

EISAI AUSTRALIA PTY LTD'S STANDARD CONDITIONS OF SALE

§ 1 GENERAL

(1) These standard terms and conditions ("**Conditions**") apply to the contract between Eisai Australia Pty Ltd ("**Seller**") and customers ("**Customer**") for the sale of pharmaceutical products ("**Goods**") as specified in Seller's quotation for the sale of the products or the Customer's purchase order acknowledged by the Seller ("**Order**").

(2) Subject to any additional terms agreed between the Seller and the Customer in writing, these Conditions govern the purchase of Goods by the Customer to the exclusion of any other express or implied conditions (including any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing).

(3) The contract between the Seller and the Customer for the sale and purchase of the Goods in accordance with these Conditions constitutes the entire agreement between the parties, and the Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in these Conditions, the Order, or is otherwise agreed in writing between the parties.

(4) These Conditions may only be modified in writing and no other action on the part of the Seller (including delivery of the Goods) shall be construed as an acceptance by the Seller of any other conditions.

(5) **The Seller reserves the right to amend these Conditions with effect for the future.** If the Seller wishes to amend the Conditions, it shall inform the Customer in writing about the envisaged amended version of the Conditions and the Customer is entitled to refuse such amendment within 20 days of the notification in written form. Without any written refusal of the Customer within this period, the amended Conditions shall be deemed to be approved. The Seller reserves the right to amend the specification of the Goods if required by any applicable laws or regulatory requirements.

§ 2 PRICE

(1) The price payable for the Goods shall be that specified in the Order.

(2) The price shall be subject to the addition of GST where and as applicable on the date of the invoice.

(3) The Seller may charge to the Customer its shipping costs if (i) the Customer requests delivery services outside the Seller's standard delivery services and/or (ii) the Order is below the minimum order value, as notified by the Seller from time to time. The Seller may amend the price of the Goods in order to amend any errors or omissions, whereas in this case, the Customer may terminate the contract.

§ 3 PAYMENT

(1) The Seller shall invoice for the Goods upon dispatch of the Order. The Customer shall pay Seller's invoice within 30 days of the date of the invoice.

(2) Should payment not be made within that time, the Customer is in default of payment. Default of payment entitles the Seller to charge the Customer interest for default at a **rate of 3% percent points per annum above the base rate of Westpac Bank** from the payment due date until payment in full is made. The Seller reserves the right to claim for higher damages due to the default, whereas the Customer in this case is entitled to prove that no such higher damages have occurred.

§ 4 DELIVERY

(1) Orders are subject to availability of the Goods and will be delivered to the address specified on the Order.

(2) Unless otherwise instructed by the Customer, the Seller will arrange carriage and insurance for the Goods through an authorized carrier. Subject to § 2 paragraph (3), if the delivery is to take place in Australia, no further charge for carriage and insurance will be made by the Seller or its authorized carrier. For deliveries elsewhere, the Seller may make an additional charge for these items and such charge will be specified on the invoice for the Goods; the same applies to costs for express delivery and any other specific way of delivery requested by the Customer.

(3) Subject to the Seller's prior written approval, the Customer shall not (i) export the Goods, itself or by a third party, to a country outside of Australia; (ii) sell or otherwise make available the Goods to a third party acting commercially without obligating that party to comply with the export prohibition under (i); (iii) sell or otherwise make available the Goods to a third party acting commercially if the Customer is aware of or has reasons for assuming that said third party will export the Goods to a country outside of Australia; (iv) actively sell the Goods into an exclusive territory or to an exclusive customer group reserved to the Seller or its subsidiaries, its holding company or any other subsidiary of such holding company (together "**Affiliated Companies**"), or allocated by the Seller or Affiliated Companies to another customer. A list of these territories and customer groups is available from the Seller on written request.

(4) Unless agreed otherwise in writing, all delivery times are business estimates and delivery will be effected within reasonable dispatch. For termination rights due to late delivery see § 13 paragraph (1), for damages § 11 paragraph (1).

