

## PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** “Buyer” means Sekisui Diagnostics, LLC or other entity identified on this Order as the purchaser of Products. “Master Purchase Agreement” means a written agreement previously entered into between Buyer and Seller, if any, governing the sale and purchase of Products. “Order” shall have the meaning specified in Section 2 hereof. “Products” shall have the meaning specified in Section 7 hereof. “Seller” means the person or entity to which this Order is addressed.
2. **AGREEMENT AND ACCEPTANCE.** Except where this Order is issued pursuant to a Master Purchase Agreement as an ordering mechanism, this purchase order, including any attached schedules (collectively, this “Order”), is an offer to purchase, and may be accepted by Seller either in writing or by any conduct which recognizes the existence of a contract. Any such acceptance is limited to the express terms of this Order. Buyer hereby objects to and rejects any proposal for additional or different terms or any attempt by Seller to vary any of the terms of this Order, including, without limitation, all preprinted or other terms and conditions of any invoice or acknowledgement submitted by Seller, and any such additional or different terms or variances shall be deemed material. Any such proposal or attempt by Seller that would materially change the description, quantity, price, rights to use or delivery schedule of the Products shall constitute a rejection of this offer. Any other such proposal or attempt shall not operate as a rejection, but this offer shall be deemed accepted by Seller without regard thereto.
3. **ENTIRE AGREEMENT.** Except where this Order is issued pursuant to a Master Purchase Agreement as an ordering mechanism, this Order constitutes the complete and exclusive statement of the terms of the agreement between Buyer and Seller with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such subject matter. No modification or rescission of this Order shall be binding upon Buyer unless in writing and signed by Buyer.
4. **SHIPMENT.** All Products shall be suitably prepared and packed for shipment, and Seller shall mark the number of this Order on each container and enclose an itemized packing slip with such number in each container. If Seller fails to enclose an itemized packing slip in each container, Buyers determination of count or weight shall be conclusive. Seller shall mail invoices in duplicate and shipping documents to Buyer for each shipment on the day such shipment is made. If, in order to comply with the required delivery date, Seller must ship by a more expensive means than that specified in this Order, Seller shall bear the increased transportation costs resulting therefrom (unless the necessity for such shipment change has been caused by Buyer). The products shall be delivered in a single lot unless specifically stated otherwise in this Order or in a Master Purchase Agreement.
5. **DELIVERY.** Time is of the essence of this Order. The Products shall be delivered on the date specified on the front of this Order. Buyer shall only accept deliveries at the delivery location Monday thru Friday between 9:00 am and 5:00 pm. Failure to complete delivery of items or rendering of services by the time promised shall constitute sufficient cause for termination pursuant to Section 15 hereof. Delivery in accordance with this Order does not constitute acceptance by Buyer under this Order.
6. **INSPECTION AND REJECTION.** Payment for any Product delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect all Products for sixty (60) days after actual receipt of the Products at Buyers place of business and to reject (including revocation of its earlier acceptance of) any or all of such Products which are, in Buyers sole judgment, nonconforming. Use of a portion of the Products for the purpose of testing shall not constitute an acceptance of the Products. Buyer shall not be obligated, however, to test or reject any Product, and Buyers inspection of, or failure to inspect or reject, any Product shall not affect any rights of Buyer under this Order. Rejected Products may be held, and if Seller so requests may be returned to Seller, at Sellers sole risk and expense and, in addition to its other rights, Buyer may cancel this Order and (whether or not it has cancelled this Order) may recover so much of the price as has been paid and may charge Seller all expenses of inspection and return, including unpacking, examining, repackaging and shipment. SELLER SHALL NOT REPLACE REJECTED PRODUCTS WITHOUT THE WRITTEN CONSENT OF BUYER.
7. **WARRANTIES.** (a) Seller hereby makes the following representations and warranties to Buyer: (i) Seller shall deliver good and marketable title to all goods and services furnished pursuant to this Order, including, without limitation, the media, articles, materials, drawings, data, information and other tangible and intangible property, and the design, delivery, installation, inspection, testing, expediting and maintenance and all related activities, specified as items, or required to furnish items, ordered by this Order (collectively, the “Products”); (ii) all Products (A) will be of good quality and workmanship and free from all defects (latent and patent) or, in the case of services, performed in a professional and workmanlike manner consistent with best industry practices; (B) will conform to all specifications, drawings, descriptions and statements of work furnished, specified, or agreed to, by Buyer; (C) will conform to any samples and to any statements made on the containers, labels, sales literature or advertisements for such Products; (D) will be adequately contained, packaged, marked and labeled; (E) will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used; and (F) if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Products, will be fit for such particular purpose. Notwithstanding the foregoing, Seller shall not be liable for defects in design to the extent Products are manufactured pursuant to, and in accordance with, detailed designs furnished by Buyer; (iii) Seller is free to enter into and fully perform this Order and has obtained any and all grants of authority necessary to do so from its Board of Directors or otherwise. (b) No warranties contained in this Order and no remedies available to Buyer for the breach thereof may be limited unless and except to the extent specifically agreed upon by Buyer in a separate agreement signed by Buyer. Sellers obligations under all such warranties shall survive and be unaffected by any inspection, testing, acceptance and use. All such warranties shall run to Buyer, to its successors, assigns and customers, and to users and consumers of, and others affected by, the Products. (c) Subject to Section 6 hereof, Seller agrees promptly to replace or repair any Product not conforming to this Order or to any warranty set forth in this Order (each, a “Nonconforming Product”), without any expense (including transportation expense) to Buyer. In the event of Sellers failure promptly to repair or replace such Nonconforming Product(s), Buyer, after reasonable notice to Seller, may repair or replace such Nonconforming Product(s) and charge Seller for all costs incurred by Buyer in doing so.
8. **PRICE AND TAXES; PRICE WARRANTIES.** (a) The price specified herein, unless otherwise expressly stated, includes: (i) all taxes and duties of any kind that Seller is required to pay with respect to the Products (including any applicable custom duties); and (ii) all charges for labeling, packing, packaging, loading, storage and insurance (including any charges associated with obtaining necessary import/export licenses). (b) Seller represents and warrants that the prices and payment terms under this Order are not less favorable to Buyer than those currently extended to any other customer for the same or substantially similar products in similar quantities. If Seller reduces its prices for any Product before this Order is completed, Seller shall reduce the prices under this Order accordingly. At Buyers option, Seller shall promptly refund to Buyer, or apply as a credit against future payments due under this Order, the amount of any overpayments that result from such price reductions for Products not yet accepted by Buyer.
9. **INDEMNIFICATION.** Seller shall, severally as applicable, at all times hereafter indemnify, defend and hold harmless Buyer, its affiliates, and all of their respective officers, directors, agents, sublicensees, employees, subcontractors or other representatives from and against any and all loss, liability, cost or expense, and any and all claims by, or liability to, any third party, for loss, damage or injury to persons or property which is based on or in any manner arises out of or is incidental to: (a) any breach by Seller of any warranty, representation or covenant contained in this Order; (b) any defective or nonconforming Product; or (c) any loss, damage, or injury to persons or property or damage to the extent based on or in any manner directly arising out of any act or omission by Seller, its affiliates, or any of their respective officers, directors, agents, sublicensees, employees, subcontractors or other representatives in connection with the performance or nonperformance of this Order by Seller; in each case including, without limitation, attorneys fees, court costs and other expenses associated with or incurred in connection with any such claim or loss.

