

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in these Terms:

Adverse Event	means any untoward, undesired or unplanned medical occurrence in the form of signs, symptoms, disease or laboratory or physiological observations occurring at any dose in a human being in temporal relationship to use of the Goods, regardless of the apparent causal relationship;
Adverse Reaction	means a response to a medicinal product which is noxious or unintended including adverse reactions which arise from: <ul style="list-style-type: none"> (a) the use of the medicinal product within the terms of the marketing authorisation; (b) the use of the medicinal product outside the terms of the marketing authorisation including overdose, off-label use, Misuse, abuse and Medication Errors; (c) occupational exposure to the medicinal product; (d) reports of drug interaction; (e) information received as part of a product quality complaint; or (f) failure to produce expected benefits (i.e. lack of efficacy)
Affiliate	means, in respect of either party, a company or other undertaking which is a group undertaking (as defined in section 1161(5) of the Companies Act 2006), in each case for the time being;
Authority	means any local, national, multinational, governmental or non-governmental authority, statutory undertaking or public or regulatory, administrative, fiscal or judicial body or body corporate which has any jurisdiction, control or influence over a party or which has responsibility for providing any decision, consent or licence which is required in order for a party to fulfil its obligations in accordance with and pursuant to the Contract (including, in the United Kingdom, the Medicines and Healthcare products Regulatory Agency, HM Revenue & Customs, the Information Commissioner's Office and the Competition and Markets Authority (and each of their successors) and including such equivalent bodies in relation to the Goods and/or Services provided outside of the United Kingdom);
Business Day	a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;
Confidential Information	in relation to either party to this Contract (" first party ") or its Affiliates, any and all Information that (i) is by its nature confidential; (ii) the other party knows or ought to know is confidential; (iii) is designated by the first party as confidential;
Contract	the contract between Fresenius Kabi and the Customer for the sale and purchase of the Goods and provision of the Services in accordance with these Terms, and all other documents attached to or otherwise incorporated into a Contract, or any amended version agreed between the parties in accordance with clause 2.2 or, Fresenius Kabi's quotation for the Goods and the Customer's acceptance of it under clause 2.4;
Customer	the person or firm who purchases the Goods and/or the Services from Fresenius Kabi;
Fresenius Kabi	Fresenius Kabi Limited (company number 2182135) registered in England and Wales with registered office at Cestrian Court, Eastgate Way, Manor Park, Runcorn WA7 1NT;
Fresenius Kabi Group	FHC (Holdings) Limited, a company registered in England and Wales (registered No. 00886829) whose registered office is at Cestrian Court, Eastgate Way, Manor Park Runcorn Cheshire WA7 1NT, and each of its Affiliates from time to time and " member of the Fresenius Kabi Group " shall be construed accordingly;
Force Majeure Event	an occurrence beyond the control and without the fault or negligence of the party affected and which that party is unable to prevent or provide against by the exercise of reasonable diligence, including, without limitation, acts of God, fire, flood, earthquake, unusually severe weather or elements of nature, war, embargo, riot, civil disorder, rebellion, revolution, epidemic, pandemic or any law or action taken by a governmental or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
Goods	the items (if any) agreed in the Contract to be supplied to the Customer by Fresenius Kabi;
Information	all information of a technical, commercial, business, financial, operational, administrative, marketing or any other nature whatsoever including information relating to its current, prospective and previous customers, members, employees and suppliers, (including personal data), whether in oral, tangible or documentary form (including digital, electronic and magnetic media), whether marked or identified as being proprietary or not;
Intellectual Property Rights	the rights of Fresenius Kabi in its Goods and Services including but not limited to patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade

dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Medication Error	means any unintentional error on the prescribing, dispensing or administration of a Fresenius Kabi product while the medication is in the control of a healthcare professional, patient or consumer;
Misuse	means situations where the Fresenius Kabi product is intentionally and inappropriately used not in accordance with the authorised product information
Order	means the Customer's order for the Goods and/or Services as set out in the Customer's purchase order or the Customer's written or oral acceptance of Fresenius Kabi's quotation as the case may be;
Services	the services (if any) to be supplied by or on behalf of Fresenius Kabi under the Contract and including the supply of any items or other deliverables required to be supplied as a consequence of performing such obligations;
Specification	any specification of the Goods, that is agreed in writing by the Customer and Fresenius Kabi;
Terms	these terms and conditions of sale as amended from time to time in accordance with clause 2.2; and
VAT	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In this context, unless otherwise stated or unless the context otherwise requires:

