

PENN PHARMA (PENN) CONDITIONS FOR THE PROVISION OF SERVICES

Effective Date: 16 March 2009

1 General

- 1.1 This **Contract** comes into force when both parties sign the **Acknowledgement of Order**. This Contract includes these Conditions, the Acknowledgement of Order and all specifications, protocols and procedures agreed and signed by both parties (**Technical Specification**). This Contract excludes all other terms and conditions contained or referred to in any other document or communication between the parties.
- 1.2 The **Company** means the client named in the Acknowledgement of Order.

2 Services

- 2.1 Penn shall provide the services set out in the Technical Specification (**Services**) in accordance with and subject to this Contract with all reasonable care and skill and in accordance with statutory and regulatory requirements.
- 2.2 All times or periods for completion of the Services and/or delivery of any products produced by Penn for the Company pursuant to this Contract (**Finished Products**) or supplied by the Company to Penn in order for Penn to perform the Services (**Company Products**) (together referred to as the **Products**), are given by Penn in good faith but are intended as an estimate only.

3 Price and Payment

- 3.1 The Company shall pay to Penn the price set out in the Acknowledgement of Order (**Price**), which is Penn's best estimate based on the information provided by the Company and is subject to review. The Price is subject to adjustment to take account of Penn's costs and related third party costs. The Price is exclusive of value added tax.
- 3.2 Unless agreed otherwise, payment is due on receipt of invoice save that payment shall become due immediately if clause 8.1 applies. Time for payment is of the essence. Penn may charge interest at the rate of 4% above the Barclays Bank base rate from time to time on overdue amounts.
- 3.3 The Company shall notify Penn if it disputes any sums in an invoice within 10 days of the invoice date, failing which the Company is deemed to accept that the sums stated are properly due and to waive all its rights to subsequently dispute those sums.
- 3.4 If the Company disputes some but not all amounts in an invoice, the Company shall pay the sums not in dispute and the dispute shall be settled in accordance with clause 10.
- 3.5 If the Company fails to make any payment that is due under this Contract or any other contract with Penn, Penn may without prejudice to its other rights and remedies suspend the Services until all such payments, with interest thereon, have been made.
- 3.6 The Company may not exercise any set-off, lien or any other similar right or claim.

4 Company Warranties and Obligations

- 4.1 The Company warrants that:

- (a) it is the owner of all Company Products or has the consent of the owner for Penn to use the Company Products for the provision of the Services;
- (b) the Products are safe and are not likely to damage or harm property or persons and it shall inform Penn in advance of any special precautions to be taken in the handling or care of Products; and
- (c) it is solely responsible for the safety and efficacy of the Products.

4.2 The Company shall:

- (a) promptly provide Penn with all Company Products and information which Penn may require to perform the Services;
- (b) take all steps to cooperate with Penn in providing the Services; and
- (c) comply with all applicable statutory and regulatory requirements.

4.3 Title to the Products shall remain with the Company at all times.

5 Confidentiality and Intellectual Property

5.1 Each party shall keep secret and confidential all business and trade secrets, methods of doing business, customer lists, commercial, scientific and technical information, data specifications and instructions in relation to the Products and the Services (**Confidential Information**) and shall use it solely for the performance of its obligations under this Contract.

5.2 Each party shall on termination of this Contract return or procure the return to the other of all Confidential Information save that the Company acknowledges that Penn must retain originals or copies of certain documents generated by it in relation to the Services in order to comply with statutory and other regulatory requirements.

5.3 The Company owns all intellectual property rights in the Products and Penn owns all intellectual property rights in relation to its expertise in providing of the Services.

6 Company Indemnity

6.1 The Company indemnifies Penn and will keep Penn indemnified against all claims, costs, losses (including, but not limited to, consequential or indirect loss and loss of profit whether foreseeable or not), damages, expenses and proceedings in respect of:

- (a) Penn's use of any Products or information provided by the Company;
- (b) any negligence or default on the part of the Company, its employees, agents or subcontractors;
- (c) any act by Penn expressly authorised or ratified by the Company; or
- (d) any failure or delay in delivering Company Products or taking delivery of Finished Products.

