

Terms and Conditions Interpretation

Contract for Supply of Goods and Services from IPG Pharma Ltd.,

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

Bids, Bidding: shall mean where a Client has been invited to submit their price for Product or Service under cover of a process to secure a Product or Service in a competitive tender situation where such bid shall only be determined as binding once IPG has informed the Client that their bid is the winning bid. (in whatsoever Formal Document and process that IPG uses and provided that the paperwork clearly states that IPG is running the bidding then this definition is applicable and applied)

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods and Services in accordance with these Conditions.

Customer or Client or Buyer: the person or company who purchases the Goods or Services from IPG Pharma Limited.

Date or Information shall mean any paperwork, dossiers, reference materials, reports, assessments, IP, Specification or any other materials that Buyer provides to Supplier that Supplier relies upon to provide Services or uses to prepare Quotations for Goods that Buyer subsequently orders and later rejected.

Delivery/Deliver/Delivered shall have the meaning given to it by Incoterms® 2020 applicable to each purchase of Goods and the performance of the Service.

Final Destination shall have the meaning of the destination of the Buyers stipulated location named with address on their Order.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control which prevents that party from performing any of its obligations (whether supply or services) hereunder, including without limitation, fire, flood, accidents, war, commotion, riot, acts of God or any lawful government intervention, applicable regulatory change, financial institution failure or industry changes as a response to COVID-19 or any other virus causing pandemic.

Formal Document/ation: shall mean where the IPG company name is clearly stated on the document and its address and registration number of present (such as this terms document.)

Goods: the goods (or any part of them) or Services or Products (whether tangible or not or electronic or cloud accessed) set out in the Order.

Intellectual Property Rights or IP: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress,

goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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, lack of freight in pandemic or financial crisis 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 in or associated with the Goods.

Order: the Sellers Quotation as accepted by the Customer in accordance with Clause 2.2 or the document issued by the Buyer stating the description of the Goods or Services being purchased (whether general making reference the Seller's quotation and or specification number or not so as to be ambiguous) stating price and terms.

Order Acknowledgement the Sellers document accepting the Order stating the description of the Goods being purchased (whether general making reference the Seller's quotation and or specification number or not so as to be ambiguous) stating price, Order number and delivery terms and delivery date Incoterms 2020.

Services Rate Card: being the staff level prices list per hour for certain levels of experience as provided to Buyer.

Services Workstream Document or Proposal or Quotation: being a Formal Document laying out the scope of the services to be supplied along with descriptions of the work being contemplated and the related prices.

Specification: a document specifically describing the Goods or Services either being that of the Supplier or that provided by the Buyer, including any related plans and drawings, Services Workstream Document or Services Rate Card applied to given tasks that is agreed in writing by the Customer and the Supplier.

Supplier: IPG Pharma Limited (registered in England and Wales with company number 06454550).

Supplier's Quotation: the quotation submitted by the Supplier to the Customer for the sale of the Goods or the Services Rate Card or Services Workstream Document.

Service: shall have the meaning where Supplier is providing Buyer specific services agreed between the Parties in the Specification or Services Workstream Document or Quotation using Supplier expertise to deliver a targeted outcome, for the avoidance of doubt other terms such as consultancy, advice, guidance, review, comment, assessment, research, outcomes and the like concepts shall be wrapped into this definition.

Volatile: shall mean where supply or delivered price become unreliable, unpredictable or unprecedented such that total reliance cannot be placed on the subject matter in the context of where the term is applied.

Writing: shall have the meaning of printed posted letter with first class stamp with delivery receipt (or reputable courier), facsimile or email clearly identifying a party.

1.2 Interpretation:

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- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. Absent alternate agreement executed between the parties.
- 2.2 The Order constitutes a commitment by the Customer to purchase the Goods or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or presentations and website content are produced for the sole purpose of giving an approximate idea of the Goods or Services referred to in them. They shall not form part of the Contract nor have any contractual force in themselves.
- 2.6 A quotation for Goods or Services given by the Supplier shall constitute an offer. A quotation shall only be valid as stated at its date of issue and shall expire according to its expiry date. The Supplier reserves the right to vary any amount specified in the Supplier's Quotation for items it has no direct control over e.g., freight, government taxes or levies or duties or due to prices changes imposed by its material suppliers and other similar costs either before or after the Customer has accepted the Quotation.

