

WEST PHARMACEUTICAL SERVICES CORNWALL LIMITED

CONDITIONS OF PURCHASE FOR GOODS AND SERVICES (08/10)

1 DEFINITIONS

1.1 In these Conditions, unless the context otherwise requires, the following terms shall have the following meanings:-

Associate	in respect of the Purchaser, any subsidiary or holding company of the Purchaser or any subsidiary of that holding company (each as defined in sections 736 and 736A of the Companies Act 1985);
Business Days	any day other than a Saturday, Sunday or public holiday in England;
Conditions	these standard conditions of purchase of the Purchaser;
Confidential Information	shall be as defined in condition 20.1;
Contract	the contract for the sale and purchase of the Goods comprising these Conditions, the Order and any other document specified in the Order;
Defects Liability Period	shall be as defined in condition 12.2;
Delivery	shall be as defined in condition 9.2;
Equipment	all buildings, machinery, apparatus, materials and articles sold and supplied by the Supplier to the Purchaser upon the terms of, and installed, constructed and/or commissioned by the Supplier at the Site pursuant to, the Contract;
Expert	shall be as defined in condition 27.2;
FCPA	the United States' Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq;
Force Majeure	act of God, war, riot, terrorism, nuclear, biological or chemical contamination, civil commotion, explosion, malicious damage, compliance with a law, rule or regulation, governmental order or direction, accident, breakdown of plant or machinery, fire, flood, storm, strike, lock-out, labour dispute (other than a strike, lock-out or labour dispute involving exclusively the employees of the party relying on the event of Force Majeure), difficulty or increased cost in obtaining workers, goods or transport and any other event or circumstance affecting the supply of the Goods Provided that the event in question is not within the reasonable control, or caused by the act, omission or

	negligence, of the party affected by, and purporting to rely on, the event of Force Majeure;
Goods	the goods and/or services (including any instalment of such goods and/or services) which the Supplier is to sell and supply to the Purchaser as described in, and upon the terms of, the Contract; and unless the context shall otherwise require, all references to the Goods shall include the Equipment;
Intellectual Property Rights	any copyright, moral right, related right, patent, trade mark, trade or business name, service mark, design right (registered or unregistered), database right, right in undisclosed or confidential information, know-how, trade secret and invention (whether patentable or not), right protecting goodwill and reputation, any right under licenses and consents in relation to any of the aforementioned, any other similar intellectual property right (whether registered or not) and any applications for such rights which may exist anywhere in the world;
Order	an order for the Goods issued by the Purchaser pursuant to condition 3;
Parties	the Supplier and the Purchaser; and “party” shall be construed accordingly;
Prevention of Corruption Acts 1889 to 1916	means collectively the following legislation in England and Wales; the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 as updated and replaced from time to time, including, without limitation, any relevant legislation coming in to force under the Bribery Act 2010.
Price	shall be as defined in condition 4.1;
Purchaser	West Pharmaceutical Services Cornwall Limited (registered number 930319) whose registered office is at Bucklers Lane, St Austell, Cornwall, PL25 3JU; and unless the context shall otherwise require, all references to the Purchaser shall include any of its Associates;
Site	the location where the Goods are to be delivered, installed and/or constructed, as stated in the Order;
Supplier	the person to whom the Order is issued and who is to sell and supply the Goods.

1.2 In these Conditions, unless the context otherwise requires:-

- (a) reference to a condition or paragraph is a reference to a provision of these Conditions or a paragraph of a condition respectively;

- (b) the singular includes the plural and vice versa; and reference to any gender includes every gender;
- (c) all headings are for convenience only, have no legal effect and shall not affect the interpretation of these Conditions;
- (d) reference to a statutory provision includes a reference to such statutory provision as amended, re-enacted or extended, and any subordinate legislation made under such statutory provision, from time to time (except to the extent that the liability of either party would be increased or extended as a result); and
- (e) reference to a person includes an individual, corporation, government body, partnership, other unincorporated association or body of persons (whether or not having separate legal personality); and includes that person's successors in title, legal personal representatives, estates and lawful assignees.

2 CONTRACT

2.1 Unless otherwise agreed in writing, these Conditions, the Order and any specification, drawing, design, description, colour, sketch, diagram, weight, dimension, capacity and other data or document referred to expressly in the Order constitute the entire agreement between the Parties relating to, and apply exclusively to, each Contract for the purchase of Goods by the Purchaser from the Supplier. The Supplier shall sell, and the Purchaser shall purchase, the Goods in accordance with, and upon the terms of, the Contract.

2.2 The Contract replaces, supersedes and prevails over:-

- (a) any terms and conditions contained in any quotation, catalogue, sales literature, price list, order, invoice, acknowledgement or other document or information provided by the Supplier or any other person (other than the Purchaser); and
- (b) all previous or other agreements, negotiations, proposals and correspondence relating to the Order or the subject matter thereof.

For the avoidance of doubt, any reference in the Order to any document referred to in paragraph (a) above or any other document shall not be deemed to constitute acceptance of any term, condition or instruction contained in any such document.

2.3 Save as provided in condition 3.5, no variation or amendment to the Contract will be effective unless agreed in writing by a duly authorised officer of the Purchaser.

2.4 No employee or agent of the Purchaser is authorised to vary these Conditions orally or to make any oral representations concerning the Goods unless confirmed in writing by a duly authorised officer of the Purchaser. Any oral advice or recommendation given by a director, employee or agent of the Purchaser to the Customer which is not confirmed in writing by a duly authorised officer of the Purchaser is relied upon by the Supplier entirely at the latter's own risk.

2.5 The Supplier acknowledges that, in entering into the Contract, it has not relied on any representation, warranty, agreement or statement not set out in the Contract and that (in the absence of fraud), it will not have any right or remedy arising out of any such representation, warranty, agreement or statement and that its only remedy for breach of the Contract is for breach of contract under the terms of these Conditions.

