

# Pfizer Australia Pty Limited - Direct Accounts

## TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in writing by Pfizer Australia Pty Limited **ABN 50 008 422 348** ("Pfizer"), the following are Pfizer's Terms and Conditions of Sale Direct Accounts. Pfizer has appointed DHL Supply Chain (Australia) Pty Ltd ("DHL") to provide services on its behalf to purchasers that have a Direct Account with Pfizer, and the Purchaser consents to DHL using their confidential information and to performing the obligations of Pfizer under these Terms and Conditions that Pfizer may choose to delegate to DHL from time to time. Pfizer's Terms and Conditions of Sale Direct Accounts apply to all deliveries/distribution of products administered by DHL, on behalf of Pfizer, to the Purchaser. In the event of a conflict between any other terms and conditions of sale and these conditions, these conditions as amended from time to time prevail.

### 1. ORDERS

1.1 Pfizer reserves the right to accept or decline, in whole or in part, any order placed by the Purchaser.

1.2 An order received from the purchaser is deemed binding on the Purchaser from the point of order regardless of confirmation from Pfizer.

1.3 Any order, which is not greater than any applicable minimum order as notified by Pfizer to the Purchaser from time to time whether as a general minimum order for that product or for a particular product deal, will be rejected. The Purchaser will be advised if the value of an order does not exceed the applicable minimum order.

1.4 If a product is temporarily out of stock, Pfizer will not create a pending order (back order) for the Purchaser. The Purchaser will be required to re-order once the product is in stock.

1.5 The Purchaser must obtain all necessary licenses and comply with all appropriate Commonwealth or State Acts and Regulations regarding the purchase and sale of product.

1.6 Purchases made through a point of sale system may incur a fee in accordance with Pfizer's then ruling rates.

### 2. RE-DISTRIBUTION / ONSELLING PROHIBITION

2.1 The Purchaser may not at any time, directly or indirectly on-sell, transfer or distribute any products to any Reseller.

2.2 The Purchaser must not sell, transfer or distribute any of the products to any person that it knows, or has reasonable grounds for believing, will or may export such products out of Australia.

2.3 Any breach of this term and condition will preclude the Purchaser from purchasing any further products from Pfizer, until such time as Pfizer is satisfied, in its sole discretion, that the Purchaser will not further breach this prohibition.

### 3. DELIVERY

3.1 A delivery fee will be charged for delivery of products in accordance with Pfizer's then ruling rates.

3.2 When, at the Purchaser's special request, non-standard delivery services such as express post, road overnight or air freight is used, the difference between ordinary surface transportation charges and the charges for special delivery services may be charged to the Purchaser.

3.3 For the purpose of requesting replacement products or the issue of a credit note under clause 6, in the event of any breakage, leakage or damage to individual packages occurring in transit between Pfizer and the Purchaser's receiving area, or short deliveries in consignment, the Purchaser must notify Pfizer within two (2) business days of receipt of the consignment.

3.4 Non-receipt of products must be notified within seven (7) days of the date of invoice or advice of despatch, otherwise, where applicable, credit pursuant to clause 65 for the products cannot be allowed unless required by law.

3.5 Products will be delivered in accordance with the delivery service criteria applicable from time to time. All Delivery times are exclusive of weekends.

3.6 Subject to clauses 3.3, 3.4 and 3.5, 6 and clause 11 and to the full extent allowed by law, Pfizer is not liable to the Purchaser for any loss or damage whatsoever (including any consequential loss) caused directly or indirectly by any delay or failure in delivery. Any delay in delivery does not relieve the Purchaser of its obligation to accept that delivery and any remaining delivery.

#### **4. PRICING**

4.1 Prices are subject to change by Pfizer without notice to the Purchaser.

4.2 All orders will be subject to Pfizer's Price List for Direct Accounts applicable at the date of despatch of the order. No credit will be granted to the Purchaser for stock on hand in the event of a price reduction.