- 1.2.1 a reference to a particular law is, unless otherwise stated, a reference to it as amended, replaced or superseded and in force for the time being, and to any legislation which re-enacts or consolidates it, and includes all orders, regulations, instruments and other subordinate legislation for the time being in force made under it;
- 1.2.2 headings do not affect their interpretation or the interpretation of this Contract;
- 1.2.3 references to this Contract or any other document are to this Contract or that document as in force for the time being and as amended, supplemented, varied, modified, renewed or replaced or extended from time to time in accordance with the requirements of this Contract or that document (as the case may be);
- 1.2.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.5 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020;
- 1.2.6 references to clauses and appendices are to clauses of and annexures to the Contract; references in an annex to paragraphs are to paragraphs of that annex; and a reference to a clause is, unless otherwise specified, a reference to all its sub-clauses;
- 1.2.7 the words 'other', 'including', 'includes', 'for example' and 'in particular' do not limit the generality of the words preceding those words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible;
- 1.2.8 a person includes a natural person, corporate or incorporated body (whether or not having separate legal personality); and
- 1.2.9 in the event of any conflict, inconsistency or ambiguity between the Terms and any Order and any other document referred to in the Contract, then the following precedence shall apply:
 - 1.2.9.1 the Order prevails over these Terms; and
 - 1.2.9.2 these Terms shall prevail over any other document referred to in the Contract.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under clause 2.2 these Terms apply to and are incorporated into the Contract and prevail over any inconsistent terms or conditions contained or referred to, in the Customer's purchase order, confirmation of order or specification, or other document supplied by the Customer or implied by trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer which is inconsistent with these Terms.



- 2.2 These Terms may only be varied by written agreement signed by an authorised representative of each party.
- 2.3 Each Order for Goods and/or Services by the Customer from Fresenius Kabi shall constitute an offer by the Customer to buy the Goods and/or Services in accordance with these Terms. The Order shall only be accepted when Fresenius Kabi either confirms the order orally on the telephone and/or issues a written acceptance of the Order at which point a Contract shall come into existence.
- 2.4 The Customer shall ensure that the terms of its Order and any Specification are complete and accurate.
- 2.5 Any quotation for the Goods and Services given by Fresenius Kabi shall not constitute an offer. A quotation is only valid for a period of thirty (30) days from its date of issue (unless agreed otherwise or withdrawn by Fresenius Kabi).

3. GOODS

- 3.1 The Goods shall be supplied materially in accordance with their description in any Specification or catalogue/website or product list subject to clause 3.3.
- 3.2 All Goods are supplied subject to availability. Fresenius Kabi shall be entitled to substitute equivalent items for the Goods without prior notification (to the extent that this is permitted).
- 3.3 Fresenius Kabi reserves the right to amend any Specification of the Goods and Services if required by any applicable laws, rules and regulations of any Authority.
- 3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Fresenius Kabi against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Fresenius Kabi in connection with any claim made against Fresenius Kabi for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Fresenius Kabi's use of the Specification. This clause 3.4 shall survive termination of the Contract.

4. DELIVERY AND PERFORMANCE

- 4.1 Unless otherwise agreed by Fresenius Kabi, the Goods shall be delivered Ex Works Incoterms® 2020 to the location set out in the Order or such other location as the parties may agree (**Delivery Location**). Delivery is completed on the completion of unloading the Goods at the Delivery Location. Where the Customer requests delivery of the Goods in a manner other than that selected by Fresenius Kabi, any difference in price shall be charged to the Customer.
- 4.2 Fresenius Kabi shall ensure that:
 - 4.2.1 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
 - 4.2.2 if Fresenius Kabi requires the Customer to return any packaging materials to Fresenius Kabi, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Fresenius Kabi shall reasonably request. Returns of packaging shall be at Fresenius Kabi's expense.
- 4.3 Any times and dates quoted for delivery of the Goods and/or performance of the Services are estimates only and time of delivery is not of the essence. Fresenius Kabi shall not be liable for any delay to deliver the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Fresenius Kabi with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 Any period for delivery of the Goods and/or performance of the Services shall be calculated from the time of Fresenius Kabi's acceptance of the Customer's Order or from Fresenius Kabi's receipt of all information necessary to enable Fresenius Kabi to manufacture or procure the manufacture of the Goods and/or perform the Services (whichever shall be the latest).
- 4.5 Where the Goods are handed to a carrier for carriage to the Customer or to United Kingdom port for export, such carrier shall be deemed to be an agent of Fresenius Kabi and not of the Customer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 4.6 Fresenius Kabi shall not have any liability (whether in contract or for negligence or otherwise) for any claim for non-delivery, unless the Customer gives written notice to Fresenius Kabi of the undelivered Goods within five (5) Business Days of the date when the Goods would in the ordinary course of events have been received.
- 4.7 In the event of a valid claim made under clause 4.6 for non-delivery Fresenius Kabi undertakes at its option either to reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with non-delivery and this remedy shall be the Customer's sole and exclusive remedy for such non-delivery.
- 4.8 If for any reason the Customer fails to or is unable to accept delivery of the Goods at the time when the Goods are ready for delivery then except where such failure or delay is caused by a Force Majeure Event