3 ORDERS

- 3.1 Any Order issued by the Purchaser in accordance with condition 3.2 constitutes an offer to purchase Goods upon the terms of that Order and, to the extent consistent with such Order, these Conditions. In the event of any inconsistency between these Conditions and the terms of the Order and unless otherwise specified in writing by the Purchaser, the Order shall prevail. Notwithstanding condition 3.3, the Supplier is deemed to accept and to be bound by such Order when it confirms its acceptance to the Purchaser (whether in writing or otherwise) or, if earlier, when it commences performance of such Order.
- 3.2 The quantity, quality and description of, and any specification for, the Goods shall be as set out in the Order or as subsequently agreed by the Parties in writing. Each Order shall be on the Purchaser's official Order form, appropriately numbered and signed by a duly authorised officer of the Purchaser. Orders in any other form shall be disregarded and shall not be binding on the Purchaser unless and until confirmed in writing (including, without limitation, facsimile and/or electronic mail) by a duly authorised officer of the Purchaser. The Order number shall be stated in all subsequent documents and correspondence relating to it.
- 3.3 Without prejudice to condition 3.1, the Supplier shall provide an order acknowledgment to the Purchaser in accordance with condition 24 (notice) within ten Business Days of the date of the Order. If such order acknowledgment is not received by the Purchaser within such period, the Purchaser shall be entitled in accordance with condition 17 to cancel the Order at any time thereafter without any liability to the Supplier.
- 3.4 In the event of any ambiguity, conflict or discrepancy in the specifications, drawings or other documents comprised in the Order, the Supplier shall immediately contact the Purchaser in writing for clarification and comply with the Purchaser's instructions with respect to any such matter.
- 3.5 The Purchaser may, by written notice to the Supplier, vary the specifications, drawings and any other details in respect of the Goods comprised in the Order provided that in the event that the Supplier considers that any such variation is likely to affect the Price or delivery date for the Goods:-
- (a) it shall so notify the Purchaser in writing (and provide such supporting documentation as the Purchaser may request) within five Business Days of receipt of the Purchaser's notice;
 - (b) the Parties shall use their reasonable endeavours to agree in writing any such adjustment to the Price and/or delivery date as is necessary as a consequence of such variation;
 - (c) in the event of the Parties' failure to reach agreement in accordance with paragraph (b) above within ten Business Days of such agreement first being sought, either party shall be entitled to refer the matter to an Expert in accordance with condition 27 and/or the Purchaser shall be entitled in accordance with condition 17 to cancel the Order by written notice without any liability to the Supplier;
 - (d) unless notified to do so by the Purchaser in accordance with paragraph (c) above, the Supplier shall not suspend performance of any part of the Order which is not subject to the proposed variation;
 - (e) the Supplier shall maintain a record of all variations agreed pursuant to this condition 3.5 (in the form of a "plus/minus" spreadsheet) and shall provide a copy thereof to the Purchaser promptly upon request; and
 - (f) for the avoidance of doubt, the Purchaser shall not be bound by any variations in the Order without its prior agreement in writing.

4 PRICE

- 4.1 Unless otherwise agreed in writing between the Parties, the price (the "Price") of the Goods shall be stated in the Order (or, in the case of any error or omission therein, shall be subsequently notified by the Purchaser to the Supplier) and, unless otherwise stated in the Order, shall be:
- (a) exclusive of any value added tax or any other applicable tax, duty or levy which shall be payable by the Purchaser, subject to its receipt of an appropriate invoice; and
 - (b) inclusive of all charges for packaging, packing, shipping, carriage, transport, storage, insurance, offloading and delivery of the Goods to and at the Site.
- 4.2 Without limitation to condition 4.1, the Price in respect of the Equipment shall include all costs of:-
- (a) the construction, manufacture, shipping, carriage, transport, storage, insurance, offloading, delivery and siting of the Equipment to and at the Site;
 - (b) installation, commissioning and validation of the Equipment in accordance with the requirements of the pharmaceutical industry;
 - (c) training at least two of the Purchaser's personnel either at the Site or at the Supplier's premises; and
 - (d) removal of all waste, packaging and debris directly resulting from work on the Site.
- 4.3 Except for variations agreed in writing by the Purchaser pursuant to condition 3.5, no increase in the Price shall be made (whether on account of increased material, labour or transport costs, fluctuations in exchange rates, currency regulation, changes in taxes or duties, alterations in delivery arrangements or dates or in the quantity or specification of the Goods ordered by the Purchaser, or any omission, delay or inadequacy in the Purchaser's instructions or otherwise).
- 4.4 The Supplier undertakes to the Purchaser that the Price paid by the Purchaser for the Goods (or any parts thereof, including spare parts) shall not exceed the lowest net price charged in respect of the Goods by the Supplier to any of the Supplier's other customers. Without limitation to the foregoing, the Supplier shall provide to the Purchaser any discounts or rebates (whether for prompt payment, bulk purchase, volume of purchase or otherwise) in respect of the Goods made available by the Supplier to any other such customer.

5 PAYMENT

- 5.1 The Supplier may invoice the Purchaser on, or at any time after, the Delivery of the Goods, and each invoice shall quote the relevant Order number and product number provided that the Purchaser is entitled to reject invoices that do not conform to this requirement.
- 5.2 Unless otherwise agreed in writing by the Parties or stated in the Order, the Purchaser shall pay (by means of any methods of payment available to the Purchaser) the Price for the Goods within thirty days following the later of either:-
- (a) the end of the month in which the Purchaser receives an invoice compliant with condition 5.1; or
 - (b) the Purchaser's acceptance of the Goods;
- or, notwithstanding condition 5.2 (a) or 5.2 (b), in accordance with such payment instalments as shall be stated in the Order or otherwise agreed in writing by the Parties provided that the Purchaser shall not be liable to the Supplier if, due to an event of Force Majeure, it delays payment to the Supplier in accordance with condition 19 (Force Majeure).
- 5.3 For the avoidance of doubt, the payment by the Purchaser of an invoice shall not constitute the Purchaser's acceptance or confirmation that the Supplier has discharged its obligations under the

Contract to the Purchaser's satisfaction or compromise or affect any rights or remedies the Purchaser might have in relation thereto.