4.3 The Purchaser is responsible for any tax or Governmental charge imposed on sale or supply of the products by Pfizer and an amount equivalent to the same will be added to the invoice price and is payable at the same time.

#### **5. PAYMENT TERMS**

5.1 Pfizer may decide to grant the Purchaser credit, but Pfizer is not obliged to do so merely because Pfizer accepts a credit application. If Pfizer allows the Purchaser credit terms, then the Purchaser remains bound by these Terms and Conditions of Sale and the credit terms are subject to any additional conditions that Pfizer may request when considering a credit application. Pfizer may decline the Purchaser credit at any time. If Pfizer declines to give the Purchaser credit, that does not affect the conditions which apply to any Order which the Purchaser then owes payment.

5.2 The Purchaser authorises Pfizer, its authorised agents or representatives, to make enquiries as to the credit and financial history and responsibilities of the Purchaser, and/or the directors of the Purchaser, as required by Pfizer from time to time, including obtaining reports from credit reporting agencies.

5.3 Any credit terms that Pfizer extends to the Purchaser are granted subject to the essential condition that the Purchaser has made complete disclosure to Pfizer in the credit application of all material information relevant to Pfizer's decision to extend credit. The Purchaser must keep Pfizer promptly informed of any material adverse change in the Purchaser's financial or business circumstances.

5.4 **Direct Debit:** A copy of Pfizer's Direct Debit policy is available at [pfizerdirect.com.au](http://pfizerdirect.com.au). The Purchaser consents to the use of its confidential information by DHL, and acknowledges that DHL will process the direct debit payments.

5.5 **Credit Card Payments:** If the Purchaser is paying by credit card, in addition to the specified prices, the Purchaser must also pay Pfizer a credit card surcharge of 0.9% (inclusive of GST).

5.6 **Due date for Payment:** Payment for any products supplied is due 28 days from end of month purchase if paid by credit card/EFT/cheque, and 45 days from end of month purchase if paid by direct debit ("**Due Date**").

5.7 If any amount owed to Pfizer is not paid on the Due Date, then at Pfizer's election all money that the Purchaser owes Pfizer on any account becomes immediately payable despite any previously agreed credit conditions. In that case, Pfizer may, without prejudice to any other rights Pfizer may have, also suspend the Purchaser's credit facility, change the Purchaser's payment terms to require cash before delivery or to shorten the payment period, change trading terms or terminate any outstanding orders (including part orders) in its sole discretion.

5.8 The Purchaser must pay Pfizer interest at 5% per annum above the rate set by the Reserve Bank Official Cash Rate on any overdue amounts. Interest is calculated from the date of invoice, on outstanding balances up to and including the day of payment or (if that falls on a weekend) up to the next working day. Accruing interest is calculated and compounded daily.

5.9 Pfizer reserves the right to terminate the Purchaser's credit facility in the event of non-payment. Such termination shall be without prejudice to any other rights Pfizer may have.

5.10 In addition to the right(s) specified in clause 5.7, Pfizer may in its absolute discretion and without assigning a reason, terminate the Purchaser's credit facility without notice. Upon such event, all amounts payable for all products sold become due for immediate payment. The Purchaser shall not be entitled to any compensation for termination of the credit facility.

5.11 The Purchaser agrees to pay Pfizer all reasonable costs including collection costs, commissions, bank charges and legal charges on a solicitor and client basis, on all monies outstanding on its account should the Purchaser breach any term or condition herein and/or should action be taken by or on behalf of Pfizer to recover the debt or enforce the charge in 5.12.

5.12 As security for the obligations and liabilities of the Purchaser, the Purchaser hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all Real Property. The Purchaser consents unconditionally to Pfizer lodging a caveat or caveats noting its interest in any Real Property.