(5) The Seller may withhold or suspend the delivery of Goods if and for as long as any sum due to the Seller under this contract pursuant to § 3 or any other contract between the Seller and the Customer is overdue

§ 5 PACKING

The Goods will be delivered in Seller's standard packaging.

§ 6 RISK

(1) Risk in the Goods shall pass to the Customer when they are delivered or when the Customer is in default of acceptance.

(2) If the Customer is in default of acceptance, the Customer shall reimburse the Seller for all costs incurred in respect of the failed offer and the retention of the Goods, including the costs of return, storage, insurance and redelivery.

§ 7 STORAGE CONDITIONS

recommended storage conditions for the Goods and with applicable law and the CGWP (Code for Good Wholesaling Practice) if applicable.

§ 8 TITLE AND PPSA

(1) Title in any Goods supplied shall not pass to the Customer until the Seller has received, in cleared funds:

(i) all sums due for the supply of those Goods; and

(ii) all other sums due under any contract between the Seller and the Customer.

(2) The Customer is obliged to store the Goods in compliance with § 7 and separately from other goods belonging to the Customer or others, and in such a way that it is clear that such Goods are the property of the Seller.

(3) The Customer undertakes that until the Customer has made payment in accordance with paragraph (1) above, to the extent permitted by applicable laws, the Customer will not remove, deface or cover up any identification marks on the Goods or marks indicating that the Goods are the property of the Seller.

(4) The Customer may resell or use the Goods in the ordinary course of its business and at full market value. Until full payment in accordance with paragraph (1), the Customer shall be obliged to account for any sums received in respect of the Goods and shall keep all such proceeds separate from any moneys or properties of the Customer or third parties.

(5) The Customer's power of sale and use will automatically cease if, at any time, the Customer is in default of payment with any sums due to the Seller, the Customer does not hold up its ordinary course of business, the Customer is subject to an application for bankruptcy, sequestration, winding up or liquidation, an administrator or receiver is appointed to the Customer or its assets, or the contract is terminated under § 13 below.

(6) To the extent permitted in law:

(i) after termination of the Customer's power of sale and use and until full payment in accordance with paragraph (1) is made, the Seller (or its nominee) shall have unrestricted access to the Customer's property or the property of any third party where the Goods are stored to inspect or re-possess any Goods in respect of which the power of sale and use has been terminated; and

(ii) the Customer indemnifies the Seller against any loss, cost or expense incurred or suffered by the Seller as a result of exercising its rights under paragraph (6)(i).

(7) If third parties take steps to pledge or otherwise dispose of the Goods, the Customer has to point to the retention of title and has to notify the Seller thereof without undue delay.

(8) The Customer acknowledges and agrees that:

(i) the Seller may register one or more financing statements or financing change statements in respect of any security interest that arises under or in relation to these Conditions in any manner it considers appropriate;

(ii) it will provide all assistance reasonably required by the Seller to ensure that any security interest that arises under or in relation to these Conditions is enforceable and perfected and otherwise effective under the Personal Property Securities Act 2009 (Cth) (PPSA);

(iii) until title in any Goods purchased under these Conditions passes to the Customer, the Customer must keep the Goods free (and ensure that they are kept free) of any charge, lien or security interest; and

(iv) the Seller has an absolute discretion to apply any money received as a result of supplying Goods or which represent the proceeds of enforcement of any security interests it holds in reduction of any part or parts of the moneys secured to the Seller despite any principle or presumption of law to the contrary or any direction given to the Seller at the time of receipt and without the need to communicate the Seller's election to any person.

(9) To the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the PPSA the Seller need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) and sections 142 and 143 are excluded;

(ii) for the purposes of section 115(7) of the PPSA, the Seller need not comply with sections 132 and 137(3); and

(iii) the Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

(10) In this § 8 each of the terms "security interest", "financing statement", "financing change statement" and "verification statement" have the meanings given to them in the PPSA.

