

ELANCO AUSTRALASIA PTY LTD - TERMS AND CONDITIONS OF SALE

Application and agreement: *These terms and conditions apply to all Orders made by Buyer to Elanco. By placing an Order with Elanco, Buyer agrees to be bound by these Terms and Conditions of Sale.*

1. Definitions and interpretation

- 1.1 In these Terms, unless the context otherwise requires:
- a) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales, Australia or, for deliveries of Products, at the place of delivery;
 - b) **Buyer** means the party placing an Order;
 - c) **Contract** means a contract for sale as referred to in clause 2.1;
 - d) **Delivery Address** means the location specified in the Buyer's account application (unless otherwise agreed);
 - e) **Elanco** means Elanco Australasia Pty Ltd ACN 076 745 198;
 - f) **Force Majeure** means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.
 - g) **Order** means an order for Products by Buyer;
 - h) **Products** means the goods listed in an Order;
 - i) headings are for convenience only and do not affect the interpretation of these Terms;
 - j) "including" and similar expressions are not words of limitation; and
 - k) money amounts are stated in Australian currency.

2. Order and supply

- 2.1 Buyer may request Elanco to supply Products by submitting an Order. Each Order is subject to Elanco's acceptance. Upon the acceptance of each Order by Elanco, a separate contract of sale will arise (**Contract**).
- 2.2 Minimum order quantities apply. All Orders must be for standard pack sizes and quantities specified by Elanco from time to time. If Elanco accepts an Order for a non-standard pack or which is below the applicable minimum order quantity, Elanco may impose additional freight and other charges which are payable by Buyer.
- 2.3 Supply of Products is subject to availability. Elanco may suspend or discontinue the supply of Products to Buyer at any time.

3. Dealing with Products

- 3.1 Buyer must not open or tamper with any finished pack including placing any overlabel on any pack except as required for dispensing to individual patients or for consumption or use.
- 3.2 Buyer must transport, store and deal with all Products:
- a) in a safe and appropriate manner;
 - b) in accordance with any applicable Material Safety Data Sheets (**MSDS**) published by Elanco (as amended or replaced from time to time);
 - c) in compliance with all applicable occupational health and safety, environmental and other legislation; and
 - d) in accordance with the Product label.
- 3.3 Buyer must use best efforts to ensure that its customers also do the same including notifying its customers of applicable MSDS and legislation.
- 3.4 The Products are licensed and registered for sale in Australia only. Buyer must not export Products from Australia or supply to anyone who may do so, except with prior written approval.
- 3.5 If Elanco recalls any Products for any reason, Buyer must promptly deliver all affected stocks to Elanco at the point of delivery. Elanco will replace affected stocks or reimburse Buyer for the cost of the affected stock at Elanco's discretion. Buyer must ensure that customers cooperate with any recall by Elanco and must, to the extent required by applicable laws and regulations, maintain records to enable prompt and effective recall of Products from its customers.
- 3.6 Buyer must have in place at all times an emergency and accident procedure for Products being stored or transported by it.
- 3.7 Buyer must ensure that Products are transported in closed vehicles.
- 3.8 Buyer must obtain and hold current all required licenses and approvals, and comply with all applicable Commonwealth, State and Territory laws and regulations.

4. Pricing and payment

- 4.1 Buyer must pay for Products at the prices specified in Elanco's price list as at the date of dispatch.
- 4.2 Elanco may change the price of any Product at any time without notice.
- 4.3 Prices are free into store unless special freight arrangements are needed to meet Buyer's requirements, for which Buyer must pay additional charges or otherwise agreed in writing.
- 4.4 Unless otherwise stated, the selling price excludes any goods and services tax (**GST**). Buyer must pay any applicable GST at the time of paying the invoice for an Order.

- 4.5 Buyer must pay for each Order within 30 days after the date of the month end statement. Any overdue amounts bear interest from the due date until paid at 2% over the rate charged by Elanco's principal banker on overdrafts exceeding \$100,000, calculated from the due date for payment of the outstanding amount until the date of payment by Buyer. Any payment made by Buyer will be credited first against any interest that has accrued.
- 4.6 Buyer must not withhold payment or make any deduction from the invoiced price or any other amount owing to Elanco without Elanco's prior written consent.
- 4.7 Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full.
- 4.8 Elanco may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
- 4.9 Elanco will be entitled to recover from Buyer all legal and other costs incurred by Elanco arising from Buyer's default in payment and the collection of any overdue monies.

