

APTEC DISTRIBUTION FZ LLC

Standard Terms and Conditions of Sale

1. **Definitions**

- “Customer”** means the party with whom Aptec Distribution may enter into an agreement for the supply of Products and Services;
- “Aptec Distribution”** means Aptec Distribution FZ LLC, a limited liability Company incorporated in the Dubai Internet City Free Zone, or Aptec Distribution LLC, a limited liability Company incorporated under the UAE Federal Commercial Companies Law, as may be determined from the invoice issued to the Customer in respect of the Products and Services in question;
- “Products & Services”** means goods (including but not limited to Computer hardware and software) and services to be provided by Aptec Distribution to its Customers under these Terms and Conditions;
- “Force Majeure”** means any event or circumstance beyond the reasonable control of Aptec Distribution, by reason of which Aptec Distribution is prevented or delayed from delivering Products & Services, including act of God, and other unpredictable events such as war, events similar to war, instructions by government, non-permission of export, import or transit permissions, national measures to limit trade traffic, strike, lockout and any other interruptions, traffic jams, no matter whether these events occur at or affect Aptec Distribution, its suppliers, contractors, its subcontractors, or any other third party on which Aptec Distribution relies from time to time.

2. **Validity of Terms**

- 2.1 These Terms apply to all orders, quotations and sale of Products & Services by Aptec Distribution to any Customer or potential Customer and (in the absence of express provisions to the contrary), to all future transactions involving Aptec Distribution and an existing Customer, to the exclusion of all other terms and conditions asserted or proposed by any Customer, whether expressly or by implication, and whether or not the same are expressly rejected by Aptec Distribution.
- 2.2 Acceptance of Products & Services by Customer shall constitute acceptance of these Terms and Conditions.
- 2.3 No amendment or modification of these Terms and Conditions shall be effective unless confirmed in writing by the General Manager of Aptec Distribution or, in relation to Clause 11.1 below, the Financial Controller of Aptec Distribution.

3. **Offer and order acceptance**

- 3.1 All offers and quotations by Aptec Distribution and proposed business arrangements are for information only and shall not be binding. Acceptance of orders is subject to Aptec Distribution’s written order confirmation, or in the case of immediate delivery, Aptec Distribution’s invoice.
- 3.2 Modification or waiver by Aptec Distribution of any contractual provision in respect of one order or transaction shall not constitute modification or waiver in respect of any future orders or transactions.

3.3 Unless expressly marked as binding in writing by Aptec Distribution, all drawings, designs, illustrations, features, specifications and particulars of dimensions and weights and other such information submitted by Aptec Distribution are approximate only.

3.4 Aptec Distribution shall have full discretion in accepting or rejecting any order.

4. Prices

4.1 Unless otherwise specified, Aptec Distribution's quoted prices offered from time to time shall serve, for a period of seven (7) calendar days thereafter, as an indicative basis for evaluation and negotiation. However, subject to the other provisions of this Clause 4, the definitive and binding price shall be that stated in Aptec Distribution's order confirmation.

4.2 Notwithstanding any price stated in Aptec Distribution's order confirmation, price increases due to monetary fluctuations will apply and be chargeable to the Customer for Products & Services not delivered at the time of such fluctuation. Such increases will be at the discretion of Aptec Distribution, but will not constitute value greater than 50% of the total order value.

4.3 All prices for Products & Services are ex warehouse Jebel Ali Dubai United Arab Emirates. All tax, packaging, environmental lump sum/fees, transport, freight, copyright levies, insurance and legal charges are for the Customer's account and the Customer agrees to indemnify Aptec Distribution in respect thereof.

5. Delivery and Performance Period

5.1 Aptec Distribution will use all reasonable endeavours to deliver the goods on or before the agreed delivery date, however, Aptec Distribution does not undertake, guarantee or warrant that delivery will be made on the agreed delivery date.

5.2 Delays in delivery and in performance due to Force Majeure shall entitle Aptec Distribution either to postpone the delivery or service for the period during which such Force Majeure shall persist plus an appropriate additional period necessary to resume the delivery or service, or (if performance by Aptec Distribution has not commenced) to rescind the contract with the Customer, or (if such performance has commenced) to terminate such contract as at the occurrence of the event or circumstance of Force Majeure, without (in any such event) further obligation or liability to the Customer.

5.3 If any delivery time is postponed by more than 3 months, whether as a result of Force Majeure or not, the Customer shall be entitled after granting in written form an appropriate period of grace (of at least 14 days) to withdraw from the contract completely or partly if it has been partly performed.

5.4 All liability to the Customer for delay is excluded, unless the delay is based on gross negligence or wilful misconduct of Aptec Distribution.

5.5 Aptec Distribution is entitled to deliver the Products & Services in one or more consignments. With delivery contracts each partial delivery and partial performance shall constitute independent performance. The period of delivery shall also be prolonged by such period as the Customer may be in default in meeting its contractual obligations.

5.6 At any time, Aptec Distribution reserves the right, at its option, to refuse delivery until the Customer has made payment for the Products & Services.