or Fresenius Kabi's failure to comply with its obligations under the Contract, Fresenius Kabi may, at its sole discretion, and without prejudice to its other rights, store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 4.9 If ten (10) Business Days after the day on which Fresenius Kabi notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Fresenius Kabi may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or recover any proportional shortfall from the Customer.
- 4.10 Fresenius Kabi may deliver the Goods by instalments which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 The Customer shall:
- 4.11.1 ensure that any information it provides in the Specification is complete and accurate;
 - 4.11.2 co-operate with Fresenius Kabi in all matters relating to the Services; and
 - 4.11.3 provide Fresenius Kabi, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Fresenius Kabi to provide the Services.

5. QUALITY

- 5.1 Fresenius Kabi warrants that on delivery and where relevant for the relevant shelf life of the Goods, the Goods shall:
- 5.1.1 conform in all material respects with their description and any Specification; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to Fresenius Kabi within five (5) Business Days of discovering that some or all of the Goods do not comply with the warranty in clause 5.1;
 - 5.2.2 Fresenius Kabi is given a reasonable opportunity to examine such Goods; and
 - 5.2.3 the Customer (if asked to do so by Fresenius Kabi) returns such Goods to Fresenius Kabi's premises;
- Fresenius Kabi shall, at its sole discretion, either (i) reprocess or replace the Goods concerned at its expense, or (ii) refund the price of the defective Goods in full, but shall not be under any further or other liability in connection with such loss, damage or non-compliance and this remedy shall be the Customer's sole and exclusive remedy for such loss, damage or non-compliance.
- 5.3 Fresenius Kabi shall not be liable for the failure of the Goods (or any part) to comply with the warranty set out in 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in 5.2;
 - 5.3.2 the defect arises as a result of Fresenius Kabi following the Specification supplied by the Customer;
 - 5.3.3 the Customer alters or repairs the Goods without the written consent of Fresenius Kabi;
 - 5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage; or
 - 5.3.5 the Goods differ from any description or Specification as a result of changes made to ensure they comply with appropriate statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5 Fresenius Kabi shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Fresenius Kabi has given commitments as to the Goods and Services in this Contract, therefore the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Terms shall apply to any repaired, reprocessed or replacement Goods supplied by Fresenius Kabi.

6. DEFECTIVE GOODS AND SERVICES

- 6.1 Nothing in these Terms shall impose any liability on Fresenius Kabi in respect of any defect in the Goods or the Services arising out of the acts, omissions, negligence or default of the Customer, its employees or agents including in particular (but without prejudice to the generality of the foregoing) or any failure by the Customer to comply with any recommendations of Fresenius Kabi as to storage and handling of the Goods.
- 6.2 Where the Goods are for delivery or the Services are to be performed by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Customer shall be bound to accept delivery or performance of such instalments.



