

UK STANDARD TERMS AND CONDITIONS OF SUPPLY OF GOODS AND/OR SERVICES

The Buyer's attention is in particular drawn to the provisions of condition 12.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the firm, organisation or company who purchases the Goods and/or Services from the Company.

Company: Tosoh Bioscience Limited, registered in England and Wales with Company Number 02076204, having its registered office at Fairfax House, 15 Fulwood Place, London WC1V 6AY.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these conditions.

Delivery: the delivery of the Goods to the Delivery Point.

Delivery Point: the place specified by the Buyer where the Goods will be delivered and, in the case of Equipment, installed.

Equipment: any equipment and instruments used for medical testing of pathology samples and blood samples.

Goods: any goods, whether Equipment, Reagents or any other goods, agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Intellectual Property Rights: means (without limitation) patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Reagents: any reagents and ancillary products used for medical testing of pathology samples and blood samples.

Services: the services, including the Goods, supplied by the Company to the Buyer as described in writing by the Company to the Buyer and shall include any installation services to which condition 15 applies.

VAT: means value added tax and/or any similar tax on the consumption of goods or services.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) or which are otherwise implied by trade, custom, practice or course of dealing.

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by the Company's Regional Sales Manager. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer and/ or performs the Services for the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification of Goods are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn or extended it in writing.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Delivery of the Goods shall take place by the Company delivering them to the Delivery Point.

4.2 Delivery of the Goods to the Delivery Point shall be at the Company's expense and under the Company's Cost Insurance Freight (CIF) Insurance Policy, provided that the Company reserves the right to make an additional charge to cover any increase in transportation costs occurring before the date of delivery.

4.3 The Buyer shall provide at the Delivery Point at the time of Delivery and at its expense, adequate and appropriate equipment and manual labour for unloading or loading the Goods, unless directed otherwise by the Company. In doing so, the Buyer shall not cause any delay to the Company. The Buyer shall be deemed to have accepted all Goods upon their delivery by the Company to the Delivery Point.

4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. The Company shall not be liable for any delay in the delivery of the Goods to the Delivery Point that is caused by a Force Majeure Event.

4.5 If for any reason the Buyer fails to accept Delivery of any of the Goods when they are ready for Delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences, authorisations or appropriate equipment and manual labour for unloading the Goods:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered;
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
- (d) the payment due under the Contract shall not be delayed.

4.6 If the Company delivers to the Buyer a quantity of Reagents of up to 15% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Reagents or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with condition 10.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 Subject to condition 18.1, the Goods are at the risk of the Buyer from the time of Delivery.
- 6.2 Subject to condition 18.1, ownership of and title to the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account (including in respect of Services).
- 6.3 Subject to condition 18.1 until ownership of and title to the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and shall, on request, produce the policy of insurance to the Company; and
 - (e) give the Company such information relating to the Goods as the Company may request from time to time.
- 6.4 Subject to condition 18.1, the Buyer may resell the Goods before ownership and title have passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represents the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or

fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

- (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

- 7.1 Subject to condition 2.7, the price for the Goods and/or Services shall be the price set out in the Company's latest offer, sent to the Buyer prior to or on the date of Delivery or deemed delivery and/or performance (in the case of Services).
- 7.2 The price for the Goods and/or Services shall be exclusive of amounts in respect of VAT. The Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT.
- 7.3 Where the Goods include components which have been bought in at prices fixed in currencies other than pounds sterling the Company reserves the right to add a surcharge to cover the cost of currency fluctuations.
- 7.4 Unless the Company's quotation or acknowledgement of order stipulates a fixed price contract, the Company reserves the right to increase the price as a result of any of the following:
- (a) Any variation in the cost to the Company of supplying the Goods and/or Services, or any part of them, caused by any reason whatsoever beyond the control of the Company;
 - (b) Any failure of the Buyer to comply with any conditions for which it is responsible; or
 - (c) Any quantities of material supplied or labour involved additional to that set out in the quotation.

