

Lipa Pharmaceuticals Ltd – Terms and Conditions

By proceeding to do business or engage with Lipa Pharmaceuticals Ltd ACN 070 106 526 (**Lipa**), you agree to do so in accordance with this agreement which supersedes any other agreement or terms and conditions you have provided or offered to Lipa, or may provide or offer to Lipa in the future.

1) Goods

- a) Lipa will provide the Goods to the Customer in consideration for the Customer paying the Price to Lipa, subject to the provisions of this agreement.
- b) The Customer must purchase the Minimum Order Quantity for any Goods which Lipa agrees to supply to the Customer.

2) Prices

- a) The Customer must pay Lipa the Price without set-off or counterclaim. The Price applicable for the Customer's purchase of the Goods is determined by reference to the applicable Price as at the date the Goods are delivered to the Customer.
- b) The Price does not include an amount on account of GST. If GST is imposed on the Goods, the Price is increased by, and the Customer must also pay, an amount equal to the GST payable on the Goods, which must be paid without set off, deduction or requirement for demand at the same time as the Price.
- c) The Customer must pay the Price in the time and manner required by Lipa's standard credit application. If no time for payment is specified in the credit application, the Price is payable on demand.
- d) The Customer acknowledges and agrees that any delivery date specified for the Goods or provided by Lipa is indicative only and Lipa will not be liable for any delay in the delivery of the Goods and the Customer releases Lipa from any Claim relating to delivery of the Goods.
- e) The Price is based on the Minimum Order Quantity. If the Customer fails to meet the Minimum Order Quantity in any given Calendar Year, the Customer must pay to Lipa its Price applicable for orders of a quantity less than the Minimum Order Quantity.
- f) Lipa may conduct an annual review of the Price and may amend the Price at any time upon notice to the Customer.

3) Failure to Pay

- a) If the Customer fails to pay any amount in the time stated in an invoice or required by this agreement, Lipa is entitled to do any or all of the following:
 - i) charge interest on the outstanding amount at the rate that is 4% greater than the 'benchmark interest rate' as that term is defined in the *Income tax Assessment Act 1936* (Cth) per annum, accruing and capitalising daily;
 - ii) require the Customer to pay, in advance, for any Goods (or any part of the Goods) which have not yet been supplied;
 - iii) cease the supply of any Goods (or any part of the Goods);
 - iv) immediately terminate its agreement with the Customer upon written notice.

4) Customer's Obligations

- a) During supply of the Goods, the Customer must:
 - i) cooperate with Lipa as Lipa reasonably requires;

- ii) provide the information and documentation to Lipa that Lipa reasonably requires;
- iii) provide, at its own cost, any Customer Supplied Materials to Lipa that Lipa reasonably requires; and
- iv) ensure that the Customer's staff and agents cooperate with and assist Lipa.

- b) If the Customer fails to provide any Customer Supplied Materials that Lipa reasonably requires (and within the time period required by it) to supply the Goods, then the Customer waives any Claim against Lipa relating to the supply of those Goods or delay in supplying those Goods and must pay to Lipa any additional cost and expense it incurs in that supply.
- c) Upon written notice by Lipa to the Customer, the Customer may pay to Lipa the cost of any Unique Materials, or part thereof, remaining in Lipa's possession or which Lipa is in the process of acquiring or preparing, Lipa's costs in transporting any Unique Materials to the Customer for which the Customer has paid to Lipa the cost of those Unique Materials, and Lipa's cost of destroying any Unique Materials that the Customer does not request be returned to the Customer.
- d) If requested by Lipa, the Customer must provide any Security for the due and punctual observance of the Customer's obligations under this agreement.

5) Retention of Title

- a) The Customer is a bailee of the Goods until such time that Lipa has received the Price in full for the Goods and the Customer must hold any proceeds from the sale or disposal of the Goods on trust for Lipa.
- b) The Customer must not charge the Goods in any way nor grant any interest in the Goods while they remain Lipa's property.
- c) Title or ownership in the Goods will not pass to the Customer until:
 - i) The Customer has paid the Price required for the Goods;
 - ii) The Customer has met all its obligations to Lipa under this agreement or otherwise.
- d) The Customer agrees that, until such time as ownership in the Goods passes to the Customer, it grants Lipa security over all its real and personal property, grants Lipa an equitable lien over all real property that it owns as security for the Goods, and irrevocably authorises Lipa to register caveats over any of the Customer's property to reflect its lien.