7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery to the Delivery Location including unloading and stacking.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1 Fresenius Kabi has received in full (in cash or cleared funds) all sums due to it in respect of the Goods;
 - 7.2.2 When the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title of the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods (at no cost to Fresenius Kabi) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Fresenius Kabi's property;
 - 7.3.2 notify Fresenius Kabi immediately if it becomes subject to any of the circumstances described in clauses 17.1.3 to 17.1.7;
 - 7.3.3 not destroy, remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.3.4 maintain the Goods in satisfactory condition and keep them insured on Fresenius Kabi's behalf for their full price against all risks. On request the Customer, shall produce such policy of insurance to Fresenius Kabi.
 - 7.3.5 Where the Customers resells the Goods (in accordance with clause 7.2.2) before it has paid Fresenius Kabi in full for the same Goods, the Customer shall hold the proceeds of such sale on trust absolutely for Fresenius Kabi and keep such proceeds separate from its own funds until the Customer pays for the Goods. Where the Customer fails to pay for the Goods in accordance with these Terms, the Customer shall be under a duty to account for the proceeds of sale of such Goods immediately on request to Fresenius Kabi.
- 7.4 Subject to Clause 7.5 and 7.6, and provided the Customer is not subject to any of the circumstances described in clauses 17.1.3 to 17.1.7, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Fresenius Kabi receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as Fresenius Kabi's agent; and
 - 7.4.2 title to the Goods shall pass from Fresenius Kabi to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 For the avoidance of doubt, where the Customer is subject to any of the circumstances described in clauses 17.1.3 to 17.1.7 and the Customer has not paid Fresenius Kabi in full for the Goods, neither the Customer, nor any administrator or liquidator or any other party, shall have the right to resell or use the Goods in the ordinary course of the Customer's business.
- 7.6 At any time before title to the Goods passes to the Customer,
- 7.6.1 Fresenius Kabi may by notice in writing, terminate the Customer's right under Clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
 - 7.6.2 the Customer shall grant or shall procure the grant for Fresenius Kabi, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 7.7 Where any of the circumstances described in clauses 17.1.3 to 17.1.7 apply to the Customer, the Customer (and any administrator, liquidator or other party appointed over the Customer's assets) shall immediately be obliged to identify and deliver up to Fresenius Kabi all Goods for which Fresenius Kabi has not received in full (in cash or cleared funds) all sums due to it.
- 7.8 Where Fresenius Kabi is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Fresenius Kabi to the Customer in the order in which they were invoiced to the Customer.
- 7.9 On termination or expiry of the Contract, Fresenius Kabi's (but not the Customer's) rights contained in this clause 7 continue to apply.

8. PRICES AND PAYMENT

- 8.1 Unless otherwise agreed by Fresenius Kabi in writing:
- 8.1.1 the price payable for Goods and/or Services shall be the list price of Fresenius Kabi that applies at the date of the delivery;



- 8.1.2 in the case of an Order for delivery of Goods and/or performance of Services by instalments, the price payable for each instalment shall be the list price of Fresenius Kabi current at the date of dispatch or performance of such instalments.
- 8.2 Fresenius Kabi may by giving notice to the Customer at any time up to 20 Business Days before delivery increase the price of the Goods to take account of any increased costs including (but not limited to):
- 8.2.1 any factor beyond Fresenius Kabi's control (including foreign exchange fluctuations, increases in taxes, tariffs and duties, increases in labour, materials and other manufacturing or delivery costs;
- 8.2.2 any request by the Customer to change the delivery date, quantities or types of Goods or any Specification; or
- 8.2.3 any delay caused by any instructions of the Customer or failure by the Customer to give Fresenius Kabi adequate or accurate information or instructions.
- 8.3 Fresenius Kabi reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out were the original contract price.
- 8.4 All prices are exclusive of VAT or other applicable sales taxes and this will be charged by Fresenius Kabi and will be payable by the Customer at the appropriate rate.
- 8.5 Fresenius Kabi reserves the right to apply a minimum order charge of £125 in respect of an Order.
- 8.6 Unless otherwise agreed in writing, the Customer shall pay for the Goods and Services within 30 days of the date of a valid VAT invoice in full and cleared funds to the bank account nominated in writing by Fresenius Kabi.
- 8.7 If the Goods are delivered or the Services are performed in instalments, Fresenius Kabi shall be entitled to invoice each instalment as and when delivery or performance of it has been made and payment shall be due in respect of each instalment of which delivery or performance has been made notwithstanding non-delivery or non-performance of other instalments or other default on Fresenius Kabi's part.
- 8.8 If the price is payable by instalments or if the Customer has agreed to take specified quantities of Goods at specified times, a default by the Customer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due immediately.
- 8.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.10 Time of payment shall be the essence of the Contract.
- 8.11 The parties agree that the provisions of Late Payment of Commercial Debts (Interest) Act 1998 shall not be applicable to the Contract and the parties further expressly agree that interest calculated from day to day at the rate per annum of two (2) per cent above the base rate of Barclays Bank plc in force from the date on which such payment was due until and including the date of actual payment (the **Agreed Interest**) shall be a substantial remedy in respect of any late payment of sums due under the Contract.
- 8.12 Each party shall be entitled to receive Agreed Interest on any payment not made when properly due and payable pursuant to the terms of this Contract.