10. **TITLE AND RISK OF LOSS.** Title to the Products shall not pass from Seller to Buyer until Buyers final acceptance of the Products. Seller assumes all risk of loss of or damage to the Products (or any part thereof) prior to the acceptance thereof (and following any revocation of such acceptance) by Buyer.
11. **BUYER PROPERTY AND CONFIDENTIALITY.** As to any information or materials provided by Buyer to Seller in connection with this Order and any information or materials (including but not limited to data, progeny or derivatives, improvements and inventions) generated by Seller resulting from the direct or indirect use of such information or materials (“Buyer Property”), the following provisions shall apply. Notwithstanding any provision to the contrary, all Buyer Property is the exclusive property and confidential information of Buyer. Seller shall not use Buyer Property for any purpose other than performance under this Order, without the express written permission of Buyer. Seller shall (i) protect the confidentiality of Buyer Property, (ii) assist Buyer in all reasonable ways (at Buyer’s expense and request) in protecting and securing Buyer Property, including but not limited to applying for patents, copyrights or other rights therein and (iii) execute, deliver such documents as may be required to carry out the provisions of 11(ii) herein. Seller shall use Buyer Property only in compliance with all applicable federal, state and local laws and regulations. Seller will promptly return or destroy Buyer Property at Buyer’s request.
12. **INFRINGEMENT OF THIRD PARTY RIGHTS.** Seller shall, at its own expense, defend any suit, action or other claim against Buyer, its affiliates and/or their respective officers, directors, employees, contractors, agents, representatives, successors, assigns, customers or licensees for alleged infringement of any United States or foreign patent, trademark, copyright or other proprietary right arising from the sale or use of any Product, and Buyer may be represented by and actively participate through its own counsel in any such suit or proceedings. Seller shall indemnify and hold harmless Buyer and such other parties from any damages, liabilities, claims, royalties, losses or expenses (including attorneys fees and court costs) arising therefrom or in connection therewith. In case any Product, or any part or use thereof, is held to constitute such an infringement, Seller shall, at its own expense, either procure for Buyer the right to continue using such Product or part thereof, or replace the same with a substantially equal but noninfringing Product meeting the requirements of this Order. In the event Seller does not or cannot procure such rights, or replace such Product, Seller shall promptly refund to Buyer all payments made under this Order.
13. **CHANGE OF CONTROL.** Seller must notify Sekisui Diagnostics, LLC at least ninety (90) days prior to any changes in the following: component formulations, manufacturing process, component testing procedure, manufacturing or testing facilities or equipment, critical raw materials or source of animal derived materials. Sellers must notify Sekisui Diagnostics, LLC within thirty (30) days of any of the following: component problems and/or recalls and any enforcement actions initiated against the Seller by a Regulatory Agency.
14. **TERMINATION FOR CONVENIENCE OF BUYER.** In addition to any other provisions for termination hereunder, Buyer may terminate all or any part of this Order without cause and at any time by written notice to Seller. In the event of such termination, Seller shall immediately stop, and cause its suppliers and subcontractors to stop, all work and deliveries under this Order, with the goal of minimizing the cost of termination. If the cancelled Order is for customs goods, Buyer shall pay to Seller, within forty five (45) days of receiving a detailed invoice from Seller to which Buyer agrees, a percentage of the total Order price reflecting the percentage of the Order unpaid for and completed prior to cancellation plus reasonable costs actually incurred by Seller and directly resulting from such termination (the “**Termination Payment**”). Buyer may verify supporting documentation of such costs. Seller will not be paid for any work done or deliveries initiated after receipt of the notice of termination, nor for any costs incurred by Seller or by Seller’s suppliers or subcontractors which could reasonably have been avoided. No amount for anticipated profit on work not performed or on unfinished Products will be recoverable by Seller. In no event shall the sum of the Termination Payment plus payments made or due Seller for the non-terminated portions of this Order exceed the Order’s total price. Seller shall promptly refund to Buyer any payments in excess of the sum of the Termination Payment plus payments made or due for the non-terminated portions of this Order. The termination of any portion of this Order pursuant to this **Section 14** shall not affect either party’s obligations as to any non-terminated portions of this Order.