(11) If this agreement creates, provides for, or gives rise to a Security Interest, each party agrees that, to the extent permitted by law:

(i) it will not disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request made pursuant to that section, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA;

(ii) nothing in this agreement is to be construed as constituting the consent of a party to the disclosure of information for the purpose of section 275(7) of the PPSA; and

(iii) it will not authorise the disclosure of information under section 275(7)(c) of the PPSA or request information under section 275(7)(d) of the PPSA (as applicable).

§ 9 INSPECTION AND OBJECTION

(1) The Customer shall inspect the Goods immediately upon their receipt and any claim in respect of a defect that ought to be discovered in such inspection **shall be notified to the Seller pursuant to § 17 paragraph (2) within 2 working days of delivery to the Customer**, with digital photographic evidence thereof. In the event the Customer states that the quality of the Goods deviates from the quality described in the Order, the Customer shall – if not unreasonable in a given case – allow the Seller to inspect the Goods. If the Customer is in breach of the obligations of this paragraph (1), the Customer shall be deemed to have

accepted the Goods and shall not be entitled to assert claims arising out of a defect of the Goods. Paragraph (2) remains unaffected.

(2) Paragraph (1) applies accordingly to a defect that could not be detected in the Customer's inspection, provided that such defect **shall be notified to the Seller immediately pursuant to § 17 paragraph (2) after discovery**.

(3) Paragraph (1) applies accordingly to a claim due to Seller's default in delivery, provided that such claim **shall be notified to the Seller pursuant to § 17 paragraph (2) within 5 working days of delivery to the Customer**.

(4) Notwithstanding paragraphs (1) and (2) of § 9, § 10 paragraphs (2) and (3) shall apply in respect of over and under deliveries.

§ 10 WARRANTY

(1) Subject to paragraph (5) below, if the Customer timely proves that any of the Goods have been defective at the time of passage of risk, the Customer is entitled to supplementary performance to be rendered by the Seller by way of replacement of the defective Goods. If supplementary performance fails, the Customer at its option is entitled to reduce the purchase price or to terminate the contract. For the avoidance of doubt, Goods which are unused and recalled by the Seller or the regulatory authority shall be treated as defective Goods as under this paragraph (1), and Customer shall cooperate fully with Supplier and the regulatory authority in relation to any recall.

(2) Subject to paragraph (5) below, if the defect is an over delivery or the wrong product/package size has been delivered, the Customer may at its option return such Goods or keep the Goods and pay to the Seller the price per unit contained in the Order or from the Seller's current price list if the price is not provided in the Order. Such defect and the chosen option **shall be notified to the Seller pursuant to § 17 paragraph (2) within 5 working days of delivery**. If not notified within this period, Customer's right to choose shall terminate and the Seller shall be entitled to claim payment of these Goods at the price units contained in the Order or from the Seller's current price list if the price is not provided in the Order.

(3) Subject to paragraph (5) below, if the defect is an underdelivery, the Seller may at its option deliver the missing Goods or refund to the Customer pro rata its excess payment for the Goods. Such defect **shall be notified to the Seller pursuant to § 17 paragraph (2) within 5 working days of delivery**. If not notified within this period, Customer shall not be entitled to assert claims arising out of such defect of these Goods.

(4) Without prejudice to § 11 paragraph (1), all other warranty rights of the Customer arising out of defective Goods shall be excluded, in particular in no event shall the Customer in case of a partial delivery or a partial defective delivery be entitled to rescind the whole contract.

(5) **THE SELLER'S WARRANTIES ABOVE SHALL ONLY APPLY (I) TO GOODS THAT HAVE BEEN DIRECTLY SUPPLIED TO THE CUSTOMER BY THE SELLER'S AUTHORISED CARRIER, LINFOX AUSTRALIA PTY LTD, AND (II) WITH RESPECT TO GOODS BEING RETURNED BY THE CUSTOMER, WHERE SUCH GOODS ARE RETURNED WITH SEALS AND PACKAGING UNDAMAGED AND WITH A RETURN OF GOODS CERTIFICATE FROM THE CUSTOMER.**

§ 11 LIMITATIONS OF LIABILITY

(1) To the maximum extent permitted by law, Seller shall have no liability to Customer under these Conditions save where resulting from intentional misconduct or gross negligence on Seller's part or on the part of Seller's agents or assistants in performance. This limitation does not apply in case of breach of fundamental contractual obligations or in respect of liability for damage to life, body or health arising from defective Goods.