5.13 Without limiting the generality of the charge in clause 5.12, the Purchaser agrees, on request by Pfizer, to execute any documents and do all things reasonably required by Pfizer to register a mortgage security over any Real Property. In the event that the Purchaser fails to deliver the requested documents, the Purchaser hereby appoints Pfizer to be the Purchaser's lawful attorney for the purposes of executing and registering such documents. The Purchaser indemnifies Pfizer on an indemnity basis against all costs and expenses incurred by Pfizer in connection with the preparation and registration of any such mortgage documents.

5.14 The Purchaser acknowledges and agrees that if the Purchaser has an order subject to other terms and conditions with Pfizer then a default or breach of those terms and conditions (however described) will constitute a default under these Terms and Conditions of Sale and it entitles Pfizer to exercise its rights and remedies under any one or all terms and conditions of sale.

## 6. RETURNS

Subject to conditions outlined herein, products will be accepted for return and replacement (or, at Pfizer's discretion, credit) if they fall into any of the following categories:

6.1 Products that Pfizer is satisfied were damaged in transit between the warehouse and the premises of the Purchaser. In such instances, the Purchaser must notify Pfizer no later than two (2) business days after receipt of delivery. Purchasers should also indicate on the carrier's consignment docket that products are "damaged" or "subject to check" or no claim will be granted.

6.2 Incorrect supply, that is, wrong product, not sent in accordance with the Purchaser's order.

6.3 Products that Pfizer is satisfied are faulty in materials or workmanship.

6.4 Products that are returned under clause 11.

6.5 Without limiting the other provisions of Clause 6 and to the extent permitted by law, the following products will not be accepted for return and no credit will be granted, or monies paid to the Purchaser in respect of these products:

6.5.1 Products sold on a non-return basis.

6.5.2 Products having a broken seal, label removed or other label / price tag attached.

6.5.3 Products that have exceeded their expiry date.

6.5.4 Generic products.

6.5.5 Discontinued products.

6.5.6 Damaged products, except as specified in 6.1 above.

6.5.7 Products that were not ordered by the Purchaser from Pfizer. For the avoidance of doubt, batch tracking of orders is in place. Pfizer products ordered by the Purchaser from another source cannot not be returned for credit by Pfizer. If products are incorrectly returned for credit, they will not be returned to the Purchaser unless by special arrangement and at the Purchaser's cost and risk.

6.6 On acceptance by Pfizer of returned products, Pfizer, at its discretion, will either:

6.6.1 replace the accepted returned products with equivalent products; or

6.6.2 issue a credit note for an amount equivalent to the GST exclusive purchase price (less any allowed rebate or credit) of the accepted returned products.

6.7 Upon receipt of notification, Pfizer will, within 14 days, collect the product to be returned, from the original place of delivery.

## 7. GENERAL

7.1 To the extent permitted by law, Pfizer will not be liable for delay, loss or damage (including consequential loss) due to scarcity of materials, strikes, acts of God or any other cause beyond its reasonable control.

7.2 Storage of products must be in accordance with the requirements stated on each pack, i.e. refrigerated and cool storage facilities for specified products must be provided.

7.3 The risk in products purchased shall, unless otherwise agreed in writing, pass to the Purchaser upon delivery to the Purchaser or his agent or to a carrier commissioned by the Purchaser, and despite the fact that ownership may not have passed to the Purchaser at that time.

7.4 The printing of Australian Product Numbering codes on its product packs by Pfizer is not the subject of any contract between Pfizer and the Purchaser. Pfizer will endeavour to observe the rules and principles of the Australian Product Numbering Association or any successor to the function thereof, but will not be liable to the Purchaser in any manner whatsoever for any loss, damage or expense attributable either directly or indirectly to the absence of, or error in such code printing.

7.5 These terms and conditions shall be governed by the laws from time to time of the State of New South Wales. In any or all legal actions that may howsoever arise from this contract the Purchaser agrees to have such matters determined within the jurisdiction of the Courts of New South Wales and their appellate Courts.