15. **TERMINATION FOR CAUSE.** Buyer may, by written notice to Seller, terminate this Order, in whole or in part, for default if: (a) Seller fails to perform in accordance with any requirement of this Order or fails to make sufficient progress thereby endangering the timely performance of this Order; (b) Seller becomes insolvent, has commenced against it or proposes to commence any bankruptcy, reorganization or insolvency proceeding or other proceeding under any federal, state or other law for the relief of debtors; or (c) any receiver, trustee or custodian is appointed to take possession of all or any substantial portion of the assets of Seller. Any such termination shall be at no cost to Buyer except for completed Products delivered and accepted by Buyer prior to such termination, and Seller shall repay to Buyer any progress payments made in excess thereof. The termination of any portion of this Order pursuant to this **Section 15** shall not affect either party’s obligations as to any non-terminated portions of this Order. In the event of termination pursuant to this **Section 15**, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, goods and services similar to Products not provided to Buyer hereunder, and Seller shall be liable to Buyer for any damages arising therefrom, including attorneys fees and excess costs incurred by Buyer in obtaining such substitute goods and services.
16. **SETOFF.** All claims by Seller for payment due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any claim arising out of this or any other transaction between Buyer and Seller.
17. **SAMPLE VALUATION.** All sample shipments whether or not provided free of charge, must be valued at the production pricing or estimated fair market value as if the goods were being sold. If the value of the production price of goods is known, the invoice shall have the production price even though the sample is being provided free of charge. Prices are not accepted at \$1.00 USD, \$1.00 CAD, £1.00 GBP, €1.00 EUR or any undervalued amount. Undervaluation will result in the shipment being held. If the invoice is found to be undervalued at time of importation, the supplier will be instructed to amend the invoice and the shipment will be held until the amended invoice is received for proper Customs clearance.
18. **FORCE MAJEURE.** Buyer shall not be liable for any delay in, or failure of, delivery or acceptance, or any other impairment of its performance under this Order, in whole or in part caused by the occurrence of any contingency beyond its control, including, without limitation, war, riot, governmental action, strikes or other labor trouble, fire, accident or unusually severe weather, except that Buyer shall be responsible for Seller’s direct additional costs in holding Products or delaying performance under this Order at Buyer’s request.
19. **ASSIGNMENTS AND SUBCONTRACTING.** Buyer may assign any or all of its rights or delegate any or all of its obligations under this Order to one or more third parties without the consent of Seller. Seller may not assign any of its rights or delegate any of its obligations under this Order to any third party without the prior written consent of Buyer. No part of this Order may be subcontracted without the prior written consent of Buyer.
20. **WAIVER.** Any waiver by either party of a breach of any provision of this Order shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Order. Any waiver must be in writing. Failure by either party to insist upon strict adherence to any term of this Order on one or more occasions shall not be considered a waiver or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Order.
21. **LIMITATIONS ON LIABILITY.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer’s liability on any claim of any kind for any loss or damage arising out of or in connection with this Order or from the performance or breach thereof shall in no case exceed the price allocable to the Product upon, or in connection with, which such claim is based. Buyer shall not be liable for penalties of any kind.
22. **SURVIVAL OF OBLIGATIONS.** The obligations hereunder which by their terms might apply after the completion or termination of this Order (including, without limitation, **Sections 7, 9, 11, 12, and 21**) shall survive such completion or termination.
23. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (excluding the choice of law rules thereof).
24. **COMPLIANCE WITH APPLICABLE LAWS.** Seller represents and warrants that in the performance of its obligations under this Order, it shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations.
25. **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION.** The nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

