

TERMS AND CONDITIONS OF TRADE ("Terms") between ASPEN PHARMACARE NIGERIA LIMITED company registration number RC1062786 ("ASPEN NIGERIA") and The person or entity purchasing the Products from Aspen Nigeria ("Customer") (collectively "the Parties" and individually "a Party")

1. DEFINITIONS

- In these terms and conditions:
- 1.1. **"Aspen Nigeria"** means Aspen Pharmacare Nigeria Limited, Reg. No. RC1062786, a company duly incorporated in accordance with the laws of Nigeria, with its registered address at Plot 28, Infinity House, Ilupeju Bypass, Ilupeju, Lagos, Nigeria.
- 1.2. **"Customer"** any legal entity or person who places an Order/offer with Aspen Nigeria directly, for the purchase of Products and whose Order/offer is accepted by Aspen Nigeria, as the case may be, in writing or telephonically or electronically, or any legal entity or person who validly accepts a quotation/offer submitted by Aspen Nigeria to such entity or person;
- 1.3. **"Delivery"** means delivery to the Customer as mentioned in **clause 6** below.
- 1.4. **"Distributors"** means distributors, as appointed by Aspen Nigeria, of Products throughout the Territory which also include the Aspen Nigeria warehouses. Products will be distributed by the relevant Distributors at Aspen Nigeria's sole discretion and Aspen Nigeria reserves the right to split Orders in its sole discretion in the quantities and on the dates it decides.
- 1.5. **"Order/s"** means an agreement entered into between Aspen Nigeria and the Customer on acceptance of an order placed by the Customer on Aspen Nigeria.
- 1.6. **"Products"** means the products manufactured, supplied, marketed, promoted, distributed or sold in the Territory by Aspen Nigeria and which appear on Aspen Nigeria's list of products as may be amended by Aspen Nigeria by notice to the Customer in writing in its absolute discretion from time to time.

2. BACKGROUND, SCOPE AND PURPOSE OF THIS DOCUMENT

- 2.1. Aspen Nigeria conducts business as a manufacturer and distributor of generic medicines and pharmaceutical products.
- 2.2. As an approved or potential Customer of Aspen Nigeria, the Customer will purchase Products from Aspen Nigeria from time to time.
- 2.3. The nature, quantity and specifications of the Products shall be agreed upon between Aspen Nigeria and the Customer in writing from time to time.
- 2.4. These Terms shall govern the sale of Products by Aspen Nigeria to the Customer and shall take precedence over any other conditions/terms which may be contained in the Customer's documentation.

3. COMPLIANCE & INTERPRETATION

- 3.1. Aspen Nigeria will only supply Products to those Customers who are eligible under and comply with the Food and Drugs Act, 35 of 1974, as amended by Act 21 of 1999 (now known as the CapF32 laws of the Federal Republic of Nigeria).
- 3.2. Customer agrees that all Products supplied by Aspen Nigeria are subject to these Terms and such other conditions which may appear on the Tax or Commercial invoice and/or waybill. No variation or alteration of these Terms shall be effective unless reduced to writing and signed by a duly authorised director or manager of Aspen Nigeria. No indulgence granted by Aspen Nigeria shall be considered a waiver of Aspen Nigeria's rights hereunder.
- 3.3. The Products are supplied on condition that they are for sale and consumption only within the Territory as per **clause 1.7**. Accordingly, the Customer shall not sell any of the Products to any person or entity outside the Territory, or to any person or entity who intends to sell the Products out of the Territory, or if it would be reasonable to assume that they would resell the Products outside the Territory.
- 3.4. Should the Customer intend to export the Products out of the Territory, the Customer will ensure that the Products to be exported are registered in the relevant country/ies of export. The Customer hereby indemnifies and holds Aspen Nigeria harmless against any losses, damages and liability should the Products not be registered in the particular country/ies of export.
- 3.5. The Customer warrants that it will always comply with regulatory requirements applicable to the Products in the Territory. The Customer hereby indemnifies and holds Aspen Nigeria harmless against any losses, damages and liability should the Customer fail to comply with regulatory requirements applicable to the Products in the Territory.
- 3.6. If the Customer is a licensed pharmaceutical wholesaler, it is encouraged to provide to IQVIA Africa, or such other company as advised by Aspen Nigeria from time to time details in such format and at such intervals as IQVIA Africa or such other company, as the case may be, may require, of all sales of Products by it.

