

## PHARMAQ LTD TERMS AND CONDITIONS OF SALE FOR GOODS AND/OR SERVICES

The Buyer's attention is particularly drawn to the provisions of clause 12.

### 1 INTERPRETATION

1.1 In these Conditions the following definitions shall apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday in England) on which banks in London are open for business.

**Buyer:** the person(s), firm or company that purchases the Goods and/or Services from the Supplier.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.12.

**Contract:** the contract between the Supplier and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.

**Deliverables:** any and all deliverables to be provided as part of the Services.

**Delivery Location:** in relation to deliveries to a location within the United Kingdom has the meaning set out in clause 4.1 and in relation to all other deliveries has the meaning set out in clause 4.2.

**Goods:** the goods agreed in the Contract to be supplied to the Buyer by the Supplier (or any part or parts of them) including (except where expressly provided otherwise) Medical Goods.

**Goods Specification:** any specification for the Goods (including any relevant plans or drawings) that is agreed in writing by the Buyer and the Supplier.

**Indebtedness:** any obligation to pay or repay money (whether present or future, actual or contingent, joint or sole).

**Intellectual Property Rights:** any and all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semiconductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.

**Losses:** losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis).

**Medical Goods:** Licensed veterinary medical products.

**Order:** the Buyer's order for Goods and/or Services as set out in the Buyer's purchase order form, the Buyer's written acceptance of the Supplier's quotation or overleaf as the case may be.

**Services:** the services (including any Deliverables) to be supplied to the Buyer by the Supplier as set out in the Service Specification.

**Service Specification:** any description and/or specification for the Services that is agreed in writing by the Buyer and the Supplier.

**Supplier:** PHARMAQ Limited of Unit 15, Sande Heath Industrial Estate, Fordingbridge, Hampshire, SP6 1PA registered in England and Wales with company number 02024398.

**Supplier Materials:** has the meaning set out in clause 8.1.7.

**Warranty Period:** a period of twelve (12) months from the date of delivery

1.2 In these Conditions (except where the context otherwise requires) the following rules shall apply:

1.2.1 a reference to a person includes a natural person, company or unincorporated body (whether or not having separate legal personality);

- 1.2.2 a reference to a company includes any company, corporation or other body corporate wherever and however incorporated or established;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended, extended and/or re-enacted from time to time. A reference to a statute or statutory provision includes any and all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.4 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative only and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and
- 1.2.5 a reference to writing or written includes faxes and email.
- 1.3 Headings are for convenience only and shall not affect the interpretation of these Conditions.
- 1.4 The Contract shall be binding upon and ensure to the benefit of the parties and their respective personal representatives, successors and permitted assignees and references to any party shall include that party's personal representatives, successors and permitted assignees.

## 2 BASIS OF CONTRACT

- 2.1 An Order shall be deemed to be an offer by the Buyer to purchase Goods and/or Services in accordance with and subject to these Conditions.
- 2.2 An Order shall only be deemed to be accepted by the Supplier when the Supplier issues written acceptance of the Order in accordance with and subject to these Conditions or (if earlier) the Supplier delivers the Goods and/or performs the Services] at which point and on which date the Contract shall come into existence (**Commencement Date**) on and subject to these Conditions.
- 2.3 These Conditions are the only conditions upon which the Supplier is prepared to deal with the Buyer and these Conditions shall govern the Contract to the entire exclusion of any and all other terms and conditions.
- 2.4 No terms or conditions (other than these Conditions) endorsed upon, delivered with or contained in the Order, confirmation of order, any other document (whether or not any such document is referred to in the Contract) or any other terms or conditions that the Buyer seeks to impose or incorporate shall form part of the Contract.
- 2.5 (Except as otherwise expressly provided) all conditions, warranties, terms and other statements whatsoever that would otherwise be implied or imposed by statute, common law, trade, custom, practice, course of dealing or otherwise howsoever are excluded from the Contract to the fullest extent permitted by law.
- 2.6 The Contract constitutes the entire agreement and understanding between the parties. The Buyer acknowledges that it has not relied on and shall have no remedy in respect of any statement, promise, representation, assurance, warranty or understanding made or given by or on behalf of the Supplier (whether innocently or negligently) which is not expressly set out in the Contract. The Buyer shall not have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in the Contract.
- 2.7 Any quotation, price list or sales literature provided by the Supplier shall not constitute an offer and is given on the basis that no contract shall come into existence until the Buyer places an Order and the Supplier accepts that Order in accordance with clause 2.2. Any quotation is only valid for a period of thirty (30) days from its date of issue during which period the Buyer may place an Order based on that quotation provided that the Supplier has not previously withdrawn it.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is expressly specified.
- 2.9 These Conditions apply to all the Supplier's sales of Goods and/or Services unless the Supplier has agreed in writing that they are not applicable