- 5.4 The Purchaser shall be entitled to deduct from, and set off against, any sums due and owing to the Supplier any sums owed by the Supplier to the Purchaser, whether under the Contract or any other contract between the Parties. Without limitation, the Purchaser shall be entitled to make a retention equal to five per cent of the Price to meet the costs of repairing any defects that may become apparent during the Defects Liability Period.
- 5.5 The Supplier shall not impose or enforce penalties (or seek or purport to do so) for late payment (whether the imposition of interest, rescission of the Contract or otherwise) except with the prior written agreement of the Purchaser.

6 INFORMATION, INSPECTION AND TESTING

- 6.1 In respect of any Order for Equipment, the Supplier shall each week furnish to the Purchaser programmes and progress charts (in such form as may be approved by the Purchaser) showing the progress of manufacture of the Equipment; and the Supplier shall give notice to the Purchaser as soon as practicable if such programmes are, or are likely to be, delayed.
- 6.2 Prior to Delivery of the Goods to the Purchaser, the Supplier shall carefully inspect such Goods and test their compliance with any specification contained in the Order or otherwise agreed by the Parties. The Supplier shall give the Purchaser reasonable prior notice of such tests (and in any event, not less than five Business Days' prior notice) and the Purchaser shall be entitled to attend or be represented at such tests. The Purchaser shall supply any tools and materials reasonably required for the conduct of such tests.
- 6.3 The Supplier shall certify (in such form as is stated in the Order or as the Purchaser may reasonably require) to the Purchaser the results of the inspection and tests carried out in accordance with condition 6.2. In relation to a Delivery of Equipment, such certificate shall be counter-signed by a duly authorised officer of the Purchaser prior to the dispatch of the Equipment from the Supplier's premises.
- 6.4 Unless otherwise expressly stated in the Order and without prejudice to condition 6.2, the Purchaser shall be entitled to inspect the Goods at any time during their manufacture, processing or storage at the Supplier's premises and the Supplier shall provide or procure all necessary facilities for such purpose.
- 6.5 If, as a result of any inspection or test carried out pursuant to this condition 6, the Purchaser is not satisfied that the Goods comply with any applicable specification, the Purchaser shall notify the Supplier within five Business Days after such inspection or test. Within twenty Business Days of such notification, the Supplier shall take all necessary steps to ensure such compliance and make the Goods available to the Purchaser for further inspection and test provided that in the event of the continued failure of the Goods to achieve such compliance, the Purchaser shall be entitled (at its option) to:-
- (a) reject the Goods in accordance with condition 16 in which case the Supplier shall refund any monies previously paid by the Purchaser in respect of the Goods;
 - (b) accept the Goods subject to the Supplier agreeing a reduction in the Price in all respects satisfactory to the Purchaser;
 - (c) assist the Supplier to rectify any deficiencies in the Goods at the Supplier's expense;
or
 - (d) carry out or procure the rectification of the Goods at the Supplier's expense.

If the Supplier is required to make payments under any of the above paragraphs, it shall do so promptly upon the Purchaser's demand.

- 6.6 The Purchaser shall be entitled to carry out a final inspection and test of any Goods at the Supplier's premises prior to their Delivery and again at the Site upon or following Delivery.
- 6.7 No inspection or test by or on behalf of the Purchaser shall relieve the Supplier of its obligations or liabilities in respect of the Goods concerned under the terms of the Contract.

7 ON-SITE WORKING

- 7.1 In the event that the Supplier is required to work on the Site in order to construct, manufacture, deliver, site and/or install any Equipment, the Supplier shall visit the Site in advance in order to ascertain the facilities available provided that the Supplier shall not visit, deliver to nor commence work at, the Site without the prior written consent of the Purchaser.
- 7.2 With regard to the Delivery of any Equipment, the Purchaser shall provide drainage and any other necessary services to a point within six metres of the connecting points to the Equipment, shall complete final connection of such services and shall provide all necessary materials for such purpose (including but not limited to piping, lubricants, hydraulic fluids and electrical cables) and the Supplier shall install all interconnecting piping and wiring to the agreed connecting points.
- 7.3 In carrying out any work on the Site, the Supplier shall comply (and ensure that its employees and agents shall comply) with:-
- (a) the Purchaser's current standing instructions for contractors working on the Site, as amended from time to time, copies of which are available from the Purchaser upon request;
 - (b) all health and safety and environmental laws, regulations, guidance and policies applicable to the Site or the Purchaser's undertaking or activities; and
 - (c) in the case of suppliers of construction services, all applicable regulations relating to such services (including, without limitation, the Construction (Design and Management) Regulations 2007 SI 2007/320).
- 7.4 The Purchaser shall be entitled to remove, or require the removal of, any employee, agent or third person brought to the Site by the Supplier.

8 PRE-DELIVERY, DISPATCH AND PACKING

- 8.1 Prior to their Delivery to the Purchaser, the Supplier shall at all times store and pack the Goods safely and securely following normal and accepted practice and the Purchaser's reasonable instructions, and shall at the Supplier's own expense, take all reasonable steps to prevent any deterioration of the Goods. In particular but without limitation, Goods shall be properly packaged to survive transportation to the Site, and to resist distortion, damage, theft, contamination or corrosion. All suitable lifting points on the Goods shall be clearly identified by the Supplier.
- 8.2 All packaging shall comply with Directive 94/62/EC on Packaging and Packaging Waste (as amended), all applicable domestic, European Union and international laws and regulations relating to packaging, labelling and the carriage of hazardous goods, and all applicable health, safety and environmental standards. Without limitation, any hazardous Goods shall be marked with the correct international danger symbol and display the name of the Goods in the language of each country from, to or through which such Goods shall be transported; and all transport and other documentation shall include a declaration of the hazard and the name of the Goods in each such language and shall include all necessary emergency information in each such language.

