



## INTRODUCTION:

These are the terms ("Terms of Sale") on which Roche Products Pty Limited (ABN 70 000 132 865) ("Roche" or "we") will supply you, the buyer ("Buyer" or "you") identified in any order accepted by Roche, with such goods, including but not limited to pharmaceuticals and medical supplies, as we may at our discretion agree ("goods"). All goods sold by Roche are sold only on the basis of these Terms of Sale. If any other terms are proposed by you, these Terms of Sale will prevail to the extent of any inconsistency and we will be deemed by delivering the goods to you to have made a counter-offer to sell the goods subject only to these Terms of Sale. By accepting delivery of the goods, you accept the counter-offer. We may from time to time notify you of changes to these Terms of Sale, which changes will apply to each order received after that notification.

### 1. ORDERS and PRICING:

- a. You may request that we supply you with goods by submitting an order to Roche, quoting your Roche account number, a purchase order number and specifying the delivery point.
- b. Any orders, whether based upon quotations or not, are subject to acceptance by Roche, in writing or by performance.
- c. We reserve the right to accept any order in whole or in part or to decline any order. Where we make a part delivery in respect of any order, each such delivery constitutes a separate sale. Delivery details including quantity of goods supplied by Roche are confirmed in the Roche tax invoice or where applicable the delivery note accompanying the goods.
- d. Orders should be placed in shipper quantities and, if the total price of the order is less than \$1,000.00 (excluding GST) you will be charged a handling fee of \$200.00 in addition to the price of the order.
- e. You will be charged for all goods ordered and delivered in accordance with the approved price listed for each of the products on the National Product Catalogue from time to time, as hosted on GS1net®, unless you have a separate written agreement.

### 2. PAYMENT:

- a. We will issue a tax invoice in respect of the goods which we supply to you. All prices quoted before our acceptance of your order are indicative only and are subject to change by Roche without notice.
- b. You must pay the invoiced price, plus any handling or freight charges, taxes (including goods and services tax), duties, levies and all other statutory charges specified in the invoice (the Price) without deduction or set-off, within 30 days of the invoice date. For the avoidance of doubt, where the 30<sup>th</sup> day falls on the last day of a calendar month, and that day is not a business day, you must pay the Price on the last preceding business day of that month.
- c. Overdue amounts bear interest calculated daily at the Corporate Overdraft Reference Rate (monthly charging cycle) published by the Commonwealth Bank from time to time. Roche reserves the right in its absolute discretion to apply this interest charge to all payments not made by You in accordance with clause 2(b) above and to debit your account accordingly.
- d. Payment is to be made by Electronic Funds Transfer (EFT) to the following bank account:

Account Name:	Roche Products Pty Limited - Sydney
BSB:	248 057
Account:	10 000 000
Bank and Branch:	Citibank, Park Street, Sydney
- e. Payment and invoicing queries should be directed to Head Office, Sydney.
- f. You agree that a notification signed by the Secretary of our company stating the amount of any unpaid price and, or overdue interest thereon due by you to Roche will be conclusive evidence, in the absence of manifest error, of your indebtedness to Roche at the date of the notification.
- g. Failure to pay may result in your account being placed on credit hold and you may be refused supply.
- h. If you dispute an invoice issued by Roche, you must promptly notify Roche in writing of the dispute and clearly explain the nature of the dispute with supporting evidence. You will pay any undisputed portion of the invoice in accordance with this clause. Any disputed part of the portion will be resolved in accordance with the Dispute Resolution clause.

- i. We may use credit reference agencies to help Roche make credit decisions or for fraud protection purposes. You consent to Roche and its agents collecting, using and disclosing credit and personal information about you (and, in the case of a company, your directors) to check your credit worthiness, credit standing, credit history or credit capacity in accordance with the *Privacy Act 1988* (Cth).

### **3. DELIVERY:**

- a. Subject to subparagraph b and c below, the cost of delivery to your premises by Roche will be included in the price. Unless otherwise agreed, we will select the mode and route of shipment of the goods. Any specification of delivery time is indicative only.
- b. You agree to accept delivery of all products the subject of an order placed by you. Any additional costs incurred by Roche as a result of your failure to accept delivery of any goods so ordered will be a debt due by you to Roche.
- c. You may request that we send the goods to you in a specific manner. If we agree to this, you will bear all additional freight costs as specified on the invoice. You may request that we deliver the goods to more than one location. If we agree to this, you must bear any additional expense (as determined by Roche and specified in the invoice). Roche will not deliver to a third party customer account and will not supply to pharmacy upon wholesaler request.