3. Goods/Services

3.1 The Goods are as described in any technical documents, Specifications, Quotations, Service Workstream Documents, catalogues or in respect of the Customers briefs, specifications or clear instructions.

3.2 To the extent that the Goods or Services are to be undertaken in accordance with a Specification the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement or government interventions or if additional information not provided at the time of the Quotation.

4. Delivery

4.1 Where the Goods are to be sourced by the Supplier from a country outside the United Kingdom the provisions of Clause 4.1 – 4.3 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of the Contract.

4.2 Unless otherwise agreed in writing (email, letter, quotation or order acknowledgement) the currency for the Price will be pounds sterling.

4.3 The Supplier shall deliver the Goods to the Customer using the manner of Delivery nominated in the Supplier's Quotation under the International Chamber of Commerce's (ICC) Incoterms® Rules 2020 (Incoterms® 2020) and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;

4.4 The Goods are to be Delivered in accordance with the ICC terms agreed between the parties or as stated in the quotations if not otherwise agreed where each term is defined in Incoterms® 2020

4.5 Any dates quoted for Delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods caused by:

- (a) a Force Majeure Event; or
- (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods including without limitation, seeking to vary the rule under Incoterms® 2020 applying to Delivery; or
- (c) the inability of the Supplier for whatever reason to arrange carriage on commercial terms or at all.

- 4.6 The Supplier will have fulfilled its contractual obligations in respect of Delivery provided that the quantity of Goods actually Delivered is no greater than 10% more or less than the quantity specified on the Order. The Customer shall pay for the actual quantity Delivered whatever the rule under Incoterms® 2020 being applied.
- 4.7 If the Supplier fails to Deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of exact description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to Deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 If the Customer fails to collect the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event:
- (a) Subject to the relevant Incoterms® 2020, Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance and temperature control if applicable).
- 4.9 If ten Business Days after the day on which the Supplier notified the Customer that the Goods are ready for the Delivery in accordance with the applicable Incoterms® 2020 rule and the Customer has not taken possession of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.10 The Supplier may Deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 It is expressly a condition that the Buyer has with them all the necessary permits, (including but not limited to the adoption of emergency exemption laws, or local government orders) and licenses applicable to using, selling and importing the Goods and satisfaction of all other applicable conditions for shipment under this Contract.
- 4.12 The Seller will use wheresoever required under Good Distribution Practices ("GDP") temperature monitors set to record temperature Data during transit up to the point where the Buyer takes delivery under ICC terms so agreed. The Buyer shall be obliged to ensure that the temperature for storage and transit are complied with and under circumstances where there is a quality complaint this will be rejected if the Buyer cannot provide such compliant temperature Data .