- 8.3 All Goods and their packing, containers, advice notes, bills of lading, labels and invoices shall be clearly marked in accordance with the Purchaser's instructions and in any event with the Purchaser's Order number, Purchaser's codes, product/material reference number, name and Site.
- 8.4 The Purchaser shall not be required to return to the Supplier packaging materials for the Goods unless the fact that such packaging is returnable is expressly stated in any invoice of the Supplier and such return is at the Supplier's expense.
- 8.5 Upon the dispatch of each Delivery, the Supplier shall send to the Purchaser an advice note (stating the method of transport, weight, number or volume of Goods and the point and date of dispatch) and a further copy of such advice note shall accompany the Goods. If requested by the Purchaser, a certificate of conformity in a form approved by the Purchaser shall be posted separately to the Purchaser's quality control manager. If the Purchaser has not received the Goods within ten Business Days of the dispatch date, the Purchaser shall inform the Supplier in writing whereupon the Supplier shall be obliged to send replacement Goods as soon as is reasonably practicable and in any event within twenty Business Days thereafter.
- 8.6 Prior to or upon the dispatch of each Delivery, the Supplier shall advise the Purchaser of any special requirements, hazards or precautions required in relation to the transportation, use and/or storage of the Goods, shall attach any related warnings and instructions in a clearly visible manner on the outside of the packaging of such Goods, and shall provide a "material safety data sheet" (which shall include details of any likely adverse environmental effects caused by the use of the Goods) in relation to any new or altered Goods not previously provided to the Purchaser.

9 DELIVERY

- 9.1 The Supplier will deliver the Goods to the Site address, at the time and date or within the delivery period, in each case as stated in the Order. Subject to the Purchaser's prior written consent, the Supplier may specify the time and date for delivery of the Goods after the date of the Order by giving the Purchaser not less than five Business Days' prior written notice thereof.
- 9.2 Delivery shall take place when the Supplier, its carrier or agent transfer possession of the Goods to the Purchaser or its carrier or agent ("Delivery").
- 9.3 Unless otherwise stated in the Order, the Goods shall be delivered to the "Goods Inwards" area at the Site during normal business hours of the Purchaser. If the Goods are not so delivered, the Supplier shall remove them or arrange their removal to the correct location and shall indemnify the Purchaser in full against all losses, damages, charges and expenses incurred or suffered by the Purchaser in connection therewith.
- 9.4 The Supplier shall deliver the quantity or weight of Goods as set out in the Order. In the event that the Supplier delivers an excess quantity or weight of Goods contrary to the foregoing, the Supplier shall indemnify the Purchaser in full against all losses, damages, charges and expenses incurred or suffered by the Purchaser in returning to the Supplier such excess quantity or weight. In the event that the Supplier delivers less than the quantity or weight of Goods as set out in the Order, and without prejudice to condition 9.8, the Supplier shall, immediately upon notification from the Purchaser to such effect, deliver the balance of the Goods to the Purchaser at the Supplier's cost, as soon as reasonably practicable.
- 9.5 The Supplier shall be solely responsible for the proper loading or unloading of the Goods at the Site. If, to assist the Supplier, the Purchaser or any of its employees or agents carries out any loading or unloading of the Goods, no liability whatsoever shall thereby be incurred by the

Purchaser, employee or agent and the Supplier shall indemnify the Purchaser in full against any such liability incurred or suffered by the Purchaser.

- 9.6 The time of Delivery is of the essence of each Contract and if Delivery does not occur on the date or within the delivery period stated in the Order or by the Supplier pursuant to condition 9.1, the Purchaser may in writing (and without affecting its rights under condition 12 (warranties)) reject the Goods in accordance with condition 16 and/or cancel the Order in accordance with condition 17. The Supplier is liable for any damages, costs, expenses and any direct or consequential loss (including loss of income, profit, bargain, saving, goodwill, economic loss or otherwise) suffered or incurred by the Purchaser in connection with any failure or delay in Delivery and shall indemnify the Purchaser in full against all such damages, costs, expenses and loss.
- 9.7 Promptly upon becoming aware of the same, the Supplier shall notify the Purchaser of any actual, potential or anticipated delay in the scheduled Delivery and shall at the Supplier's own expense, take all reasonable steps to avoid or minimise any such delays.
- 9.8 If the date of Delivery is postponed or delayed for any reason whatsoever and notwithstanding condition 19 (Force Majeure) but without prejudice to condition 9.6, the Purchaser shall be entitled at its option (but without prejudice to any other rights it may have) to:-
- (a) require the Supplier to supply substitute Goods of such nature and upon such terms as shall be satisfactory in all respects to the Purchaser until the new Goods are available;
 - (b) in the event that the actual delay in the date of Delivery exceeds five Business Days, claim liquidated damages for any direct or indirect loss suffered or incurred by the Purchaser in connection with such delay in Delivery, such damages to equal one per cent of the Price for each week (or part week) between the scheduled date of Delivery and the actual date of Delivery; and/or
 - (c) cancel the Order in accordance with conditions 9.6 and 17, purchase alternative Goods elsewhere and recover from the Supplier the amount by which the cost of any alternative Goods exceeds the Price, and claim for any loss (whether direct, indirect and/or consequential) suffered or incurred by the Purchaser in connection with any such delay in Delivery which results other than from an event of Force Majeure within condition 19.
- 9.9 The Supplier shall not deliver the Goods by instalments or make part deliveries of Goods unless so stated in the Order or expressly agreed in writing in advance by the Purchaser. If Goods are to be delivered by instalments:-
- (a) the period during which such Delivery by instalments may be made and the quantity of the Goods comprised in each instalment shall be as set out in the Order or as agreed in writing by the Purchaser; and
 - (b) the Order shall be treated as a single Order and not severable. No single delivery shall constitute a separate contract and any failure by the Supplier to deliver any one or more of the instalments in accordance with the Contract or any claim by the Purchaser in respect of any one or more instalments shall entitle the Purchaser to treat the entire Contract under the same Order as having been repudiated.
- 9.10 Upon the delivery of any Equipment, the Supplier shall deliver to the Purchaser the following documentation:-
- (a) two copies of a planned maintenance and operating manual in CD-ROM format;
 - (b) two copies of a list of recommended spare parts (which list shall include details of relevant prices and suppliers and be divided into "Essential", "advisable" and "non-essential" categories);

- (c) two copies of a list of preferred lubricants and hydraulic fluids, together with a list of equivalent brands;
- (d) three copies of general assembly drawings (including mechanical systems, electrical circuits, hydraulic circuits and pneumatic circuits) in AutoCAD 2000 format;
- (e) a Declaration of Conformity or Certificate of Incorporation in accordance with condition 14.4;
- (f) the recommended preventative maintenance plan; and
- (g) all necessary details and costs in respect of a service contract to commence on expiry of the Defects Liability Period, as recommended by the Supplier.