(2) Seller's liability is excluded: (i) if and to the extent a damage is caused by an act or omission on the part of the Customer, including that the Customer is not in possession of all approvals by authorities required for the purchase and/or sale of the Goods; (ii) if the minimum shelf life has expired, though the Goods had been delivered with a proper minimum shelf life; (iii) to the extent it includes any loss of profit, or any indirect or consequential loss arising under or in connection with the supply of Goods.

(3) Circumstances beyond the control of the Seller such as force majeure and other material events that can not be overcome by the Seller or Seller's authorized carriers release the parties from their contractual obligations, as long as and to the extent such circumstances continue.

§ 12 RETURNS

Goods which are not defective within the meaning of these Conditions will not be accepted as returns without the prior written consent of the Seller.

§ 13 TERMINATION

(1) If the Seller is liable for a delay in delivery pursuant to § 11 paragraph (1), the Customer may terminate the contract, provided the Seller failed to deliver the Goods within a grace period set by the Customer of 14 days.

(2) Circumstances beyond the control of the Seller (e.g. disaster or other cases of force majeure, governmental interference, import or export restrictions, employment conflicts, traffic disruptions) extend the proposed delivery time reasonably. If the Seller after such extension is still not able due to such grounds, both parties shall be entitled to terminate the contract.

(3) In addition, the Seller is entitled to terminate the contract if:

(i) the Customer is in default of payment pursuant to § 3 and fails to make full payment within a grace period set by the Seller of 7 days, save where payment is disputed in good faith;

Immediately upon delivery, the Goods shall be stored by the Customer in accordance with

§ 13 TERMINATION (Continued)

- (ii) the Customer is in breach of a material obligation under the contract and fails to remedy such breach – if possible – within a grace period set by the Seller of 30 days;
 - (iii) the Customer is subject to an application for bankruptcy, composition proceedings, sequestration, winding up or liquidation, an administrator or receiver is appointed to the Customer or its assets or any analogous step or procedure is taken in respect of the Customer;
 - (iv) the Customer does not hold up its ordinary course of business for a period exceeding 4 weeks or ceases business operations entirely; or
 - (v) the Customer is not in possession of all approvals by authorities required under the respective law for the purchase and/or sale of the Goods.
- (4) Termination of a contract shall be without prejudice to Seller's right under § 8 paragraph (6) to re-possess any Goods or to claim for damages.

§ 14 SET-OFF

The Customer may not set off any claims against claims of the Seller arising from this contract.

§ 15 WAIVER

Any delay or waiver by the Seller of any breach of, or any default under, any provision of these Conditions by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of these Conditions.

§ 16 JURISDICTION AND GOVERNING LAW

(1) **The parties hereby agree to submit to the non-exclusive jurisdiction of the courts in the State of New South Wales, Australia.** The Seller shall however be entitled to take legal action against the Customer at Customer's general legal venue.

(2) These Conditions shall be governed by and interpreted in accordance with the laws of the State of New South Wales.

§ 17 GENERAL

(1) If any provision (or part thereof) of these Conditions is found to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, then such provision (or part thereof) shall be deemed severable and the remaining provisions of these Conditions shall continue in full force and effect.

(2) All notifications, statements and declarations under this contract, including those that have to be in writing, require text form and have to be made to the Seller by email (contact_australia@eisai.net) ; except for claims for defects or defaults in delivery pursuant to § 9 and § 10 which shall be made to Linfox Australia Pty Ltd by telephone (02 8882 4900), email (eisai_cs@linfox.com) or mail (Locked Bag 2013, Seven Hills NSW 1730).

(3) The Seller may freely assign any of its rights and/or sub-contract the performance of any of its obligations hereunder to Affiliated Companies and to its agents or assistants in performance.