

BACKGROUND:

The Seller is a supplier of goods for purchase by businesses in the course of trade and the Buyer intends to purchase goods from the Seller on a sale or return basis subject to these Terms and Conditions.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means any day other than a Saturday, Sunday or public or bank holiday;
“Buyer”	means the individual or business that purchases the Goods subject to these Terms and Conditions;
“Contract”	means the contract for the purchase and sale of the Goods under these Terms and Conditions;
“Delivery Date”	means the date on which the Goods are to be delivered as stipulated in the Buyer’s order and accepted by the Seller;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms and Conditions;
“Return Date”	means the earliest date on which the Buyer may return the Goods in accordance with the sale or return provisions of Clause 12 as stipulated in the Contract;
“Returned Goods”	means any Goods which the Buyer returns to the Seller in accordance with the sale or return provisions of Clause 12; and
“Seller”	means the individual or business that sells the Goods subject to these Terms and Conditions.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to these Terms and Conditions; and

- 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. Basis of Sale

- 2.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.2 Sales literature (including websites and other electronic material), price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance.
- 2.3 An order placed by the Buyer may not be withdrawn, cancelled or altered prior to acceptance by the Seller and no contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Goods or has accepted an order placed by the Buyer by whichever is the earlier of:
 - 2.3.1 the Seller's written acceptance;
 - 2.3.2 delivery of the Goods; or
 - 2.3.3 the Seller's invoice.
- 2.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2 The specification for the Goods shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller). The Goods shall only be supplied in the minimum units (or multiples thereof) stated in the Seller's price list or in multiples of the sales order as specified.
- 3.3 Orders received for quantities other than those set out in sub-Clause 3.2 will be adjusted accordingly. Illustrations, photographs or descriptions whether in catalogues, brochures, other documents or on websites are intended as a guide only and shall not be binding on the Seller.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or

regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the written agreement of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price

- 4.1 The price of the Goods shall be the price listed in the official quotation current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer.
- 4.2 Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for 28 days only or such lesser time as the Seller may specify.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by the instructions of the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.4 [The Seller will allow the Buyer quantity discounts subject to and in accordance with the payment terms set out in the Seller's published price list for the Goods current at the date of acceptance of the Buyer's Order.]
- 4.5 [Any settlement discount specified by the Seller in the Contract will be allowed by the Seller to the Buyer in respect of Goods for which payment is received by the Seller on or before the due date and otherwise in accordance with the payment terms set out in these Terms and Conditions and provided that no other amounts owing by the Buyer to the Seller are overdue and unpaid.]
- 4.6 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are inclusive of the Seller's charges for packaging and transport.
- 4.7 The price is exclusive of any applicable VAT or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the buyer shall be additionally liable to pay to the Seller.

5. Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

- 5.2 The Buyer shall pay the price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction, credit or set off) within 28 days of the date of the Seller's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and / or that the property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence. Receipts for payment shall be issued only upon request.
- 5.3 All payments shall be made to the Seller as indicated on the form of acceptance or invoice issued by the Seller.
- 5.4 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references which the Seller deems acceptable. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further Goods will be delivered to the Buyer other than against cash payment and, notwithstanding sub-Clause 5.2 of these Terms and Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place in the United Kingdom specified in the Buyer's order and / or the Seller's acceptance as the location to which the Goods are to be delivered by the Seller. If no place of delivery is so specified, the Buyer shall collect the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 6.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms & Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and / or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon given written notice to the Buyer to store or arrange for the storage of the Goods and then, notwithstanding the provisions of sub-Clause 9.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses, including storage and insurance charges, arising from such failure.

7. Non-Delivery

If the Seller fails to deliver the Goods or any part of them on the Delivery Date other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault:

- 7.1 the Seller shall have no liability in respect of such late delivery if the Seller delivers

the Goods at any time thereafter; or

- 7.2 if the Buyer gives written notice to the Seller within 14 Business Days after the Delivery Date and the Seller fails to deliver the Goods within 14 Business Days after receiving such notice the Buyer may cancel the order and the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer of similar goods to those not delivered over the price of the Goods not delivered.

8. Inspection / Shortage

- 8.1 The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.
- 8.2 Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".
- 8.3 The Seller shall be under no liability for any damage or shortages that would be apparent on reasonable and careful inspection if the terms of this Clause are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within 5 days of delivery detailing the alleged damage or shortage.
- 8.4 In all cases where defects or shortages are complained of the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Seller before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 8.5 Subject to sub-Clauses 8.3 and 8.4, the Seller shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

9. Risk and Retention of Title

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer at:
- 9.1.1 in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 9.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full.
- 9.3 [Sub-Clause 9.2 notwithstanding, legal and beneficial title to the Goods shall not pass to the Buyer until the Seller has received cash or cleared funds payment in full of the price of the Goods and any other goods supplied by the Seller and the Buyer has repaid all monies owed to the Seller, regardless of how such indebtedness arose.]
- 9.4 Until payment has been made to the Seller in accordance with these Terms and Conditions and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the goods as bailee for the Seller, shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Seller and shall insure the Goods against all reasonable risks.