9. RETURNS

- 9.1 Goods supplied in accordance with the Contract cannot be returned without Fresenius Kabi's prior written authorisation and must in any event be notified to Fresenius Kabi within 5 (five) calendar days of the date of receipt.
- 9.2 Goods that contain prescription only medicines cannot be returned if:
- 9.2.1 the anti-tamper device has been damaged; or
- 9.2.2 any decommissioned Goods that do not get recommissioned within 10 days under the 10-day rule,
- the Customer shall comply with all instructions for dispatch or collection of returned Goods contained in Fresenius Kabi's authorisation. Any return of Goods without such authorisation is entirely at the Customer's risk.
- 9.3 Fresenius Kabi may impose either a 20% handling charge for items returned or a £100.00 handling charge whichever value is the greatest. Such costs relate to our charges for logistics and/or handling.
- 9.4 Any Goods that have been distributed via the Fresenius Kabi homecare service cannot be returned and/or credited for safety reasons save that Fresenius Kabi will credit the Customer for any Goods where such return is due to an error or omission by Fresenius Kabi or its agents or contractors.

10. RECALL

- 10.1 If for any reason, Fresenius Kabi deems in its sole discretion that a recall, withdrawal or other field safety action of Goods is appropriate, the Customer, upon notification from Fresenius Kabi (which may initially be verbal but shall be confirmed in writing), shall:
- 10.1.1 immediately identify and quarantine all affected Goods;
 - 10.1.2 follow all reasonable instructions of Fresenius Kabi;
 - 10.1.3 ensure all Goods that Fresenius Kabi considers may have been affected are available for collection by Fresenius Kabi or its agent or representative;
 - 10.1.4 provide such assistance and information as Fresenius Kabi may reasonable require;
 - 10.1.5 if applicable, notify any third parties of the recall to whom the Customer has supplied or re-sold affected Goods, as soon as possible and apply its own recall procedure to managing the recall of affected Goods from those third parties;
 - 10.1.6 maintain procedures relating to a withdrawal of the goods, recall and tampering, and records necessary to support a recall of the goods, and allow Fresenius Kabi to inspect those procedures and records at any time on reasonable notice;
 - 10.1.7 provide any services, resources or facilities as may be reasonably required in respect of a recall of the goods;
 - 10.1.8 maintain procedures relating to a withdrawal of the goods, recall and tampering, and records necessary to support a recall of the Goods, and allow Fresenius Kabi to inspect those procedures and records at any time on reasonable notice; and
 - 10.1.9 provide any services, resources or facilities to Fresenius Kabi as may be reasonably required in respect of a recall of the Goods.
- 10.2 Fresenius Kabi agrees to reprocess, replace, refund or provide credit to the Customer for any units of the Goods that are recalled under this clause unless the Customer's conduct or that of their employees, contractors or other persons engaged by the Customer has given rise to the recall of the Goods.
- 10.3 Unless otherwise required by law, the Customer may only undertake a recall or withdrawal of Goods from the market with the written permission of Fresenius Kabi and in accordance with clause 10.1. The Customer agrees that in the event that Fresenius Kabi believes that there has been a possible violation of these Terms, Fresenius Kabi may make full disclosure of such belief and related information at any time and for any reason to any competent government bodies and its agencies, and to whomsoever Fresenius Kabi determines in good faith has a legitimate need to know.
- 10.4 Fresenius Kabi shall make the necessary arrangements for such collection and shall be responsible for the collection of such Goods from the Customer and the price paid for the Goods made available for collection will either be credited by Fresenius Kabi at invoice price or replaced by Fresenius Kabi with equivalent Goods unless the conduct of Customer employees, contractors or other persons engaged has given rise to the recall of the Goods.
- 10.5 Fresenius Kabi reserves the right to destroy all Goods that are subject of any recall or withdrawal in the interests of safety and accepts no liability to keep, return or otherwise deal with such Goods.

