

**BOEHRINGER INGELHEIM PROPRIETARY LIMITED
TERMS & CONDITIONS
PURCHASE OF PRODUCTS**

October 2017

1. DEFINITIONS

- 1.1. "**Adverse Events**" means any hazard, contra-indication, side-effect, precaution, unexpected medical occurrence, harmful event, unexpected and unintended response or other unexpected adverse reaction associated with the use of a Product, whether or not considered attributable to the Product or to its compounds or to the packaging, labelling or the instructions for use, including but not limited to: any event or complaint resulting from an overdose of the Product, whether accidental or intentional; any event or complaint resulting from the abuse of the Product; any event or complaint resulting from the recall or withdrawal of the Product and any failure of the expected pharmacological action; any malfunction, failure or deterioration in the characteristics and/or performance of the Product; any inadequacy in the packaging, labelling or the instructions for use; any technical or medical factor in relation to the characteristics or performance of the Product which might lead to a recall or withdrawal of the Product.
- 1.2. "**Agreement**" shall have the meaning as set forth in Section 2.1.
- 1.3. "**Authorized Signatory**" is an employee or representative of a Party who has authority by virtue of that Party's internal procedure to commit that Party to a legally binding contract.
- 1.4. "**BI**" shall mean Boehringer Ingelheim Animal Health South Africa (Proprietary) Limited a private company with registration number 1997/022402/07, having its business address at Private Bag X3032, Randburg 2125, South Africa.
- 1.5. "**Customer**" shall have the meaning as set forth in Section 2.1.
- 1.6. "**Customer PV Contact**" shall have the meaning as set forth in Section 15.4.
- 1.7. "**Credit Approved Customer**" shall be deemed a Customer having been qualified by BI to have a sufficient credit rating to be eligible to order Products on 'open account' with deferred payment terms pursuant to Section 10.1 number (ii).
- 1.8. "**Party**" shall mean each, BI and the Customer (collectively the "**Parties**").
- 1.9. "**Price List**" means BI's record of prices and minimum order quantities prevailing at any particular point in time, as amended and e-mailed from time to time by BI.
- 1.10. "**Product**" shall have the meaning as set forth in Section 2.1.
- 1.11. "**T&C**" shall mean these terms and conditions.

2. GENERAL

- 2.1. These T&C are applicable to purchases of animal health pharmaceutical products ("**Product**") concluded by BI's acceptance of an order placed by a customer ("**Customer**"). Such purchase agreement governed by this T&Cs being referred to as agreement ("**Agreement**").
- 2.2. These T&Cs supersede any terms and conditions oral or written referred to, offered or relied on by the Customer, whether in negotiation or at any other time in the dealing between BI and the Customer, with reference to the purchase of Products.

2.3. Without prejudice to the matters above, BI will not be bound by any standard, oral, or printed terms or any other terms whatsoever provided by the Customer in any of its documents or otherwise unless the Customer specifically states in writing, separately and distinct from such terms that it intends such terms to apply and an Authorized Signatory of BI confirms its acceptance in writing to the Customer.

2.4. In cases where an Agreement (governed by these T&Cs) requires a notification to be given 'in writing', this shall mean by document signed by Parties, or by letter, fax, electronic mail and by such other means as are agreed by the Parties.

3. PRODUCT PRICES / DELIVERY COSTS

- 3.1. Products might be ordered by the Customer at a price as reflected on the e-mailed Price List at the time of the order being placed by the Customer.
- 3.2. Products will be supplied in sales modules/packs or multiples thereof as mentioned in the Price List and will not be broken down into individual Products by BI unless it is sold as single units.
- 3.3. BI reserves the right to change its Price List without prior notification to the Customer. In the event that the prices of Products ordered by the Customer increase prior to delivery, BI will notify the Customer of the increase and the Customer will be entitled to cancel its order for those Products in respect of which there has been a price increase.
- 3.4. For deliveries within the Republic of South Africa no additional charges will be invoices for the delivery. For orders to be delivered outside the Republic of South Africa delivery charges will be added to the purchase price of the Products and have to be borne by the Customer.

4. ORDERING OF PRODUCT

- 4.1. The minimum order quantity, as set out in Price List, will apply to all orders. Smaller orders may be considered by BI, in its sole discretion, subject to the Customer being liable for payment of the specific delivery cost of such order.
- 4.2. BI's obligation to supply the Products will at all times be subject to the condition that BI is reasonably able to obtain or manufacture a sufficient quantity of the Products to sell to the Customer. In the event that the Products are in short supply, BI will allocate to the Customer its pro rata share of available Products, taking into consideration the Customer's relative sales volume in relation to the BI's other customers. BI shall not be obliged to purchase from others in order to be able to deliver the Products ordered by the Customer.