- 4.13 The Buyer shall provide and be responsible for such information at the time of purchase any special Data and paperwork requirements to travel with the goods or and be sent by email as PDF to enable the Buyer to take delivery. If the Buyer fails to do so or the information changes even if the Buyer has provided such information, then the Buyer must at least 7 working days in advance of the shipment date agreed or on an earlier date as notified by the Seller, provide the Seller with all delivery-related information and assistance agreed in writing and shall if so requested by the Seller sign a supplementary contract for the changes in the contents of this Contract to ensure that the goods can pass the examination of for any export inspection (from wheresoever shipped from or and through in terms of country) and or regulatory authorities that have any compliance jurisdiction over the Goods. Seller cannot be held liable in Buyer does not comply with this clause.
- 4.14 The consignee or freight forwarding agent appointed by the Buyer shall receive the goods at the delivery location as designated by Seller ICC as agreed at the time notified by the Seller. The Seller shall be responsible for the transportation and related transportation costs and insurance prior to delivery point ICC as agreed and the Seller shall not be responsible for the customs clearance procedures for the import of the goods and the Buyer shall be responsible for the import customs clearance procedures at its own expenses thereto.
- 4.15 If the Buyer, without the prior written consent of the Seller fails to pay any contract price within the time limit stipulated in the payment terms once an Order has been placed and fails to provide information or facilitation relating to successful delivery under this Contract or fails to promptly instruct the consignee to receive the goods at loading location as designated by Buyer under this Contract or violates any other representations and warranties hereunder, the Seller shall be entitled to exercise one or more of the following rights at its own option (unless the Seller has not complied with its obligations):
- (a) delay production schedules until resolution;
 - (b) cancels the orders in part or in whole without refund of any pre-payment (if any);
 - (c) terminates this Contract in part or in whole without refund of any pre-payment (if any);
 - (d) pursue the Buyer's liability for breach of contract.
- 4.16 The Buyer hereby represents and warrants that it has at the time of placing Orders been fully aware of potential chain of events that may arise from any pandemic or any form (including, but not limited to, any shutdown of governmental institutions, government ban, interruption of transportation, embargoes, regional lockdown, over demand etc.) and the Buyer undertakes that it will take all reasonable measures to eliminate or reduce the adverse effects thereof and that it is just based on the foregoing that the Buyer negotiates with the Seller, places Orders and urges the Seller to coordinate and arrange the materials and manpower for emergent production of Goods for the Buyer, which will objectively incur all necessary production costs on the Seller's side. The Buyer undertakes that it shall, under no circumstances, seek to suspend or terminate the performance of this Contract or require the Seller to return any price on the grounds of pandemics (including but not limited COVID-19 or lack of samples or any other natural infections) and/or the chain events arising therefrom or of any other reason.

- 4.17 The Buyer hereby represents and warrants that the execution, delivery and performance of this Contract and the consummation of the transactions hereunder or complying with the provisions of this Agreement will not (i) conflict with or cause violation to effective articles of association or similar organizational documents of the Buyer; (ii) cause violation to agreement clauses, conditions or stipulations to which the Buyer is a party; (iii) violate any approval documents, orders, laws, regulations or rules applicable to the Buyer.
- 4.18 The Buyer hereby represents and warrants that (i) it has, as of placing Orders under this Contract, obtained all licenses or approval of emergency license exemption (if applicable) (“Necessary Permits”) in the importing place for the goods and transaction hereunder that allow the import, use, disposal and free circulation of the goods hereunder by the Buyer in compliance with the laws of the importing place in all respects; and that (ii) it shall, within 10 days from the date of first receipt of the goods (regardless of quantity thereof), obtain all Necessary Permits if the Seller has delivered the goods at the request of the Buyer, despite that the Buyer has not obtained all Necessary Permits in accordance with the aforesaid in this clause 4.18 at the time of shipment; and that (iii) it shall not, before obtaining all Necessary Permits, engage in any act of using or disposing the goods hereunder, including sale, offering to sale, distribution, donation, usage for clinical diagnostics and treatment or other use, that may constitute violation of the regulatory rules applicable in the Final Destination. The full satisfaction of this clause is one of the prerequisite conditions for the shipment by the Seller, and the Seller’s act of shipment shall, under no circumstances, constitute or be deemed a waiver of such prerequisite condition in this clause. If the Buyer violates this clause, the Seller shall have the right to terminate this Contract immediately without refund of any contract price paid (if any) and the Buyer hereby fully indemnifies the Seller to the fullest extent under law.
- 4.19 The Buyer hereby represents and warrants that it purchases, imports and uses the goods under this Contract for legitimate purposes and shall safeguard the reputation of the Seller. In any case, the Buyer shall not (i) release or report any news claiming the goods being defective without verification supported by sufficient evidence as so required by a court of law; (ii) sell or offer to sell the goods under this Contract within the territory of Delivery; (iii) claim that it has a joint venture, employment, agency, distribution, license or other relationship inconsistent with the contractual relationship of goods sale and purchase under this Contract; (iv) publicly promote or advertise, without the approval of the Seller’s examination and approval of advertising, promotion and other related materials, the Seller’s brand (including its trade name and trademark) or the goods of this Contract for the purpose of public sale; (v) disassemble, analyze, decipher or conduct reverse engineering for the purpose of cracking or obtaining technology secrets and the like; (vi) use or dispose the goods in violation of the instructions of the goods under this Contract.
- 4.20 Furthermore, in connection with Services
- (a) the Supplier shall provide Services with all reasonable care using their experience, skills, and expertise however they shall not be liable in any way to the Buyer in the Buyer’s use of the Services outcomes.
 - (b) Such tools, techniques, task management and systems developed by Supplier that Supplier may implement pursuant to the Services will remain the property of the Supplier and may not be reproduced without the prior written authority of the Supplier.