### **4. GENERAL OBLIGATIONS:**

Supply of goods under these Terms of Sale is conditional upon your compliance with the following obligations:

- a. You will at all times comply with all applicable laws and regulations, including without limitation in relation to therapeutic goods, drugs, poisons, controlled substances, dangerous goods, record-keeping, document retention, trade practices and competition and consumer issues and fair trading issues in connection with the goods, their receipt, storage and their re-supply.
- b. You will at all times comply and assist Roche to comply with applicable professional or industry standards, including the Medicines Australia Code of Conduct.
- c. You will not make statements and will not offer or promote the goods to the general public or to customers on resale except in accordance with these Terms of Sale and applicable laws, regulations, codes and industry standards. This includes making statements about the medical appropriateness or otherwise of Roche goods for a particular customer or for a particular purpose.
- d. You undertake, as a precondition of the supply of goods, to maintain a current wholesale licence, practising certificate or other authorising certification required by the relevant state or federal body and to advise Roche immediately of any changes to this status. You further indemnify Roche with regard to any expense or liability resulting directly or indirectly from the failure to maintain a current authorising certification to receive and supply goods in any form whatsoever.
- e. You must (and will ensure that any person to whom you sell or transfer the goods does) hold all licences and authorisations and have established all workplace precautions and systems (including any required under dangerous goods legislation) to safely receive, store, use and supply the goods.
- f. You must acquaint yourself and comply with any instructions or recommendations which we give to you with respect to storage, handling, use, processing, re-supply and labelling of the goods and you must pass them on to any person to whom you sell or transfer the goods.
- g. You agree that promptly upon delivery you will place the goods into storage conditions adequate to preserve and protect them and which are appropriate given the nature of the goods, and you will ensure that the goods are maintained in those conditions until the time of re-supply.
- h. You will not create any encumbrance (including a bill of sale, mortgage, security interest, charge, lien, pledge or similar security arrangement) or adverse equity interest over or in the goods held by you, before title in the goods passes to you in accordance with the Title and Risk clause.
- i. You will comply with all applicable laws prohibiting bribery and the payment of money or anything of value to government officials, political parties or candidates for the purpose of corruptly obtaining or retaining business.
- j. You will advise Roche of any misuse or suspected misuse of any Roche product as soon as possible after it first comes to your attention.
- k. You will not take any action on Roche's behalf which would conflict with applicable anti-corruption laws.
- l. You warrant that the goods purchased by you will not be used predominantly for personal, domestic or household use.

## **5. RESALE OF GOODS:**

- a. When on-selling the goods, you must use the same unit packages as delivered by Roche. You will not repackage, rebrand or relabel the goods, unless directed to do so by Roche.
- b. The goods purchased by you are for sale and use only within Australia and you will not export any of the goods or on-sell any of the goods to anyone you know, or ought to know, would or would be likely to export any of the goods.

## **6. INDEMNITIES AND LIABILITY:**

- a. We will not be liable for any failure to perform which is directly or indirectly due to any cause beyond our reasonable control.
- b. You indemnify Roche from and against all claims, liabilities, losses, damages, costs and expenses (including any damage to, theft or loss of the goods) which we directly or indirectly suffer or incur because of:
  - i. any act or omission by you or your employees, agents, or subcontractors in breach of your obligations under these Terms of Sale;
  - ii. your failure to comply with any written instructions or recommendations about the goods, including in relation to storage or transportation of the goods;
  - iii. your failure to comply with any law or regulation in relation to the goods or their use or supply;
  - iv. your negligence; or
  - v. statements you may make about the goods or their performance or characteristics, without our written approval.
- c. This indemnity will include any GST liability incurred by Roche in enforcing the indemnity.
- d. Except as provided by this clause, nothing in these Terms of Sale will limit a party's liability for:
  - i. any categories of liabilities, losses, damages, costs and expenses which cannot be limited under applicable laws;
  - ii. death or personal injury caused by that party's negligence; or
  - iii. breach of confidentiality or any related indemnity.
- e. A party's liability in connection with these Terms of Sale (including any indemnity) will be reduced to the extent that the other party caused or contributed to the liabilities, losses, damages, costs or expenses.