4.3. Products which are out of stock will be placed on back order unless otherwise stated. Such backorders will be confirmed and delivered as soon as stocks are available.

4.4. Delivery and performance times quoted are merely estimates and are not binding.

5. ACCEPTANCE OF ORDER

BI will accept orders placed by Customer by providing a pro-forma invoice to the Customer.

6. CANCELLATION OF ORDER

- 6.1. Any order is subject to cancellation by BI due to force majeure or any circumstance beyond the control of BI including, *inter alia*, inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state

- of emergency, strike, lockout, labour disputes, fire, flood, drought or legislation.
- 6.2. Any order is subject to cancellation by BI if the Customer breaches the terms of the Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.
- 6.3. The Customer agrees that BI will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in Sections 6.1 or 6.2 occur.
- 7. DELIVERY**
- 7.1. Any waybill (copy or original) signed by the Customer or a third party engaged to transport the on behalf of BI shall be prima facie proof that delivery was made to the Customer. The person signing the proof of delivery documentation shall be deemed to have the authority to accept the Products on behalf of the Customer.
- 7.2. Title ownership of the Products shall not be transferred to the Customer until full payment of corresponding purchase price of the Products.
- 7.3. The Customer acknowledges that he is aware that certain Products require specialized handling or storage on delivery (as indicated on each carton and/or label) and understands that the risk in and to the Products will pass to the Customer on delivery. The Company cannot accept responsibility for any deterioration which may occur because of failure to follow the storage instructions precisely.
- 8. DELIVERY INSPECTION**
- 8.1. Upon receipt of the Products, Customer shall examine all Products delivered and shall promptly notify BI in writing of any defect in a consignment or an incomplete delivery of an order, which in any case shall not be later than ten (10) days.
- 8.2. In the case of hidden defects for which BI is responsible, the Customer should notify BI of the defects within 10 (ten) days after discovery along with supporting photographs and confirmation of the quantities and defects.
- 8.3. Upon Customer's failure to comply with the foregoing examination obligation Products delivered shall be deemed as accepted by the Customer.
- 9. CLAIMS & RETURN OF PRODUCT**
- 9.1. As a general rule, BI will not accept any return of Product.
- 9.2. In the event of incorrect, incomplete or damaged Products at the time of the delivery to the Customer, BI will, in its sole discretion, either
- replace such Products at BI's cost and expense; or
 - issue the Customer with a credit note for an amount equal to the price of such Product as reflected on the invoice related to the order (for this quantity).
- 9.3. Expired, damaged or used Products, or any components, remnants, containers, packaging relating thereto must be disposed of by the Customer in accordance with any applicable national or provincial legislation, including any industry waste management program approved under any applicable legislation or regulation.
- 10. PAYMENT TERMS**
- 10.1. The purchase price for the Products contained in the tax invoice issued by BI shall be due and payable either (i) cash on order (payment in advance) or (ii) within thirty (30) calendar days from date of a credit statement if the Customer is a Credit Approved Customer.
- 10.2. BI shall be entitled to withdraw credit facility granted to a Credit Approved Customer at any time within its sole discretion.
- 10.3. The Customer has no right to withhold payment for any reason whatsoever and no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by the BI reduced to writing and signed a duly Authorized Signatory of BI.
- 11. TAX**
- 11.1. All prices in the Price List are expressed to be exclusive of value added tax (VAT) or similar taxes. VAT/indirect taxes shall be added to the extent required by applicable law.
- 11.2. If applicable laws or regulations require withholding by BI of any taxes imposed upon Customer on account of any payments made under an Agreement (withholding taxes) to benefit of Customer, such taxes have to be retained by BI as required by local law from such payment and shall be paid by BI to the proper tax authorities on account of Customer. Official receipts of payment of any retained local withholding tax shall be secured and sent by BI to Customer as evidence of such payment only on Customer request. The Parties shall cooperate and exercise their best efforts to ensure that any withholding taxes imposed on Customer are reduced as far as possible under the provisions of any relevant double tax treaty.
- 12. LATE PAYMENT**
- 12.1. Interest on overdue amounts shall be charged at the maximum permissible rate in terms of the National Credit Act 2005 (Act No 34 of 2005) as amended and published on the Standard Bank of South Africa Website <http://www.standardbank.com>, calculated from the due date referred to in Section 10.1 above.
- 12.2. The Customer agrees that if an account is not settled in full (within the period agreed in Section 10.1 (ii) above for a Credit Approved Customer); BI is:
- 12.2.1. entitled to immediately institute action against the Customer at the sole expense of the Customer; or
 - 12.2.2. to withdraw from the underlying Agreement and take possession of any Products delivered to the Customer and claim damages. These remedies are without prejudice to any other right BI may be entitled under such Agreement or in law. BI reserves its right to stop supply immediately on cancellation or on non-payment.
- 12.3. In the event of cancellation of the Agreement BI, it shall be entitled to repossess any Products that have been delivered to the Customer and remained unpaid at the due date.
- 12.4. The Customer is not entitled to sell or dispose of any Products unpaid for without the prior written consent of the Company. The Customer shall not allow the Products to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of the Company in the Products.