## 3 DESCRIPTION OF GOODS

- 3.1 The Goods are described in the Supplier's quotation as modified by the Goods Specification.
- 3.2 Any samples, drawings, descriptions, specifications, illustrations and/or advertising issued by the Supplier and/or contained in the Supplier's catalogues or brochures are provided for the sole purpose of giving an approximate

idea of the Goods and/or Services described in them and (unless otherwise expressly agreed in writing by the Supplier) they shall not form part of the Contract and shall not have any contractual force.

- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements following which the applicable Goods Specification shall be that as so amended.

## 4 DELIVERY OF GOODS

- 4.1 In relation to deliveries to a location within the United Kingdom the Supplier shall deliver the Goods to the location set out in the Order or to such location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Buyer that the Goods are ready. Delivery of the Goods in accordance with this clause 4.1 shall be completed when the Goods have arrived at the Delivery Location.

- 4.2 Except as otherwise expressly provided in clause 4.1 or agreed in writing by the Supplier delivery of the Goods shall be Ex Works (as defined in Incoterms 2010) at the Supplier's premises at Unit 15, Sande Heath Industrial Estate, Fordingbridge, Hampshire, SP16 1PA or such other location as may be advised by the Supplier before delivery (**Delivery Location**). The Buyer shall collect the Goods from the Delivery Location within three (3) Business Days of the Supplier notifying the Buyer that the Goods are ready. Delivery of the Goods in accordance with this clause 4.2 shall be completed on the completion of loading of the Goods onto the transportation provided by or on behalf of the Buyer at the Delivery Location.

- 4.3 The Buyer shall be responsible for providing (at the Buyer's own expense) adequate and appropriate equipment and manual labour at the Delivery Location for loading or unloading of the Goods (as appropriate) and shall provide all requisite instructions, documents, licences and authorisations required for or relevant to the delivery of the Goods to enable delivery to a place.

- 4.4 Any dates specified for delivery of the Goods are approximate and intended to be an estimate only. If no dates are specified delivery shall take place within a reasonable time.

- 4.5 Time for delivery of the Goods shall not be of the essence of the Contract.

- 4.6 (Without prejudice to any other rights or remedies the Supplier may have) if for any reason the Buyer fails to accept or take delivery of the Goods (as appropriate) within three (3) Business Days of the Supplier notifying the Buyer that the Goods are ready or if the Supplier is unable to deliver the Goods within that period because the Buyer has not complied with any of its obligations under these Conditions then:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth (4) Business Day following the day on which the Supplier notified the Buyer that the Goods were ready;

4.6.2 the Goods shall be at the risk of the Buyer from the date and time specified in clause 4.6.1;

4.6.3 the Supplier shall store the Goods until actual delivery takes place and the Buyer shall be liable for all related costs and expenses (including insurance);

4.6.4 the Supplier may (in relation to deliveries to a location within the United Kingdom) rearrange delivery to the Delivery Location specified in accordance with clause 4.1 and the Buyer shall be liable for all related costs and expenses (including transportation and insurance); and

4.6.5 if after the date of deemed completion of delivery in accordance with clause 4.6.1 the Buyer has not accepted or taken delivery of the Goods the Supplier may resell or otherwise dispose of all or part of the Goods.

- 4.7 Except in relation to Medical Goods if the Supplier delivers to the Buyer a quantity of Goods of up to five (5) % more or less than the quantity ordered the Buyer shall not be entitled to object to or reject the Goods (or any part or parts) by reason of such surplus or shortfall and the Buyer shall pay for all the Goods delivered (including any such excess) and the price shall be adjusted accordingly on a pro-rata basis

- 4.8 The Supplier may deliver Goods by instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in one or more instalment shall not entitle the Buyer to cancel or reject any other instalment.

- 4.9 Where requested by the Supplier prior to completion of delivery on the delivery note accompanying the delivery of the Goods the Buyer shall make such packaging material available for collection at such time as the Supplier shall reasonably request.

- 4.10 The Buyer shall not resell the Goods in any packaging other than the packaging in which the Goods were delivered to the Buyer and shall not alter or damage that packaging in any way whatsoever and the Buyer shall indemnify and keep indemnified the Supplier in full and hold the Supplier harmless on demand from and against any and all

Losses suffered or incurred by the Supplier or for which the Supplier may become liable arising out of or in connection with any claim made against the Supplier as a result of the Buyer failing to comply with this clause 4.10.

