

## Terms and Conditions of Sale

### These Terms and Conditions of Sale apply unless covered by other contractual agreements

#### 1. GENERAL

These terms and conditions of sale shall apply to the exclusion of all others, including terms and conditions of the customer's (whether on customer's order forms or otherwise). No goods will be supplied by FRESENIUS KABI NEW ZEALAND LIMITED (herein referred to as Fresenius Kabi) on any terms or conditions other than those set out herein and by taking delivery of goods, the customer shall be deemed to agree that these terms and conditions shall apply to the exclusion of all others.

#### 2. PAYMENT

Unless otherwise agreed by the parties in writing payment shall be made by the end of the month following the month of invoice.

2.1 Without limitation upon Fresenius Kabi's other legal rights and remedies, interest may be charged from the due date to all overdue accounts.

2.2 Notwithstanding clause 2.1, Fresenius Kabi may at its sole discretion vary the credit terms.

#### 3. RETENTION OF TITLE

3.1 Legal and equitable title to any of the goods supplied by Fresenius Kabi to the customer from time to time shall only pass to the customer upon payment to Fresenius Kabi of all amounts which are due under this invoice and any other invoices or agreements and the customer agrees with Fresenius Kabi to keep the goods pending their sale as fiduciary for Fresenius Kabi in a manner that clearly shows the ownership of Fresenius Kabi. The customer may sell the goods as Fresenius Kabi's fiduciary to a third party in the ordinary course of the customer's business and deliver them to that third party in accordance with the customer's fiduciary obligations to Fresenius Kabi and shall keep the proceeds of those sales in a separate account with separate records in accordance with its fiduciary obligations.

3.2 In addition to the rights granted to Fresenius Kabi in clause 3.1, if,

- (a) any amount due by the customer to Fresenius Kabi in respect of the goods remains unpaid 30 days after the date on which it first became due and payable; or
- (b) the customer becomes insolvent or makes an assignment for the benefit of its creditors, or is placed under official management or goes into liquidation or a receiver or receiver and manager is appointed to any of its assets,
- (c) then Fresenius Kabi may retake possession of any goods for which Fresenius Kabi has not received payment, in full, wherever they are located and enter upon the premises of the customer for that purpose without any court action or other process at law then furthermore recover the cost of that repossession from the customer as a debt due under these Terms and Conditions of Sale.

#### 4. PERSONAL PROPERTY SECURITIES ACT 1999

4.1 The customer grants to Fresenius Kabi a security interest in all goods supplied or to be supplied by Fresenius Kabi to secure all payments under these Terms and Conditions of Sale. The customer will do all things necessary for Fresenius Kabi to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the goods and their proceeds.

4.2 Nothing in sections 114(1)(a), 120, 122, 133 or 134 of the PPSA applies. The customer's rights in sections 116, 120(2), 121, 125 to 127, 129, and 131 of the PPSA do not apply.

4.3 The customer waives its right to receive a verification statement under section 148 of the PPSA.

#### 5. PRICE

5.1 Unless agreed by Fresenius Kabi in writing to the contrary the price payable is Fresenius Kabi's price at the time of ordering.

5.2 Orders placed by accredited accounts which are less than \$500 will attract an administration fee of \$50 in addition to normal freight charges.

5.3 Goods are to be purchased by the buyer in "Shipper Quantities" as specified on the price list.

5.4 Where applicable the appropriate level of GST or other tax will be charged unless an exemption is claimed.

#### 6. DELIVERY/ FREIGHT CHARGES

6.1 Freight charges are payable on all deliveries:

- \$40 within Metro areas
- \$60 in regional areas
- \$125 in remote areas
- Orders over 1 pallet - pallet rates will be charged where applicable.

6.2 Urgent orders or deliveries requested outside normal lead times will attract an administration fee of \$50 as well as freight charges. These will be charged on a case by case basis as per quotations from transport companies.

6.3 Goods shall only be transported by Fresenius Kabi's authorised carriers, representatives or agents.

6.4 If at the customer's request the goods are transported by means other than as stated in sub-paragraph 6.3, such transport is at the customer's cost and risk.

6.5 If a delivery date is specified, Fresenius Kabi will endeavor to deliver within the time so specified but in no circumstances will Fresenius Kabi be liable for any loss or damage of any kind whatsoever caused directly by any delay in or failure of delivery.