13. CUSTOMER CREDIT VALIDATION

- 13.1. BI may carry out a credit enquiry on the Customer and its directors, members, partners, trustees, principals from time to time with one or more credit bureaus/ credit information agents.
- 13.2. Customers consents that BI may transmit details to credit bureaus/ credit information agents of the Customer of how the Customer has performed in meeting his/her/its obligations in terms of this Agreement;

14. INSURANCE

- 14.1. The risk of damage to, destruction or theft of Products shall pass to the Customer upon receipt of the Products ordered. Customer undertakes to comprehensively insure the Products until paid for in full. The Customer shall at a minimum have the following insurances:

- Goods in transit insurance;
- Product liability insurance; and
- Commercial General Liability Insurance.

- 14.2. BI in no manner or form undertakes to be liable for any premium or charge associated with such insurance or policy and Customer shall at all times be solely responsible for any payment, premium and charge or cost associated with the insurance policy.
- 14.3. BI reserves the right to request proof of insurance at any time from the Customer.

15. ADVERSE EVENT

- 15.1. Customer shall keep BI promptly and fully informed of any information concerning any Adverse Events or pharmaceutical technical complaints coming to its knowledge with regard to any Product, regardless of the origin of such information.
- 15.2. The Customer shall answer all questions BI might raise with regard to adverse reactions or Adverse Events. All reporting of Adverse Events between the Parties and with the Medicines Control Council or any other agency shall be made in accordance with all applicable laws, rules and regulations and in accordance with any specific requirements of BI as notified by it to the Customer in writing from time to time.
- 15.3. The Customer shall consult with BI on the content and tenure prior to any communication and before initiating or responding to agencies.
- 15.4. BI, as holder of the marketing authorization / product registration of the Products, shall maintain detailed records of all suspected Adverse Events. An expedited report to the M Medicines Control Council or other agency concerned is to be made within 15 (fifteen) calendar days of any human exposure or serious animal adverse reaction. The Customer shall accordingly designate and provide BI with a responsible person for pharmacovigilance ("**Customer PV Contact**").
- 15.5. The Customer PV Contact shall:

- in collaboration with BI, establish local procedures and policies to adequately record and follow up any Adverse Events relating to the use of the Products covered by the agreement, in particular any suspected Adverse Events in or off label use, suspected lack of efficacy, violation of approved maximum residue limits, environmental problems, suspected transmission of an infectious agent or sensitivity reactions or human events, that are brought to the attention of the Customer. The local documentation should comply with the Company's internal pharmacovigilance program;

- within 24 (twenty four) hours after it comes to its knowledge) notify in writing, the BI PV Contact of the Adverse Events;
- promptly furnish the Company PV Contact with copies of all correspondence received from agencies and underlying data relating to the safety or efficacy of the Products;

- 15.6. BI's pharmacovigilance department will be responsible for:-

- the establishment of an appropriate pharmacovigilance system including the availability of a qualified person for pharmacovigilance;
- undertaking training in pharmacovigilance with refreshers as appropriate and the supply of training materials more particularly the internal pharmacovigilance program;
- the entry of individual cases in the pharmacovigilance database, together with coding and assessment of cases;
- electronic communication of serious Adverse Events;
- literature surveillance;
- benefit/risk monitoring; and
- providing support for the Customer in answering any kind of pharmacovigilance request from a national competent authority.