- 4.11 The quantity of any delivery of Goods as recorded by the Supplier upon dispatch from the Supplier shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide evidence proving the contrary.
- 4.12 Any liability in contract, tort (including negligence), breach of statutory duty or otherwise of the Supplier for non-delivery of Goods shall be limited to replacing within a reasonable time or issuing a credit note against any invoice raised for any Goods that were not delivered.

## 5 QUALITY OF GOODS

- 5.1 Subject to clauses 5.2, 5.3 and 5.7 the Supplier warrants that on the Delivery date the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
  - 5.1.2 be free from material defects in design, materials and workmanship;
- 5.2 The Supplier shall not be liable for any breach of warranty under clause 5.1 unless:
- 5.2.1 in the case of a defect that is apparent on normal visual inspection the Buyer gives written notice of such defect to the Supplier within three (3) Business Days of delivery;
  - 5.2.2 in the case of a defect that is not apparent on normal visual inspection the Buyer gives written notice of such defect to the Supplier promptly after such defect becomes apparent;
  - 5.2.3 the Supplier is given a reasonable opportunity after receiving any notice under this clause 5.2.1 or 5.2.2 to examine the Goods; and
  - 5.2.4 the Buyer (if asked to do so by the Supplier) returns the Goods or such of the Goods as are defective to the Supplier's place of business at the Supplier's expense for an examination to take place there.
- 5.3 The Supplier shall not be liable for any breach of warranty under clause 5.1 if:
- 5.3.1 the Buyer makes any further use of such Goods after giving notice under clause 5.2.1 or 5.2.2;
  - 5.3.2 the defect arises because the Buyer failed to follow any instructions from the Supplier (written or otherwise) as to the storage, handling, use or maintenance of such Goods or (if none were given) failed to comply with good trade practice;
  - 5.3.3 the Buyer alters or repairs such Goods without the written consent of the Supplier;
  - 5.3.4 the defect arises as a result of the Supplier following any design, drawing, diagram, specification or other technical instruction provided by the Buyer;
  - 5.3.5 the defect arises through willful damage or the Buyer's negligence;
  - 5.3.6 the defect arises as a result of fair wear and tear, misuse or abnormal working conditions; and/or
  - 5.3.7 the Goods differ from their description and/or the Goods Specification as a result of any changes to the Goods made to comply with any applicable law, regulation, standard and/or health and safety requirement.
- 5.4 Subject to clauses 5.2, 5.3 and 5.7 if any of the Goods do not conform with any of the warranties in clause 5.1 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price (or a pro-rata proportion of the price if not all the Goods are defective) provided that (if the Supplier so requests) the Buyer shall at the Supplier's expense return the Goods or such of the Goods as are defective to the Supplier.
- 5.5 If the Supplier complies with clause 5.4 it shall have no further liability (in contract, tort (including negligence), breach of statutory duty or otherwise) for a breach of any of the warranties in clause 5.1.
- 5.6 This clause 5 shall apply in respect of any repaired or replacement Goods for any unexpired part of the Warranty Period.

5.7 Where the Supplier is not the manufacturer of the Goods the Supplier shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Supplier instead of and in substitution for the warranties set out in clause 5.1.

## 6 OWNERSHIP AND RISK

6.1 Risk in the Goods shall pass to the Buyer on completion of delivery in accordance with clause 4.1 or 4.2 (as appropriate) or (if earlier) deemed completion of delivery in accordance with clause 4.6.1.

6.2 Ownership in the Goods shall pass to the Buyer only on completion of delivery in accordance with clause 4.1 or 4.2 (as appropriate)

## 7 SUPPLY OF SERVICES

7.1 The Supplier shall provide the Services to the Buyer in all material respects in accordance with the Service Specification.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified for the Services but any such dates shall be approximate and are intended to be an estimate only. If no dates are specified performance shall take place within a reasonable time.

7.3 Time for performance of the Services shall not be of the essence of the Contract.

7.4 The Supplier shall have the right to make any changes to the Services to comply with any applicable law, regulatory standard and/or health and safety requirement or which do not materially affect the nature or quality of the Services and the Supplier shall notify the Buyer in any such event.