**Sekisui Diagnostics (UK) Limited**  
**TERMS AND CONDITIONS OF PURCHASE**

These conditions shall have precedence over any printed conditions appearing in any acceptance forms, delivery note or other documents or letter emanating from you, and such conditions shall have no effect whatsoever except in so far as they confirm the terms of this order.

**ACCEPTANCE**

1. This order is liable to cancellation by us if not acknowledged within 7 Days of the date on which we despatched the Order.

**PROCEDURE**

2. The Company shall not be liable for any order or amendments thereto other than those issued or confirmed on our official printed Order of amendment forms duly signed on our behalf. To the extent that any of the terms and conditions appearing on the Purchase Order differ from those contained in any documents rendered by the Supplier prior to the Purchase Order, then the Purchase Order shall constitute acceptance of the conditions set out on the purchase order and a waiver of any terms and conditions which a supplier has previously sought to impose.

**CANCELLATION/POSTPONEMENT**

3. The Company reserves the right to cancel this order or any part of it in the event that:
  - (a) the material or goods to be supplied are not received by us or the work to be carried out is completed by the date specified in our order, or
  - (b) The material or goods supplied or the work carried out do not comply strictly with the description, specification and drawings relating thereto and such fault is not rectified within 14 days, or
  - (c) The materials or goods supplied by you or the work to be carried out by you being below the specified standard or failing to pass such inspection or test may be required by us, our customer or his agent.

In any event we shall be entitled to reimbursement in respect of all loss and/or expense which results directly or indirectly out of the foregoing circumstances.

4. In the event of any strike, lockout, fire, explosion, accident or any stoppage of our business or matter of this order, the delivery of such goods or the completion of such work and the payment thereof may be suspended or postponed at our option until the circumstances preventing or hindering the use of such goods or work have ceased.
5. The Supplier shall forthwith inform us of any likely delay in delivery, despatch or completion and without prejudice to any other right on our part the Company shall be entitled to cancel this order under the terms of condition 3 thereof if such delay is likely to seriously jeopardise the purpose of the order.
6. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packing and delivery of the goods and the performance of any services.
7. If the goods are to be delivered by instalments, the contract will be treated as a single contract and not severable.

**SUB-CONTRACTING OR ASSIGNMENT**

8. None of the obligations to be performed by you in accordance with this order is to be sub-contracted or assigned by you except as is customary in the trade without our consent in writing which consent shall not be unreasonably withheld. Any sub-contractor or assignee shall be made aware of the terms and conditions contained herein and unless that sub-contractor or assignee agrees to be bound by these terms and conditions the withholding or our customer pursuant to the previous terms shall be deemed to be reasonable.

**INSPECTION**

9. Our inspector or representative, or Inspector of representative of our customer, or his agent shall be entitled on our authority to inspect the goods or work at any reasonable time subject to reasonable notice at your works or at the works of any of your sub-contractors. Such inspection does not relieve you of any liability nor does it imply acceptance of the goods or work which are the subject matter of this order. Terms for 'Quality Assurance' of deliveries are contained at the end of these conditions.

**DELIVERY/TRANSPORT/PACKING**

10. Any time or period given for delivery or despatch shall be of the essence.
11. All goods supplied against this order must be adequately protected against damage and deterioration in transit and delivered, carriage paid or as otherwise agreed in writing and must bear the description and quality of the contents and our order number on the packages thereof.
12. The goods shall be carried at your risk and delivered to us at the point designated in this order between the hours of 9 am and 5 pm at the Haverhill and Oxford Sites, and between 9am and 4.30pm at the Kent site, on the due date for delivery unless otherwise indicated by us. On delivery to us all property in the goods shall pass to us unless payment for the goods is made prior to delivery, when title shall pass to us once payment has been made and the goods have been appropriated to the contract..
13. No concession on our part with respect to delay, despatch or completion shall be constructed as a waiver of our rights and remedies unless we specifically agreed in writing.

**PAYMENT**

14. All prices are exclusive of any applicable Value Added Tax (which shall be payable by us subject to receipt of a VAT invoice) and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the goods to the specified address, and any duties or levies other than value added tax. No increase in the price may be made without our prior consent in writing.

15. Inattention to the following details may mean a delay in payment but no prompt payment discount shall be forfeited by us on account of your failure:
  - (a) To send on the day of despatch for each consignment such advice(s) of despatch and invoice(s) as maybe indicated on this order, or
  - (b) To send a monthly statement of account quoting the invoice numbers applicable to each item thereon, or
  - (c) To mark clearly our order number on the consignment package, packing notes, advice notes, invoices, monthly statements and all correspondence relating thereto.

**PATENT/COPYRIGHTS**

16. All tools, patents, materials, drawings, specifications and other data provided by us in connection with this order will remain at all times our property and are to be surrendered to us, on completion of the order and are to be used by you solely for the purpose of completing the same. It is specifically agreed that in supplying us with the goods you obtain no intellectual property rights of any kind in any patents, copyright, registered or unregistered designs, of Sekisui Diagnostics (UK) Limited or any such rights in any information or details of patents, drawings, specifications, or other data supplied to you by us.
17. The supplier guarantees that the sale of these products will not infringe any British or foreign patent trade name or registered design, or other intellectual property rights and undertakes to keep us indemnified against all actions, judgements, decrees, costs, claims, demands and expenses resulting from any actual or alleged infringement and undertakes at his own expense to defend or assist in the defence of any suit or action which may be brought on this connection.
18. This order and ensuing subject matter hereof shall be treated as confidential between the Supplier and the Company and shall not be disclosed by the Supplier to any assignee or sub-contractor of the Supplier, to any third party or used by the Supplier or any such assignee or sub-contractor or third party for advertisement, display or publication without the prior consent in writing of the company.
19. The Supplier will keep the Company indemnified (except in respect of designs provided by the Company) against all claims of whatsoever nature (including those for royalties, damage or other losses) arising from infringement of patents, registered designs, copyrights or trade marks in relation to this order and in relation to the use of articles or processes to this order.