6) PPSR

- a) This agreement creates a security agreement giving rise to a Security Interest in the Goods in favour of Lipa as security for any Price owed by the Customer to Lipa from time to time.
- b) The Customer irrevocably grants Lipa a purchase money Security Interest in the Goods.
- c) The Customer must do everything reasonably required by Lipa to perfect a Security Interest over the Goods as security for any Price owed by the Customer to Lipa from time to time, including by registration of the Security Interest under the PPSR.
- d) The Customer must not grant any party a Security Interest or other security over the Goods until such

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time as it has paid the Price payable in respect of the Goods and complied with its obligations under this agreement.

- e) The Customer indemnifies Lipa for all costs, on an indemnity basis, incurred in perfecting and registering a Security Interest under this clause 6).

7) Subcontractors

- a) Lipa may subcontract performance of its obligations under this agreement to other persons.

8) Intellectual Property

- a) The Parties agree that, other than as expressly provided in this clause 8), nothing in this agreement transfers or grants to any party any right, title or interest in or to any Intellectual Property in any the other party's Intellectual Property. The Customer grants to Lipa a worldwide, royalty free, perpetual, irrevocable, transferable, non-exclusive licence to use the Customer's Intellectual Property to the extent necessary for Lipa to manufacture and supply the Goods.
- b) The Customer indemnifies Lipa against all Claims if the Customer's Intellectual Property, or what the Customer alleges or represents is its Intellectual Property, infringes the rights of a third party.
- c) The obligations accepted by the Parties under this clause 8) survive termination or expiry of this agreement.

9) Confidentiality

- a) The parties must keep this agreement and any transaction stemming from them confidential and not disclose any information relating to the Agreement to any person, except:
 - i) If that information is already in the public domain, not as a consequence of a party's breach of this agreement;
 - ii) If disclosure is required by law;
 - iii) With the other party's prior written consent; or
 - iv) For the purpose of obtaining legal or financial advice.

10) Privacy

- a) The Customer is responsible for obtaining all relevant consents from, and providing all relevant notices to, individuals whose personal information is provided by the Customer to Lipa in connection with this agreement so as to ensure that Lipa's dealings with that information pursuant to this agreement comply with Lipa's obligations under any privacy laws.
- b) The Customer indemnifies Lipa against, and must pay Lipa on demand the amount of, all Claims arising out of its failure to comply with this clause 10).
- c) The Customer must ensure compliance with all mandatory data breach reporting obligations arising out of any data breach or suspected breach.

11) Liabilities and indemnities

- a) Except in the case of death or personal injury caused by Lipa's negligence, the liability of Lipa under or in connection with this agreement, whether arising in contract, tort, equity, negligence, breach of statutory duty or otherwise must not exceed \$100. The Customer waives any entitlement to recover from Lipa and releases Lipa from any Claim, for any amount exceeding \$100.

- b) If clause 11(a) is held to be unenforceable for any reason, then Lipa's maximum and total liability under or in connection with this agreement, if any, is capped at the Price paid to Lipa under this agreement for any and all Claims jointly, less any cost or expense incurred by Lipa. The Customer waives any entitlement to recover from Lipa at the date of this Agreement or into the future, and releases Lipa from any Claim, for any amount exceeding the Price paid to Lipa under this Agreement less any cost or expense incurred by Lipa.
- c) This agreement may be pleaded as a bar to any Claim commenced or to be commenced concerning or arising out of or in any way related directly or indirectly to the matters in this clause 11).
- d) The obligations accepted by Lipa and the Customer under this clause 11) survive termination or expiry of this agreement.
- e) If the Customer provides to Lipa any Customer Supplied Materials required by Lipa, the Customer acknowledges and agrees that:
 - i) Lipa has no responsibility for any defects, issues or Claim in the Goods arising from or related to the Customer Supplied Materials and the Customer indemnifies Lipa for Claim arising from any such Claim;
 - ii) It is not entitled to make any Claim against Lipa as a consequence of any loss or damage to the Customer Supplied Materials in the process of manufacturing or supplying the Goods, including due to material wastage, inefficiencies, equipment issues or other reasons arising from the manufacture and supply of the Goods.
- f) The Customer acknowledges and agrees that the Goods may contain differences or defects to what the Customer requested, but the Customer cannot make any Claim related to those differences or defects where such differences or defects do not cause a health and safety risk.