- (c) Where the performance of Supplier is frustrated by Buyers staff members that are required to co-operate with the Services and this effects Supplier ability to perform its obligations such frustration will be reported in writing to Buyer and Supplier will not thereby be considered in breach of this Agreement. Where such performance frustration is on the part of the third-party supplier of the Buyer then Supplier will first use reasonable endeavours to resolve the frustration keeping Buyer informed and if such frustrations cannot be resolved the matter will be reported in writing to Buyer and Supplier will not thereby be considered in breach of this Agreement.
- (d) During the provision of the Services, if applicable, Buyer at its own expense provide Supplier with any necessary documents, materials, Data and any other requested Data that only Buyer or its contractors can provide within sufficient time to enable the Services to be undertaken. Supplier cannot be held liable for the accuracy of all documents provided and if such documents are not suitable and Supplier needs to repeat the work Buyer shall pay for the extra costs. The Data that Client will provide will to the best of its knowledge be complete, correct, accurate, and legible and not infringe any intellectual right if any third party. The Supplier cannot be held responsible for any incompleteness that it discovers in the Data provided or for any work is does based on the Data if said Data is found to be incomplete or any extra cost for having to repeat the work.
- (e) Supplier undertakes to store Data provided by Buyer in a safe location with suitable back up
- (f) Supplier will not be liable to Client for any indirect or consequential loss, loss of income or profit, damage, costs, expenses or other claims of any kind howsoever arising (whether caused by the negligence of providers, their servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use or application by Client unless as stipulated in this Agreement.
- (g) Supplier may assign to its subsidiaries or sub-contract elements of the Services but not its rights and obligations under this Agreement.

5. Quality

- 5.1 The Supplier warrants that all Goods sold by the Supplier to the Customer pursuant to this Contract will conform in all material respects to any Specification agreed. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this Contract are excluded from this agreement to the fullest extent permitted by law.
- 5.2 The Customer shall be entitled to reject any quantity of the Goods which do not comply with the Warranty or that contain defects, provided that any purported rejection is made no later than seven Business Days from the date of delivery. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.3 Where high volume low value Goods are being supplied by Supplier then the Parties agree that a percentage of minor defects of up to 3% are not statistically significant and acceptable.

- 5.4 In the case of defects or failures in the Goods which were not apparent on initial inspection the Customer shall notify Supplier as soon as reasonably practicable following discovery by the Customer or disclosure to the Customer by a third party provided that such notification is made within one (1) week of Delivery. Should the Parties disagree on the conformity or the non-conformity of the Goods to the Specification an independent laboratory, to be agreed upon by the Parties within 30 days (such agreement not to be unreasonably withheld or delayed), shall be designated to decide on said conformity or non-conformity. If the parties are unable to agree on an independent laboratory within 90 days of the Customer's notification, then either Party may be at liberty to commence legal proceedings. The independent laboratory will act as an expert, not arbitrator, and the decision shall be binding on both Parties. The fees of the laboratory shall be borne by the Party determined to be at fault by the laboratory. Where there are set up costs or transfer of methods of testing prior to ascertaining conformity or non-conformity the Parties shall share such costs equally between them and the Party to be considered in fault after the testing by the third party laboratory shall then pay for the total costs of the set up.
- 5.5 The Buyer may at its option inspect and accept the goods at the manufacturing site before taking delivery (ICC Terms apply) or shall in any event complete the on-site acceptance at the loading location of the consignee (no later than the same arrival date of the goods at the loading location) confirming whether the Goods meet the requirements of the Contract and shall issue certificate of acceptance (or deliver Bill of lading, manifest, cargo receipt or similar document in lieu of such certificate of acceptance) to the Seller within the above-mentioned time limit. If the Buyer fails to complete the acceptance within the above-mentioned time limit, the goods shall be deemed to be qualified. After the acceptance by the Buyer or the goods are deemed to be qualified, the Buyer shall not demand replacement or return of goods refund or refuse to make any payment due on or before delivery (ICC) or termination of this Contract on the grounds of any product quality problems except for those advised by the buyer and confirmed by the Seller in writing, and shall not claim for any loss against the Seller.
- 5.6 The risk of loss or damage of the goods shall be borne by the Buyer after the delivery (ICC) pursuant to this Contract. Any problems resulting from the registration regulations of the Final Destination or any problem relating to the goods hereunder or its quality in Final Destination the Seller shall not be liable for the said problem and shall be free from any liability caused therefrom and the Buyer shall not make any claims against the Seller therefor. The Buyer shall indemnify and hold harmless the Seller from, against and in respect of, any liability caused from the deal hereunder in the Final Destination or any onward customer of the Buyer whomever that shall be with no exclusions whatsoever.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 6.2 Title to the Goods shall not pass to the Customer until:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