5. Delivery

- 5.1 Subject to these Terms, Elanco will deliver approved Orders to the Delivery Address. If only part of an Order is ready, Elanco may deliver that part to Buyer and render an invoice for the part delivery.
- 5.2 Buyer agrees to accept delivery of the Products at any time between 8.00am to 5.00pm on a Business Day.
- 5.3 If Elanco fails to deliver some or all of the Products pursuant to a Contract, Buyer will not be entitled to cancel that Contract or any other order, Contract or delivery. Elanco will not be obliged to accept any claims for shortages of deliveries or non-conforming Products unless written notice of the claim is given to Elanco within 5 Business Days after receipt by Buyer of the Products at the delivery destination.
- 5.4 If Buyer does not, or indicates to Elanco that it will not, take or accept delivery, then the Products will be deemed to have been delivered when Elanco was willing to deliver them.
- 5.5 Buyer must bear all costs incurred where Elanco cannot deliver the Products due to Buyer's act or omission, including the cost of further attempted delivery.
- 5.6 Any delivery date specified is an estimate only and Elanco is not liable for any delay in delivery.
- 5.7 If Elanco supplies the Products pre-packed and labelled, Buyer must not sell, supply or otherwise deal with the Products unless the packaging and labelling remains intact, and Buyer must not alter, remove, conceal or tamper with any batch numbers or other means of identification used in relation to the Products.
- 5.8 Elanco may suspend or cancel delivery of the Products for a technical, scientific, medical or efficacy reason or if Elanco believes the Products may infringe the intellectual property rights of any person, or if payments owing from Buyer to Elanco remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Elanco's part.

6. Inspection and returns

- 6.1 Buyer must inspect the Products promptly after delivery and notify Elanco within 48 hours after delivery of any errors, discrepancies or damaged Products.
- 6.2 Elanco may accept return of Products at its sole discretion. Buyer must obtain a Return Material Authorisation (RMA) number from Elanco before returning any Product. Without limiting clause 6.3, an RMA number will only be issued if the Products:
 - a. are incorrect or exceed the quantity in the Order;
 - b. are damaged in transit arranged by Elanco to Buyer; or
 - c. at time of delivery, are past, or within 6 months of, the expiry date (unless Buyer agreed in advance to accept such Products).
- 6.3 Without limitation, Elanco will not accept return of Products which:
 - a. have not been allocated an RMA number;
 - b. are returned to Elanco more than 7 days after the RMA number was allocated;
 - c. involves a claim by Buyer that the quantity of Products received differs from the quantity signed for by Buyer at delivery;
 - d. are damaged (subject to clause 6.2(b)) or otherwise not in resaleable condition;
 - e. are not in the unopened original packaging;
 - f. need refrigeration or storage below normal temperature unless Buyer can demonstrate to Elanco's satisfaction that storage conditions have been met; or
 - g. are obsolete, past their expiry date or no longer on Elanco's price list.
- 6.4 Buyer bears the cost of returning the Products unless Elanco agrees otherwise. Returned Products are at Buyer's risk in transit. Elanco will credit Buyer for Products that it accepts for return at the price paid by Buyer. If this price cannot be determined, Elanco will use the net wholesale price applying 6 months before the return date for pharmaceuticals.
- 6.5 Elanco may destroy any returned Products it considers unsaleable whether or not any dispute with Buyer about the return is finalised.
- 6.6 Subject to clause 9, Elanco will not accept returns directly from Buyer's customers. Any return accepted by Buyer from a customer does not bind Elanco.

7. Risk and insurance

- 7.1 Products supplied by Elanco to Buyer are at Buyer's risk on the earlier of arrival at the Delivery Address or into Buyer's custody, including its carrier or forwarder, if Buyer collects the Products. 8.2 At its cost, Buyer must insure the

Products from the time the Products become at Buyer's risk until they are paid for in full, against such risks as are usual or common to insure against in a business of a similar nature to Buyer.

8. Title to Products

- 8.1 Property in the Products does not pass to Buyer until Buyer pays for the Order in full. Until then, Buyer holds the Products as fiduciary agent and bailee of Elanco.
- 8.2 Until an Order has been paid for in full:
- Buyer must store the Products safely and securely in accordance with any applicable storage instructions and in a manner which enables them to be identified as Elanco's property; and
 - subject to clause 9, Buyer may sell the Products comprised in that Order in the ordinary course of its business, but only as fiduciary agent of Elanco. Buyer receives all proceeds in trust for Elanco until all liability to Elanco for that Order is discharged.