**DEFECTIVE MATERIAL/WORKMANSHIP**

20. The Supplier will keep the Company indemnified in respect of all loss and/or expenses which results during or after proper use directly or indirectly of defective materials, goods, workmanship or design supplied and in addition you will repair, replace or reinstate at the Company's option the defective item or items free of charge.
21. The Supplier shall reimburse the Company in the event of any damage to the Company's property and against any claims for loss or injury to any person or to the property of any person by reason of the Supplier's negligence or any act or omission on the part of the Supplier's employee's, sub-contractors, or agents arising out of the execution of this order.
22. If the Supplier shall become bankrupt or go into liquidation or if a notice should be issued rectifying a resolution for winding up or if a receiver or administrative receiver shall be appointed over the assets or if a petition for winding up should be presented to a competent court or an analogous act, event or procedure shall be done or suffered by the Supplier under any other law applicable to the Supplier or if the Supplier shall cease to trade or threaten to cease to trade the company shall have the right to summarily terminate this order.
23. This order shall be constructed in all respects in accordance with English law and any claims shall be subject to the jurisdiction of the English Courts. Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the company is entitled in relation to the material or goods ordered by virtue of statute or common law.

**QUALITY ASSURANCE AND INSPECTION**

- A1. This order is subject to inspection on delivery. Notwithstanding this, all goods are to be approved by the Supplier's Quality Assurance organisation to comply fully with the requirements of this order.
- A2. This order is subject to an inspection at the Supplier's work at the Company's option, please inform the Company's purchasing department when goods are available for Inspection.
- A3. Each delivery of goods must be supported by a certificate of conformance signed by a senior member of the Supplier's staff responsible for Quality Assurance/Inspection stating his position or status in their Quality Assurance/Inspection organisation. The certificate of conformance shall read as follows:  
The items on Delivery Note.....(state your no.) have been inspected and tested to Drawing and/or Specification No.....(here quote relevant drawing, specification and issue numbers) and have been found to conform in all respects to the requirements of Order No.....
- A4. Each delivery of material shall be supported by a certificate of chemical and mechanical analysis, or an authenticated copy of same.
- NB. Certificates or release documents shall be supplied with the relevant goods or materials and shall bear the order number referenced hereon in full.

**SEKISUI Diagnostics GmbH**  
**Terms and Conditions of Purchase**

**1. DEFINITIONS**

“Buyer” means SEKISUI Diagnostics GmbH as the purchaser of Products and/or Services. “Products” and “Services” shall have the meaning set forth in the Agreement and Acceptance section hereof. “Seller” means the person or entity to which this Order is addressed. “Conditions” means these terms and conditions. Buyer and Seller are each at times referred to herein as a "Party" and collectively as the "Parties".

**2. AGREEMENT AND ACCEPTANCE**

This Order contain Conditions under which Buyer is agreeing to purchase Products and/or Services including, without limitation, the equipment, supplies, materials (the "Products"), and related services (the “Services”) ordered by this purchase order (this “Order”). By accepting any purchase order of Buyer and/or performing thereunder, Seller agrees to comply solely upon the Conditions stated herein. These Conditions shall have precedence over any printed conditions appearing in any acceptance forms, delivery note or other documents or letter emanating from Seller, and such conditions shall have no effect whatsoever except in so far as they confirm the Conditions of this Order. Any additions, exceptions, or changes to these Conditions proposed by Seller are hereby rejected unless approved by Buyer in writing.

**3. ORDERS**

Seller must return a written notice of acceptance to Buyer within seven (7) days of the Order date, confirming price, quantity, and/or description of Products and/or Services, and delivery dates. In the event Buyer does not receive a written notice of acceptance or rejection of this Order within seven (7) days of the date of the Order, Seller shall be deemed to have accepted this Order upon expiration of the seventh day. Buyer may withdraw this Order at any time before Seller accepts it. Any changes to the Products and/or Services must be pre-approved by Buyer in writing.

**4. DELIVERY/TRANSPORT/PACKING**

(a) Seller shall deliver the Products and/or Services strictly in accordance with the dates (time is of the essence hereof) and the Conditions set forth in this Order. Seller shall notify Buyer immediately, in writing, if it has reason to believe that it may not be able to meet the delivery dates in this Order and the estimated duration of such delay. Upon Seller’s written notice Buyer may elect to expedite the delivery of the Products and/or Services affected by the delayed delivery at Seller’s sole expense. In any such event, failure to meet agreed upon delivery dates shall be considered a breach of these Conditions and shall not affect Buyer's right to return any of the Products already accepted.

(b) Unless waived by Buyer in writing, Buyer may cancel all or any part of this Order, refuse to accept any Services rendered, or may return at Seller's expense, any of the Products ordered hereunder if Seller; (i) fails to deliver all or any part of the Products and/or

Services in accordance with this Order and; (ii) breaches the Conditions of this Order. Buyer shall hold Seller accountable for damages arising therefrom.