- 9.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain in the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.6 The Seller reserves the right to repossess any Goods in which the Seller retains title without notice. The Buyer irrevocably authorises the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 9.4.
- 9.7 The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:
- 9.7.1 the Buyer commits or permits any material breach of his obligations under these Terms and Conditions;
 - 9.7.2 the Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors;
 - 9.7.3 the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
 - 9.7.4 the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, or has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof;
 - 9.7.5 any documents are filed with the court for the appointment of an administrator in respect of the Buyer;
 - 9.7.6 notice of the intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
 - 9.7.7 a resolution is passed or 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
 - 9.7.8 any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

10. Assignment

- 10.1 The Seller may assign the Contract or any part of it to any person, firm or company.
- 10.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

11. Defective Goods

- 11.1 The provisions of this Clause shall be without prejudice to the provisions of Clause 12 governing sale or return.
- 11.2 If on delivery any of the Goods are defective in any material respect and either the Buyer lawfully refuses delivery of the defective Goods or they are signed for on delivery "condition and contents unknown" and the Buyer gives written notice of such defect to the Seller within three business days of such delivery, the Seller shall

at its option:

- 11.2.1 replace the defective Goods within 5 days of receiving the Buyer's notice; or
- 11.2.2 refund to the Buyer the price for the goods which are defective.
- 11.3 Notwithstanding the provisions of sub-Clause 11.2 the Seller shall have no further liability to the Buyer in respect of defective Goods and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as set out in sub-Clause 11.2.
- 11.4 No Goods may be returned to the Seller under the provisions of this Clause without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied subject to defects or quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Seller's sole discretion, the Seller shall refund or credit to the Buyer the price of such defective goods but the Seller shall have no further liability to the Buyer.
- 11.5 The Seller shall be under no liability in respect of any defect arising from fair wear and tear or any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's approval, or any other act or omission on the part of the Buyer, its employees, agents or any third party.
- 11.6 Subject as expressly provided in these Terms and Conditions and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.7 Where the Goods are sold under a consumer sale the statutory rights of the Buyer are not affected by these Terms and Conditions.
- 11.8 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Terms and Conditions, the Seller shall not be liable to the Buyer by reason of:
 - 11.8.1 any representation;
 - 11.8.2 any implied warranty, condition or other term;
 - 11.8.3 any duty at common law;
 - 11.8.4 any duty under statute; or
 - 11.8.5 any express term of the Contractfor any of the following which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer:
 - 11.8.6 direct or consequential loss or damage sustained by the Buyer (including, without limitation, loss of profit, indirect or special loss);
 - 11.8.7 costs;
 - 11.8.8 expenses; or
 - 11.8.9 other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise).
- 11.9 The Buyer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the

Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory provisions and that the handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority. The Buyer will indemnify the Seller against any liability, loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.

12. Sale or Return

- 12.1 The provisions of this Clause shall be without prejudice to the provisions of Clause 11 governing defective goods. The provisions of this Clause apply only to undamaged Goods which the Buyer wishes to return to the Seller on a sale or return basis.
- 12.2 For a period of 5 days starting on the Return Date the Buyer shall have the right to return the Goods to the Seller without prior authorisation provided that:
 - 12.2.1 payment in full has been made by the Buyer and received by the Seller for the Goods in question in accordance with Clause 5;
 - 12.2.2 the Returned Goods are undamaged and are in a saleable condition, requiring no removal of defacing marks, labels or any other additional material which may have been attached to the Returned Goods or their packaging;
 - 12.2.3 a returns form is completed by the Buyer and dispatched with the Returned Goods; and
 - 12.2.4 the Seller shall be under no obligation to reimburse or return Returned Goods to the Buyer in the event that the requirements of sub-Clauses 12.2.1, 12.2.2 and 12.2.3 are not met.
- 12.3 [Notwithstanding sub-Clause 12.2.2 the Seller may, at its sole discretion, accept Returned Goods which have been damaged or marked and shall pay to the Buyer a reduced sum calculated with reference to the estimated value of the Returned Goods taking account of any such damage.]
- 12.4 The cost of returning any and all Returned Goods under this Clause shall be borne exclusively by the Buyer.
- 12.5 Any and all refunds due to the Buyer under this Clause shall be made by the Seller within 5 days of receipt of the Returned Goods in undamaged and saleable condition as set out in sub-Clause 12.2.2.
- 12.6 The Seller shall dispatch a statement of returned goods to the Buyer upon receipt of the Returned Goods which shall set out the sums due to the Buyer by way of reimbursement including any deductions or set-off for damaged or otherwise non-saleable goods.

13. Risk and Retention of Title in Returned Goods

- 13.1 Risk of damage to or loss of the Returned Goods shall pass back to the Seller at the time of delivery or, if the Seller wrongfully fails to take delivery of the Returned Goods, the time when the Buyer has tendered delivery of the Returned Goods.
- 13.2 Notwithstanding delivery and the passing of risk in the Returned Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Returned Goods shall not pass back to the Seller until the Buyer has received in cash or cleared

funds payment in full for the Returned Goods.