Subject to condition 16, acceptance of the Equipment shall only take place when all the documents referred to above have been provided by the Supplier to the Purchaser's satisfaction.

10 SPARE PARTS

With respect to any Order for Equipment, the Supplier shall ensure that any spare part required to commission or operate the Equipment is:-

- (a) provided upon the Delivery of such Equipment and its cost is included within the Price;
- (b) available for at least ten years following the installation of the Equipment;
- (c) suitable for use in the country in which the Site is located; and
- (d) re-purchased by the Supplier at a price equal to its original sale price (provided that it has been maintained in good condition) if such spare part is not used by the Purchaser within twelve months of its Delivery.

11 RISK AND TITLE

- 11.1 Risk of damage to, and/or loss of, the Goods, and responsibility for their storage and insurance, shall pass to the Purchaser upon Delivery to the Site. In particular but without limitation, the risk of damage to, and/or loss of, Goods in transit is the responsibility of the Supplier. If upon receipt of a Delivery, the Purchaser is aware of any damage or deficiency in the Goods, the Purchaser shall be entitled to reject the Goods in accordance with condition 16 without examining their contents; in such event, the Supplier shall indemnify the Purchaser in full against all losses, damages, charges and expenses incurred or suffered by the Purchaser in connection with the return of the Goods to the Supplier.
- 11.2 Without prejudice to the Purchaser's rights to reject the Goods (whether accruing to the Purchaser under condition 16 or otherwise), title to the Goods shall pass to the Purchaser upon Delivery to the Site or upon payment for the Goods (whichever is earlier).
- 11.3 In the event that title to the Goods passes to the Purchaser prior to their Delivery to the Purchaser in accordance with condition 11.2:-
- (a) the Supplier shall hold the Goods as the Purchaser's fiduciary agent and bailee and shall keep the Goods separate from those of the Supplier and third parties and properly stored, protected, insured and identified as the Purchaser's property;
 - (b) the Purchaser shall be entitled at any time to require the Supplier to deliver up the Goods to the Purchaser and, if the Supplier fails to do so, forthwith to enter upon any premises of the Supplier or any third party where the Goods are stored and take possession of the Goods; and
 - (c) the Supplier will not at any time exercise or seek to enforce any lien over any Goods or pledge or in any way charge or purport to charge by way of security for any indebtedness or create any encumbrance or security interest over (or otherwise purport to do so) any of the Goods.

11.4 Without prejudice to condition 25.2 (unenforceable provisions), each right or obligation contained in this condition 11 shall be construed as a separate right or obligation and if any such right or obligation is held to create a charge over any part of the assets or undertaking of the Supplier and is held to be void for want of registration, the remaining rights and obligations in this condition 11 shall remain in full force and effect and binding upon the Supplier.

12 WARRANTIES

12.1 Without prejudice to any other rights or remedies of the Purchaser, the Supplier hereby represents and warrants to the Purchaser that:-

- (a) the quantity of the Goods is as stated in the Order;
- (b) the Goods are of satisfactory quality (as defined in section 14 (2) of the Sale of Goods Act 1979 (as amended by section 1(1) of the Sale and Supply of Goods Act 1994)) and are fit for any purpose held out by the Supplier or made known to the Supplier at the time the Order was placed;
- (c) the Goods are free from all defects in design, material and workmanship;
- (d) the Goods correspond with any relevant plans, drawings, designs, specifications or samples provided to the Supplier by the Purchaser or forming part of the Contract;
- (e) any drawings, calculations, data, details or other information or documents provided by the Supplier (whether or not such information has been approved by the Purchaser) are accurate in all material respects;
- (f) the Goods and all supporting literature and documentation comply with all United Kingdom, United States of America, European Union and other applicable legal and statutory requirements and regulations in force from time to time relating to the sale, operation and use of the particular category of Goods;
- (g) the design, manufacture, construction, supply, use and quality of the Goods comply in all respects with all United Kingdom, United States of America, European Union and other relevant statutes, statutory rules, orders, directives, licences, consents or permits which may be in force from time to time;
- (h) the Goods have all necessary export and/or import licences and comply with all relevant government export and/or import regulations;
- (i) the Goods (and/or their importation) do not infringe the Intellectual Property Rights of any other person;
- (j) all Equipment will perform on a multi-shift or continual use basis for at least eighteen months from Delivery or at least twelve months from the Purchaser's acceptance of the Equipment, whichever is the later; and
- (k) any support services in respect of the Goods will be performed by appropriately qualified and trained personnel of the Supplier with due care and diligence and to such standard of quality and performance as the Purchaser might reasonably expect from a fully qualified and experienced provider of such services.

12.2 In respect of any Goods and without prejudice to condition 12.1(j), the "Defects Liability Period" means:-

- (a) subject to paragraphs (b)-(d) below, twelve months from Delivery of such Goods or the shelf life of the Goods as stated in the Contract (whichever is longer);
- (b) with regard to any Goods which have defects which are not detectable at the time of Delivery, twelve months from the time when such defects become known to the Purchaser;
- (c) with regard to any Goods which constitute part of a system, twelve months from the date on which such system in its entirety is approved or accepted by the Purchaser; and

- (d) with regard to spare parts, twelve months from the date of their Delivery to the Purchaser.

For the avoidance of doubt, the Defects Liability Period is without prejudice to any statutory or other limitation period otherwise applying to any claims by the Purchaser against the Supplier.

- 12.3 Without prejudice to any other remedy available to the Purchaser (whether offered by the Supplier, a third party or otherwise) or any other provision of these Conditions, if within the Defects Liability Period, it is discovered that the Goods supplied do not comply with the Contract, the Purchaser shall be entitled (at its option and at the Supplier's expense) within thirty (30) days either to require the Supplier to remedy any defect in the Goods or to supply replacement Goods in compliance with the Contract. Any Goods so repaired or replaced shall be subject to a further Defects Liability Period commencing from the date of their Delivery after their repair or replacement during which the Purchaser may exercise the said rights in respect of them.
- 12.4 If the Supplier fails within thirty (30) days of receiving notice from the Purchaser to repair or replace the defective Goods in accordance with condition 12.3 or in the event of an emergency, then the Purchaser shall be entitled, at its option, to:-
 - (a) take the necessary steps to repair or replace the same at the Supplier's expense; or
 - (b) reject the Goods in accordance with condition 16; and
 - (c) cancel the Order in accordance with condition 17 and require the repayment of the Price, or any part of it, previously paid by the Purchaser.

