

1. General:

- (a) Midwest supplies all present and after acquired products to every Customer on the Terms and Conditions of Trade which shall constitute the entire agreement between Midwest and the Customer and it is expressly agreed that there are no other understandings, representations, undertakings or warranties of any kind (express or implied) forming part of this contract;
- (b) Any condition contained in the Customers order which is inconsistent with, qualifies or is contrary to the Terms and Conditions of Trade shall have no effect unless that condition is expressly accepted in writing by Midwest within a Quotation;

2. Acceptance of Terms and Conditions of Trade:

- (a) Midwest shall not be obliged to supply the Products unless the Customer has completed and executed an approved Customer Application for Credit Account form. The Customer acknowledges and agrees that the execution of the Customer Application for Credit Account form shall be deemed to be acceptance of the Terms and Conditions of Trade by the Customer from the date of execution.
- (b) Midwest shall only supply the Customer with Products on these Terms and Conditions of Trade unless Midwest has expressly agreed in writing to a variation of the Terms and Conditions of Trade.
- (c) Midwest shall only supply the Customer with Classified Medicines, Controlled Drugs and Dangerous Goods upon receipt from the Customer of a copy of the appropriate licence to purchase such products held by the Customer.

3. Prices:

- (a) The price of the Products will be the current prices as at the date of delivery unless Midwest has agreed in writing to a variation of this clause.
- (b) The Purchase Price is exclusive of GST, taxes, duties and freight unless otherwise specified by Midwest.
- (c) Freight charges within New Zealand are payable by the customer and will be included in the invoiced cost.

4. Terms of Payment

- (a) The Customer shall pay for the Products upon delivery being made in the manner set out in the Terms and Conditions of Trade unless Midwest approves the provision of a credit account for the Customer.

- (b) In the event that Midwest has, in writing, approved a Credit Account for the Customer then the Customer shall ensure that Midwest is paid, in full and without any deduction whatsoever, no later than the 20<sup>th</sup> day of the month following the date of invoice.
- (c) In the event that the Customer does not make payment to Midwest when payment is due to be made then, in addition to any rights to enforce payment which is available to Midwest at law, the Customer agrees:
  - (i) to pay a penalty sum to Midwest at a rate of 2% per month, calculated daily, on the amount outstanding from the date that payment was due to be made until the date that payment is actually received by Midwest;
  - (ii) to pay all costs incurred by Midwest including solicitor-client costs and debt collection costs incurred in the enforcement of the Terms and Conditions of Trade;
  - (iii) Midwest may in its absolute discretion allocate any sum received from the Customer towards any invoice or amount owing by the Customer, whether the Products were supplied under any particular invoice or otherwise. Midwest shall not be obliged to make such allocation at the time of receipt but may do so on any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured to Midwest and secondly towards any sum which in the opinion of Midwest is under secured;
  - (iv) Legal ownership in the Products supplied by Midwest to the Customer is retained by Midwest until payment is made in full for the Products supplied by Midwest to the Customer. In the event that the Customer has taken delivery of the Products then, until payment in full has been made by the Customer, the Customer authorises Midwest to enter at any place at which the Customer is holding or storing the Products and to remove them to any location chosen by Midwest and/or to dispose of them in any manner that Midwest deems fit.
  - (v) In the event that the Customer does not make payment to Midwest when payment is due to be made then Midwest shall be entitled to defer supplying the Customer with any Products and in the case of a Customer which has previously been approved for credit by Midwest, to forfeit the status and rights of having been approved for credit by Midwest.

5. Title and Risk:

- (a) Risk of any loss, damage or deterioration of the Products to pass to the Customer on delivery;

- (b) From Delivery until Title passes to the Customer the Customer should be responsible for insuring the Products;
- (c) Ownership of the Products remains with Midwest until payment in full of the issued invoice.

6. Delivery & Freight:

- (a) Orders received before 2pm, will be despatched the same day whenever possible. While Midwest endeavours to despatch your order on the day of receipt we cannot be held responsible for delays for any reason.
- (b) Midwest will normally use local courier companies to transport the Products unless arrangement has been made with the Customer for an alternative mode of transport.
- (c) If the delivery is urgent, or the Customer asks for delivery to be made in a manner not normally used by Midwest, the Customer shall incur all additional freight costs.
- (d) In the case of the Customer being a Pharmacy, the delivery shall be sent direct to the Customer and not to a third party. If the Customer is a Wholesaler and the Customer requests delivery to a third party being a Pharmacy, Midwest will deliver to the third party providing clause 2(c) of these terms of trade are satisfied.
- (e) Midwest cannot be held liable for delays in delivery that are outside it's control.

7. Cancelled Orders & Returned Goods Policy:

Midwest will only accept goods returned for credit under the following conditions:

- (a) If goods have been ordered in error and notification has been received by Midwest either by phone, fax or email within 48 hours of receipt of the product, a credit will be issued. Any costs incurred in the return of the product(s) are to be met by the customer. Goods must be received by Midwest unopened in original packaging.
- (b) Goods that have been sent in error by Midwest Pharmaceuticals may be returned for credit. Notification of errors must be made to Midwest either by phone, fax or email within 48 hours of receipt of the product. Goods will be picked up within 48 hours of receipt of notification by Midwest. Any costs incurred in the return of the product(s) will be met by Midwest.
- (c) Midwest cannot accept the following goods for return:

- Goods where the packaging has been defaced or marked in any way by the customer.
  - Goods that have been opened or partially used.
- (d) Midwest reserves the right not to accept short dated or expired products for return for credit. For these products, returns must be approved by Midwest in advance.
- (e) Cancelled orders will be subject to a 15% restocking fee at the discretion of Midwest.

