

## **General Conditions**

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### **Paragraph 1. Applicability**

1. These general conditions apply to sales of goods, deliveries and quotes by Orly Pharma BV, Orly Pharma Ltd and Orly Pharma GmbH (hereafter: "ORLY").

They form an integral part of all contracts and legal relationships between ORLY and third parties (hereafter: customers or clients) concerning sales of goods, deliveries and offers. Future sales of goods and deliveries to clients are also subject to these general conditions even if they do not form part of a separate contract.

2. The general conditions of a customer or a third party do not apply even if ORLY has not explicitly ruled out their validity. Neither does ORLY accept the general conditions of the customer if it refers, or has referred, to a letter or other document mentioning the general conditions of the customer.

### **Paragraph 2. Offer and Beginning of a Contract**

1. All offers made by ORLY are without obligation. The acceptance of an offer by the customer is final.

2. The legal relationship between ORLY and its clients will be based solely on a written contract or purchase contract referring to these general conditions. Oral consent or arrangements with staff members of ORLY are not binding for ORLY unless and insofar as they are confirmed by ORLY in writing. Amendments or additions to written contracts, including these general conditions, will only be binding in writing and only if ORLY has accepted them.

### **Paragraph 3. Prices and Payment**

1. The agreed prices are valid until the day of and including delivery. Unless otherwise agreed, these prices are net of the applicable value added tax. Prices are shown in euros and are quoted without shipping costs. For delivery to the customer's address according to Paragraph 4, Section 1, if situated within Germany, the Netherlands or Belgium, the shipping costs are charged separately. Outside these regions, delivery is ExWorks (Where goods are exported, the prices exclude any costs, taxes or other charges such as customs duties or other official charges).

2. Invoices are payable on the date the goods are received and are due for final payment within 14 days after receipt of the goods. From day 22, 8% yearly interest and an additional fee of €30.00 for administrative expenses will be invoiced over the due payments. If payment is made even later, ORLY will be entitled to invoice further costs.

3. Settlement or withholding payment by clients will be permitted solely in the case of undisputed counter-claims or enforcement orders.

4. Payments will be considered to have been paid only if ORLY has access to this payment.

### **Paragraph 4. Supply and Delivery, Transfer of Risk and Time of Delivery**

1. Unless otherwise agreed, goods are delivered at the clients' address (DAP: Delivery At Place). Product ownership of and -risk will transfer to the customer on delivery at the customer's given address. If delivery ExWorks is agreed, product-ownership and -risk will transfer to the customer when ORLY hands over the goods to the freight forwarder or to any other third party nominated by the customer. If delivery is delayed for reasons outside ORLY'S influence or because the customer could not accept the goods (on time) in spite of being offered to the customer for acceptance, productownership and -risk will transfer to the customer on acknowledgement of receipt.

2. Unless a specific deadline has been agreed by ORLY, the delivery times and deadlines given by and agreed with ORLY are to be regarded as approximate, not binding. If these dates/deadlines are exceeded, ORLY will not be obliged to pay compensation nor will the customer be entitled to neglect its contractual obligations or to postpone their execution.

3. In case goods cannot be delivered for reasons beyond ORLY's control, ORLY will be entitled to cancel the contract unilaterally. Only if a binding deadline has been agreed, the customer will be entitled to end the contract unilaterally. ORLY will only be in default if it fails to deliver the goods after having received a default notice indicating a reasonable delivery period. Liability in case of delivery default will be reduced to 10% of the agreed price for those goods for which delivery has been delayed.

### **Paragraph 5. Reasonably Unforeseeable Events**

1. Should ORLY not be able to fulfil the contract due to force majeure, it will be entitled to suspend execution of the contract or terminate the contract at its own discretion provided the contract cannot be executed within eight (8) weeks due to reasonably unforeseeable events. In case of force majeure, the customer will not be entitled to compensation, reimbursement, or interest.

2. As force majeure shall be considered events such as fire, flood, accident, illness of staff members, interruption to operations, traffic problems, product or transport problems and goods or services not supplied on time by third parties appointed by ORLY.