- 13.3 Until payment has been made to the Buyer in accordance with these Terms and Conditions and title in the Returned Goods has passed to the Seller, the Seller shall be in possession of the Returned Goods as bailee for the Buyer, shall store the Returned Goods separately and in an appropriate environment, shall ensure that they are identifiable as being returned by the Buyer and shall insure the Returned Goods against all reasonable risks.
- 13.4 The Seller shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Returned Goods which remain in the property of the Buyer, but if the Seller does so all money owing by the Seller to the Buyer shall (without prejudice to any other right or remedy of the Buyer) forthwith become due and payable.
- 13.5 The Buyer reserves the right to repossess any Returned Goods in which the Buyer retains title without notice. The Seller irrevocably authorises the Buyer to enter the Seller's premises during normal business hours for the purpose of repossessing the Returned Goods in which the Buyer retains title and inspecting the Returned Goods to ensure compliance with the storage and identification requirements of sub-Clause 13.3.
- 13.6 The Seller's right to possession of the Returned Goods in which the Buyer maintains legal and beneficial title shall terminate if:
 - 13.6.1 the Seller commits or permits any material breach of his obligations under these Terms and Conditions;
 - 13.6.2 the Seller enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors;
 - 13.6.3 the Seller is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
 - 13.6.4 the Seller convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, or has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof;
 - 13.6.5 any documents are filed with the court for the appointment of an administrator in respect of the Seller;
 - 13.6.6 notice of the intention to appoint an administrator is given by the Seller or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
 - 13.6.7 a resolution is passed or petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller;
or
 - 13.6.8 any proceedings are commenced relating to the insolvency or possible insolvency of the Seller.

14. Buyer's Default

- 14.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- 14.1.1 cancel the order or suspend any further deliveries to the Buyer;
- 14.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 14.2 This Clause 14 applies if:
 - 14.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
 - 14.2.2 the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
 - 14.2.3 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer;
 - 14.2.4 the Buyer ceases, or threatens to cease, to carry on business; or
 - 14.2.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 14.3 If sub-Clause 14.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. Limitation of Liability

- 15.1 Subject to Clauses 6, 7 and 14, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees and agents) to the Buyer in respect of:
 - 15.1.1 any breach of these Terms and Conditions;
 - 15.1.2 any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods; and
 - 15.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 15.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 15.3 Nothing in these Terms and Conditions excludes or limits the liability of the Seller:
 - 15.3.1 for death or personal injury caused by the Seller's negligence;
 - 15.3.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - 15.3.3 for fraud or fraudulent misrepresentation.
- 15.4 Subject to sub-Clauses 15.2 and 15.3:

- 15.4.1 the Seller'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
- 15.4.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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.

16. Confidentiality, Publications and Endorsements

- 16.1 The Buyer undertakes to the Seller that:
 - 16.1.1 the Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and / or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
 - 16.1.2 the Buyer will not use or authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, website, email, note paper, visiting cards, advertisement or other printed or electronic matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) any relevant licensors;
 - 16.1.3 the Buyer will use all reasonable endeavours to ensure compliance with this Clause by its employees and agents.
- 16.2 The provisions of this Clause shall survive the termination of the Contract.

17. Notices

- 17.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
 - 17.2 Notices shall be deemed to have been duly given:
 - 17.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 17.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 17.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 17.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

17.3 Communications addressed to the Seller shall be marked for the attention of Matrix Diagnostics Ltd.

18. Force Majeure

18.1 Neither Party to the Contract shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

18.2 The provisions of sub-Clause 18.1 shall not apply with respect to industrial action where such action has been induced by the Party so incapacitated.

18.3 If and when the period of such incapacity exceeds 1 year then the Contract shall automatically terminate unless the Parties first agree otherwise in writing.

19. No Waiver

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions shall constitute a waiver of the right to subsequently enforce that provision or any other provision of these Terms and Conditions. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

20. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

21. Third Party Rights

A person who is not party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. [Dispute Resolution (Arbitration)]

22.1 It is agreed that where any dispute or difference relating to these Terms and Conditions or the Contract arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.

22.2 The arbitrator shall be agreed by the Parties or, in the event of failure to agree, shall be appointed by the president for the time being of the Law Society of England and Wales.

22.3 The arbitration shall take place in a location selected by the arbitrator and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.

22.4 The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.

- 22.5 The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall co-operate fully with the arbitrator to achieve this objective.
- 22.6 The Parties shall share the fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.
- 22.7 [The Parties agree to exclude any right of application or appeal to the courts of England and Wales concerning any question of law arising in the course of the arbitration.]]

23. Law and Jurisdiction

- 23.1 These Terms and Conditions shall be governed by the laws of England and Wales.
- 23.2 [Any dispute between the Parties relating to these Terms and Conditions and the Contract shall fall within the jurisdiction of the courts of England and Wales.]