4. PRICE STRUCTURE

- 4.1. Products will be sold at prices as recorded in Aspen Nigeria's product price list in force at the date of delivery.
- 4.2. Prices are subject to change without notice.
- 4.3. The prices quoted for the Products are inclusive of packaging and delivery within the borders of the Territory.

5. ORDERS

- 5.1. Any Order received from the Customer will be binding on the Customer, notwithstanding the fact that such Order may have been given or signed by a person not authorized to do so.
- 5.2. Products, which are out of stock, may be placed on back order. Such Products will be delivered as soon as stocks are available. Aspen Nigeria reserves the rights, in its absolute discretion, to cancel back orders.
- 5.3. The Order constitutes an offer by the Customer to purchase the Products in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specifications submitted by the Customer are complete and accurate.
- 5.4. These Terms constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Aspen Nigeria which is not set out in these Terms.

6. DELIVERY

- 6.1. All distribution for Aspen Nigeria will be done through the Distributors, in accordance with the terms and conditions of a separate distribution agreement as entered into between the Distributor and Aspen Nigeria.
- 6.2. All risk in and to any Product supplied by Aspen Nigeria shall pass to the Customer upon delivery. Delivery shall be deemed to have taken place when the Products are delivered to the address nominated by the Customer. The Customer warrants that the signatory to any delivery note or any other documentation made out in the name of the Customer shall constitute prima facie proof of the proper delivery of the Products to the Customer.
- 6.3. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Aspen Nigeria shall not be liable for any delay in delivery of the Products that is caused by a force majeure event or the Customer's failure to provide Aspen Nigeria with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 8.12.1 an order is made by any court of competent jurisdiction, whether provisional or final, for the winding up or the judicial management of the Customer; or
- 8.12.2 the Customer passes a resolution for its voluntary winding up.

9. QUALITY

- 9.1. Aspen Nigeria warrants that on Delivery the Products shall:
- 9.1.1. conform with their description and any applicable Specification;
- 9.1.2. be of satisfactory quality;
- 9.2. Subject to **clause 7.2** and **10.1**, if:
- 9.2.1. the Customer gives notice in writing to Aspen Nigeria within 72 (seventy two) hours of delivery that some or all of the Products do not comply with **clause 9.1**; and
- 9.2.2. Aspen Nigeria is given a reasonable opportunity of examining such Products; and
- 9.2.3. the Customer (if asked to do so) returns such Products to Aspen Nigeria's nominated address; then Aspen Nigeria shall replace the Products.
- 9.3. Aspen Nigeria shall not be liable for the Products' failure to comply with **clause 9.1** in any of the following events:
- 9.3.1. the Customer makes any further use of such Products after giving notice in accordance with **clause 9.2**;
- 9.3.2. the defect arises because the Customer failed to follow Aspen Nigeria's oral or written instructions as to the storage of the Products;
- 9.3.3. if Aspen Nigeria determines that the defect had arisen as a result of the Customer's manner of storage;
- 9.3.4. if the Customer either transported or was responsible for the transportation of the Products from any of Aspen Nigeria's premises to the place of delivery;
- 9.4. Except as provided in this **clause 9**, Aspen Nigeria shall have no liability to the Customer.

10. LIMITATION OF LIABILITY

- 10.1. The Customer undertakes to ensure that, in respect of all Products, all instructions with regard to safety precautions, handling and storage information and environmental data, are strictly adhered to and such information is passed on to its Customers and to determine the suitability of the Products for the intended use.
- 10.2. This **clause 10** shall survive termination of these Terms.