3. If due to force majeure ORLY has already executed part of its contractual obligations or can only fulfil part of his obligations, it will be entitled to invoice the already-delivered goods and those goods available but not yet delivered. The customer will be obliged to pay this invoice without withholding payment or settlement as though it were a separate contract.

### **Paragraph 6. Claims, Liability and Availability**

1. Claims resulting from a product defect due to incorrect handling by ORLY are to be submitted no later than 12 months after delivery of the respective product.

2. The customer will check carefully (personally or by another party) whether the goods are undamaged and if they were delivered as ordered. The customer will also be required to give written notice to ORLY within seven (7) working days of any deviations from or damage to the goods, attaching the packing slip. If the customer misses the deadline for compensation it will have no further claims against ORLY.

3. The goods on which the claim is based may be returned to ORLY only if ORLY has requested so or has given its written consent. If the customer complaint is justified, the costs of returning the goods will be paid by ORLY. If a

customer complaint is justified, ORLY will only be obliged to supply a substitute product or to credit the purchase price. The customer has the sole right to terminate the contract only if ORLY cannot supply a substitute product or if such a product cannot be supplied within an appropriate period.

4. Customer complaints will have no postponing effect on the customer's payment obligations.

5. If a defect in a product is detected, the customer will be obliged to take all appropriate steps to prevent further damage or restrict the damage, including ceasing use of the product or handling it.

6. Other than the provisions in these conditions, the customer will not be entitled to any claims against ORLY for defects in or in relation to the delivered goods., ORLY is not responsible for direct and/or indirect damage, including property damage , physical injury, immaterial damage, consequential damage (such as loss of earnings) and other damage unless ORLY has acted negligently or with intent.

7. In case ORLY will be obliged to pay compensation this will never exceed the invoice value (excluding VAT) of the delivered goods and/or services incurred by or connected with the damage in question. If the damage is covered by ORLY'S insurance, compensation will not exceed the amount of damage that actually be paid by the insurer in that particular case.

8. The customer shall indemnify ORLY for claims by third parties, including the competent authorities, and all related costs and damages relating to the goods already delivered or to be delivered and/or services performed or to be performed.

#### **Paragraph 7. Obligations of the Client; Export**

1. For delivery ExWorks, the customer is responsible for transport of the goods from the ORLY warehouse and accepts all related legal obligations. If the delivery address is outside Germany, the Netherlands or Belgium, the goods will always be shipped ExWorks unless otherwise agreed.

2. In all cases the customer is obliged to duly comply with the relevant laws in the country of destination and to act according to all laws and regulations applying to pharmaceutical products, including amongst others the immediate reporting of adverse reactions (pharmacovigilance).

3. ORLY has no obligations or liability to, and cannot be held responsible for, the duties of the customer referred to in this Paragraph. In case of ExWorks delivery, ORLY can never be held responsible for damage resulting from destruction, loss, confiscation, destruction or damage resulting from import controls, lack of approval/s, product inspections, customs legislation or other circumstances resulting from export and shipment of the goods.

#### **Paragraph 8. Miscellaneous**

1. Goods may be returned to ORLY only after written consent (see Conditions for Returning Goods). ORLY reserves the right to destroy goods without prior consent.

2. If any provision of the conditions of business or the contracts applying to these conditions of business is invalid or contentious, the remaining provisions will not be affected. ORLY and the customer will endeavour to replace ineffective and contentious regulations with valid provisions which come as close as possible to the original intention of the invalid and contentious regulations.

3. The place for making payments and performing delivery obligations is ORLY's head offices.

#### **Paragraph 9. Applicable Law, Place of Jurisdiction and Delivery Address**

1. Dutch law applies exclusively to all offers by ORLY to clients and all contracts concluded by both parties. The provisions of the 1980 CISG will be excluded.

2. Disputes arising from or connected with a contract or quotes and/or bids made by ORLY or any other legal action will be brought before the *Rechtbank Oost-Brabant* Court and addressed by it. This will not affect ORLY's right in certain cases to bring disputes before other authorised judges in the Netherlands.