## **7. RETURNS AND EXCHANGES:**

To the extent permitted by law:

- a. All grants of credits, exchange or return are at our discretion and under such conditions as we may impose.
- b. All goods related claims must be lodged with Roche Customer Service, Sydney, citing all original invoice details and the basis of the claim. We will not accept (and you waive any right to make) any claim notification:
  - i. received one business day after delivery
  - ii. from any person except you; or
  - iii. for goods supplied on "special deals" where we have supplied the goods on a no returns basis.
- c. No returns will be accepted (and you waive any right to return goods) unless:
  - i. we have given authorisation and the authorisation code is quoted; and
  - ii. the goods are returned immediately to our Warehouse using our nominated carrier (if applicable).
- d. We will not credit or accept claims or returns in respect of goods returned to you by your customers, unless faulty.
- e. Where we agree to accept return of goods, they must be returned in their original container and the label and any seal should not have been removed or otherwise tampered with or damaged. All goods must be returned in compliance with the signed Product Return document.
- f. You must pay any return freight charged for the return of goods unless the goods are subject to a goods recall or withdrawal from sale, were supplied in error by Roche, or were defective or damaged when received by you due to our fault.
- g. All rebate claims must be lodged with Roche Finance Department within 3 months of the rebated period.
- h. Where Roche approves the disposal of damaged goods, the cost of such disposal will be met by you.

## **8. RECALLS:**

- a. Roche will notify you if we require, at any time, an emergency recall or withdrawal of any of the goods. Such a recall will cover goods which are still in your possession, custody or control.
- b. Where a recall is instituted, we will provide you with a list of the goods impacted by the recall, and any other information we determine is relevant.
- c. You will provide all necessary assistance to Roche, including following all reasonable directions of Roche to enable a recall to be adequately completed in accordance with applicable laws, regulations and industry standards. This may include promptly providing details in writing of the quantity of goods in your possession, custody or control, the quantity of goods delivered to customers and any other information reasonably requested by Roche.
- d. You will isolate all goods subject to a recall or withdrawal and label the goods as "quarantined as recalled / withdrawn" or as otherwise reasonably directed by Roche.
- e. We will bear all consequent freight costs and pay or credit to you the invoiced price of the goods in question but will have no further liability to you of any kind in respect of the recall. Additional recall charges are subject to negotiation between us.

## **9. TITLE AND RISK:**

- a. Unless otherwise agreed to by Roche in writing, possession in the goods and risk in the goods passes to you upon delivery of the goods to the location specified on the order.
- b. Property in the goods remains with Roche until we have received full payment of the price. If we do not receive full payment, we may retake possession of the goods and for this purpose enter into any premises you occupy or control.
- c. Until such time as payment is made in full for the goods, you are only a bailee of the goods and hold them in trust for Roche; you receive any proceeds of sale of them on trust for Roche and must keep those moneys in a separate account and account to Roche for those moneys upon demand; and you must keep them separate from other goods held by you or store them in such a way as they are clearly identifiable as Roche property.
- d. You agree at your expense to insure Roche's goods until property has passed to you in accordance with clause (b) (i.e. when Roche has been paid in full for them). You will insure the goods under a comprehensive policy of insurance in your and our names for the full value of the goods against fire, accident, malicious damage and theft and such other risks as we may from time to time require. You will hold the proceeds of any insurance claim in respect of the goods in trust for Roche and must account to Roche for that amount immediately without the need for any demand by Roche.
- e. You acknowledge that by virtue of (b) and (c) (above) we have a security interest in the goods for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Act) and to the extent applicable the PPS Act applies.
- f. You acknowledge that we may do anything reasonably necessary, including but not limited to registering any security interest which we have over the goods on the Personal Property Securities Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirement of the PPS Act.
- g. You agree to do all things reasonably necessary to assist Roche to undertake the matters set out in (f) (above).
- h. The Buyer and Roche agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):
  - i. section 129 (disposal by purchase);
  - ii. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
  - iii. paragraph 132(3)(d) (contents of statement of account after disposal);
  - iv. subsection 132(4) (statement of account if no disposal);
  - v. section 142 (redemption of collateral);
  - vi. section 143 (reinstatement of security agreement).

## **10. NO REPRESENTATIONS OR WARRANTIES:**

- a. Subject to paragraph (b) (below) and except as expressly provided to the contrary in these Terms of Sale, all terms, conditions, warranties, undertakings, inducements or representation whether express or implied, statutory or otherwise, relating to the goods are excluded.