8. SUPPLY OF SERVICES

- 8.1 Subject to condition 18.1, the Company shall provide the Services to the Buyer in accordance with the Service description in all material respects.
- 8.2 The Company shall use its reasonable endeavours to meet any performance dates for the Services specified in any description of the Services provided by the Company, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.
- 8.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

9. BUYER'S OBLIGATIONS

- 9.1 The Buyer shall:
- (a) ensure that the terms of the order and (if submitted by the Customer) the Goods description are complete and accurate;
 - (b) co-operate with the Company in all matters relating to the Services;
 - (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office

accommodation and other facilities as reasonably required by the Company to provide the Services;

- (d) provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Buyer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- (h) Maintain, site and store any materials and equipment under the required recommendations and conditions as outlined by Tosoh in their Instruction for Use (IFU) or equipment manuals.

9.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 9.2; and
- (c) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

10. PAYMENT

- 10.1 The Buyer shall be invoiced for the Goods on the day of despatch.
- 10.2 Where Delivery is by instalments, the Buyer shall be invoiced for each separate instalment on the day of Delivery or deemed delivery of each instalment.
- 10.3 Depending on the nature of the Goods and the duration of the Contract, the Company reserves the right to require a deposit with the order and the Buyer may be sent an invoice on receipt of the order and on each agreed date.
- 10.4 Subject to condition 10.9, payment of the price for the Goods is due in pounds sterling within 30 days of the invoice date, except if the Buyer is situated outside of the UK where payment of the price for the Goods shall be due in the local currency as stated in the invoice within 30 days of the invoice date.
- 10.5 Payment may be made either in person at any of the Company's offices or directly into the Company's designated bank account.
- 10.6 Time for payment shall be of the essence.
- 10.7 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.8 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.9 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 10.10 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of **4% above the base lending rate from time to time of National Westminster Bank PLC**, accruing on a daily basis until payment is made, whether before or after any judgment.

10.11 Where payment is to be by instalments the Company shall not be bound to take any step in performance of the Contract until the Buyer has paid the deposit or first instalment and if the Buyer shall fail promptly to pay the second or any subsequent instalment the Company shall be entitled to suspend or terminate its performance of the Contract and to call on the Buyer to provide a bank guarantee for the due payment of the outstanding balance of the price.

11. QUALITY

- 11.2 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
 - 11.3 In relation to newly manufactured Goods only, the Company warrants that (subject to the other provisions of these conditions) on Delivery, and for a period of 12 months from the date of Delivery, the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and free from defects, except where the Goods have an expiry date which is less than 12 months from the date of Delivery in which case the Company warrants that any such Goods shall be of satisfactory quality and free from defects until the stated expiry date of such Goods. All Goods will be stored and maintained by the Buyer following the recommendations of the Company.
 - 11.4 Any warranty offered by the Company in respect of refurbished goods is offered separately in writing at the Company's sole discretion.
 - 11.5 The Company shall not be liable for a breach of the warranty in condition 11.2 or 11.3 unless:
 - (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 5 days of Delivery or the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there at the Company's expense and using only the Company's approved transport, firm or company and, if the defect is discovered on Delivery, in the original packaging, and, if the Goods have been received under temperature controlled conditions, using the special long-term cool container to be delivered by the Company.
 - 11.6 The Company shall not be liable for a breach of the warranty in condition 11.2 or 11.3 if:
 - (a) the Buyer makes any further use of such Goods after giving such notice as is referred to in condition 11.4(a); or
 - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
 - 11.7 Subject to condition 11.4 and condition 11.5, if any of the Goods do not conform to the warranty in condition 11.2 or 11.3, the Company shall at its option repair or replace such Goods (or the defective part) or issue a credit note for such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
 - 11.8 If the Company complies with condition 11.6 it shall have no further liability for a breach of the warranty in condition 11.2 or 11.3 in respect of such Goods.
 - 11.9 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
- ## 12. LIMITATION OF LIABILITY
- 12.2 Nothing in these conditions excludes or limits the liability of the Company:
 - (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3) Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

12.3 Subject to condition 4, condition 5 and condition 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 (3) of the Sale of Goods Act 1979) or (if applicable to the order) the terms implied by Section 2(3) of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 Subject to condition 12.1 and condition 12.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

13. ASSIGNMENT

13.2 The Company may assign, transfer, mortgage, charge, subcontract or deal with in any other manner with all or any of its rights or obligations under the Contract.