11. ADVERSE EVENTS OR ADVERSE REACTIONS

- 11.1 If the Customer is or becomes aware of any Adverse Event affecting or Adverse Reaction by a patient relating to the Goods where the Goods are pharmaceutical products or medical device products, the Customer shall contact Fresenius Kabi's pharmacovigilance team within 24 hours using the contact details specified below and shall supply to Fresenius Kabi all reasonable information as requested to allow it to comply with its regulatory obligations.
- 11.1.1 Email: pharmacovigilance.qb@fresenius-kabi.com
 - 11.1.2 Telephone: 01928 533575
 - 11.1.3 The Fresenius Kabi Safety Contact Team shall provide explanation on Reporting of Adverse Events to the respondent.
- 11.2 The Customer will ensure that all personally identifiable information gathered during Adverse Event reporting will be kept confidential and in no circumstances disclosed to any other party without prior discussion and approval from Fresenius Kabi.
- 11.3 Personal data of a healthcare professional who has reported an Adverse Event or Adverse Reaction under these Terms may be disclosed to Fresenius Kabi only where that healthcare professional has given their consent for such disclosure. In no event will personally identifiable information of any patient be provided to Fresenius Kabi in connection with any Adverse Event or Adverse Reaction without consent from the respondent.
- 11.4 The Customer shall indemnify Fresenius Kabi and its Affiliates and keep them indemnified from and against all Losses incurred or suffered as a result of or in connection with any Adverse Events or Adverse

Reactions resulting from a Medication Error or the Misuse of a product by any act or omission including a failure to follow product specifications by the Customer, its employees, representatives or sub-contractors (as applicable).

12. SAFE HANDLING AND USE

- 12.1 The Customer confirms that Fresenius Kabi has provided or makes available to the Customer on request information concerning the Goods and the conditions recommended for safe handling and storage of the Goods.
- 12.2 The Customer agrees and it is a condition of each Contract that all Goods delivered to the Customer by or on behalf of Fresenius Kabi will be held, used, resold and/or disposed of by the Customer in accordance with all applicable laws, rules and regulations of any Authority.
- 12.3 If the Customer is or becomes aware of the suspected/ actual theft of a medicinal product, the Customer shall contact Fresenius Kabi's pharmacovigilance team within 24 hours using the contact details specified below and shall supply to Fresenius Kabi all reasonable information as requested to allow it to comply with its regulatory obligations.
- 12.3.1 Email: pharmacovigilance.gb@fresenius-kabi.com
- 12.3.2 Telephone: 01928 533575
- 12.3.3 The Fresenius Kabi Safety Contact Team shall provide explanation on reporting of such an event.

13. COMPLIANCE WITH RELEVANT REQUIREMENTS

- 13.1 Each party shall and shall ensure that its employees, directors, officers, agents and others acting on its behalf including Affiliates (**Representatives**) comply with all applicable laws, rules and regulations in relation to the Contract, including but not limited to the laws on fair competition, public procurement and anti-bribery and corruption including the UK Bribery Act 2010. The Customer shall comply with good business practices and all laws and regulations relevant to these Terms such that Fresenius Kabi's image and reputation is promoted and safeguarded and shall in particular comply with all laws and regulations of the United Kingdom relating to the marketing, distribution, supply, sale, labelling and installation of the Products, including, but not limited to Eucomed, ABHI and ABPI Guidelines.
- 13.2 The Customer undertakes to comply and shall ensure that its Representatives comply with [Third Party Code Of Conduct - Fresenius Kabi Global \(fresenius-kabi.com\)](#) in this link or is available on request.
- 13.3 Both parties shall and shall procure that its Representatives shall comply with all applicable laws, rules and regulations relating to modern anti-slavery and human trafficking including the Modern Slavery Act 2015.
- 13.4 Each party shall comply fully at all times with all laws, regulations, industry codes of practice and/or any other legal requirements including, but not limited to, those applicable to reporting of Adverse Events, health, safety, medical device, pharmaceutical, FSMP, environment, welfare and the production, storing, handling and supply of Goods and provision of Services.
- 13.5 The Customer confirms that it can receive/hold/sell the Goods in accordance with applicable laws and regulatory requirements and that it has and maintains all necessary licences and authorisations including a wholesaler dealer's licence issued by the relevant Authority where applicable and that evidence of the same will be provided to Fresenius Kabi on request. (For the avoidance of doubt, the Customer remains responsible for ensuring it complies with all applicable laws and regulatory/ licensing requirements and nothing in this clause nor in these Terms transfers that burden to Fresenius Kabi).
- 13.6 The Customer agrees that it will have a process for self-assessment competency for all employees and other users of medical devices (equipment). It is the Customer's responsibility to ensure that all medical devices (equipment) are available for service and maintained on a regular basis.
- 13.7 Breach of this clause 13 shall be deemed a material breach incapable of remedy under clause 17.
- 13.8 The Customer agrees that Fresenius Kabi (or its representatives) may carry out an audit (either remote or in person) to ensure compliance with this clause 13. Fresenius Kabi shall give the Customer reasonable notice of any such audit. In case of substantiated concerns of non-compliance with this clause 13, Fresenius Kabi may carry out audits without prior notice.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Customer acknowledges that any Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services are Fresenius Kabi's (or a member of the Fresenius Kabi's Group) or its licensors' sole property.
- 14.2 Nothing in these Terms or a Contract shall confer any licence or grant of any rights in favour of the Customer in relation to the Intellectual Property Rights.