6. Default in Acceptance

6.1 If the Customer refuses or fails to take delivery of the Products & Services ordered or is in delay in payment, Aptec Distribution shall be entitled to store the delivery items at the Customer's risk and expense until such time as the Customer resumes acceptance of delivery or (as the case may be) resumes timely

payment. Until resumption by the Customer, the Customer shall pay Aptec Distribution compensation for storage expenses at the rate of 2% per week of the purchase price with a maximum of AED 5000 per week.

- 6.2 If the Customer continues to refuse the acceptance of delivery items after a period of grace granted or if it declares non-acceptance of Products & Services, Aptec Distribution shall be entitled (without obligation or liability to the Customer) to refuse to fulfil the order and claim compensation from the Customer for breach of contract. The Customer agrees that no refusal to take delivery of the Products and Services shall relieve the Customer of the obligation to pay Aptec Distribution the full value thereof on demand and (without prejudice to the foregoing) the Customer further agrees that the loss, damage and disruption caused to Aptec Distribution by the Customer's breach of contract will amount to no less than 40% of the agreed purchase price, and agrees that Aptec Distribution shall be entitled at its option and without contestation, to receive such sum from the Customer by way of compensation.

7. **Quantity of Delivery**

- 7.1 Visible differences in quantity or damage to the Products must be disclosed in writing to Aptec Distribution and the carrier within 48 hours from receipt of the Products in question. Hidden differences in quantity must be similarly disclosed within 4 days from receipt of the Products.
- 7.2 Acceptance of the Products by the carrier or transport agent of the Customer will constitute conclusive evidence that the correct quantity has been supplied and that the Products in question have been wrapped and shipped in accordance with all contractual requirements.
- 7.3 Should Aptec Distribution inadvertently deliver Products that have not been ordered by the Customer, the Customer undertakes to notify Aptec Distribution in writing within 14 days of the erroneous delivery and to keep the Products ready for pick-up by a carrier or forwarding agent to be instructed by Aptec Distribution. Should the Customer fail to notify Aptec Distribution of an erroneous delivery in writing or do so after the 14-day period, the Customer shall be considered for all purposes to have accepted the delivery and shall accordingly be obliged to make prompt payment for such Products in accordance with Aptec Distribution's listed prices applicable at the time of delivery.

8. **Transfer of Risk**

Risk of loss and damage shall pass to Customer as soon as the shipment has been transferred to the carrier or forwarding agent instructed by the Customer or when the shipment leaves Aptec Distribution's warehouse, whichever shall occur first.

9. **Warranty & RMA**

- 9.1 Aptec Distribution warrants that all Products supplied to the Customer are fit for their purpose only in accordance with and to the extent of, for such period and upon such terms as may be specified in the manufacturer's warranty, provided that no unauthorised modification to the Products (or to the system of which the Product forms part) has taken place.
- 9.2 In the event that a Product (being hardware) should prove to be defective, the maximum entitlement of the Customer in such event (and subject to the provisions of Clause 9.1 above) will be that such Product will be repaired or replaced.
- 9.3 In the event that a Product (being software) should prove to be defective, the Customer accepts that such Product has been supplied and accepted on an "as-is" basis. Accordingly, it is agreed that Aptec Distribution's maximum liability in respect thereof (and subject to the provisions of Clause 9.1 above) is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned provided that the Customer notifies Aptec Distribution of such defect within 90 days of the date of delivery thereof to the Customer.
- 9.4 Under no circumstances shall the Customer be entitled to deduct or set off the value of Products rejected by the Customer as faulty, in the absence of a credit note issued by the Aptec Distribution.

9.5 Except as expressly set out in these Terms and Conditions, Aptec Distribution disclaims and excludes all other warranties, whether express or implied by statute or otherwise, including but not limited to warranties of description, design, merchantability and fitness for a particular purpose, or arising from any previous course of dealing, customer or trade practice. Aptec Distribution further disclaims and excludes all liability to the Customer for special, indirect, or consequential damage including but not limited to loss of profits or arising from loss of data in connection with the use of the Products or provision of the Services, and the Customer hereby agrees to indemnify, hold harmless and defend Aptec Distribution in respect thereof.

10. **Retention of Title**

10.1 Aptec Distribution shall retain title of Products and Services until it has received payment in full of all sums due in connection with the supply or provision thereof to the Customer.

10.2 If any Products are attached to, mixed or incorporated with other Products not owned by Aptec Distribution and are not identifiable or separable from the resulting composite or mixed Products then title to the resulting composite or mixed Products shall vest in Aptec Distribution (on the basis of co-ownership with other owners in the proportion which the stated value of the Products bears to the stated value of the whole) and shall be retained by Aptec Distribution as long as and on the same terms on which it would have retained title to the Products in question.

10.3 The Customer shall store Products owned by Aptec Distribution in such a way that they are clearly identifiable as Aptec Distribution property and shall maintain records identifying them as Aptec Distribution property.