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- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs only if payment has been made in full

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods or Services shall be the price set out in the Supplier's Quotation and Order Acknowledgement or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery or Services Rate Card. If an Order price differs the Suppliers Quotation the Order Acknowledgement shall prevail.

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- 7.2 The Supplier reserves the right to review and change its Services Rate Card each year to reflect any changes in costs.
- 7.3 The Supplier may, by giving notice to the Customer at any time up to five (5) Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in freight, labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification or change in the scope or tasks of Services; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
 - (d) for the avoidance of doubt should Supplier have freight surcharges applied then it reserves the right to pass these costs on to Buyer and
 - (e) where Volatile freight costs and availability of means of shipment of freight exists (despite quoting rates either within a delivered price or not) the Parties acknowledge that such events result in delays that cannot be mitigated and that if/when extra costs are incurred Supplier reserves the right to pass such costs on.
- 7.4 The price:
- (a) excludes amounts in respect of any applicable value added tax or equivalent applicable tax for goods and services (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid invoice; and
 - (b) if the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
 - (c) If the Customer requests to pay in another major currency, then Supplier will convert the price using the exchange rate of the day plus banking exchange rate fees with receiving bank fees to Customer account and a £50 handling charge.
- 7.5 Notwithstanding any Incoterms® 2020 rule applying to the Order, the Supplier may invoice the Customer for the Goods on or at any time after acceptance of the Order.
- 7.6 The Customer shall pay each invoice submitted by the Supplier: on the due date.
- (a) as specified in the Supplier's Quotation and the sales invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.

7.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0% and in the case where payment in advance of either part or the full amount absent bona fide reasons (which for the avoidance of doubt shall not include failure of a customer the Buyer might be selling onto or the Buyer has had customers cancel orders) the Buyer shall within 2 working days from the default notice issued by the Seller pay 10% of the total contract price to the Seller as liquidated damages as well as issue proceedings for breach of contract.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) other than credit notes.

7.9 In the event that (1) the Buyer has paid the price to the Seller in part or in whole or (2) the purchase order of the Buyer has been accepted by the Seller with an order acknowledgement or (3) the Seller has issued production order committing to resources and materials including without limitation to any of its suppliers back down the supply chain (for the whole Goods or part of the Goods or subcontracted the Goods or part of the Services) the Buyer shall not cancel the purchase order for any reason and request the Seller for refund (if any) except that the Buyer has obtained the prior written consent of the Seller and the Seller has been compensated for all losses or compensation defined herein (if any) caused by the Buyer's cancellation of the purchase order. Unless it is for the reason that the Seller can no longer supply the order or the product no longer has regulatory or other approvals that as the effect of rendering the Seller from legally making, buying or selling the Goods.

8. Limitation of liability

8.1 The Customer affirms that it shall hold Supplier harmless from all and any claims in connection with the purchase of Goods on the basis that the onus is placed upon them before purchase to undertake all suitable assessments.