13.3 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question (each or any a "Force Majeure Event") continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

15. INSTALLATION

Where the Company undertakes to install the Equipment the following additional terms shall apply:

- (a) The Company shall be entitled to use free or charge such supplies of electricity, water, gas and other services as may be reasonably required for the installation;
- (b) The Buyer shall provide at its own expense such temporary roadways, footways, scaffolding, lifting equipment and the like as may be reasonably required for the safe completion of the installation;
- (c) The Buyer shall at its own expense be responsible for the cleaning out and preparation of the site prior to installation;
- (d) The Buyer shall at its own expense be responsible for the proper fencing, guarding, lighting and protection of the works during the installation and until it is completed;
- (e) The Buyer shall give the Company facilities for carrying out the works on the site continuously during the normally recognised

working hours or at such other hours as the Company shall in its sole discretion specify; and

(f) The Buyer shall provide secure and suitable on-site facilities for the storage of Equipment and/or materials until their installation.

16. GENERAL

16.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.7 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 or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

17. COMMUNICATIONS

17.2 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by e-mail:

- (a) (in case of communications to the Company) to its business office address or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (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 such other address as shall be notified to the Company by the Buyer.

17.3 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

17.4 Communications addressed to the Company shall be marked for the attention of the Regional Sales Manager.

18. INTELLECTUAL PROPERTY RIGHTS

18.2 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services supplied shall be owned by the Company. All Intellectual Property Rights in the Goods and/or Services are reserved to the Company.

18.3 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Buyer.

18.4 All Company Materials (as "Company Materials" is defined in condition 9.1 (g)) of the Company are the exclusive property of the Company.

18.5 In the event that any claim is made against the Buyer for infringement of Intellectual Property Rights arising directly from the use or sale by the Buyer of the Goods and /or Services, the Company at its own expense shall conduct any ensuing litigation

and all negotiations for a settlement of the claim. The Company will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Company in the event of litigation.

- 18.6 The benefit of condition 18.4 is granted to the Buyer by the Company only in the event that the Buyer shall give the Company reasonable notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection therewith, shall permit the Buyer to have the conduct of the claim pursuant to condition 18.4, and shall (at the Company's expense) give all reasonable information, co-operation and assistance to the Company (including without limitation lending its name to proceedings) in relation to the conduct of the claim. In addition, if it is made a condition of any settlement made by the Company, or judgment awarded against the Buyer, pursuant to condition 18.4, the Buyer shall return or destroy, as applicable, all infringing Goods and/or Services already made.
- 18.7 The provisions of condition 18.4 shall not apply to any infringement caused by the Buyer having followed a design or instruction furnished or given by the Buyer nor to any use of the Goods and/or Services in a manner or for a purpose which shall have been specifically prohibited in writing by the Company, nor to any infringement which is due to the use of such Goods in association or combination with any other product.
- 18.8 Any design or instruction furnished or given by the Buyer shall not be such as will cause the Company to infringe any Intellectual Property Rights.
- 18.9 The foregoing states the Company's entire liability to the Buyer and the Buyer's sole and exclusive remedies against the Company in connection with claims based on or resulting from the infringement of Intellectual Property Rights, of any kind whatsoever, of third parties.

19. **CONFIDENTIALITY**

A party (the "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 (the "disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products 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 it 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 condition 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. This condition 19 shall survive termination of the Contract.

20. **TERMINATION**

- 20.2 Subject to condition 20.2, without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than three months' written notice unless a shorter period of not less than 30 days is stipulated in the acknowledgement of order.
- 20.3 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within thirty days after receipt of notice in writing to do so;
 - (b) the other party 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 its 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;
 - (c) the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that

other party with one or more other companies or the solvent reconstruction of that other party;

- (d) 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party 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;
- (g) 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 the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 20.2(b) to condition 20.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

20.4 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- (b) the Buyer shall return all of the Company Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies 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; and
- (d) conditions which expressly or by implication have effect after termination shall continue in full force and effect.

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