6.6 Fresenius Kabi reserves the right to suspend or cancel deliveries to any customer without notice where the customer's account has exceeded the due date for payment and/or the customer's credit account limit.

6.7 The risk in the goods purchased shall unless otherwise agreed in writing pass to the customer upon delivery to the customer or agent, or to a carrier commissioned by the customer, in accordance with sub-paragraph 6.4.

6.8 Failed deliveries resulting from incorrect information supplied by the customer will attract an administration fee of \$50 as well as freight charges both ways.

#### 7. RETURN OF PRODUCTS FOR CREDIT

7.1 Subject to clauses 7.2 and 7.3, Fresenius Kabi will accept return of Products for credit in circumstances where:

- (a) the Order was delivered in error resulting from an error by Fresenius Kabi and the Customer has notified Fresenius Kabi within 48 hours after the delivery;
- (b) the Product was damaged or lost in transit – the damage must be noted on the proof of delivery and notification made within 48 hours after the delivery;
- (c) the Product is defective or the quality unsatisfactory and notice given in writing within 48 hours after the delivery.

7.2 Fresenius Kabi will only accept return of Products for credit where the following criteria has been met:

- (a) the Customer has lodged the request for credit in writing with Fresenius Kabi's Customer Service Department for approval within 48 hours after the delivery;
- (b) request for credit of damaged goods shall be accompanied by photos taken upon delivery;
- (c) goods have been stored at all times according to the conditions stated on the label, and other applicable requirements imposed by law or recommended by Fresenius Kabi.
- (d) Medical Device returns are subject to \$100 fee per device

7.3 Fresenius Kabi **will not accept** a return of a Product for credit in the following circumstances:

- (a) the Customer did not notify Fresenius Kabi in writing of any errors/variances found with the invoice or in the delivery of goods within 48 hours of the delivery;
- (b) the Product is returned in packaging that is damaged, written upon or otherwise marked and/or is in an unsalable condition;
- (c) the Product is returned in opened packages/cartons;
- (d) the Product has a remaining expiry dating of one month or less;
- (e) the Products are returned more than 15 Business Days after the 'Return Authority' has been issued;
- (f) if any other requirement in this clause 6 have not been satisfied.

7.4 Fresenius Kabi, in its absolute discretion (but is not obliged to) may accept returns of Products which the Customer has incorrectly ordered provided that the Customer requests the Credit within 48 hours after the delivery. If Fresenius Kabi accepts, return freight is at the customer's expense and a restocking fee of \$100 is charged.

7.5 Any query as to the expiry date of goods must be conveyed to Fresenius Kabi within 48 hours after the delivery. Fresenius Kabi will not accept the return of stock which has expired or has less than 9 months shelf life unless prior arrangements have been made.

#### 8. GOODS NOT TO BE EXPORTED

The Goods purchased by the customer are for sale and use within New Zealand. The customer covenants that it will not export any of the goods purchased from Fresenius Kabi or resell the goods to anyone whom it knows or ought to know intends to export any of the goods.

9 WARRANTY AND LIABILITY

- 9.1 All warranties and conditions whether express or implied and whether statutory or otherwise as to goods supplied by Fresenius Kabi as to quality, fitness or suitability for any purpose are hereby excluded except to the extent of any non-excludable warranty, condition or liability of Fresenius Kabi provided for by the Fair Trading Act 1986 or any relevant and applicable legislation. The parties agree to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986.
- 9.2 Except as set out in this clause 9, Fresenius Kabi shall not be liable in any way (including negligence, tort and equity) to the customer or any other person in connection with goods supplied or not supplied or the exercise of Fresenius Kabi's rights under these Terms and Conditions of Sale.
- 9.3 In no event shall the liability of Fresenius Kabi exceed the purchase price of the goods supplied by Fresenius Kabi.
- 9.4 No servant, agent or contractor of Fresenius Kabi has any authority to alter these terms or conditions.

10 PROPER LAW

The construction validity, operation and performance of any contract subject to these conditions shall be governed by the laws of New Zealand and the parties hereto accept the jurisdiction of the courts of New Zealand for the resolution of any dispute arising hereunder.

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