16. LIABILITY AND INDEMNITY

- 16.1. To the fullest extent permissible by law, BI shall not be liable for loss of revenue, business contract, anticipated savings, profits, data or information, damage to property, or any indirect or consequential loss howsoever arising whether from negligence, breach of contract or otherwise.
- 16.2. Nothing in this T&C shall limit or exclude the liability of BI for:
- 16.2.1. death or personal injury resulting from negligence; or
 - 16.2.2. fraud or fraudulent misrepresentation; or
 - 16.2.3. any matter which it would be illegal for BI to exclude or attempt to exclude its liability.

17. RECORD KEEPING | AUDIT

As reasonably applicable, the Customer shall maintain complete and accurate books and records regarding the purchase of Products, as necessary to allow the accurate calculation of consideration payments due thereunder which shall include invoices received from BI. BI shall have the right to engage an independent accounting firm at BI's expense, which shall have the right to examine in confidence the relevant records as may be reasonably necessary to determine and/or verify the amount of payments due hereunder. Such examination shall be conducted during normal business hours, after at least thirty (30) days prior written notice and shall take place where such records are maintained.

18. COMPLIANCE WITH LAWS

- 18.1. The Customer will perform its obligations resulting from the business relationship with BI with high ethical and moral business and personal integrity standards.
- 18.2. The Customer will comply with all applicable laws, regulations and guidelines, including applicable to the Products according to applicable law.

19. ANTI-BRIBERY AND ANTI-CORRUPTION

- 19.1. The Customers represents and warrants that it, its owners, directors, officers, employees, sub-contractors and agents will act in full compliance with any applicable anti-corruption laws and regulations,

industry and professional codes of and will not offer, promise, pay or arrange for payment or giving of a bribe or any benefit, advantage or anything of value to any public official, individual, entity or any other third party in exchange for an improper advantage in any form either directly or indirectly.

- 19.2. Any violation of this Section by the Customers constitutes a material breach of the business relationship to BI will allow BI to terminate such relationship with immediate effect.
- 19.3. The Customer shall report any indication of past, actual or potential violations of this Section immediately to BI. If the Customer is in doubt whether a certain act violates its obligations under this Section, the Customer shall contact BI and shall await the decision before taking the action.
- 19.4. The Customer shall indemnify and hold BI harmless for any loss or damage resulting of a breach by the Supplier, its directors, officers, employees, sub-contractors and agents of this Section by the Customer or of any applicable laws and regulations.

20. DATA PRIVACY

- 20.1. The Parties will use personal data in accordance with applicable laws such as the Protection of Personal Information Act 4 of 2013.
- 20.2. The Parties represent and warrant that in the event that either Party provides personal data to the other Party, the Party providing the personal data represents and warrants that it has obtained all necessary consents, approvals and authorizations to provide the personal data to the receiving Party, and it is not violating any laws, rules or regulations, or the rights of any individual or entity, by providing such personal data. Upon request by the receiving Party, the providing Party shall provide documentation of any applicable consents, approvals and authorizations.

21. DATA INTEGRITY

Any documentation or data relevant to the purchase of Products must be attributable, original, accurate, legible, complete, controlled, retrievable, and safe from intentional or unintentional manipulation, loss or unauthorized access. This applies to all documents or data relevant for the purchase of Products, especially such relevant under current Good Storage Practice and other applicable good practice standards. These items are required throughout the retention period of such data / documentation, and the Customer warrants that it will maintain such protection throughout this period.

22. GOVERNING LAW

- 22.1. Any dispute resulting from Agreement governed by these T&Cs shall be exclusively governed by the laws of South Africa.
- 22.2. All disputes arising out of the aforesaid shall be finally settled by the High Court of South Africa, Gauteng Local Division, Johannesburg.

23. MISCELLANEOUS

- 23.1. BI may perform its obligations hereunder personally, through one or more affiliates, or through a designated third party, however, it shall in all cases be responsible for the performance of its affiliates.
- 23.2. Except for the payment of money, neither Party shall be liable or deemed in default for failure to perform any duty or obligation that such Party may have pertaining to the business relationship resulting from the purchase of Products where such failure has been occasioned by any act of God, fire, inevitable accidents, war, or any other cause outside the reasonable control of that Party, and occurring without its fault or negligence. The Party whose performance has so been interrupted shall give

the other party notice of the interruption and cause thereof, and shall use every reasonable means to resume full performance of the business relationship as soon as possible.

- 23.3. It is expressly agreed that the Customer and BI shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither the Customer nor BI shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party.
- 23.4. Each Party or where applicable, its subcontractors, shall at all times be and remain the sole employer of persons assigned to the performance of work by such Party hereunder and shall assume any and all obligations, responsibilities and risks to such employment and the possible termination thereof.