13 INDEMNITIES

- 13.1 Without prejudice to any other rights or remedies of the Purchaser, the Supplier will indemnify the Purchaser and keep it indemnified in full against all liability, loss (including, without limitation, any direct, consequential and special loss or damage, whether for loss of income, profit, business, contracts, goodwill, bargain, saving or otherwise), costs and expenses (including legal expenses) awarded against, suffered, incurred or paid by the Purchaser or any other claims for compensation which arise out of or in connection with, the sale and supply of Goods by the Supplier or their use or resale by the Purchaser.
- 13.2 The Supplier shall not inflict damage or injury on any property or persons and the Supplier shall indemnify the Purchaser in full against all losses, actions, demands, damages, costs, charges and expenses incurred or suffered by the Purchaser in connection with any such damage or injury caused or alleged to have been caused by the Supplier.

14 CONTINUING OBLIGATIONS AND COMPLIANCE

- 14.1 The Supplier shall respond to any issues or problems in respect of the Goods promptly upon notice by the Purchaser and in any event by the end of the following business day.
- 14.2 The Supplier shall keep the Purchaser informed of any improvements and upgrades in respect of the Goods that may become available during the period of five years from the date of Delivery of the Goods.
- 14.3 All Equipment shall conform with the following:-
 - (a) Machinery Directive 2006/42 Directive on Machinery and amending Directive 95/16/EC (recast);
 - (b) The Health and Safety at Work etc Act 1974 and all regulations made under the same;

- (c) The Supply of Machinery (Safety) Regulations 2008 (SI 1597);
- (d) The Provision and Use of Work Equipment Regulations 1998 (SI 2306) (as amended);
- (e) Electrical Equipment (Safety) Regulations 1994 (SI 3260) (as amended);
- (f) Chemicals (Hazard Information and Packaging for Supply)(Amendment) Regulations 2009 (SI 2009/716);
- (g) Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677); and
- (h) European (EN) Standards EN289;2004 + A1 2008.
- (i) such other United Kingdom, United States of America, European Union and other legal and statutory requirements and regulations in force from time to time as the Purchaser shall consider appropriate or applicable to the Contract.

14.4 All Equipment shall be marked with a CE mark and shall be accompanied by the relevant EU Declaration of Conformity or Certificate of Incorporation.

15 INSURANCE

15.1 The Supplier shall insure and keep insured to their full market value with an insurer of repute satisfactory in all respects to the Purchaser:-

- (a) the Goods; and
- (b) any other goods, tools, materials, equipment or other property provided by the Purchaser or on its behalf for use by the Supplier for the purposes of the Contract (which goods, tools, materials, equipment or other property shall not be used for the benefit of any other customer of the Supplier),

in each case while the same are in the Supplier's possession or while the risk in respect of them remains with the Supplier.

15.2 The Supplier shall have in force (and shall procure each of its agents to have in force):-

- (a) employer's liability insurance;
- (b) public liability insurance; and
- (c) insurance against any liabilities it might incur under these Conditions,

in each case for such sum and range of cover and with such insurer of repute as the Purchaser shall approve (but in any event for not less than three million pounds Sterling for any one accident covered by insurance within paragraph (b) above).

15.3 As soon as reasonably practicable after becoming aware of the same, the Purchaser shall notify the Supplier of any event likely to form the subject of a claim under the Supplier's insurances within condition 15.1 or 15.2 and shall give such information and assistance in respect thereof as the Supplier's insurers may reasonably require.

15.4 The Supplier shall not negotiate, pay, settle, admit or repudiate any claim brought under its insurances in relation to the Purchaser or any Goods provided to the Purchaser without the Purchaser's prior written consent.

16 REJECTION

16.1 Without prejudice to any other rights or remedies of the Purchaser, the Purchaser shall be entitled to reject any Goods which are not in accordance with the Contract. The Purchaser shall not be deemed to have accepted any Goods until it has had a reasonable time (being not less than twenty Business Days) to inspect them following Delivery, or if later, after any hidden or latent defects in the Goods have become apparent to the Purchaser. Section 15A of the Sale of Goods Act 1979 (as inserted by section 4(1) of the Sale and Supply of Goods Act 1994) shall not apply.

16.2 When giving notice of rejection within condition 16.1, the Purchaser shall specify in reasonable detail the reasons for such rejection and shall as soon as reasonably practicable thereafter return the rejected Goods to the Supplier at the Supplier's risk and expense. This is without prejudice to the Purchaser's rights pursuant to condition 12.3 to require the Supplier to remedy any defect in the Goods or to supply replacement Goods in compliance with the Contract.

16.3 Signature of any advice note by or on behalf of the Purchaser shall not imply or be deemed to constitute the acceptance of Goods by the Purchaser or its confirmation that they comply with the terms of the Contract.

17 CANCELLATION

17.1 Without prejudice to any other rights or remedies of the Purchaser, the Purchaser may at any time by written notice to the Supplier cancel any Order in whole or in part, provided that if at the date of such notice (the "Cancellation Date"):-

- (a) the Supplier is not in breach of the Contract, the Purchaser shall pay a reasonable price for the work in progress relating to that Order carried out at the Cancellation Date but shall not be liable for any other cost, expense, loss, damage or liability arising from such cancellation; and
- (b) the Supplier is in breach of the Contract, the Purchaser shall be entitled to cancel the Order without liability and without prejudice to any rights it may have in relation to such breach.

17.2 On the Cancellation Date, the Supplier shall discontinue all work relating to the Order, shall refrain from placing further orders with its suppliers and pending the Purchaser's instructions, shall preserve and protect all materials purchased for or committed to the Order and all work-in-progress and completed work. The Supplier shall dispose of the same in accordance with the Purchaser's instructions.