7.6 The Purchaser agrees that Pfizer may deal with the Purchaser electronically including but not limited to having the Purchaser electronically sign documents and receive electronic notices, including without limitation, invoices, statements, receipts, records or other documents (collectively **Notices**) at an electronic address or addresses (whether email address, SMS number or otherwise) nominated by the Purchaser in the Purchaser's account application or that the Purchaser may advise Pfizer from time to time for that purpose. The delivery of any Notice from Pfizer is effective when sent by Pfizer, regardless of whether the Purchaser has read the Notice when the Purchaser receives it or whether the Purchaser actually receives the delivery. Pfizer also reserves the right to deal non-electronically and to require the Purchaser to do so.

7.7 Pfizer reserves the right to vary or add to these terms and conditions of sale at any time. Terms and Conditions of Sale - Direct Accounts are available at [www.pfizer.com.au](http://www.pfizer.com.au). It is the Purchaser's responsibility to review the Terms and Conditions.

7.8 Pfizer's rights are not limited by, or because of, any guarantee, indemnity or other security or security interest that Pfizer holds in connection with the Purchaser's obligations.

7.9 The Purchaser is bound by any certificate signed by any of Pfizer's managers, directors or solicitors which shows any amount of calculation relevant to what the Purchaser owes Pfizer. The only exception is where the Purchaser can prove the certificate is incorrect.

7.10 Pfizer may collect personal information as a result of its dealings with the Purchaser. If so, Pfizer will abide by its privacy policy. A copy of that policy is available on Pfizer's website at [www.pfizer.com.au](http://www.pfizer.com.au).

## **8. OWNERSHIP PASSING ON PAYMENT**

8.1 The following provisions apply to secure the payment, on the due date or dates for payment, of amounts that the Purchaser owes to Pfizer and to secure its further obligations under these provisions. These provisions are essential conditions. If the Purchaser breaches any of these conditions then at Pfizer's election all amounts that the Purchaser owes Pfizer becomes payable in full and immediately.

8.2 Property in each unit of the products shall remain with Pfizer until all monies owing to Pfizer on account of the purchase price of those units have been paid ("the Debts").

8.3 Until the Debts have been paid, the Purchaser:

8.3.1 Shall, subject to clause 8.4, take custody of the products and retain them as Pfizer's trustee, fiduciary agent and bailee;

8.3.2 Must not charge, mortgage or encumber the products;

8.3.3 Shall ensure that the products are insured and stored or identified such that they are readily distinguishable from other goods (including other batches of the same type of goods) held by the Purchaser or other persons.

8.4 Until the Debts have been paid, the Purchaser has the right to move, sell and otherwise use the products in the ordinary course of business, subject to the following:

8.4.1 The Purchaser may resell the products, but only as fiduciary agent and trustee for Pfizer and by way of bona fide sale in the ordinary course of its business; and

8.4.2 The Purchaser shall hold such part of the proceeds it receives from any sub-sale of the products under clause 8.4.1 that is less than or equal to the Debt owed to Pfizer at the time of receipt (the "Proceeds") as fiduciary agent and trustee for Pfizer;

8.4.3 The Purchaser shall place the whole of the Proceeds in an account separate from its own monies and maintain proper records of that account.

8.5 In the event of default of these terms and conditions or other agreement between Pfizer and the Purchaser in relation to the settlement of Debts, then:

8.5.1 Immediately on Pfizer's request the Purchaser must return to Pfizer any products acquired from Pfizer on which there are outstanding Debts;

8.5.2 the Purchaser irrevocably authorises Pfizer, its employees and agents to enter any premises or vehicle owned by the Purchaser for the purposes of taking possession of the products if Pfizer has reasonable grounds to expect that Pfizer may find any part of the products there and the Purchaser authorises Pfizer by its employees and agents to use all reasonable force to obtain such possession. That applies even if Pfizer holds some negotiable instrument or security for the unpaid amount; and

8.5.3 Pfizer may resell those products.

8.6 In this clause 'paid' means receipt of cash or cleared funds by Pfizer in settlement of the Debts and 'Proceeds' includes all benefits (including book debts and choses in action) received by the Purchaser from the disposal, whether by sale or otherwise, of the products or material incorporating the Products.