- b. Where any Act of Parliament implies a term in these Terms of Sale and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, such term shall be deemed to be included in these Terms of Sale.
- c. You acknowledge that neither Roche nor any person acting on Roche's behalf has made any representation or other inducement to you to enter these Terms of Sale and that you have not entered into these Terms of Sale in reliance on any representations or inducements except for those representations or inducements contained herein. No representative of ours is authorised to make any representation or promise or enter into any agreement with respect to the goods or to waive any right under, alter or modify any of these Terms of Sale unless the representation, promise, agreement or waiver is in writing and signed by Roche.

**11. CONFIDENTIALITY:**

- a. You acknowledge that we are under no obligation to give you any proprietary or confidential information about the goods and that you will keep confidential any such information, including without limitation, price lists, specifications or market research, you do acquire.
- b. Both parties agree to keep the other party's confidential information confidential and secure at all times.
- c. A party will only use or disclose the other party's confidential information for the purpose of performing its obligations under these Terms of Sale, if required by law, or with the prior written agreement of the other party.
- d. Any party who has received confidential information under these Terms of Sale must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to the confidential information.

**12. PRIVACY:**

Each party will comply with applicable privacy laws in the collection, use, disclosure and storage of personal information in performing its obligations under these Terms of Sale. You will ensure that any individuals are made aware of, or provide individual consent to, the collection, disclosure and use of their personal information by you or by Roche, including in compliance with your obligations to keep and disclose records of customers to whom you on-sell the goods.

**13. INTELLECTUAL PROPERTY:**

- a. You acknowledge that all patents, rights, trademarks and other intellectual property rights subsisting in the goods and/or the packaging of the goods are the sole property of Roche (and its related companies worldwide) and you will not in any way question, dispute or infringe any of those rights.
- b. You will not use our name, trade marks or logos without our prior written consent to each such use.
- c. You will not tamper with, obscure, damage, remove or otherwise alter the trade marks as they are applied to the goods, or cause or authorise this alteration.

**14. RECORD KEEPING:**

- a. You must keep adequate records identifying the persons to whom you on-sell goods. You will, within 2 business days, permit Roche access to, or provide Roche with copies of, those records if we so reasonably request in writing.
- b. To enable Roche to provide scientific support to the clinicians and hospitals using its goods, upon request and within 10 working days, you must supply to Roche, for any Roche goods you have on-sold or dispensed a report which details the monthly sales and deliveries by product and by hospital/pharmacy customer.

**15. DISPUTE RESOLUTION:**

- a. If any dispute or claim arises out of or in connection with this sale or these Terms of Sale (including in relation to the formation of the contract for sale of the goods or arising after termination of that contract, or in relation to invoicing and payment), the parties agree to first attempt to cooperate with each other in an amicable manner in order to resolve the dispute.
- b. If a resolution cannot be reached by local operational management, within 14 days of the dispute arising, the parties may refer the dispute to mediation. A party will not commence arbitration or litigation, other than for urgent interlocutory relief, unless it has first offered to submit the dispute to mediation.

- c. The parties agree to keep strictly confidential any information or documentation disclosed in the course of, or for the purpose of, mediation. Both parties will require all third parties, including the mediator, any witnesses, experts, representatives or others concerned, to execute and deliver to the mediator with a copy to the other party a deed of confidentiality prior to rendering any services in respect of the mediation.

**16. GOVERNING LAW AND JURISDICTION:**

The Terms of Sale and any and all related disputes or claims will be governed by the laws of New South Wales without regard to conflict of laws provisions in the courts of New South Wales.

**17. ENTIRE AGREEMENT:**

These Terms of Sale and any document incorporated by reference constitute the entire agreement of the parties about this subject matter. Any previous agreements, understandings and negotiations on the subject matter of the Terms of Sale cease to have any effect.

**18. SUBCONTRACTING:**

You may only subcontract your obligations under these Terms of Sale with our prior written consent, which consent will not be unreasonably withheld or delayed. You will remain primarily liable to Roche for all acts or omissions of your subcontractors under these Terms of Sale.

**19. NO ASSIGNMENT OR TRANSFER:**

Neither party may assign or transfer any of its rights or obligations under these Terms of Sale without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any unauthorised assignment or transfer by either party will be void.

**20. SEVERANCE:**

If at any time a provision of these Terms of Sale is deemed illegal, invalid or unenforceable by a competent court in any respect under the laws of NSW, any such provision shall be interpreted in a manner to give effect to the intention of the parties and will not affect or impair the legality, validity or enforceability of any other provision of these Terms of Sale.

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