10.4 In the event of failure or delay by the Customer in making payment, or if the Customer is the subject of bankruptcy or equivalent proceedings, or makes composition with its creditors, Aptec Distribution shall be entitled (but not obliged) to withhold delivery of any undelivered Products and stop Products in transit and recover possession of Products already delivered and unpaid for. Alternatively, Aptec Distribution shall be entitled (but not obliged) to reaffirm the contract for supply of the Products & Services and to require the Customer to pay for Products in transit.

11. **Payment**

11.1 All invoices shall be payable in the manner described in the Payment Terms Confirmation provided by Aptec Distribution to the Customer except as may be notified to the contrary by Aptec Distribution's Financial Controller. If so required by the Customer, Aptec Distribution may undertake to (but shall not be obliged to) provide carriage and insurance at rates and charges to be agreed and to be charged separately. Unless and until such agreement is recorded in writing, the arranging of carriage and insurance shall remain the responsibility of the Customer.

11.2 Notwithstanding any provision to the contrary, including any provision in documentation emanating from the Customer, Aptec Distribution shall be entitled to book payments against earliest invoices, then against interest accrued, and finally against the current transaction for supply of Products & Services.

11.3 If the Customer is in default of its obligations to make timely payments, interest shall accrue on the amount(s) outstanding at the rate of 3% above the LIBOR rate prevailing during the period of delay.

At its own discretion, Aptec Distribution shall have the right to determine, adjust or refuse a credit line at any time. If a Customer exceeds his credit line at any time, Aptec Distribution shall have no obligation to continue to deliver any Products & Services until such time as the Customer rectifies its credit standing or elects to proceed on a cash payment basis for the transaction in question.

12. **Limitations on Liability**

Except as may be expressly provided elsewhere in these Terms and Conditions, neither Aptec Distribution nor any of its servants, agents, officers, employees, suppliers or contractors shall be liable to the Customer for any loss or damage sustained as a result of breach of contract.

13. **Trademarks**

All trademarks on or relating to the Products & Services are and remain intellectual property of the respective manufacturer and/or supplier. For the use of these trademarks prior written approval of the respective manufacturer and/or supplier is required. All use and delivery of software is subject to the license agreement accompanying the Products & Services.

14. **Copyrights**

All intellectual property rights other than trademark rights (including for the avoidance of doubt but not limited to any title or ownership rights, copyrights, patent rights and trade secret rights) in or relating to the Products & Services supplied to Aptec Distribution by third party owners or suppliers for onward sale or supply by Aptec Distribution to the Customer shall at all times and for all purposes vest and remain vested in such third party owners or suppliers.

The Products & Services in question are supplied to the Customer by Aptec Distribution subject to the foregoing rights and subject to the applicable licence in respect thereof. Except as may be provided in such licence, the Products & Services are supplied to the Customer for the purpose of onetime re-selling and to the end customer for exclusive use (excluding for the avoidance of doubt any rights to make copies or to grant user rights to any third party), and no title to or ownership of the Products & Services is conferred by virtue of these Terms and Conditions.

The Customer hereby acknowledges that it is the Customer's sole responsibility to comply with any terms of such licence and that failure to do so could result in the Customer being refused further supplies of such Products & Services. Accordingly, the Customer hereby further agrees to indemnify Aptec Distribution in respect of any costs, charges or expenses incurred by Aptec Distribution in any claim or legal action involving such third party, owner or supplier as a result of any breach of any of such terms and conditions by the Customer.

15. **Data Protection**

The Customer authorises Aptec Distribution to process data concerning the Customer received in relation to their mutual relationship, to the same extent as if governed by English Law.

16. **Confidentiality**

During the course of the business relationship or at any time after the termination thereof, Customer shall not disclose or use any business or company secrets or other confidential information relating to Aptec Distribution, its parent or affiliated companies. Customer agrees that such information will only be communicated to those members of its staff whose knowledge of such information is essential and will bind these members of its staff to confidentiality.

17. **Export**

All products, spares, technical data, software and documentation may be subject to export and import laws, rules and regulations including but not limited to those of the United Arab Emirates, the United States of America and the country of import. In the event Customer exports the Product outside the United Arab Emirates, the Customer shall comply with all applicable export and import rules and regulations and obtain all applicable licenses, and indemnify Aptec Distribution from and against all loss and damage sustained as a result of the Customer's failure or delay in doing so.

In line with Export / Trade Compliance checks that may need to be undertaken by Aptec Distribution when implementing Manufacture Export Compliance Policies. Aptec reserves the right to cancel / terminate any contracts with customers failing these checks.

18. **Governing Law**

These Terms and Condition shall be governed by and construed in accordance with the laws of Dubai in the United Arab Emirates. If any of these Terms and Conditions are declared invalid or unenforceable, the validity of other provisions shall be unaffected and Aptec Distribution and the Customer shall agree to enter into negotiations with the aim of substituting or amending the invalid or unenforceable provision with a new provision that approximates the economic purpose of the intended provision.

19. **Marketing Activities**

The Customer expressly consents to receiving advertisement from Aptec Distribution by telefax or e-mail without requirement for prior request.