8.7 The Purchaser agrees that Pfizer may apply any payment from the Purchaser or on the Purchaser's behalf, at Pfizer's absolute discretion, irrespective of whether the Purchaser, or the person making the payment, directs how the payment is to be applied. Without limiting those general words, Pfizer may apply a particular payment to or towards a payment or obligation that the Purchaser owes to Pfizer that is not secured by any security interest or to or towards payment for a particular Product or particular products rather than to another product or other products.

8.8 The Purchaser must, if requested by Pfizer, register as agent of Pfizer a continuing security interest in favour of Pfizer in any products that the Purchaser disposes of on credit terms, to further secure the payments and obligations that the Purchaser owes to Pfizer.

8.9 Any part of this clause that is unenforceable, ambiguous or illegal will be severed from these terms and conditions and such severance will not affect the enforceability of the remaining terms and conditions.

## 9. PERSONAL PROPERTY SECURITIES ACT

9.1 In this clause "commercial property", "proceeds", "security agreement" and "security interest" have the meanings given to those by the *Personal Property Securities Act 2009* (PPSA).

9.2 The Purchaser acknowledges and agrees that these terms and conditions:

9.2.1 constitute a security agreement for the purpose of the PPSA; and

9.2.2 create a security interest in:

9.2.2.1 all products supplied by Pfizer to the Purchaser on retention of title terms; and

9.2.2.2 the proceeds of sale of products supplied on retention of title terms by Pfizer to the Purchaser.

9.3 The Purchaser must act immediately when requested by Pfizer to do such acts and provide such information as Pfizer reasonably considers necessary or desirable to enable Pfizer to perfect any security interest created or provided by these provisions in the products or any proceeds, with first priority or such other priority that Pfizer requires.

9.4 The following provisions of the PPSA do not apply – section 95 (notice of removal of accession, to the extent that it otherwise requires Pfizer to give a notice to the Purchaser), section 130 (notice of disposal, to the extent that it otherwise requires Pfizer to give a notice to the Purchaser), section 132(3)(d) (statement of account), section 132(4) (statement of account if no disposal), section 135(1)(a) (notice of retention, to the extent that it otherwise requires Pfizer to give notice to the Purchaser), and section 143 (reinstatement).

9.5 The Purchaser waives its right under section 157 PPSA to receive a notice in relation to any registration event in connection with any collateral that is commercial property.

9.6 Pfizer may delay disposing of, or taking action to retain, the whole or part of the collateral beyond the period mentioned in section 125(2) of the PPSA for as long as Pfizer sees fit provided Pfizer acts honestly.

9.7 Pfizer reserves all rights and powers in relation to any security interest that is in addition to any right or power conferred under the PPSA.

9.8 Pfizer may choose between its various rights and powers, including for enforcement of its security interest, as Pfizer sees fit and without limiting other rights and powers.

## 10. WAIVER AND VARIATION

A provision of or a right created under these terms in favour of Pfizer may not be waived or varied except in writing signed by Pfizer. Pfizer may elect not to exercise its rights arising from a breach of any provision of these terms and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against Pfizer.

## 11. AUSTRALIAN CONSUMER LAW

11.1 **Exclusion of implied conditions.** All conditions, terms and warranties that are or might otherwise be implied by law, practice, trade usage or international convention, are excluded to the fullest extent permitted by law.

**11.2 Acknowledgement as to representations.** The Purchaser acknowledges that Pfizer is not in the practice of making any representations regarding its goods and services unless they are in writing and signed by an authorised officer.