- 6.4. The Customer shall not have a claim of any nature whatsoever against Aspen Nigeria either by reason of any delay in giving delivery of the Products on any date or dates that may be specified in the Customer's Order, or agreed to elsewhere, or within a reasonable time in the case in which no date is specified or agreed.
- 6.5. The obligation to deliver shall in all cases be subject to Aspen Nigeria having the Products available. Orders for Products that are out of stock shall, unless cancelled under **clause 6.6** below, be placed on back order for delivery as soon as stocks are available.
- 6.6. In the event of Aspen Nigeria being unable to deliver the Products for any reason whatsoever, Aspen Nigeria may, in its discretion, cancel the Order or any part thereof, and the Customer shall have no claim against Aspen Nigeria for any damages, losses or claims of whatsoever nature arising out of non-delivery or part delivery of the Products.
- 6.7. Aspen Nigeria may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Order. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.8. Aspen Nigeria reserves the right to suspend or cancel deliveries to the Customer without notice where the Customer's account has exceeded the due date of payment and/or the Customer's credit account limit.
- 6.9. In the event that the Customer's order requires Aspen Nigeria to deliver directly to a third party instead of the Customer, any additional expenses will be billed to the Customer.

7. CLAIMS AND RETURNS POLICY

- 7.1. All Products are sold on a non-returnable basis, subject to the provisions of **clause 6.2** to **7.9** (inclusive).
- 7.2. Aspen Nigeria cannot and does not accept responsibility for any deterioration which may occur because of failure to follow storage instructions precisely.
- 7.3. Invoices shall be deemed to be correct unless the Customer queries the same in writing within 10 (ten) days of receipt of the relevant documentation.
- 7.4. Original invoice numbers must be quoted when submitting a claim. Aspen Nigeria will target to resolve any claims within a period of less than 90 (ninety) days. Customer must have back-up documentation readily available for this period so as to facilitate the provision of all relevant documents, such as invoices, debit and credit notes as well as Delivery notices.
- 7.5. All claims or requests for returns must have prior approval by Aspen Nigeria before such a claim can be processed or Product returned. The cost of returning Products to Customer where proper prior approval has not been obtained will be for the account of Customer.
- 7.6. Products supplied in error are returnable, and Aspen Nigeria will arrange for collection thereof, if reported to Aspen Nigeria in writing within 72 (seventy two) hours of Delivery; and the incorrect Products to be collected are in the same order and condition as on Delivery to the Customer and the Customer has complied with the correct storage specifications for these Products while awaiting collection.
- 7.7. Short delivered stock must be reported to Aspen Nigeria within 48 (forty eight) hours. Upon receipt of the claim from Customer, Aspen Nigeria will investigate the matter and will endeavour to report back to Customer within 5 (five) working days. Should Aspen Nigeria determine the claim to be valid, Aspen Nigeria will proceed to credit the Customer. Should the Products be damaged upon Delivery to the Customer, Aspen Nigeria will arrange to credit the Customer if the damaged Products are reported to Aspen Nigeria in writing within 72 (seventy two) hours of Delivery. Aspen Nigeria will collect or destroy the damaged Products.
- 7.8. Products Delivered with an expiry date of less than 3 (three) months from the date of Delivery will be credited or replaced if they are returned or reported within 48 (forty eight) hours of Delivery of such Products.
- 7.9. Aspen Nigeria regulatory policies and procedures will be followed in the event of a Product recall by Aspen Nigeria and the Customer shall comply with the administrative procedures prescribed by Aspen Nigeria from time to time for the implementation of this **clause 7.9**.