7.5 The Supplier warrants to the Buyer that the Services shall be performed using reasonable skill and care.

## 8 BUYER'S OBLIGATIONS

8.1 The Buyer shall:

8.1.1 follow any and all instructions from the Supplier (written or otherwise) in relation to the storage, handling, use and maintenance of the Goods and good trade practise;

8.1.2 ensure that the terms of the Order and (if submitted by the Buyer) the Goods Specification are complete and accurate provide such co-operation, resources and facilities as the Supplier may reasonably request in relation to the Contract;

8.1.3 provide the Supplier (and the Supplier's employees, agents, consultants and subcontractors) with such access to the Buyer's premises, office accommodation and other facilities as may be reasonably requested by the Supplier in connection with the Contract;

8.1.4 provide the Supplier with such instructions, information and materials as the Supplier may reasonably request and ensure that such instructions, information and materials are accurate and complete in all respects;

8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required by the Buyer in relation to the Goods and/or Services before the Commencement Date;

8.1.6 keep and maintain all materials, equipment, data, information, documents and other property of the Supplier (**Supplier Materials**) at the Buyer's premises in safe custody at the Buyer's own risk, maintain the Supplier Materials in good condition until returned to the Supplier and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

8.2 If performance of any of the Supplier's obligations under the Contract are prevented or delayed by any act or omission by the Buyer or any failure by the Buyer to perform any relevant obligation under the Contract (**Buyer Default**):

8.2.1 the Supplier shall (without limiting the Supplier's other rights or remedies) have the right to suspend performance of the Supplier's obligations under the Contract until the Buyer remedies the Buyer Default and to rely on the Buyer Default to relieve the Supplier from the performance of any of the Supplier's obligations under the Contract to the extent the Buyer Default prevents or delays the Supplier's performance of any such obligations;

- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of the Supplier's obligations under the Contract as a result of the Buyer Default; and
- 8.2.3 the Buyer shall reimburse the Supplier on written demand for any and all Losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default.

## 9 CHARGES AND PAYMENT

- 9.1 Unless otherwise agreed by the Supplier in writing and subject to clause 9.4 the price for the Goods shall be the price set out in the Order or, if no price is set out, the price set out in the Supplier's acknowledgement of Order or, if no price is set out, the Supplier's published price list applicable on the date of delivery.
- 9.2 The price of the Goods is exclusive of all costs and charges of packaging, insurance, transportation and of the Goods, which shall be paid by the Buyer when it pays for the Goods.
- 9.3 The charges for Services shall be on a time and materials basis and:
- 9.3.1 the charges shall be calculated in accordance with the Supplier's standard daily fee rates;
- 9.3.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 9.3.3 the Supplier shall be entitled to charge an overtime rate of 100% per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals engaged on the Services outside the hours referred to in clause 9.3.2;
- 9.3.4 the Supplier shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses; and
- 9.3.5 the Supplier shall be entitled to charge for the cost of services provided by third parties and required by the Supplier for the performance of the Services and for the cost of any materials.
- 9.4 The Supplier reserves the right to increase the price of the Goods by giving notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 9.4.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs);
- 9.4.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered and/or the Goods Specification;
- 9.4.3 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in respect of the Goods; and/or
- 9.5 The Supplier reserves the right to increase its standard daily fee rates for the charges for the Services. The Supplier shall give the Buyer written notice of any such increase three (3) months before the date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Supplier in writing within three (3) weeks of the date of the Supplier's notice and the Supplier shall have the right (without limiting its other rights or remedies) to terminate the Contract by giving three (3) weeks written notice to the Buyer.
- 9.6 Unless otherwise agreed in writing by the Supplier the Supplier may invoice the Buyer (in relation to the Goods) on or at any time after completion (or deemed completion) of delivery and (in relation to the Services) on a weekly monthly basis in arrears if not otherwise agreed.
- 9.7 Unless otherwise agreed in writing by the Supplier the Buyer shall pay each invoice submitted by the Supplier within twenty eight (28) days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 9.8 Time for payment shall be of the essence of the Contract.
- 9.9 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract

by the Supplier to the Buyer the Buyer shall (on receipt of a valid VAT invoice from the Supplier) pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.