**11.3 Australian Consumer Law etc. limits.** This clause 11.3 only applies if the Purchaser is a deemed "consumer" under the Australian Consumer Law and may not apply in every case. Pfizer does not vary or extend the remedies otherwise available to the Purchaser by including the following.

*Pfizer's products come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the products repaired or replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure.*

Provisions of the Competition and Consumer Act, the Australian Consumer Law, and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law Pfizer's liability under those provisions is limited as follows. Pfizer's liability in relation to products is limited at Pfizer's option to replacement of the products or the supply of equivalent products; or repair of the products; or payment of the cost of replacing the products or of acquiring equivalent goods; or payment of the cost of having the products repaired. Pfizer's liability in relation to services is limited at Pfizer's option to the supplying of the services again; or the payment of the cost of having the services supplied again.

**11.4 Full liability for injury and death.** Pfizer does not seek to exclude its legal liability (if any) for any death or personal injury which is caused by its own negligence. However, even where Pfizer is liable for death or personal injury Pfizer is not liable for any associated Consequential Damage. Also, Pfizer is not liable to the extent that something was caused or contributed to by the Purchaser's negligence or by the negligence of the Purchaser's consultants or agents or of any third party.

**11.5 Other claims excluded.** Except as stated above, Pfizer is not liable for, and the Purchaser does not rely on being able to claim against Pfizer for, any loss or damage or Consequential Damage under or in relation to any agreement for Pfizer to supply goods, services or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any order, and whether or not the possibility or potential extent of the loss or damage or Consequential Damage was known or foreseeable whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorised or required. Consequential Damage in these conditions includes loss of use, lost sales, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against the Purchaser by others, losses or costs or expenses associated with identification, investigation, assessment, handling, replacement and any other economic loss or damage and any other special, indirect or consequential loss or damage.

## **12. REBATES**

12.1 Rebates may be granted by Pfizer to the Purchaser, at its discretion, on the condition that

12.1.1 the Purchaser is not in continuing breach of its obligations under these Terms and Conditions of Sale or other agreement between Pfizer and the Purchaser,

12.1.2 the Purchaser is not subject to an Insolvency Event and

12.1.3 the Purchaser has not sold, transfer or otherwise changed the ownership of the Pharmacy or Pharmacies to which the rebate relates.

12.2 Rebates cannot be taken as cash or offset against an amount owing to Pfizer without a credit note being issued by Pfizer.

12.3 If the Purchaser is subject to an Insolvency Event or Pfizer forms the view that the Purchaser that the Purchaser is in breach of these Terms and Conditions of Sale or other agreement between Pfizer and the Purchaser then any entitlement of the Purchaser to a rebate lapses.

12.4 If the Purchaser sells, transfers or otherwise changes ownership in respect of the Pharmacy or Pharmacies operated by the Purchaser, any entitlement of the Purchaser to a rebate applicable to the sale of products through that Pharmacy or Pharmacies lapses and is not transferable.

12.5 **Insolvency Event** means for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

### 13. IMPROPER PAYMENTS

13.1 If Pfizer pays the Purchaser a rebate in respect of purchases under this Agreement, the Purchaser warrants and represents that the Purchaser has not and will not promise, pay or give anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage for Pfizer. In this clause, 'government official' means any official, officer, representative, or employee of, including any animal health care professional, employed by any government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office.

13.2 The Purchaser will at all times comply with the Pfizer Anti-Bribery and Anti-Corruption Principles which are available at [www.pfizer.com.au](http://www.pfizer.com.au).

13.3 The Purchaser agrees to permit Pfizer to take reasonable steps to ensure that rebates paid are properly used by permitting Pfizer's auditors to access any relevant books, documents, papers and records of the Purchaser involving the payment of rebates by Pfizer.

13.4 Pfizer may terminate the Purchaser's credit account if Pfizer learns that the Purchaser is making, or has made, improper payments to government officials.

April 2016