8. PAYMENT TERMS

- 8.1. Aspen Nigeria may invoice the Customer on or any time after the completion of the delivery.
- 8.2. Any tax applicable will be charged in addition to the price of the Products unless an exemption is claimed by the Customer.
- 8.3. The payment terms are strictly within the agreed credit days from the date of the invoice or delivery of the Products.
- 8.4. No discounts or allowances may be deducted from the net amount.
- 8.5. Unless agreed otherwise, interest at the rate of 2% per month will be charged on all amounts overdue beyond the applicable credit days.
- 8.6. A certificate by any director, general manager or manager for the time being of Aspen Nigeria, whose capacity or authority it will not be necessary to prove, showing the nature and amount of any indebtedness due, owing and payable by the Customer to Aspen Nigeria at any time, shall be sufficient prima facie proof of the facts stated in such certificate for the purposes of all legal proceedings against the Customer for the recovery of the said amount.
- 8.7. Payment is to be made to Aspen Nigeria or its nominee, as advised by Aspen Nigeria from time to time, and shall be made in the currency as per the Tax and/or Commercial invoice free of deduction, set off and any other charges. Payment by the Customer shall not be delayed or withheld for any reason whatsoever, including any alleged default on the part of Aspen Nigeria. Time of payment is of the essence.
- 8.8. Aspen Nigeria may at any time without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Aspen Nigeria to the Customer.
- 8.9. Unless the Customer objects in writing to the balance outstanding which appears on any monthly statement of Aspen Nigeria within 15 (fifteen) days from the date of statement, the balance outstanding which appears on the statement shall be prima facie proof of the amount due and owing and it shall rest with the Customer to prove that such amount is not due and owing to Aspen Nigeria.
- 8.10. If, in Aspen Nigeria's opinion, the Customer's financial position becomes unsatisfactory, cash payments or security satisfactory to Aspen Nigeria may be required by Aspen Nigeria from the Customer for future deliveries and for the Products which have been previously delivered. If such cash payment or security is not provided, in addition to Aspen Nigeria's other rights and remedies, Aspen Nigeria may discontinue deliveries.
- 8.11. Aspen Nigeria may cease performance of any of its obligations to the Customer until all amounts have been paid and Aspen Nigeria shall not be liable for any loss or damage that may be suffered by the Customer as a result thereof.
- 8.12. These Terms will also be terminated in the event that:

15. ACCEPTANCE CONDITIONS

- 15.1. These Terms shall be governed by, construed and take effect in all respects in accordance with the laws of Nigeria.
- 15.2. No relaxation or indulgence granted by Aspen Nigeria and no omission by Aspen Nigeria timely or diligently to enforce any right under these Terms should be deemed to amount to a waiver of that or any other right for the future.
- 15.3. The provisions of these Terms are severable and in the event that any one or more of the conditions or terms hereof are illegal, the remaining provisions and terms shall be valid and enforceable.
- 15.4. Should there be a valid agreement in place between Aspen Nigeria and the Customer regulating the matters contemplated herein and the Parties are conducting their business in terms of that agreement, these Terms will supplement that agreement in so far as there are no conflicts and in case of a conflict, such other agreement will take precedence over these Terms. These Terms shall take precedence over any terms and conditions of the Customer, whether such terms and conditions are included in Customer's documentation or by reference.