- 14.3 The Customer will immediately give written notice to Fresenius Kabi if any of the following matters apply, which at any time during the continuance of using the Services come to its knowledge, giving full particulars of:
- 14.3.1 any infringement or suspected or threatened infringement of the Intellectual Property Rights;
 - 14.3.2 any allegation or complaint made by any third party that the Intellectual Property Rights are invalid or use by the Customer of the Intellectual Property Rights may infringe any rights of another party or may be liable to cause deception or confusion to the public; and
 - 14.3.3 any other form of attack, charge or claim to which the Intellectual Property Rights may be subject, including passing off or unfair competition claims,
- provided always that the Customer will not make any admissions in respect of such matters other than to Fresenius Kabi and provided further that the Customer will in every case furnish Fresenius Kabi with all information in the possession of the Customer relating thereto which may reasonably be required by Fresenius Kabi.
- 14.4 The Customer will assist Fresenius Kabi, at Fresenius Kabi's reasonable cost, in relation to any actions or proceedings relating to the unauthorised use of the Intellectual Property Rights or in relation to any actions or proceedings brought by any third party in respect of the use by the Customer of the Intellectual Property Rights.

15. LIMITATION OF LIABILITY

- 15.1 Nothing in this Contract limits or excludes the liability of either party which cannot legally be limited including liability for: (i) fraud or fraudulent misrepresentation by it or its officers, employees, agents, contractors or subcontractors; (ii) for death or personal injury caused by the negligence of that party or its officers, employees, agents, contractors or subcontractors; (iii) for breach of any obligation by Fresenius Kabi as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (iv) defective products under the Consumer Protection Act 1987.
- 15.2 Subject to clause 15.1, neither party shall be liable to the other for: (i) any special, consequential or indirect loss or damage; (ii) loss of business and/or business opportunity; (iii) loss of anticipated savings; (iv) loss or corruption of data or information; and/or (v) for any loss of profits, in each case whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 15.3 Subject to clauses 4.7, 5.2 and 15.1, the total aggregate liability of Fresenius Kabi and each other member of the Fresenius Kabi Group to the Customer under or in connection with this Contract whether in contract, tort (including negligence) or otherwise howsoever, in respect of all acts, omissions (including negligence), breach of statutory duty, breach of contract or breach of warranty of Fresenius Kabi and/or any member of the Fresenius Kabi Group, its/their officers, employees, agents, contractors or sub-contractors occurring in any contract year, shall in no event exceed the sum equivalent to 100% of the value of the Goods and Services purchased pursuant to the Contract in the prior 12 months to which the claim relates.

16. CONFIDENTIALITY

- 16.1 Each party (the **Receiving Party**) shall treat and keep all Confidential Information of the other party and its Affiliates (a) first disclosed to it by the other party, or (b) learnt, acquired or developed by the Receiving Party in connection with this Contract, secret and confidential, and will not, without the other party's consent, disclose Confidential Information to any other person other than in accordance with this Contract.
- 16.2 The foregoing shall not apply to the extent that (a) the Receiving Party needs to have or disclose Confidential Information of the other party to any Affiliate, sub-contractor, agent or employee of the Receiving Party in order to fulfil its obligations, exercise its rights under this Contract or to receive the benefit of the Services, provided always that the Receiving Party shall procure that such person to whom the Confidential Information is disclosed keeps the Confidential Information secret and confidential; or (b) any Confidential Information is in the public domain at the date of the Contract, or at a later date comes into the public domain, where such Confidential Information has not come into the public domain through a breach of this Contract; or (c) any Confidential Information is required to be disclosed pursuant to any applicable laws or Authority, or to the Receiving Party's solicitors, auditors, insurers, accountants or other professional advisors, for the purposes of reporting to or seeking advice from the relevant party, provided that the Receiving Party ensures that such party to whom disclosure is made under paragraph (e) uses such Confidential Information solely for such purposes and otherwise complies with this clause 16 to the same extent as if it were a party to this Contract.
- 16.3 This clause shall survive termination of this Contract.