17.3 Upon any cancellation, the Parties shall use their reasonable endeavours in good faith to negotiate and agree any payment due to the Supplier or refund due to the Purchaser, having due regard to that portion of the work satisfactorily performed as at the Cancellation Date, the reasonable expenses incurred by the Supplier as a direct result of the cancellation (as substantiated by appropriate receipts verified to the Purchaser's satisfaction), the materials available to the Supplier and any amounts previously paid by the Purchaser. The Supplier shall not be entitled to any loss of potential profits, contribution to overheads or consequential damages due to such cancellation.

17.4 If any issue between the Parties arising out of or in connection with such cancellation cannot be resolved amicably through negotiations pursuant to condition 17.3, either party may refer the issue at any time to an Expert in accordance with condition 27.

18 INSOLVENCY

If:-

- (a) the Supplier ceases or threatens to cease to carry on business;
- (b) the Supplier is unable to pay its debts as they fall due;
- (c) the Supplier makes any voluntary arrangement with its creditors;
- (d) the Supplier (being an individual or firm) becomes bankrupt;
- (e) the Supplier (being a company) becomes subject to a petition for an administration order or winding-up order (otherwise than for the purposes of amalgamation or reconstruction);

- (f) an encumbrancer takes possession, or a receiver or administrative receiver is appointed in respect, of any of the property or assets of the Supplier; or
- (g) the Purchaser reasonably apprehends that any of the events mentioned in this condition 18 has occurred or is about to occur and notifies the Supplier accordingly,

then the Purchaser may, without prejudice to any of its rights and/or without incurring liability for any loss or damage caused to the Supplier:-

- 18.1 cancel or suspend the Contract and the Order forthwith by notice in writing to the Supplier or to the receiver, administrator or any other person in whom the Order may have become vested;
- 18.2 give such receiver, administrator or other such person the option of fulfilling the Order subject to his providing a guarantee for the due and faithful performance of the Order up to an amount of the Price; and/or
- 18.3 enter the Supplier's premises to identify and remove the Purchaser's property.

19 FORCE MAJEURE

- 19.1 If either party is prevented from performing, or delayed in the performance of, its obligations under the Contract by an event of Force Majeure arising after the placement of the Order, such party may notify the other of the existence of such event of Force Majeure and the contractual rights and obligations of the Parties under the Contract shall be suspended.
- 19.2 If the event of Force Majeure continues for a period of 90 days or less, then upon the cessation of the Force Majeure event, the contractual rights and obligations of the Parties under the Contract shall be reinstated with such reasonable modifications to take account of the Force Majeure event as may be agreed between the Parties, or in default of agreement, as may be determined by an Expert in accordance with condition 27.
- 19.3 If the event of Force Majeure continues for a period in excess of 90 days, then the Contract shall be deemed to have been terminated by mutual consent without rights or liability on either side.

20 CONFIDENTIALITY

- 20.1 All specifications, formulations, drawings, designs, documents, materials, information and tools (and any information derived therefrom) ("Confidential Information") supplied or otherwise communicated by the Purchaser to the Supplier for the purposes of, or in connection with, the Contract shall be kept secret and confidential by the Supplier. Except with the prior written consent of the Purchaser, the Supplier shall not:
 - (a) use any Confidential Information for any purpose other than the performance of its obligations under the Contract; or
 - (b) disclose Confidential Information to any person other than those of its staff or agents to whom such disclosure is reasonably necessary for the discharge of the Supplier's obligations under the Contract Provided that the Supplier shall ensure that any such recipient complies with the Supplier's obligations of confidentiality under this condition 20 as if he was a party hereto,

Provided that this condition 20.1 shall not apply to Confidential Information which:-

- (i) is or becomes publicly known other than as a result of a breach of the Contract by the Supplier, or by any person acquiring the Confidential Information from the Supplier; or
- (ii) is required to be disclosed by law or any court or regulatory, governmental or quasi-governmental authority of competent jurisdiction Provided that where reasonably practicable, the Supplier shall, prior to such disclosure, agree with the Purchaser the timing, manner and content of such disclosure.

20.2 Without prejudice to condition 20.1 neither party may make or send a public announcement, communication or circular concerning the Contract or its existence, terms or subject matter unless the form, content and manner of publication have been agreed in writing by the other party (such agreement not to be unreasonably withheld or delayed) provided that this condition 20.2 shall not apply to any public announcement, communication or circular if it is required by law, any court or any regulatory, governmental or quasi-governmental authority of competent jurisdiction.

20.3 The Supplier shall not take any photographs of the Site or any of the Purchaser's equipment, installations or property without the Purchaser's prior consent in writing.

21 INTELLECTUAL PROPERTY

21.1 The Purchaser shall own and retain all Intellectual Property Rights in the Goods and in their constituent parts, and in any equipment, computer software or drawings used or produced in their manufacture which has been specially made for the Purchaser by the Supplier for the purposes of the Contract. The Supplier waives all moral rights therein, shall not register any Intellectual Property Rights or other rights in such Goods or other assets, and shall not use them except in order to perform its obligations under the Contract.

21.2 All Confidential Information supplied by the Purchaser for the purpose of the Contract shall:-

- (a) remain the property of the Purchaser;
- (b) be returned to the Purchaser in good condition upon Delivery of the Goods;
- (c) be insured by the Supplier to such value and against such risks as the Purchaser may reasonably require while in the Supplier's possession;
- (d) be stored separately from the Supplier's own property and be clearly identified as the property of the Purchaser; and
- (e) not be altered or moved without the prior written consent of the Purchaser.

The Purchaser shall be entitled to enter the Supplier's premises to recover its Confidential Information and the Supplier shall indemnify the Purchaser in full against all actions, suits, claims, demands, costs, charges and expenses suffered or incurred by the Purchaser in connection with the loss of or any damage to, such Confidential Information.

21.3 Without prejudice to condition 12.1(i), the Supplier shall indemnify the Purchaser in full against all actions, suits, claims, demands, costs, charges and expenses arising from any claim that the importation, use or sale of the Goods infringes any Intellectual Property Rights of any other person anywhere in the world except to the extent that the claim arises from compliance with any Confidential Information supplied by the Purchaser.