- 9.10 The Supplier shall be entitled to claim interest on the late payment of any amount properly due to the Supplier under the Contract accruing on a daily basis from the due date for payment until payment is made in full (both before and after any judgment) at a rate equal to the rate of statutory interest prescribed for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time.
- 9.11 To the extent that the Supplier does not exercise its right to claim interest under clause 9.10 the Supplier reserves the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.12 The Buyer shall pay all amounts due under or in respect of the Contract in full without any deduction including any set-off, counterclaim, discount, abatement, withholding or otherwise except as required by law. The Supplier may (without prejudice to any other right or remedy) set off any amount owing to the Supplier by the Buyer against any amount payable by the Supplier to the Buyer.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Unless otherwise agreed in writing between the parties all rights, including any copyright and/or other Intellectual Property Right arising in relation to the Contract including the Supplier Materials and Deliverables belong to the Supplier subject only to a licence in favour of the Buyer to use such rights for the purposes of receiving the Goods and/or Services.
- 10.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer the Buyer shall indemnify and keep indemnified the Supplier in full and on a hold harmless basis against any and all Losses suffered or incurred by the Supplier or for which the Supplier may become liable arising out of or in connection with any claim made against the Supplier for alleged or actual infringement of a third party's Intellectual Property Rights in connection with the Supplier's use of the Goods Specification and this clause 10.2 shall survive the termination or expiry of the Contract howsoever arising.

## 11 CONFIDENTIALITY

- 11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**) and/or its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its goods and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 11.1 as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 11.2 This clause 11 shall survive the termination or expiry of the Contract howsoever arising.

## 12 LIMITATION OF LIABILITY

**The Buyer's attention is particularly drawn to the provision of this clause 12**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 12.1.4 defective products under the Consumer Protection Act 1987; and/or
- 12.1.5 any other act, omission, matter and/or liability which cannot be legally limited or excluded.
- 12.2 Subject to clause 12.1 the Supplier shall under no circumstances whatsoever be liable to the Buyer (whether in con-

tract, tort (including negligence), breach of statutory duty or otherwise) for any loss of profit, loss of business, depletion of goodwill or any indirect or consequential loss whatsoever arising out of, under or in connection with the Contract.

12.3 Subject to clauses 12.1 and 12.2 the Supplier's total liability to the Buyer under or in connection with the Contract (whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed £5,000 per claim or series of connected claims; and in respect of all claims (connected or unconnected) £5,000.

12.4 This clause 12 shall survive the termination or expiry of the Contract howsoever arising.

## 13 TERMINATION

13.1 Without limiting any other rights or remedies the Supplier may have if there occurs any of the events referred to in clause 13.2 or the Supplier reasonably believes that any of the events referred to in clause 13.2 is about to occur the Supplier may give notice to the Buyer following which:

13.1.1 the Supplier may (without incurring any liability to the Buyer) cancel or suspend any further deliveries of Goods and/or performance of Services under the Contract or under any other contract with the Buyer;

13.1.2 all outstanding amounts in respect of Goods the delivery of which is complete (or deemed to be complete) shall become immediately due and payable;

13.1.3 all outstanding amounts in respect of Services shall become immediately due and payable; and

13.1.4 the Supplier may (without incurring any liability to the Buyer) by notice to the Buyer terminate the Contract.

13.2 For the purposes of clause 13.1 the relevant events are:

13.2.1 the Buyer commits a material breach of its obligations under the Contract and if such breach is remediable fails to remedy such breach within fourteen (14) days after receipt of notice in writing to do so;

13.2.2 the Buyer is or is deemed to be, in the reasonable opinion of the Supplier, insolvent or unable or (being an individual) is deemed to have no reasonable prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its (being the Buyer's) debts (or (being a partnership) has any partner to whom any of the foregoing apply);

13.2.3 any of the Buyer's Indebtedness is not paid in full when due or becomes due (or could be declared due) before its stated maturity because of default;

13.2.4 any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued out on or against, or affects, any of the Buyer's assets and is not discharged or stayed within twenty one (21) days;

13.2.5 the Buyer begins negotiations, or enters into, or gives notice of any intention to enter into, any composition or arrangement, with one or more of its creditors in order to reschedule any of its indebtedness because of actual or anticipated financial difficulties including giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;

13.2.6 a moratorium is declared, or in any event comes into existence, over any of the Buyer's Indebtedness;

13.2.7 any petition is presented, application made, resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken whether by the Buyer or any third party for, or which may lead to: (a) suspension of payments, winding up, dissolution, administration, receivership (whether administrative or otherwise) or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Buyer; (b) the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee supervisor, compulsory manager or other similar officer in respect of the Buyer or any of its assets; or (c) (where the Buyer is an individual) bankruptcy, an individual voluntary arrangement or debt relief order;

13.2.8 any event similar or equivalent to any of those set out in clauses 13.2.2 to 13.2.7 occurs in relation to the Buyer including in any jurisdiction to which it is subject;

