

**CELGENE LTD.**  
**(“we”, “us”, “our” or the “Company”)**  
**TERMS AND CONDITIONS**

**1. THE CONTRACT**

- 1.1 These terms and conditions, as may be amended from time to time (“**Conditions**”), are incorporated into each contract between us (or our agent) and you for the sale and purchase of our medicinal products (the “**Contract**”) and apply to the exclusion of all other terms and conditions (including, without limitation, any of your terms and conditions under any purchase order, confirmation of order or any other document, or which are implied by trade, custom, practice or course of dealing). You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company that is not set out in the Contract.
- 1.2 Any order (“**Order**”) that you place with us or our agent for our medicinal products (“**Products**”) constitutes an offer by you to purchase the relevant Products in accordance with these Conditions. You are responsible for ensuring that any such Order is complete and accurate.
- 1.3 An Order shall only be deemed to be accepted by us when we, or our agent, delivers(s) the relevant Products to you, at which point the Contract shall come into existence. Each Order that we or our agent accept(s) creates a separate Contract. Neither we nor our agent are under any obligation to accept Orders. Once an Order has been accepted, it cannot be cancelled without our consent.
- 1.4 Any descriptions, specifications or illustrations contained in our catalogues, brochures or other sales materials (whether online or in paper form) are produced for the sole purpose of giving an approximate idea of the Products described. They shall not form part of the Contract nor have any contractual force. Further, our employees or agents are not authorised to make any claims about the Products unless those claims are confirmed in writing by the Company. We will not be liable for any advice or recommendation that any of our employees or agents provides about storing or using the Products unless it has been confirmed in writing by the Company.
- 1.5 It is your responsibility to take adequate precautions to ensure safe handling and use of the Products in accordance with all available information concerning the Products. Products are sold on the understanding that you have sole responsibility for determining the suitability of the Products for the purposes for which you intend to use them.
- 1.6 Except as permitted by relevant laws or regulations, you shall only dispense Products to patients in the United Kingdom and shall not resell the Products commercially.

**2. DELIVERY**

- 2.1 Unless otherwise agreed in writing by us and provided always that the relevant delivery location has previously been registered with us, the Products shall be delivered to the location set out in the relevant Order (the “**Delivery Location**”). You must ensure that the Delivery Location complies in full with any applicable regulatory and registration requirements. Any dates specified for delivery are approximate only, and the time of delivery is not of the essence.
- 2.2 Products may be delivered by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any fault, damage or error in an instalment shall not entitle you to cancel any other instalment.
- 2.3 Title and risk in the Products shall pass to you at the time we or our agent deliver(s) them to the Delivery Location or, if you fail to accept the Products, the time when we or our agent tried to deliver them to the Delivery Location. The signature on a delivery note or drop sheet by any person working at the Delivery Location will be evidence that you have accepted delivery of the Products in full.
- 2.4 If you fail to take delivery of the Products or fail to give us or our agent adequate delivery instructions at the time given for delivery (unless we are at fault or there are circumstances beyond your reasonable control), without affecting any of our rights and any action we may be entitled to take, we, or our agent, may store the Products until we or our agent actually deliver(s) them and charge you for the reasonable costs (including insurance) of storage and any costs related to redelivery.
- 2.5 We will provide to you, free of charge, any educational materials, patient information or other documents relating to our products as may be required under the risk management plan (RMP) for any relevant marketing authorisation. If you would like to request copies of any such materials, please contact Celgene Risk Management using the contact details below:

Tel: 0808 156 3059

FAX: 0808 156 3058

Email: rmp.uk.ire@celgene.com

### **3. PRICE AND PAYMENT**

- 3.1 The price of the Products shall be the price set out in our price list as at the date of our acceptance of the relevant Order.
- 3.2 The price list is subject to change, and any promotion or special offer withdrawn, at any time without notice to you.
- 3.3 Unless we say otherwise, the price specified includes the cost of delivering the Products to the Delivery Location (standard delivery only). However, we may, by giving notice to you at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by you to change the delivery date(s), Delivery Location, quantities or types of Products ordered;
  - (c) any request by you to deliver the Products otherwise than in accordance with our standard delivery process (including urgent and next day deliveries);
  - (d) any delay caused by any instructions from you, or your failure to give us adequate or accurate information or instructions; or
  - (e) any extra related costs incurred and any increase in transport costs that apply before the date the Products are delivered.
- 3.4 The price of the Products does not include any value added tax or other government tax or duty, which will be charged and payable in addition to the price at the time when payment for the Products is due.
- 3.5 We may invoice you for the Products on or at any time after the completion of delivery (or, if you fail to take delivery of the Products, at any time after we or our agent have/has tried to deliver the Products). You must pay the invoice in full and in cleared funds within 30 calendar days from the date of the invoice. Payment shall be made to the bank account as shown on the invoice. Time of payment is of the essence.
- 3.6 Any credit terms extended to you are subject to review by us from time to time and we can at any time and without prior notice suspend or vary any credit terms given to you. We also reserve the right to ask you to pay the full amount you owe (or part of it) or provide acceptable security before we or our agent make(s) delivery.
- 3.7 You shall pay all amounts due under the Contract in full without any set off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). You are not entitled to withhold payment or use any amounts as a set off against any amount we or our agent may owe you, other than in respect of any credit note(s) which we have agreed that you are entitled to under clause 4.3 below. If you fail to make any payment due to us under the Contract by the due date for payment, without limiting any other rights or remedies we may have, we may:
- (a) cancel the Contract and/or suspend any further deliveries of Products;
  - (b) charge interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time, such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and you shall pay the interest together with the overdue amount;
  - (c) set off any amount owing to us by you against any amount payable by us to you; and/or
  - (d) demand immediate payment of any or all outstanding invoices that are payable to us or our agent.

#### **4. RETURNS**

- 4.1 Products can only be returned to us if such Products are faulty, damaged or incorrect on delivery or are the subject of a recall by the manufacturer or marketing authorisation holder.
- 4.2 We will not be liable to you for any faulty, damaged or incorrect Products unless you give us due notice in accordance with clause 4.4 below. Also, we will not be liable for any faulty or damaged Products caused by abnormal storage conditions after delivery, any deliberate damage or negligence by you or your staff, or by you or your staff failing to follow our instructions or misusing the Products.
- 4.3 If we accept liability under clause 4.2 (and subject always to clause 7 below), our liability is limited to replacement of any Products which are damaged, faulty or incorrect, or to issuing a credit note for the cost of any such Products. These Conditions shall apply to any replacement Products.
- 4.4 You must notify us in writing of any claim in relation to shortages in the Products delivered, or any faulty, damaged or incorrect Products within three working days after delivery. Each such notification must set out the reason for the claim as well as:
- (a) your name and address;
  - (b) the quantity, description, strength and pack size; and
  - (c) the invoice number and date of the relevant invoice.

Unless you comply with the provisions of this clause 4.4, the delivery of Products shall be deemed accepted by you and you shall have no right to reject the same. You must keep a copy of the notification and the person responsible for collection must sign it to acknowledge that the Products have been received by us or our agent.

- 4.5 Without limiting either party's obligations under relevant laws and regulations, we will only accept returns of any Products which are recalled by the manufacturer or marketing authorisation holder in line with the specific instructions given at the time of the recall. All such recalled Products must be packaged separately, clearly identified as returns relating to the Product or batch recall and accompanied by a separate returns notification. The notification must give details of the type of recall and, where appropriate, all batch numbers. You must keep a copy of the notification and the person responsible for collection must sign it to acknowledge that the Products have been received by us or our agent.
- 4.6 You must package any returned Products that are toxic, hazardous, or that are covered by the Misuse of Drugs Act 1971 (or any amending or other applicable legislation), separately in line with the statutory safeguards, any packing or collection instructions provided by us, or any handling or storage instructions set out in the applicable Product information.

#### **5. INTELLECTUAL PROPERTY**

- 5.1 All intellectual property rights in the Products remain with the Company, and you shall not cover, deface or erase any notices, trade marks or other marks that we may place on or affix to the Products.
- 5.2 You shall not use any trade mark of the Company other than to indicate the origin of the Products, and shall not use any trade mark in connection with any trade mark of the Company without the Company's prior consent.