8.2 The Supplier has arranged freight and transit storage insurance for the Goods in accordance with the Delivery terms. The Supplier has insurance cover in respect of its own legal liability not extended to Customers. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange given the global nature of its trade, and the Customer is responsible for making its own arrangements for the insurance of any loss.

8.3 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

- (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (applicable and limited to the UK only); or
 - (d) defective products under the Consumer Protection Act 1987 (applicable and limited to the UK only).
- 8.5 The Customer warrants that for the duration of the Contract and for a period of one year thereafter it has and will keep maintained in force product liability and public liability insurance policies with a reputable insurer to cover its own liability for any third party claims in respect of the Goods.
- 8.6 Subject to clause 8.4, the Supplier's total liability to the Customer shall not exceed any net margin tied up in any one Order and for Services that value directly attributed to any specific affected task, both never on any cumulative basis
- 8.7 Subject to clause 8.4, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales, business or other income;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, Data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.8 The Supplier is not liable for:
- (a) non-delivery, unless the Customer notifies the Supplier of the claim in writing within five (5) Business Days of the anticipated date for delivery identified in the Order; or
 - (b) shortages in the quantity of Goods delivered in excess of those permitted unless the Customer notifies the Supplier of a claim within ten (10) Business Days of delivery of the Goods.
- 8.9 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.10 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five (5) Business Days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods or Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

- 9.7 Return of any Data provided by the Client shall be subject to all invoices having been paid and a fair management charge of no more than £1,000 for gathering and returning said Data.
- 9.8 Any handover or technical transfer to another supplier or provider of similar Services or Products shall be undertaken subject to agreement between the Parties on the scope of the work required and agreement thereafter on the price.

10. Intellectual Property

- 10.1 The Customer hereby indemnifies and keeps the Supplier indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design copyright, trade mark or other industrial or intellectual property rights anywhere in the world whether registered or not, resulting from any compliance by the Supplier with the Customer's instructions and/ or Specification, whether express or implied.
- 10.2 The Customer acknowledges that:
- (a) the Intellectual Property Rights are the Supplier's (or its licensor's) property;
 - (b) nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights. The Supplier asserts its full rights to control the use of its trademarks and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights; and
 - (c) any reputation in any trademarks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trademarks from time to time.
- 10.3 Nothing in these Conditions will be construed as any representation or warranty by the Company that the design, manufacture, use or sale of the Goods is not an infringement of any third-party intellectual property rights.

11. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

12. General

12.1 Assignment and other dealings.

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- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (c) In the absence of fraud or the intentional breach of this Agreement the indemnification provisions contained herein shall constitute the sole and exclusive recourse and remedy of the Parties for monetary, damages arising out of any breach or violation of any of the representations, warranties, covenants or agreements contained in this Agreement. Nothing herein shall be deemed to limit the right of either Party to seek injunctive or other equitable relief in connection with the failure of the other Party to perform any covenant or agreement contained in this Agreement.

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12.3 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.7 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number or sent by email to any address specified in the Order.
 - (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.7(b)(iii), business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.8 **Third party rights.**
- (a) Unless it expressly states otherwise the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract

- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.9 Governing Law

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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 the laws of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this agreement neither shall it be over governed by The European Court . Incoterms® 2020 shall apply for Delivery but where they conflict with this Contract, this Contract shall prevail. No third party shall have any rights to enforce neither shall any rights be acquired by any other than the Parties or any rights be inferred or construed as due to another outside of the Parties.

12.10 Jurisdiction

- (a) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- (b) Each party irrevocably consents to any process in any legal action or proceedings under Clause 12.9 above being served on it in accordance with the provisions of this agreement relating to service of notices. Nothing contained in this agreement shall affect the right to serve process in any other manner permitted by law.
- (c) Nothing in this Clause 12 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the Supplier from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

12.11 Language

- (a) These Conditions are drafted in the English language. If this agreement is translated into any other language, the English language version shall prevail.
- (b) Any notice given under or in connection with the Contract shall be in the English language. All other documents provided under or in connection with the Contract shall be in the English language or accompanied by a certified English translation.
- (c) The English language version of this agreement and any notice or other document relating to this agreement shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.