17. TERMINATION AND CONSEQUENCE OF TERMINATION

- 17.1 Without prejudice to its other rights, either party may immediately terminate this Contract by written notice if:
- 17.1.1 the other party commits a breach of a fundamental term or condition of this Contract and such breach is not capable of remedy;

- 17.1.2 the other party commits a material breach of a fundamental term or condition of this Contract that may be remedied but does not remedy the breach within fourteen (14) days of a notice requiring it to do so;
 - 17.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into, any compromise or arrangement with any of its creditors;
 - 17.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 17.1.5 (being a company and prior to the commencement of a formal insolvency process) is deemed unable to pay its debts within the meaning of section 123 of the IA 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA1986;
 - 17.1.6 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy;
 - 17.1.7 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.4 to clause 17.1.6 (inclusive);
 - 17.1.8 the terms of clause 18.3 apply; or
 - 17.1.9 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business or the business contemplated under this Contract.
- 17.2 Any provision of the Contract that expressly or by implication is intended to come into force on or after termination or expiry of the Contract shall remain in full force and effect.
- 17.3 Save as provided in the Contract, the Order may not be cancelled after dispatch except by agreement in writing of both parties and the Customer shall be liable for all costs incurred by Fresenius Kabi in fulfilling the delivery of Goods and/or providing the Services up until the deemed date of receipt of the cancellation notice.
- 17.4 Upon termination of the Contract the Customer shall immediately pay to Fresenius Kabi all of Fresenius Kabi's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Fresenius Kabi shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 17.5 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination
- 18. FORCE MAJEURE**
- 18.1 Provided it has complied with clause 18.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.2 The Affected Party shall:
- 18.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - 18.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 (four) weeks, the Party not affected by the Force Majeure Event may terminate this Contract by giving 4 (four) weeks' written notice to the Affected Party.
- 19. GENERAL**
- 19.1 **Notices:** Any notice given under this Contract shall be in writing served by hand, prepaid first class recorded delivery, or first class registered post, marked for the attention of the person and sent to the address set out in the Contract Schedule, and, in the case of Fresenius Kabi, copied to Legal Counsel at the registered office. Notices served by hand shall be deemed to have been received immediately if during business hours, and at the start of the next business hour if not. Notices sent by recorded delivery or post shall be deemed to have been received the second business day after posting. For the avoidance of doubt, notice given under this Contract shall not be validly served if sent by email.
- 19.2 **Waiver:** A waiver of any right or remedy under this Contract is only effective if it is in writing and it shall apply only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 19.3 **Cumulative Rights:** The rights and remedies of the parties in connection with this Contract are cumulative and, except as expressly stated in this Contract, are not exclusive of and may be exercised

- without prejudice to any other rights or remedies provided in this Contract, by law, equity or otherwise. Except as expressly stated in this Contract (or in law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.
- 19.4 **Further Assurance:** Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of this Contract.
- 19.5 **No Partnership or Agency:** Each party is an independent contractor and neither is the agent of the other and nothing in this Contract shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the Customer and Fresenius Kabi and neither party shall have authority to act in the name of or bind the other in any way.
- 19.6 **Severability:** If any provision of this Contract is held by a court of competent jurisdiction to be illegal, invalid or unenforceable then the remaining provisions shall remain in full force and effect. If it is held by a court or administrative body of competent jurisdiction that any provision in this Contract is illegal, invalid or unenforceable, in whole or in part, 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 commercial intention of the original provision.
- 19.7 **Third party Rights:** The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it
- 19.8 **Entire Agreement:** This Contract represents the entire agreement and understanding of the parties, and supersedes and extinguishes all proposals, previous agreements, understandings and negotiations between the parties in respect of the subject matter hereof and shall apply to the exclusion of all other standard conditions of supply or purchase, whether written, oral, express or implied which either party may purport to apply or which are endorsed upon any correspondence or documents issued by either party irrespective of their date of communication. In entering into this Contract, the Customer has not relied on any statement, representation, warranty, understanding, promise or assurance of any person, other than as expressly set out in this Contract. The Customer waives all rights and remedies which, but for this clause 19.8, it might otherwise have had in relation to any of the foregoing. Nothing in this clause shall limit or exclude any liability for fraud, fraudulent misrepresentation or fraudulent misstatement.
- 19.9 **Assignment and other dealings**
- 19.9.1 Fresenius Kabi may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 19.9.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Fresenius Kabi.
- 19.10 **Governing Law and Jurisdiction:** This Contract and any non-contractual obligations arising out of or in connection with it and them or its subject matter shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales to settle any claim or dispute that arises from or in connection with this Contract or its subject matter.