16. OWNERSHIP OF PRODUCT

- 16.1. Ownership of the Products shall not pass to the Customer until Aspen Nigeria has received payment in full (in cash or cleared funds) for:
- 16.1.1. the Products; and
- 16.1.2. any other Products that Aspen Nigeria has supplied to the Customer in respect of which payment has become due.
- 16.2. Until ownership to the Products has passed to the Customer, the Customer shall:
- 16.2.1. hold the Products on a fiduciary basis;
- 16.2.2. store the Products held by the Customer so that they remain readily identifiable as Aspen Nigeria's property;
- 16.2.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 16.2.4. maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- 10.3. Aspen Nigeria shall under no circumstances whatsoever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the sale of Products; and
- 10.4. Aspen Nigeria's total liability to the Customer in respect of all other losses arising under or in connection with the sale of Products, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the invoice giving rise to such liability.
11. **BREACH**
Should the Customer breach any provision of these Terms, Aspen Nigeria shall be entitled, without prejudice to any other rights that it may have, whether under these terms and conditions or in law, to cancel these Terms or any Order immediately on written notice or to claim immediate specific performance of all the defaulting party's obligations, whether or not due for performance, in such event without prejudice to Aspen Nigeria's right to claim damages from the Customer.
12. **FORCE MAJEURE**
Aspen Nigeria shall not be liable for damages for any delay or failure to carry out any obligations to the Customer out of any cause in whole or in part beyond Aspen Nigeria's control and without derogating from the generality of the foregoing, arising out of any delay or failure due to civil or political unrest or action, rebellion, strikes, lock-outs or other industrial dispute, war, embargoes, sanctions, breakdown of machinery, transport and shipping difficulties, inability to secure labour and materials, fire, flood, rain or storm or any act of any Government or legislation or default of suppliers, sub-contractors or third party service providers.
13. **NOTICES AND DOMICILIUM**
- 13.1. The parties choose as their respective domicilium citandi et executandi and as the address at which service of legal documents can be effected, their principal place of business address, as recorded on the Delivery note.
- 13.2. The Customer undertakes to inform Aspen Nigeria in writing, within 7 (seven) days of any change of director, member, shareholder or of any change of address or of its intention to sell or alienate its business.
14. **COSTS**
The Customer shall be liable for and shall pay all legal costs, on attorney and own client scale, including but not limited to counsel's fees, collection commission and tracing fees incurred by Aspen Nigeria as a result of a breach of any of the provisions of these Terms.
- 16.2.5. give Aspen Nigeria such information relating to the Products as Aspen Nigeria may require from time to time.
- 16.2.6. but the Customer may resell or use the Products in the ordinary course of its business.
- 16.3. Aspen Nigeria reserves the right to enter a Customer's property to recover Products where payment is not received.
- 16.4. The Customer shall not pledge or in a way charge as security for any indebtedness the Products which are the property of Aspen Nigeria. If the Customer does so, all amounts whatsoever owing to Aspen Nigeria forthwith become due, owing and payable.
- 16.5. The Customer undertakes to inform the landlord of the premises at which any of the Products are stored or located, that Aspen Nigeria owns such Products and the Customer shall, against request, furnish written proof of such notification. Notwithstanding the aforesaid, Aspen Nigeria shall be entitled to notify the landlord of the premises at which any of the Products are stored or located, should it deem it necessary to do so.
- 16.6. If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in **clause 8.12** or Aspen Nigeria reasonably believes that any such event is about to happen and notifies the Customer accordingly, then :
- 16.6.1. provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Aspen Nigeria may have, Aspen Nigeria may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them, or
- 16.6.2. the Customer may in the ordinary course of business, sell the Products on behalf of Aspen Nigeria on the strict condition that the Customer must:
- 16.6.2.1. keep separate records of all sales of the Products;
- 16.6.2.2. account to Aspen Nigeria for all proceeds of the sale of such Products;
- 16.6.2.3. keep a part of such proceeds equal to the total amount outstanding to Aspen Nigeria in relation to all Products in trust for Aspen Nigeria; and
- 16.6.2.4. keep a part of such proceeds equal to the total amount owing to Aspen Nigeria by the Customer on any account whatsoever other than the Products, in trust for Aspen Nigeria.
17. **DECLARATION**
- 17.1. I/We, the undersigned, in my/our capacity as an authorised representative of the Customer hereby accept and agree to these Terms.
- 17.2. I/We here by confirm that these Terms are fair, reasonable and just and I/We confirm that our attention has been drawn to all provisions which imposes liabilities and obligations.

Customer Name:

Signature:

Name:

Designation:

(who by his / her signature hereto warrants his / her authority)

Date:

Place:
