

**BIONICAL LIMITED AND ITS AFFILIATES  
TERMS AND CONDITIONS OF SALE – CTS**

**1 DEFINITIONS** In these terms and conditions the following phrases have the following meanings:

**Acceptance:** Seller's written acceptance (which may be by email) of an Order, which automatically incorporates these Terms and the Specification to form a Contract.

**Affiliate:** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

**Business Day:** a day that is not a weekend day (Saturday or Sunday) nor a public holiday in the country of either Seller or Buyer.

**Buyer:** person or organisation who purchases the Products from Seller, as its details appear on the Order, and who warrants that it is at the time of purchase licensed and regulated by the applicable regulatory body in the applicable jurisdiction to purchase such Products in the manner set out in the applicable Contract.

**Contract:** the contract between Seller and Buyer for the sale and purchase of Products, which shall incorporate the Terms, the Acceptance and the Specification.

**Force Majeure Event:** any circumstances beyond Seller's reasonable control affecting its ability to perform any of its obligations under a Contract.

**Order:** Buyer's order for Products, as set out in Buyer's purchase order form or in Buyer's written response to Seller's Quotation as the case may be.

**Products:** licensed and unlicensed pharmaceutical or other healthcare products including pharmaceutical compounds, drugs, medical equipment, supplies and ancillary items to be sold by Seller to Buyer as described in the Specification.

**QTA:** a quality and/or technical agreement governing quality requirements and responsibilities relating to the sale by Seller and the purchase by Buyer of the applicable Products.

**Quotation:** Seller's written quotation supplied to Buyer (in response to an enquiry from Buyer or otherwise) relating to the potential supply of Products by Seller to Buyer.

**Seller:** the Bionical Emas company which enters a Contract to sell Products to Buyer, as set out in the Quotation and/or Acceptance, which shall be: Bionical Limited trading as Bionical Emas whose registered office and main trading office is The Piazza, Mercia Marina, Findern Lane, Willington, Derbyshire DE65 6DW United Kingdom; or Bionical Emas, Inc. (an Affiliate of Bionical Limited) whose trading office is 200 Grove Road, Suite A, Paulsboro, NJ 08066, United States; or Bionical Emas Limited whose registered office and main trading address is Unit 7, Midland Gateway Business Park, Kilbeggan, County Westmeath Ireland or other Affiliate of Bionical Limited.

**Specification:** the specification for the Products agreed in writing by Buyer and Seller as set out in the Quotation, and/or the Order and/or the Acceptance (and if there is a discrepancy between these documents in relation to such specification, the Specification shall be the latest specification contained in such a document). For the avoidance of doubt, the Specification is likely to include: Product name and other necessary identifying features; required configuration of the Product, including product type and strength; pack size; quantity; whether Products are required in instalments and if so, required instalment details; required batch number if applicable; required expiry date range; required country of origin if applicable; any packaging, transport or storage requirements; any documentation which is required to be supplied with the Product; the Buyer or its agent's delivery site details; and where applicable any import requirements such as import for export or IND importation details.

**Terms:** the terms and conditions set out in this document as amended from time to time in accordance with Clause 12.8.

**2 BASIS OF CONTRACT**

**2.1** These Terms apply to each Contract to the exclusion of any other terms that Buyer may seek to impose or incorporate (whether on the Order or elsewhere) or which are implied by trade, custom, practice or course of dealing provided that where the Parties have executed a separate bespoke written agreement in respect of the type of services covered by these Terms, these Terms shall not apply to the extent that they conflict with such separate agreement and the terms of the written agreement shall prevail. Buyer agrees that any terms it seeks to impose or incorporate in any document shall be null and void even if Seller does not explicitly strike out such terms and Seller's silence in relation to Buyer's terms shall not amount to acceptance of those terms. Each party acknowledges that in entering into each Contract, it has not relied on nor shall have any right or remedy in respect of, any statement, representation, assurance or warranty other than as set out in these Terms and the applicable Contract.

**2.2** Upon Buyer's request, Seller may issue a Quotation. The Quotation is not an offer and the Order is not acceptance of an offer. The Order constitutes an offer by Buyer to purchase Products in accordance with these Terms and the applicable Quotation. Buyer is responsible for ensuring that the terms of the Order and the Specification are complete and accurate. The Order shall be accepted only when Seller issues the Acceptance to Buyer, at which point the Contract shall come into existence. Seller reserves the right not to accept an Order for any reason.

**2.3** Unless otherwise stated in writing in the Quotation, a Quotation will state the price at which the Products can be supplied by Seller on the date of the Quotation only. Prices are subject to variation. Should Seller no longer be in a position to supply the Products at the price set out in the Quotation when the Order is submitted by Buyer, the parties shall discuss the matter and if Buyer wishes to purchase Products at the varied price notified by Seller, Buyer shall issue a new Order to this effect. If Seller's Quotation specifies a quotation expiry date and Buyer wishes to place an Order pursuant to the Quotation, Buyer shall do so before the lapse of the Quotation's expiry date. If Buyer submits an Order after the Quotation's expiry date, Seller shall, at its discretion either: (a) issued a revised Quotation; or (b) permit Buyer to submit an Order pursuant to the original Quotation.

**2.4** Upon Seller's Acceptance of the Order, Buyer shall not be permitted to cancel the Contract or part of it without the prior written consent of Seller. Should Seller consent to cancellation of a Contract or part of it, Buyer shall reimburse Seller for all non-cancellable costs Seller has incurred or committed to incur up to the date of cancellation and any expenses or penalties which Seller incurs in connection with cancellation of a Contract (or part of a Contract). If Seller permits cancellation, and in addition to the cancellation charges payable by Buyer as set out in this Clause 2.4, Seller shall charge a cancellation fee of 10 % of the value of the Order (or the cancelled part of the Order).

**2.5** Buyer and Seller shall at any time on Seller's request enter into a QTA in a form provided by Seller (unless otherwise agreed between the parties), which QTA shall govern all Contracts (unless otherwise agreed in writing between the parties), and which QTA shall be incorporated into each applicable Contract.

### **3 PRODUCTS**

**3.1** In respect of each Contract, Seller shall use all reasonable endeavours to supply the Products as described in the Specification. Buyer is not permitted to reject any Products supplied by Seller that do not meet any requirements that were not included in the Specification. Subject to Clause 3.2, any changes to the Specification requested by Buyer after formation of the Contract shall only be valid if such changes are notified to Seller and Seller accepts Buyer's change request in writing.

**3.2** Seller reserves the right to amend the Specification to comply with any applicable statutory or regulatory requirements. Any amendments made to the Specification pursuant to this Clause 3.2 shall not permit Buyer to cancel a Contract.

### **4 DELIVERY**

**4.1** Seller shall deliver the Products accompanied by a delivery note (which shall include date of Order, type and quantity of Products, special transport and storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered). Any further documentation agreed to be supplied in the Specification shall be delivered to Buyer by the dates agreed between the parties in writing.

**4.2** Unless agreed otherwise in writing between the parties, delivery shall be made by Seller to Buyer Delivery Duty Paid (DDP) (as per Incoterms® 2020) to Buyer's or its designated 3<sup>rd</sup> party recipient's premises ready for unloading by Buyer (or its designated 3<sup>rd</sup> party). For the avoidance of doubt, delivery to Buyer shall for the purposes of these Terms mean delivery to Buyer or (where agreed with Buyer) to Buyer's designated 3<sup>rd</sup> party recipient (such 3<sup>rd</sup> party recipient's details to be set out in writing on the Order and accordingly accepted by Seller).

**4.3** Any dates quoted for delivery are approximate. Time of delivery is not of the essence. Seller shall not be liable for any delay or failure in delivery of the Products caused by a Force Majeure Event or Buyer's failure to provide Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

**4.4** Without prejudice to Clause 10, if Seller fails to deliver the Products its liability shall be limited to refund of the price pre-paid by the Buyer for the Products, if any.

**4.5** If Buyer fails to take or accept delivery of Products then except where such failure or delay is caused by Seller's failure to comply with its obligations under the Contract, delivery shall be deemed to have been completed at the time and date the delivery attempt was made (or on the fifth Business Day after the day on which Seller notified Buyer that Products were ready for collection, should an applicable Incoterm have been used (e.g. ex works)). In such a case, Seller shall (subject to Clause 4.6 below) store the Products until Buyer arranges collection of them and shall charge Buyer a storage fee and all related costs and expenses (including freight and insurance).

**4.6** If, 10 Business Days after the day on which Seller attempted delivery of the Products (or Buyer failed to collect the Products, depending on the Incoterm used), Buyer has not arranged collection of them pursuant to clause 4.5 above, Seller may at its option resell (where reasonably practicable), return, destroy or otherwise dispose of part or all of the Products and charge Buyer for any shortfall in the amount it receives or is reimbursed for the Products compared to the Contract price of the Products and for any return or disposal costs (if returned, destroyed or otherwise disposed of).

**4.7** Seller may deliver the Products by instalments, which instalments shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment.

### **5 QUALITY**

**5.1** Seller shall use its reasonable endeavours to deliver the Products in accordance with the Specification and any applicable QTA.

**5.2** If Buyer gives notice in writing to Seller within 3 Business Days of delivery of the Products that some or all of them do not comply with the Specification (including in relation to quantity or defects), such notice specifying details of the defect or shortage; and if: **(a)** Seller is given a reasonable opportunity to examine such Products which will at Seller's request include Buyer submitting to Seller clear photographs of the Products to the Seller's satisfaction evidencing the alleged non-conformance with the Specification; and **(b)** Buyer (if asked to do so by Seller) returns such Products to Seller's place of business or to such other address instructed by Seller at Buyer's cost; and **(c)** Seller (acting reasonably) agrees that the affected Products do not comply with the Specification and that such defect arose prior to delivery of the Products by Seller to Buyer; then Seller shall at its option, replace the affected Products or refund the price of the affected Products in full (if prepaid). Buyer acknowledges that if a Products defect and/or deviation from the Specification is confirmed by the manufacturer of the Products to be a defect and/or deviation caused during the Products manufacturing process, Buyer shall receive a refund of the price paid for the affected Products or replacement Products upon Seller's receipt of a refund or replacement Products (as applicable) from its supplier.

**5.3** Seller shall in its absolute discretion decide if Products may be returned by Seller, whether under a Clause 5.2 notification or otherwise. If Seller gives consent to return Products, returns shall be accepted by Seller if the Products are received back by Seller uncompromised and undamaged with complete outer packaging and unbroken seals. If Seller gives consent to return Products, and Products are returned with outer packaging not complete and/or seal(s) broken, return of such Products shall only be accepted by Seller if the return is due to a defect which could only have been discovered on opening the Product(s') packaging. In respect of unaccepted returns, Seller shall at its option destroy such Products or return them to Buyer at Buyer's cost.

**5.4** Whether or not Products are returned, Seller shall not be liable for failure of Products to comply with the Specification, and Buyer shall remain liable to pay for the Products, in any of the following events: **(a)** in Seller's reasonable opinion, there is no material deviation from the Specification, or such deviation occurred after delivery of the Products to the Buyer; **(b)** Buyer makes any further use of the Products after giving notice in accordance with Clause 5.2; **(c)** the defect arose because Buyer failed to follow Seller's instructions as to transport, storage and use of the Products or good trade practice (including Good Distribution Practice) regarding the same; **(d)** the defect arose as a result of Seller following

any instructions of the Buyer; **(e)** Buyer altered the Products; **(f)** the defect arose as a result of wilful damage, negligence or abnormal carriage or storage conditions (save if such wilful damage, negligence or abnormal carriage or storage conditions is proven to be caused by the negligence or wilful misconduct of Seller); **(g)** Buyer opened Products which were not defective or interfered with Product packs, and attempted to return them; or **(h)** the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

**5.5** Should a product recall occur in respect of the Products, the Parties shall fully co-operate in order to comply with the recall. Unless otherwise agreed by the Seller, any Products subject to a recall shall only be returned to Seller if such Products are received in their original form and in unopened, undamaged packaging.

**5.6** For the avoidance of doubt, supply by Seller to Buyer of a scan report verifying authenticity of the Products in compliance with the Falsified Medicines Directive (FMD) or equivalent legislation in non-EU countries shall be deemed proof of authenticity of the Products.

**5.7** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (UK) are, to the fullest extent permitted by law, excluded from each Contract.

**5.8** These Terms shall apply to any replacement Products supplied by Seller.

**5.9** Except as provided in this Clause 5, Seller shall have no liability to Buyer in respect of failure of the Products to comply with the Specification.

## 6 BUYER WARRANTIES

Buyer warrants that it (and/or its applicable 3<sup>rd</sup> party recipient delivery site): **(a)** has the necessary licence (or other authority) to purchase, store and use the Products in the manner and for the purposes as ordered from Seller, and shall upon Seller's request, produce evidence to Seller of that licence or authority; and **(b)** shall immediately notify Seller if such licence (or other authority) has been revoked, suspended, conditioned or amended.