13.2.9 the Buyer suspends or ceases to carry on or threatens to suspend or cease to carry on all or a material part of its business;



- 13.2.10 the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing the Buyer's own affairs or becomes a patient under any mental health legislation; and/or
- 13.2.11 the financial position of the Buyer deteriorates to such an extent that in the reasonable opinion of the Supplier the capability of the Buyer adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3 Without limiting its other rights or remedies the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 13.4 Without limiting its other rights or remedies the Supplier may suspend all further deliveries of Goods or the supply of Services under the Contract or any other contract between the Buyer and the Supplier if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clauses 13.2.1 to clause 13.2.11 (inclusive) or the Supplier reasonably believes that the Buyer is about to become subject to any of them.
- 13.5 On termination or expiry of the Contract (or any part) for any reason:
- 13.5.1 the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 13.5.2 the Buyer shall immediately return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Supplier may (without limiting any other rights or remedies the Supplier may have) enter the Buyer's premises and take possession of them. Until they have been returned or repossessed the Buyer shall be solely responsible for their safe keeping and shall not use them for any purpose not connected with the Contract; and
- 13.5.3 the accrued rights, remedies, obligations and/or liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.6 Such of these Conditions which expressly or by implication are intended to come into or remain in force on or after the termination or expiry of the Contract shall remain in full force and effect.

## 14 FORCE MAJEURE

- 14.1 If either party is delayed or prevented in the performance of any of its obligations under the Contract by an event, circumstance or cause beyond its reasonable control which, by its nature, could not have been foreseen or, if foreseeable, was unavoidable, (including war or other armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, national or international emergency or calamity, strikes, lock-outs or other industrial disputes, (whether involving its own workforce or any third party's), failure of energy supply, disruption to transport, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of buildings or other structures, fires, floods, storms, earthquakes, natural disasters, extreme adverse weather conditions, other acts of God, loss at sea, epidemics or similar events and default of suppliers or subcontractors caused by any such event), that party shall not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable that party, using all reasonable endeavours, to perform that obligation.
- 14.2 If the performance of any of the Supplier's obligations under the Contract are delayed or prevented as described in clause 14.1 for a continuous period of one (1) month, the Supplier may terminate the Contract without liability to the Buyer immediately by giving notice to the Buyer.

## 15 GENERAL

- 15.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 15.2 The Buyer shall not without the prior written consent of the Supplier assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

- 15.3 Any communication between the parties about the Contract shall be in writing, in English, and delivered personally, sent by pre-paid registered post or recorded delivery (or pre-paid registered air mail if overseas) or by fax: (i) (in the case of communications to the Supplier) to its registered office or main fax number or such changed address or fax number as shall be notified to the Buyer by the Supplier; or (ii) (in the case of communications to the Buyer) to its registered office (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or to its main fax number or such other address or fax number as shall be notified to the Supplier by the Buyer.
- 15.4 Communications shall be deemed to have been received: (i) if delivered personally, at the time of delivery to the address; (ii) if sent by pre-paid registered post or recorded delivery, 48 hours after posting; (iii) if sent by pre-paid registered airmail, at 9.00am on the fifth Business Day after posting; and (iv) if sent by fax, at 9.00am on the next Business Day after transmission provided a transmission report is generated by the sending party's fax machine recording a message from the recipient party's fax machine confirming all pages were successfully transmitted.
- 15.5 Communications addressed to the Supplier shall be marked for the attention of General Manager.
- 15.6 The provisions of clauses 15.3 to 15.5 (inclusive) shall not apply in the case of service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution to the extent that such provisions are inconsistent with Part 6 of the Civil Procedure Rules 1998.
- 15.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.7 shall not affect the validity and enforceability of the rest of the Contract.
- 15.8 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.9 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure, delay or indulgence by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.10 Nothing in the Contract is intended to, or shall be deemed to, establish or imply any partnership, joint venture, employment, agency or fiduciary relationship between the parties. Neither party shall have, nor represent that it has, any authority to make or enter into any commitments on behalf of the other party or otherwise bind the other party in any way.
- 15.11 No provision of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- 15.12 Except as expressly set out in these Conditions no variation of the Contract (including the introduction of any additional terms and conditions) shall be effective unless it is agreed in writing and signed by a duly authorised representative of the Supplier.
- 15.13 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and/or claims) shall be governed by and construed in accordance with English law.
- 15.14 These Terms and Conditions shall be governed by and construed in accordance with English law.

**Last Modified:**

These Terms and Conditions of Sale were last modified in March 17<sup>th</sup>, 2016.