9. Default

- 9.1 An Event of Default occurs if:
- Buyer breaches these Terms; or
 - any form of insolvency event occurs in respect of Buyer including appointment of a receiver or other insolvency administrator, winding up, deemed insolvency, bankruptcy or arrangement with creditors or if Buyer does anything that may lead to any of these events.
- 9.2 If an Event of Default occurs, Elanco may (without limitation) do any or all of the following:
- vary or withdraw any approved credit limit and/or terms of trade;
 - cancel or suspend any unfilled orders;
 - terminate any contracts between Elanco and Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
 - cancel any rebate, discount or allowance due or payable by Elanco as at the date of the event;
 - enter (at any time) any premises in which the Products are stored, to enable Elanco to inspect and reclaim possession of the Products without liability for trespass, negligence or payment of any compensation to Buyer whatsoever;
 - give directions to Buyer in respect of dealings with any Products not paid for; and
 - institute any recovery process as Elanco in its discretion decides, at Buyer's cost.

10. Warranties and liability

- 10.1 To the fullest extent permitted by law, all conditions, warranties and representations not expressly contained in these Terms are excluded.
- 10.2 Where legislation implies in these Terms any condition or warranty that cannot be excluded or modified, the liability of Elanco for a breach of any such condition or warranty is limited at Elanco's option to any one or more of the following:
- In the case of the Products, replacing or supplying equivalent Products or paying for the cost of replacing or acquiring equivalent Products; and
 - In the case of any services, resupplying the services or paying for the cost of resupply.
- 10.3 Elanco is not liable for any loss or damage of any kind (whether to the Products, Buyer or any third party and including any indirect or consequential loss, any loss of profit, loss of contract or loss of goodwill) arising from or in connection with the supply of or failure to supply the Products or these Terms, even if due to the negligence of Elanco or any of its employees or agents.
- 10.4 The exclusions and limitations in these Terms apply to the maximum extent legally permitted. To the extent that Elanco's liability cannot be or is not otherwise limited, Elanco's total aggregate liability arising from or in connection with the supply of or failure to supply the Products or these Terms, even if due to the negligence of Elanco or any of its employees or agents, will not exceed \$100.
- 10.5 For Elanco Products only, Buyer warrants that it has, and will maintain current a valid veterinary practising certificate.

11. Assistance Provided by Elanco

- 11.1 Subject to obligations imposed on Elanco by the law which cannot be excluded or modified by these Terms, and subject to any contrary provisions in a Contract, any advice, recommendation, information, assistance or service provided by Elanco in relation to Products and their use or application is given in good faith but is provided without liability or responsibility on the part of Elanco and without intention that Buyer should rely thereon.

12. PPSA Application

- 12.1 In this clause 12, PPSA means the Personal Property Securities Act 2009 (Cth) and terms in this clause defined in the PPSA have the same meaning in this clause.
- 12.2 Buyer acknowledges and agrees that:
- these Terms constitute and create in favour of Elanco a security interest in all Products supplied to or held by Buyer and in the proceeds of the sale of those Products; and
 - Elanco may at any time register a financing statement or financing change statement in respect of any security interest created by the arrangements contemplated by these Terms.
 - Buyer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 12.3 Buyer consents to Elanco effecting and maintaining a registration on the register in relation to the security interest in the Products and proceeds

- 12.4 Buyer will:
- a. do anything Elanco requires to ensure Elanco's security interest is a perfected security interest in respect of the Products and proceeds which is enforceable, perfected, has priority over or otherwise effected against Buyer and third parties;
 - b. not register a financing change statement in respect of any security interest without the prior written consent of Elanco; and
 - c. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products supplied to it by or on behalf of Elanco or in the proceeds of the sale of those Products in favour of a third party without the prior written consent of Elanco.
 - d. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Terms, the following provisions of the PPSA will not apply and Buyer will have no rights under them: sections 95, 121(4), 125; 129(2), 129(3); 130; 132(3)(d); 132(4); 135; 142 and 143.
 - e. To the extent permitted by the PPSA, Elanco and Buyer agree not to disclose information of the kind referred to in section 275(1) of the PPSA. Buyer agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

13. Force Majeure

- 13.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure. If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended for the duration of the Force Majeure event.