8. Terms of Warranty

Midwest warrants to the original customer purchasing such products directly from Midwest that all such products sold will be free from defects in materials and workmanship affecting form, fit and function. Any claim alleging that any product fails to conform to the foregoing warranty may be made only by the customer who purchased such product and only while such customer owns such product. Midwest, at its option, will replace or provide a credit or refund of either the original purchase price or fair market value, whichever is lower, that is determined by Midwest to be defective. Midwest reserves the right to substitute functionally equivalent product. The Limited Warranty does not include failures resulting from misuse, abuse, neglect, alteration, usage not in accordance with product instructions or acts of nature.

9. Limitations

Midwest makes no warranties, expressed or implied, and Midwest disclaims and negates all other warranties, including without limitation, implied warranties of merchantability, fitness for a particular purpose, conformity to models and samples, or any warranties or indemnities against intellectual property infringement.

10. Disputes Resolution

In the event of a dispute arising between Midwest and the Customer relating directly or indirectly to the Terms and Conditions of Trade one party may give a written notice to the other setting out the matter in dispute ("Dispute Notice"). Thereafter:

- (a) The parties will use their best endeavours to resolve the dispute by negotiation in good faith. The parties will attend at least one meeting to discuss and attempt to resolve the dispute prior to taking any other steps concerning the dispute;
- (b) If the dispute cannot be resolved under clause 10(a) within 15 business days following the giving of the Dispute Notice, or if a party refuses to comply with its obligations under that clause, the dispute will be referred to mediation, and

the mediation will take place in accordance with the LEADR mediation guideline in force at that time;

- (c) Failing a mediated resolution or if all of the parties agree that the dispute is not likely to be resolved by reference to mediation, the dispute will be settled by arbitration in accordance with the provisions of the Arbitration Act 1996.

11. Default

- (a) In the Terms and Conditions of Trade a "Default Event" shall be one or more of the following:

- (i) any default by the Customer under the Terms and Conditions of Trade including a failure to make payment;
- (ii) the Customer becomes insolvent or is adjudged bankrupt;
- (iii) the Customer ceases or threatens to cease to carry on its business;
- (iv) a receiver, liquidator, official assignee or a statutory manager of the Customer's asset is appointed;
- (v) the Customer makes or proposes an arrangement or compromise with its creditors;
- (vi) there is a judgement of any court against the Customer which is not sustained or satisfied;
- (vii) there is a change in the effective control and/or management of the Customer;
- (viii) there is any other event which in the sole opinion of Midwest gives rise to concern as to the time the payment of the Customer's debts.

- (b) Where a Default Event occurs and without prejudice to any other remedies in the Terms and Conditions of Trade or at law Midwest may:

- (i) demand payment of the arrears as well as payment in advance for any part of the Products not yet supplied;
- (ii) cancel this contract and any other contract between Midwest and the Customer, suspend or cancel the Customer's Credit Account, and/or cancel any outstanding variations requested by the Customer and in each case seek damages;
- (iii) appoint a receiver in respect of the Products (including the proceeds of them). Any receiver so appointed may take possession of the Products and re-sell them and otherwise exercise the rights conferred by law on the receiver;

- (c) Notwithstanding the passing of time since the Default Event Midwest can invoke the provision of this clause at any time;

- (d) The Customer shall pay all costs incurred by Midwest including solicitor-client costs and debt collection costs incurred in the enforcement of the Terms and Conditions of Trade.

12. General

- (a) If any provision of the Terms and Conditions of Trade shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired;
- (b) The Terms and Conditions of Trade are subject to the laws of New Zealand and Midwest takes no responsibility for changes in the law, which affects the validity of the Products or the use of the Products by the Customer;
- (c) Midwest shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach of the Terms and Conditions of Trade by Midwest;
- (d) Midwest may licence or sub-contract all or any part of its rights and obligations in the Terms and Conditions of Trade without the Customer's consent;
- (e) Midwest reserves the right to review the terms of the Terms and Conditions of Trade at any time and from time to time. If, following any such review, there is to be any change in the terms of the Terms and Conditions of Trade, that change will take effect from the date on which Midwest notifies the Customer of such change.
- (f) In the event that the Customer is a wholesaler or otherwise a trade purchaser then the Consumers Guarantee Act 1993 will not apply to the Terms and Conditions of Trade.

13. Variations to Terms and Conditions of Trade

- (a) Any variation, waiver or cancellation of the Terms and Conditions of Trade (or part of them) shall have no effect unless accepted in writing by Midwest. If Midwest accepts cancellation Midwest may levy a charge for all Products supplied by Midwest prior to accepting cancellation of the Terms and Conditions of Trade;
- (b) Where the Customer and Midwest agree to any variation to the Terms and Conditions of Trade (or part of them) for the quantity of Products to be provided, the Products provided shall be priced at the rate applicable to the original quantity or at a revised rate in the sole and absolute discretion of Midwest;