#### **6. TERMINATION AND SUSPENSION**

- 6.1 If you have a receiver, administrative receiver, administrator, provisional liquidator or liquidator appointed, pass a resolution for winding-up, have a court order made against you, are judged insolvent or bankrupt, cannot pay your debts as they fall due or make any arrangements with your creditors, or cease to trade, we may terminate the Contract with immediate effect by giving written notice to you.
- 6.2 We may cancel any Order, in whole or in part, or suspend deliveries thereunder if you are in breach of any of the terms of the Contract.
- 6.3 On termination of the Contract for any reason, you shall immediately pay to us all outstanding unpaid invoices and interest.

#### **7. LIMITATION OF LIABILITY**

- 7.1 Nothing in these Conditions shall limit or exclude our liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents

- or subcontractors (as applicable); or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 12 of the Sale of Products Act 1979; or
  - (d) Products that are defective under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 7.2 Subject to clause 7.1:
- (a) we exclude to the fullest extent possible any conditions, warranties, representations and other terms expressed or implied by any law, regulation or Act of Parliament;
  - (b) we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, consequential loss, loss of business, depletion or loss of goodwill (in each case whether indirect or direct) arising under or in connection with the Contract or the supply of the Products; and
  - (c) the total liability of the Company to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products paid under such Contract.

## 8. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A “**Force Majeure Event**” means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 9. DATA AND FREEDOM OF INFORMATION

- 9.1 If you receive a request for information or documents under the Freedom of Information Act 2000, or any other legislation or guidance, that is relevant to the Company or the Products, you will: (a) to the extent it is legally permitted to do so, give us as much notice of such disclosure as possible; and (b) comply with our reasonable directions for taking legally available steps to resist or narrow such requirement (at our reasonable expense), and in any event restrict the disclosure to only those information or documents lawfully required to be disclosed.
- 9.2 You agree to us using any personal data collected from you in respect of any Order or Contract (including, for example, your name, job title, postal address, email address) for the purposes of administration, marketing, risk assessment, Product delivery, compliance with any applicable patient access scheme, analysing your purchasing preferences, statistical analysis, credit checking, invoicing and to let you know (by mail, telephone, fax or email) about other products and services offered by us which we think will be of interest to you.
- 9.3 We may share your personal data with our group companies in the United States of America, the European Union and elsewhere, and with our agents and third party service providers for the purposes described above (some of whom may be located outside of the European Economic Area). We may also disclose your personal data to third parties where necessary to comply with applicable laws and regulations and/or for the purposes of obtaining professional advice (for example, legal advice). It is possible that the Company could merge with or be acquired by another business. To the extent legally permissible, we may share with, or otherwise transfer your information to, the resulting legal entity.
- 9.4 We will at all times comply with the Data Protection Act 1998 and any subsequent regulations relating to the protection of your personal data. If you wish to amend or update your personal data, opt-out of receiving marketing communications from us or wish us to delete information about you, please notify us by writing to the Data Protection Officer at the address given in clause 10.3. Please note, however, that we may still hold and process your personal data to the extent necessary to process your Orders

and otherwise as necessary for the purposes of the Contract.

- 9.5 You shall maintain, and you agree to provide to us within seven days of our written request:
- (a) all prescription data relating to the Products, such data to be anonymised and to comply in all respects with the provisions of the Data Protection Act 1998 and other regulations relating to the transmission and use of personal data;
  - (b) a stock list, in such format as we request, detailing all Products supplied by us or our agent and held by you from time to time; and
  - (c) a record of all Products supplied to you by us or our agent which, for whatsoever reason, are found, or are considered to be, faulty or damaged and/or have been destroyed.
- 9.6 You shall provide all reasonable assistance to us in order to facilitate our fulfilment of regulatory obligations in connection with marketing authorisations relating to the Products.

## **10. GENERAL**

- 10.1 The Company may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.2 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.
- 10.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or email. Any such notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one working day after transmission. The provisions of this clause 10.3 shall not apply to the service of any proceedings or other documents in any legal action.
- 10.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.5 If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 10.6 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 10.8 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by us.
- 10.9 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 10.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).