14. Notices

- 14.1 Any notice in connection with these Terms or any Contract will be deemed to have been duly given when made in writing and delivered or sent by post or email to the party to whom such notice is intended to be given, at the address or email address of that party in the Contract or to such other address or email address as may from time to time be notified in writing to the other party.
- 14.2 A Notice is deemed to be given and received:
- a. if hand delivered, on delivery;
 - b. if sent by prepaid post, five (5) Business Days after the date of posting, or ten (10) Business Days if sent to or from another country; or
 - c. if sent by email the earlier of: the sender receiving an automated message confirming delivery, or two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within such 2 hour period, receive an automated message that the email has not been delivered or an out of office automated reply,
- but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.

15. General

- 15.1 Elanco is not responsible for any delay in or failure to perform any obligation under these Terms where such delay or failure is caused by events or circumstances beyond Elanco's reasonable control.
- 15.2 The United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) does not apply.
- 15.3 Buyer:
- a. warrants it has complied and will comply with all applicable anti-bribery laws in the countries in which it has its principal places of business and it conducts activities under these Terms;
 - b. will comply with the US *Foreign Corrupt Practices Act* which generally prohibits the promise, payment or giving of anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage. In this clause, 'government official' means any official, officer, representative, or employee of, including any doctor employed by, any non-US government department, agency or instrumentality (including any government owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office;
 - c. represents that neither it nor any of its owners, directors, employees, agents, consultants:
 - i. is a government official, or
 - ii. will directly or indirectly pay or give or promise to pay or give anything of value to any person or to any government official for purposes of
 - A. improperly influencing any act or decision of the government official in his/her official capacity;
 - B. inducing the government official to do or omit to do any act in violation of his/her lawful duty;
 - C. securing any improper advantage; or
 - D. inducing the government official to use his/her influence with the government or instrumentality to affect or influence any act or decision of the government or such instrumentality with respect to any activities undertaken relating to these Terms;
 - d. agrees that it will make reasonable efforts to comply with requests for information, including answering questionnaires and audit inquiries, to enable Elanco to ensure compliance with applicable anti-bribery laws. Buyer agrees that it will maintain accurate and complete records of its receipts and expenses relating to these Terms in accordance with generally accepted accounting principles, relating to

- e. these Terms for a period of five (5) years after Delivery;
agrees that it will maintain adequate internal controls and will not make or permit any off-the-books accounts, inadequately identified transactions, recording of non-existent expenditures, entry of liabilities with incorrect identification of their object, or the use of false documents, in connection with these Terms. Buyer will make such books and accounting records available for review by Elanco, or an independent party nominated by Elanco, at Elanco's request;
 - f. agrees to cooperate in good faith to investigate the extent of any potential violations of law in connection with these Terms;
 - g. agrees that at any time, and without notice to Buyer, Elanco may disclose information relating to a possible violation of laws, or the existence of these Terms, including the compensation provisions, to a client, to a government or government agency, and to anyone determined by Elanco to have a legitimate need to know;
 - h. agrees that Elanco may immediately terminate Buyer's account and seek all remedies available under law if it believes, in good faith, that Buyer has breached this clause 15.
- 15.4 To the extent that Buyer collects, holds or deals with personal information of Elanco or Elanco's customers, the Buyer must comply with Elanco's Privacy Statement and applicable privacy legislation including the Australian Privacy Principles.
- 15.5 These Terms apply to all orders. Subject only to a formal agreement signed by both parties, these Terms contain the entire understanding between the parties concerning the subject matter and supersede all prior communications. Elanco is not bound by any terms and conditions contained in any document issued by Buyer. Buyer must not submit any such terms and conditions with its Order.
- 15.6 Each party acknowledges that, except as expressly stated in these Terms, it has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of these Terms.
- 15.7 If any provision of these Terms is unenforceable, illegal or void, that provision is severed and the other provisions of these Terms remain in force.
- 15.8 A failure, delay, relaxation or indulgence by a party in exercising any power or right under these Terms does not operate as a waiver of the power or right. A waiver of a breach does not operate as a waiver of any other breach.
- 15.9 These Terms do not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.
- 15.10 Elanco may vary or replace these Terms by notifying Buyer in writing including by email. Any variation takes effect from the date of Buyer's next Order.
- 15.11 Buyer cannot assign or deal with these Terms without Elanco's prior written consent.
- 15.12 These Terms bind and benefit the parties and their respective successors and permitted assigns.
- 15.13 The laws of New South Wales apply to these Terms. The parties irrevocably submit to the jurisdiction of the courts of that State and any appellate courts.