## 7 TITLE AND RISK

**7.1** Risk in the Products shall pass to Buyer on delivery by Seller to Buyer in accordance with the Incoterms used or as otherwise agreed in writing between the parties. Title to the Products shall not pass to Buyer until the later of: **(a)** delivery; or **(b)** Seller's receipt of payment in full (in cleared funds) for the Products.

**7.2** During any period post-delivery until title passes to Buyer, Buyer shall: **(a)** maintain the Products in good condition and in compliance with all applicable quality requirements including in compliance with the QTA; **(b)** store the Products separately from other products of Buyer or other third party so they remain identifiable as Seller's property; **(c)** not open, use or sell (or otherwise part with) the Products, nor remove, deface or obscure any identifying mark or packaging on or relating to the Products; **(d)** keep the Products insured against all risks for their full price; **(e)** notify Seller forthwith if it becomes subject to any of the events listed in Clause 9.1; and **(f)** promptly provide Seller with such information relating to the Products as Seller may require from time to time.

**7.3** If, in contravention of Clause 7.2(c) above, Buyer resells or otherwise parts with the Products in the ordinary course of its business before Seller receives payment for the Products, it does so as principal and not as Seller's agent but Buyer shall hold the payment for the Products on trust on behalf of Seller until Seller has received payment in full for the Products.

**7.4** If before title in the Products passes to Buyer, Buyer becomes subject to any of the events listed in Clause 9.1 then, without limiting any other right or remedy Seller may have, Seller may at any time require Buyer to immediately return (in satisfactory condition) or deliver up all Products in its or a 3<sup>rd</sup> party's possession which have not been resold or used.

## 8 PRICE AND PAYMENT

**8.1** The price of the Products shall generally be the price confirmed by Seller in the Acceptance. However, if matters outside the control of Seller (such as currency fluctuations, supply route issues, taxation changes or similar) result in Seller incurring higher costs than anticipated at time of Acceptance, in relation to the Contract, Seller shall be entitled to invoice such extra costs to Buyer and Buyer shall be obliged to pay such extra costs.

**8.2** Unless otherwise specified in the Acceptance, the price of the Products is exclusive of the costs and charges of packing, insurance and transport, which shall be arranged and paid for by Buyer, or if (at the request of Buyer) arranged by Seller, Seller shall invoice the cost (estimated or actual) of such to Buyer, and Buyer shall pay such invoice in accordance with Clause 8.5.

**8.3** The price of Products is exclusive of applicable custom duties and taxes. Buyer shall, on receipt of a valid tax invoice from Seller, pay Seller such additional amounts in respect of customs duties/taxes as are chargeable on the supply of the Products.

**8.4** Unless otherwise agreed in writing between the parties, Seller may invoice Buyer for the Products on or at any time after issue of the Acceptance.

**8.5** Unless otherwise agreed in writing between the parties: **(a)** Buyer shall pay the invoice referred to at Clause 8.4 in full and in cleared funds within 5 Business Days of the date of invoice and in any event prior to delivery of the Products; and **(b)** payment shall be made by bank transfer in the currency set out in the Contract to the bank account nominated in writing by Seller. Time of payment is of the essence.

**8.6** If Buyer fails to make any payment due to Seller by the due date for payment, then Seller reserves the right to charge interest on the overdue amount of the equivalent of 1 % of the outstanding amount for each and every month (pro rata for part of a month) until payment of the overdue amount is received in full.

**8.7** If Buyer fails to make any payment due to Seller, Seller reserves the right to terminate or suspend the applicable Contract (and any other Contracts) until Seller receives payment of the amount due including interest in full and cleared funds, and Seller shall incur no liability in doing so.

**8.8** Buyer shall pay all amounts due under a Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer.

**8.9** Buyer shall pay to Seller all fees and expenses (including legal fees and expenses) incurred by Seller in collection of outstanding amounts owed by Buyer to Seller or otherwise enforcing these Terms or any Contract.

## **9 TERMINATION AND SUSPENSION**

**9.1** If Buyer becomes subject to any of the events listed below, Seller may terminate a Contract or all Contracts with immediate effect by written notice to Buyer: **(a)** Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay his or her debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; **(b)** Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; **(c)** (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Buyer; **(d)** (being a company) an application is made to court or an order is made for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over Buyer; **(e)** (being a company) the holder of a qualifying floating charge over Buyer's assets has become entitled to appoint or has appointed an administrative receiver; **(f)** a person becomes entitled to appoint a receiver over Buyer's assets or a receiver is appointed over Buyer's assets; **(g)** (being an individual) Buyer is the subject of a bankruptcy petition or order; **(h)** a creditor or encumbrancer of Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; **(i)** any event occurs, or proceeding is taken, with respect to Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 9.1(a) to 9.1 (h); **(j)** Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; **(k)** In Seller's opinion, Buyer's financial position deteriorates to such extent that Buyer's capability to adequately fulfil its obligations under a Contract has been jeopardised; **(l)** (being an individual) Buyer dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or **(m)** In Seller's opinion, Buyer materially or persistently breaches a Contract or Contracts (and failure to make payments by the due date under a Contract is acknowledged by the parties to be a material breach).

**9.2** Without limiting its other rights or remedies, Seller may suspend supply of Products under a Contract if Buyer becomes subject to any of the events listed in Clause 9.1(a) to 9.1(m), or Seller reasonably believes that Buyer is about to become subject to any of them.

**9.3** On termination of a Contract for any reason Buyer shall pay to Seller forthwith all Seller's outstanding unpaid invoices in full, and in addition Seller shall be entitled to invoice and be paid by Buyer for all costs incurred (or committed to be incurred) by Seller in order to perform the Contract as at the date of termination.

**9.4** Termination of a Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

**9.5** Clauses which expressly or by implication survive termination of a Contract shall continue in full force and effect.

## **10 LIMITATION OF LIABILITY AND INDEMNITY**

**10.1** Nothing in these Terms or any Contract shall limit or exclude either party's liability for: **(a)** death or personal injury caused by its negligence; **(b)** fraud or fraudulent misrepresentation; or **(c)** any matter in respect of which it would be unlawful to exclude or restrict liability.

**10.2** Subject to Clause 10.1: **(a)** Seller shall under no circumstances be liable to Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with a Contract; and **(b)** Seller's total liability to Buyer in respect of all other losses arising under or in connection with a Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Seller in respect of the applicable Products.

**10.3** Buyer shall indemnify Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Seller arising out of or in connection with any claim made against Seller by a third party arising out of or in connection with Buyer's treatment, handling or use of the Products (including resale of the Products), to the extent that such loss is not directly caused by the negligent acts or omissions of Seller.

## **11 CONFIDENTIALITY**

All non-public, confidential or proprietary information disclosed by a party to the other party, including but not limited to information relating to supply routes and suppliers, data, business operations, customers, pricing, discounts or rebates, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with a Contract is confidential, solely disclosed to the other party for its use in performing the Contract and may not be disclosed or copied unless authorised in advance by the disclosing party in writing or unless required by law. Upon the disclosing party's request, the receiving party shall promptly return all documents and other materials received from disclosing party, but is permitted to retain one copy of such documents if required for legal/regulatory or legitimate record-keeping purposes. The disclosing party shall be entitled to injunctive relief for any violation of this clause 11. This clause does not apply to information that is: **(a)** in the public domain (otherwise than through a breach of this clause 11); **(b)** known to the receiving party at the time of disclosure; or **(c)** rightfully obtained on a non-confidential basis from a third party.

## **12 GENERAL**

**12.1** Seller shall be entitled to cancel a Contract at any time, without liability, on written notice to Buyer.

**12.2** Seller shall not be liable for any failure or delay in performing its obligations under a Contract to the extent that such failure or delay is caused by a Force Majeure Event.

**12.3** Buyer may not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under a Contract without Seller's prior written consent.

**12.4** Any notice or other communication given to a party in connection with a Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in other cases) or such other address as that party may notify the other in writing for this purpose.

**12.5** If any provision of a Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

**12.6** No waiver by Seller of any breach of a Contract by Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**12.7** A person who is not a party to a Contract shall not have any rights to enforce its terms.

**12.8** Seller may modify these Terms at any time on notification to Buyer and/or by displaying an updated version of these Terms on its website. Except as set out in these Terms, no variation of these Terms or of a Contract shall be effective unless in writing and signed by the parties.

**12.9** Regardless of place of delivery, each Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.