(c) Seller agrees Buyer shall not be bound to pay for excess Products supplied by Seller unless approved by Buyer in writing. Any excess Products shall be returnable at Seller's expense and risk.

(d) Any Products delivered to Buyer more than seven (7) working days prior to the applicable delivery date in this Order may be returned to Seller for re-delivery on the scheduled delivery date or stored by Buyer at Seller's expense and risk. Seller shall promptly reimburse the Buyer in the full amount of any delivery costs for return of such Products.

(e) All the Products supplied in this Order must be adequately protected and secured against damage in such a manner as to reach their destination in a good condition. Seller shall ensure that delivery of Products must include: (i) description of the Products; (ii) an order number on the packages; (iii) specific delivery instructions and requirements; and (iii) any other requested documentation. Buyer shall not be liable for any extra charges for packing or anything else.

(f) Delivery shall be completed when the Products have been unloaded by Seller at the point of delivery specified in this Order and the delivery has been accepted by Buyer or its duly authorized agent. Unless otherwise stipulated in this Order, deliveries to Buyers facilities shall only be accepted by Buyer or its authorized representative between the hours of 9 am and 4:30 pm at the Buyer's office in Darmstadt, Germany or to any other place as specified in the Order on the due date for delivery. Seller shall be liable for all damages, including, but not limited to, damages which it or its carrier causes to the Products being delivered in the course of delivery. Delivery in accordance with this Order does not constitute acceptance by Buyer under this Order.

## **5. INSPECTION AND REJECTION OF NON-CONFORMING PRODUCTS AND/OR SERVICES**

(a) This Order is at Buyer's option subject to inspection and testing prior to delivery of the Products or completion of the performance of the Services at the Seller's work site or at the works of any of Seller's sub-contractors at the Buyer's option. Buyer's and/or its duly authorized representative shall be entitled to inspect and/or test the Products or work at any reasonable time. If, as a result of such inspection or testing, Buyer is of the opinion that the Products and/or Services do not conform or are unlikely to conform with this Order or any specification or any designs provided by Buyer to Seller, then Seller shall immediately take such action as is necessary to ensure conformity, and Buyer shall have the right to inspect replacement Products or audit re-performed Services as set out in this section.

(b) Buyer shall have the right to reasonably inspect and test all or a sample of Products purchased under this Order after actual receipt of Products at Buyer's place of business. Such inspection or testing shall not relieve Seller of any liability nor does it imply acceptance or approval of all or any part of the Products and/or Services which are the subject matter of this Order.

(c) Buyer reserves the right to: (i) reject and cancel in its entirety (including revocation of its earlier acceptance of) and refuse acceptance of Products and/or Services which are not in accordance with this Order or Seller's representation or warranties, expressed or implied; (ii) accept all or part of the Products and/or Services at a reduced price; and (iii) reject part of the Products and/or Services and recover from Seller all related expenses including but not limited to, inspection, transportation unpacking, examining, testing, repackaging and shipment of Products that are rejected. Rejected Products may be held at no cost to Buyer, and if Seller so requests may be returned to Seller, at Seller's sole risk and expense and, in addition to its other rights, Seller shall not replace rejected products without the written consent of Buyer. Payment for any Product and/or Services delivered hereunder shall not constitute acceptance thereof.

## **6. MANUFACTURING CHANGE & RECALLS**

Seller must notify Buyer in writing at least ninety (90) days prior to any changes in the following: component formulations, manufacturing process, component testing procedure, manufacturing or testing facilities or equipment and critical raw materials. Sellers must notify Buyer immediately within any of the following occurring: component problems and/or recalls and any enforcement actions initiated against Seller by a regulatory agency.

## **7. PRICE/PAYMENT**

(a) All prices specified herein, unless otherwise expressly stated, includes (ii) all charges for labelling, packing, packaging, loading, storage and insurance (including any charges associated with obtaining necessary import/export licenses). All prices are exclusive of applicable Value Added Tax (which shall be payable by Buyer subject to the receipt of a VAT invoice) and duties of any kind that Seller is required to pay with respect to the Products and/or Services. Seller will not render an invoice until completion of delivery of all of the Products and performance of all of the Services which are the subject of this Order. All claims by Seller for payment due or to become due from Buyer shall be subject to deduction or set-off by Buyer by reason of any claim arising out of this or any other transaction between Buyer and Seller.

(b) Seller represents and warrants that the prices herein are not less favourable to Buyer than those currently extended to any other customer for the same or substantially similar products and/or services in similar quantities. If Seller reduces its prices for any Products or Services before this Order is completed, Seller shall reduce the prices under this Order accordingly. At Buyer's option, Seller shall promptly refund to Buyer, or apply as a credit against future payments due under this Order, the amount of any overpayments that result from such price reductions for Products and/or Services not yet accepted by Buyer. No increase in the price for Products and/or Services may be made without Buyer's prior consent in writing.