22 IMPROPER INFLUENCE

22.1 The Supplier must refrain from directly or indirectly exerting improper influence on the decisions of the Purchaser's representatives who become known to the Supplier during performance of the Contract, by means of offer to pay, promises to pay, or authorising the

payment of any monies or payments in kind, or by granting other advantages. In the event of a breach of this provision, the Purchaser shall be entitled to terminate this Contract in full or in part for good cause and all payments due and owing to Supplier will be automatically cancelled. The Supplier shall indemnify the Purchaser for any losses, damages, or claims sought by third Parties in connection with any breach by the Supplier under this condition.

- 22.2 The Supplier certifies that it has not paid or offered to pay, or has caused to be paid, or offered or agreed to be paid directly or indirectly, in respect of this Contract and any ancillary agreements, any political contributions, fees or commissions as defined under the FCPA or other comparable law, including without limitation the Prevention of Corruption Acts 1889 to 1916 or any applicable laws of the European Union.
- 22.3 The Supplier further certifies that it will not offer, pay, promise to pay, or authorise payment of any monies, or offer, give, promise to give, or authorise the giving of anything of value to any foreign official or government official as such term is defined in the FCPA or comparable law, including without limitation the Prevention of Corruption Acts 1889 to 1916 or any applicable laws of the European Union.

23 ASSIGNMENT

- 23.1 The Contract is personal to the Supplier and the Supplier shall not assign, transfer or sub-contract any of its rights or obligations under the Contract (or purport to do so) without the Purchaser's prior written consent.
- 23.2 The Purchaser may assign, transfer or sub-contract any of its rights or obligations under the Contract to any of its Associates.

24 NOTICES

- 24.1 Without prejudice to condition 24.2, any notice required or permitted to be given by either party under these Conditions shall be in writing, addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this condition 24 to the party giving the notice as the correct address for service of documents. Any such notice shall be delivered by hand or sent by first class post (airmail if overseas), by recorded delivery post or by facsimile or e-mail provided that, in the case of facsimile and e-mail, it is also sent otherwise in accordance with this condition.
- 24.2 In the absence of evidence of earlier receipt, a notice or other communication shall be deemed to have been given:-

- (a) if delivered personally, at the time of delivery to the address referred to in condition 24.1;
- (b) if sent by pre-paid first class or recorded delivery post (except air mail), two Business Days after posting it;
- (c) if sent by air mail, six Business Days after posting it; and
- (d) if sent by facsimile transmission or e-mail, one hour after its dispatch,

Provided that if, in the case of delivery by hand or facsimile transmission, such delivery occurs on a day which is not a business day or after 5pm on any business day, service shall be deemed to occur at 9am on the next succeeding business day.

25 GENERAL

- 25.1 *Waiver*: The failure of the Purchaser at any time to exercise or enforce, or its delay in exercising or enforcing, any right or remedy provided by the Contract or by law shall not constitute a waiver of any such right or remedy or a waiver of any other rights or remedies. No single or partial exercise or enforcement of a right or remedy provided by the Contract or by law shall prevent or bar any further exercise or enforcement of any such right or remedy or the exercise or enforcement of any other right or remedy. The waiver by the Purchaser of any breach of any of these Conditions by the Supplier shall not constitute a waiver of any subsequent or continuing breach of the same or any other condition.
- 25.2 *Unenforceable Provisions*: If any one or more of these Conditions is held to be illegal, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of these Conditions in that jurisdiction or of any condition in any other jurisdiction shall not be affected; and if any one or more of these Conditions is found to be invalid or unenforceable but would be valid and enforceable if some part of the condition were modified, that condition will apply with whatever modifications are reasonably necessary to make it valid.
- 25.3 *Time of the Essence*: Each date, time or period referred to in the Contract is of the essence. If the Parties agree in writing to vary a date, time or period, the varied date, time or period shall be of the essence.
- 25.4 *Partnership and Agency*: Except to the extent that the Contract expressly provides otherwise, the Contract does not create a partnership or employment relationship between the Parties nor make one party the agent or employee of the other party for any purpose; and no party has any authority or power to bind, contract in the name of, communicate or incur any liability for or on behalf of the other party in any way or for any purpose.
- 25.5 *Language*: These Conditions are drafted in the English language. If reproduced in any other language, only the English language text is authentic and binding on the Parties and the text in any other language shall not affect the interpretation of these Conditions. If there is a conflict or inconsistency between the English language text and the text in any other language, the English language text shall prevail.
- 25.6 *Third Party Rights*: A person who is not a party to these Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these Conditions and the Parties do not intend that any third party rights are created by these Conditions Provided that any Associate of the Purchaser may benefit under these Conditions and the Contract and enforce its terms against the Supplier.

26 GOVERNING LAW AND JURISDICTION

- 26.1 These Conditions are governed by, and shall be construed in accordance with, English law.
- 26.2 Subject to condition 27, the courts of England have non-exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with these Conditions; and, for these purposes, each party irrevocably submits to the non-exclusive jurisdiction of the courts of England and irrevocably waives any objection which it might at any time have to the courts of England.

27 EXPERT DETERMINATION

- 27.1 If any issue between the Parties arising out of or in connection with the Contract cannot be resolved amicably through negotiations between them, either party may, on giving written

notice to the other party, refer the issue at any time to any person who may be appointed by agreement between the Parties or, in default of agreement within ten Business Days of such agreement first being sought, nominated on the application of either party by the President for the time being of the Law Society of England & Wales.

- 27.2 Any person to whom a reference is made under condition 27.1 (the "Expert") will act as an expert and not as an arbitrator and will be entitled to appoint any technical expert he considers necessary to assist him in determining the matter in question. The decision of the Expert (which will be given by him in writing and state his reasons) will (in the absence of manifest error) be final and binding on the Parties.
- 27.3 Each party will provide the Expert with whatever information he reasonably requires for the purposes of his determination.
- 27.4 The costs of the Expert (including the costs of any technical expert appointed by him) will be borne by the Parties in the proportions that the Expert, in its discretion, decides is fair and reasonable in all the circumstances or, if no decision is made by the Expert, by the Parties in equal proportions.
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