7 Warranties and Limitation of Liability

- 7.1 Penn warrants that the Services will conform to the Technical Specification. Except as expressly provided for in this Contract any warranties, representations or conditions (whether express or implied) are excluded insofar as is permitted by law.
- 7.2 In substitution for all rights the Company would or might have but for this clause 7.2, Penn will, to the extent the Company can show to Penn's reasonable satisfaction that any part of the Services have been performed defectively and not in accordance with this Contract, credit the Company with the Price paid for such part of the Services or, at Penn's option, re-perform such part of the Services at no cost to the Company.
- 7.3 Subject to clause 7.4, Penn shall not be liable for any indirect or consequential loss of whatever nature or any loss of profits (whether direct or indirect), loss of income, loss of business or contract, loss of anticipated savings, loss of goodwill or loss or corruption of data, howsoever caused.
- 7.4 Neither party seeks to exclude liability for loss arising from death or personal injury caused by its negligence or any other liability which cannot be excluded at law.
- 7.5 Penn's liability for loss or damage in respect of Products on its Premises shall not exceed £5,000 or such greater amount as set out in the Acknowledgement of Order. Penn shall not bear any risk in respect of Products that are not on its premises.
- 7.6 Subject to clause 7.4, the aggregate liability of Penn to the Company under or in connection with this Contract shall not exceed 125% of the Price for the Services.
- 7.7 The Company acknowledges that it has expertise in the Products and is fully responsible for forming its own opinions in respect of them. Penn therefore excludes all liability for any recommendations or advice it gives in respect of the Products (subject to such recommendations and advice being expressly detailed in the Technical Specification as part of the Services).

8 Termination

- 8.1 Either party (**Terminating Party**) may without prejudice to its other rights or remedies forthwith terminate this Contract by notice in writing to the other if such other:
- (a) commits a material breach of any of its obligations hereunder and does not remedy such breach within 28 days after written notice from the Terminating Party requiring such remedy; or
 - (b) becomes insolvent or enters into liquidation or receivership or is the subject of an application for an administration order or suffers an administrative receiver to be appointed in relation to the whole or any part of its assets or makes a composition or arrangement with its creditors or suffers any judgment to be executed in relation to any of its property or assets (or any analogous event happens in another jurisdiction).
- 8.2 Either party may terminate this Contract by three (3) months notice in writing or as otherwise agreed by the parties, without prejudice to its other rights or remedies.
- 8.3 Any termination of this Contract shall not relieve either party of the obligations under this Contract which are expressed to continue after termination, or affect any rights or obligations of the parties which accrued prior to termination (including pursuant to clauses 3, 5, 6, 7 or 12).

8.4 Upon termination of this Contract, the Company will pay Penn:

- (a) the Price for the Services which have been performed by Penn prior to termination; and
- (b) Penn's reasonable costs relating to the cessation of Services up to a maximum of 10% of the Price.

9 Force Majeure

9.1 Penn shall not incur any liability to the Company in the event it is prevented from or delayed in the performance of its obligations under this Contract by reason any circumstances beyond its reasonable control, including (without limitation) strikes, riots, sabotage, war, terrorism, fire, storm, flood, earthquake, failures of, shortages in or a loss of access to equipment, power, supplies, fuel or transport facilities, inability to obtain materials or government action.

10 Dispute Resolution

10.1 The parties shall use reasonable endeavours to resolve any dispute by prompt discussion in good faith at a managerial level appropriate to the dispute in question. Other than in relation to non-payment, this discussion shall be a pre-condition to the commencement of legal proceedings before any court. This procedure commences when either party gives notice to the other setting out the issues in the dispute and referring to this clause and, unless the parties agree otherwise, shall be treated as having been exhausted if the dispute has not been resolved within 10 business days after the giving of the notice.

10.2 If and to the extent that the parties do not resolve a dispute following the application of this clause 10 either party may commence proceedings subject to the exclusive jurisdiction of the English courts and this Contract shall be governed and interpreted in accordance with English law.

11 Privacy Statement

11.1 Penn respects the privacy of its customers. Information obtained about the Company including contact information, postal addresses, email addresses, telephone numbers, and other information volunteered to Penn by the Company (such as survey data) will only be shared within Penn or its affiliated or subsidiary companies. Information will not be shared with any outside company. Penn may communicate with the Company and its employees via email, direct mail or telephone for the purpose of providing support for the provision of services, for commercial messages, or to keep the Company informed on new products, services or upcoming events.

12 Changes to the Services: If the Company wishes to make any changes to the Services, it will submit to Penn details of the proposed changes and the reasons for them. The parties will negotiate the proposals and if agreement is reached, Penn will produce a new Acknowledgement of Order (with a revised Price, if applicable) which will be incorporated into this Contract upon signature.

13 General: If and to the Delay in exercising, or a failure to exercise, any right or remedy in connection with this Contract shall not operate as a waiver of that right or remedy.

13.1 All notices shall be sent by pre-recorded delivery or registered post or by fax to the other at the address stated in the Acknowledgement of Order and shall be deemed to have been received by the other, if sent by pre-paid recorded delivery or registered post, 3 business days after posting, or if sent by fax, on the date sent provided that a printed report confirming transmission is received.

- 13.2 Penn has the right to sub-contract any part of the Services and may assign this Contract. The Company shall not assign or transfer this Contract without the prior written consent of Penn.
- 13.3 This Contract contains the entire understanding between Penn and the Company and supersedes all previous agreements in respect of the Services.
- 13.4 A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it.