## **8. TITLE AND RISK OF LOSS**

Title to the Products shall not pass from Seller to Buyer until completion of delivery. Seller represents and warrants that title to the Products shall pass to Buyer free and clear of all liens and encumbrances. Seller assumes all risk of loss of or damage to the Products (or any part thereof) prior to delivery and acceptance thereof (and following any revocation of such

acceptance) by Buyer.

## **9. TERMINATION**

(a) Buyer may, by written notice to Seller, terminate this Order, in whole or in part, for default if: (a) Seller fails to perform in accordance with any requirement of this Order or fails to make sufficient progress thereby endangering the timely performance of this Order or; (b) Seller becomes bankrupt or go into liquidation or if a notice should be issued rectifying a resolution for winding up or if a receiver or administrative receiver shall be appointed over the assets or if a petition for winding up should be presented to a competent court or an analogous act, event or procedure shall be done or suffered by the Seller under any other law applicable to the Seller or if the Seller shall cease to trade or threaten to cease to trade Buyer shall have the right to summarily terminate this Order. Any such termination shall be at no cost to Buyer except for completed Products delivered and accepted by Buyer prior to such termination, and the performance of Services prior to such termination. Seller agrees to repay Buyer any progress payments made in excess thereof. The termination of any portion of this Order pursuant to this Section 9 shall not affect either party's obligations as to any non-terminated portions of this Order. In the event of termination pursuant to this Section 9, Buyer may procure or otherwise obtain, upon such Conditions and in such manner as Buyer may deem appropriate, products and/or services similar to Products and/or Services not provided to Buyer hereunder, and Seller shall be liable to Buyer for any damages arising therefrom, including attorneys fees and excess costs incurred by Buyer in obtaining such substitute products and/or services.

(b) In addition to any other provisions for termination hereunder, Buyer may terminate all or any part of this Order without cause and at any time upon thirty (30) days written notice to Seller. In the event of such termination, Seller shall immediately stop, and cause its suppliers and sub-contractors to stop, all work and deliveries under this Order to minimise the cost of termination. In this event, payment to Seller for Products delivered and/or Services performed prior to termination shall be the sole remedy available to Seller.

## **10. CONFIDENTIALITY**

As to any information or materials provided by Buyer to Seller in connection with this Order and any information or materials (including but not limited to data or derivatives, improvements and inventions) generated by Seller resulting from the direct or indirect use of such information or materials ("Buyer Property"), the following provisions shall apply. Notwithstanding any provision to the contrary, all Buyer Property is the exclusive property and confidential information of Buyer. Seller shall not use Buyer Property for any purpose other than solely for the performance under this Order and shall not be disclosed without the express written permission of Buyer, by the Seller to any assignee or sub-contractor of the Seller, to any third party or used by the Seller or any such assignee or sub-contractor or third party for advertisement, display or publication without the prior consent in writing of the Buyer. Seller shall: (i) protect the confidentiality of Buyer Property with the same degree of care as it normally uses to preserve and safeguard its own proprietary information of like nature, but not less than a reasonable degree of care; (ii) assist Buyer in all reasonable ways (at Buyer's expense and request) in protecting and securing Buyer Property, including but not limited to applying for patents, copyrights or other rights therein and (iii) execute, deliver such documents as may be required to carry out the provisions of Section 10 (ii) herein.

Seller shall use Buyer Property only in compliance with all applicable Laws, local laws and regulations. Seller will promptly return or destroy Buyer Property at Buyer's request.

## **11. INTELLECTUAL PROPERTY RIGHTS**

(a) All tools, patents, materials, drawings, specifications and other data provided by Buyer in connection with this Order will remain at all times the property of Buyer and are to be surrendered to Buyer, upon completion of this Order and are to be used solely by Seller for the purpose of completing the same. It is specifically agreed that in supplying Buyer with Product and/or Services, Seller shall not obtain any intellectual property rights of any kind in any patents, copyright, registered or unregistered designs, of Buyer or any such rights in any information or details of patents, drawings, specifications, or other data supplied to Seller by Buyer.

(b) Seller guarantees that the sale of the Products will not infringe any trade name or registered design or other intellectual property rights and undertakes to keep Buyer indemnified against all actions, judgments, decrees, costs, claims, demands and expenses resulting from any actual or alleged infringement and undertakes at its own expense to defend or assist in the defence of any suit or action which may be brought on this connection.

## **12. INDEMNIFICATION**

Seller shall, severally as applicable, at all times hereafter indemnify, defend and hold harmless Buyer, its affiliates, and all of their respective officers, directors, agents, sub-licensees, employees, sub-contractors or other representatives from and against any and all loss, liability, cost or expense, and any and all claims by, or liability to, any third party, for loss, damage or injury to persons or property which is based on or in any manner arises out of or is incidental to: (a) any breach by Seller of any warranty, representation or covenant contained in this Order; (b) any defective or non-conforming Product; or (c) any loss, damage, or injury to persons or property or damage to the extent based on or in any manner directly arising out of any act or omission by Seller, its affiliates, or any of their respective officers, directors, agents, sub-licensees, employees, sub-contractors or other representatives in connection with the performance or non-performance of this Order by Seller; in each case including, without limitation, attorney's fees, court costs and other expenses associated with or incurred in connection with any such claim or loss.