12) Termination

- a) An 'Event of Default' means:
 - i) A party failing to pay an amount it must pay in the time required;
 - ii) A party committing a material breach of this agreement and such breach is incapable of remedy; or
 - iii) A party committing a breach of this agreement and if such breach is capable of remedy, does not remedy such breach within a reasonable time of being notified to remedy that breach.
- b) If a party has committed an Event of Default, then the other party may terminate this agreement immediately upon written notice.
- c) If Lipa terminates this agreement:
 - i) the Customer indemnifies Lipa against any Claim;
 - ii) the Customer must immediately pay to Lipa any amount it was obliged to pay to Lipa immediately before termination;
 - iii) Lipa may exercise any rights, at law or in equity, to mitigate its damages, including without limitation, selling Goods or part thereof, despite

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those Goods or part thereof containing any branding or Intellectual Property of the Customer, or repackaging, rebranding or selling the Goods or part thereof, or any raw materials or components. The Customer acknowledges and agrees it has no Claim and is barred from bringing any Claim as a result of Lipa exercising its rights under this clause 12.

13) General

- a) Amendment
 - i) This agreement may be amended in writing by mutual agreement.
- b) Assignment
 - i) Neither party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the other party's prior written agreement.
- c) Entire agreement
 - i) This agreement contains the whole agreement between the parties in respect of the subject matter of this agreement.
 - ii) The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.
- d) Waiver
 - i) No failure or delay by Lipa in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
 - ii) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.
- e) Further assurance
 - i) Each party must do all things reasonably necessary to give effect to this agreement.
- f) Severability
 - i) If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be read down or severed as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.
- g) Notices
 - i) A notice or other communication connected with this agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this agreement, or sent by email to the email address of the addressee.
- h) Law and jurisdiction
 - i) This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in New South Wales, Australia. The parties submit to the non-

exclusive jurisdiction of the courts of New South Wales.

14) Definitions

- a) **Claim** means any claim, cause of action, proceeding, suit, notice, litigation, investigation, audit, judgment, damage, loss, cost, expense, liability or demand however it arises and whether present or future, fixed or unascertained, actual or contingent.
- b) **Cross Guarantee** means a continuing and irrevocable cross-guarantee from each related party of the Customer to the reasonable satisfaction of Lipa and as requested by Lipa that unconditionally and irrevocably guarantees to Lipa, and indemnifies Lipa for, the Customer's obligations under this agreement.
- c) **Customer** means the party to whom Lipa supplies the Goods and includes its employees, contractors, officers and assigns.
- d) **Customer Supplied Materials** means any raw materials, components, labels, packaging or other items purchased or procured by the Customer and provided to Lipa at its own cost to manufacture and supply the Goods.
- e) **Goods** means any item, product, service or related matter supplied by Lipa to the Customer.
- f) **GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- g) **Intellectual Property** means all intellectual property rights of any kind anywhere in the world, whether registered or unregistered, including trade marks, patents, copyright, processes, know-how, designs or other like rights or any right to apply for registration of any of them.
- h) **Minimum Order Quantity** means, for any Goods, a minimum batch order of three orders per calendar year with each order being no less than the minimum applicable batch size for those Goods.
- i) **Personal Guarantee** means a means a continuing and irrevocable guarantee from each of the Customer's officeholders to the reasonable satisfaction of Lipa and as requested by Lipa that unconditionally and irrevocably guarantees to Lipa, and indemnifies Lipa for, the Customer's obligations under this agreement.
- j) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- k) **PPSR** means the Personal Property Securities Register.
- l) **Price** means the amount payable by the Customer to Lipa according to Lipa's price list as notified by Lipa from time to time to the Customer.
- m) **Security** means a Personal Guarantee, a Cross-Guarantee, a security deposit or bank guarantee in an amount and on terms reasonably acceptable to Lipa.
- n) **Security Interest** has the meaning given in section 12 of the PPSA.
- o) **Unique Materials** means any raw materials, components, labels, packaging or other items purchased or procured by Lipa to specifically manufacture and supply the Products for the Customer.