## **13. WARRANTY**

(a) Seller hereby makes the following representations and warranties to Buyer: (i) Seller shall deliver products and marketable title to all Products and/or Services furnished pursuant to this Order, including, without limitation, specifications, drawings, or descriptions referenced in such order; (ii) all Products (A) will be of good quality and workmanship and free from all defects (latent and patent) or, in the case of Services, performed in a professional and workmanlike manner consistent with best industry practices and the standard of care typically exercised in the Seller's field; (B) will conform to all specifications, drawings, descriptions and statements of work furnished, specified, or agreed to, by Buyer; (C) will conform to any samples and to any statements made on the containers, labels, sales literature or advertisements for such Products; (D) will be adequately contained,



packaged, marked and labelled; (E) will be merchantable and will be safe and appropriate for the purpose for which products and/or services of that kind are normally used; and (F) if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Products, will be fit for such particular purpose.

(b) No warranties contained in this Order and no remedies available to Buyer for the breach thereof may be limited unless and except to the extent specifically agreed upon by Buyer in a separate agreement signed by Buyer. Sellers obligations under all such warranties shall survive and be unaffected by any inspection, testing, acceptance and use. All such warranties shall run to Buyer, to its successors, assigns and customers, and to users and consumers of, and others affected by, the Products. Seller hereby agrees promptly to replace or repair any Product not conforming to this Order or to any warranty set forth in this Order (each, a “Non-conforming Product”), without any expense (including transportation expense) to Buyer. In the event of Sellers failure promptly to repair or replace such Non-conforming Product(s), Buyer, after reasonable notice to Seller, may repair or replace such Non-conforming Product(s) and charge Seller for all costs incurred by Buyer in doing so.

#### **14. ASSIGNMENT; SUB-CONTRACTING**

Seller may not assign any of its rights or delegate any of its obligations under this Order to any third party without the prior written consent of Buyer. Buyer may assign any or all of its rights or delegate any or all of its obligations under this Order to one or more third parties without the consent of Seller. No part of this Order may be sub-contracted by Seller without the prior written consent of Buyer.

#### **15. INSURANCE**

Seller shall maintain in force at its expense an appropriate liability insurance covering any damages caused by Seller, its employees or its agents for the Products and Services supplied. If requested, Seller shall furnish Buyer with a certificate evidencing the required insurance.

#### **16. COMPLIANCE WITH APPLICABLE LAW**

Seller represents and warrants that in the performance of its obligations under this Order, it shall comply with all applicable laws, codes, regulations, rules, orders, and binding requirements applicable to Seller, including but not limited to laws and regulations relating to health, safety the environment and anti-corruption and anti-bribery laws.

#### **17. LIMITATIONS OF LIABILITY**

Nothing in this Order shall limit or exclude the Seller’s liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors; fraud or fraudulent misrepresentation; Buyer shall under no circumstances be liable to Seller, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Order. Buyer’s total liability to Seller in respect of all other losses arising under or in connection with this Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products and/or Services supplied.

## **18. AUDIT**

During the performance of this Order, Seller will keep accurate books and records in connection with all its obligations and services to be performed under this Order for the time required by applicable law or at least three (3) years. Seller agrees that Buyer or its designated representative shall have the right, from time to time, upon written notice to conduct an audit of facilities being used by Seller to assure compliance by Seller with the Conditions of this Order.

## **19. FORCE MAJEURE**

Buyer shall not be liable for any failure to perform hereunder due to force majeure, including, but not limited to, forces of nature, war, riots, fire, pandemic explosion, epidemic, strike, injunction, labour dispute or shortage, or any cause beyond the reasonable control of Buyer, which prevents, or hinders the performance hereunder. If the circumstances of the force majeure event exist for more than sixty (60) days, then Buyer may terminate this Order upon thirty (30) days advance written notice without incurring any liability whatsoever.

## **20. ENTIRE AGREEMENT AND VARIATION**

These Conditions constitute the entire understanding between the Parties with respect to the subject matter hereof and supersedes and cancels any previous understandings, whether oral, written or implied, heretofore in effect. No Contracts or Agreements amending, altering, or supplementing the Conditions hereof may be made except by a written document signed by duly authorized representatives of the Parties. To the extent that they are inconsistent, these Conditions shall not apply to Seller who has entered into a master supply or distribution agreement with Buyer which governs the sale and purchase of the Products and/or Services which are in place as of the date of shipment.

## **21. WAIVER AND SEVERABILITY**

A waiver of any right or remedy under this Order or law is only effective if given in writing and shall not be declared a waiver of any subsequent breach or default. No failure or delay by Buyer to exercise any right or remedy provided under this Order 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 of Buyer. No single or partial exercise of that right or remedy shall prevent or restrict the further exercise of that or any other right or remedy by Buyer. If any provision of this Order is declared invalid or unenforceable, all other provisions shall remain in full force and effect as if this Order had been agreed with the invalid or unenforceable provision eliminated.

## **22. GOVERNING LAW AND JURISDICTION**

This Order and any dispute or claim arising out of or in connection with the subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of Germany. The Parties hereby submit to the exclusive jurisdiction of the courts of Germany in respect of any claim or

dispute arising out of or in connection with this Order and their subject matter or formation (including non-contractual claims or disputes).