

INOVYN Deutschland GmbH – Terms and Conditions of Sale

1 DEFINITIONS

1.1 In these Conditions the following words and expressions shall have the following meanings:

"Affiliate" has the meaning within the meaning of Clause 15 of German Stock Corporation Act (AktG);

"Anti-Bribery Legislation" means all national and international laws and regulations relating to the prevention of bribery, corruption or fraudulent acts, including (but not limited to) the United Nations Convention on Anti-Corruption (as ratified in 2006), the UK Bribery Act 2010;

"Business Day" means any day (other than a Saturday or Sunday) that is not a public holiday in Germany;

"Buyer" means the person who purchases Goods and/or Services;

"Conditions" means these terms and conditions of sale;

"Contract" means a legally binding contract between the Seller and the Buyer for the sale and purchase of Goods and/or Services ordered under a Purchase Order and accepted by the Seller in accordance with Clause 2.4 subject to these Conditions;

"Delivery Address" means the delivery address agreed in writing by the Seller;

"Delivery Date" means the delivery date agreed between the Parties or if no delivery date is agreed, then within a reasonable time from acceptance of the Purchase Order by the Seller in accordance with Clause 2.4;

"Goods" means the goods detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2.4;

"Intellectual Property Rights" means any patents, trade marks, service marks, registered designs, database rights, applications for any of the foregoing, copyright, unregistered design rights know how and any other similar protected rights in any other country.

"Party" and **"Parties"** means the Seller or the Buyer or both the Seller and the Buyer (as is applicable);

"Price" means:

(a) in relation to Goods, the price of the Goods agreed between the Seller and the Buyer; and

(b) in relation to Services, the price of the Services as notified by the Seller.

"Purchase Order" means the Buyer's written or oral purchase order;

"Quantity Required" means the quantity of Goods to be delivered by the Seller to the Buyer as set out in a Purchase Order accepted by the Seller under Clause 2.4 or otherwise agreed in writing between the Parties;

"Restricted Person" means a natural or legal that is:

(a) Listed on, directly or indirectly owned or controlled by a person listed on, a sanctions list, or a person acting on behalf of or at the direction of such a person;

(b) Located or currently resident in or organised or incorporated under the laws of a sanctioned country, or is owned or controlled by or acting on behalf of or at the direction of such a person; or

(c) Otherwise the subject of Sanctions;

"Sanctions" means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority;

"Sanctions Authority" means:

(a) The Security Council of the United Nations;

(b) The United States of America;

(c) The European Union;

(d) The member states of the European Union;

(e) Any other relevant sanctions authority whose Sanctions require the Buyer and Seller's compliance; and

(f) The governments and official agencies of any of paragraphs (a) to (e) above;

"Seller" means **INOVYN Deutschland GmbH** (Registered Number HRB 210333) whose registered office is at Ludwigstrasse 12, 47495 Rheinberg, Germany;

"Services" means the services detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2;

"Specification" means the specification of the Goods and/or Services agreed in writing by the Parties from time to time.

"Person" means any natural and legal person or entity, in particular a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture.

1.2 Any reference in these Conditions to:

(a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;

(b) a Clause is to a clause in these Conditions.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.

2 BASIS OF SALE

2.1 Any quotation (whether written or oral) is given on the basis that it is an invitation to treat only and no Contract will come into existence until the occurrence of one of the events set out in Clause 2.4.

2.2 Each Purchase Order constitutes a separate offer by the Buyer to purchase the Goods and/or Services subject to these Conditions.

2.3 Each Purchase Order shall contain:

(a) Name and species of the Goods and/or Services required;

(b) Information on the Specification;

(c) the Delivery Address (or confirmation that the Buyer will collect the Goods from the Seller);

(d) desired amount of the quantity of Goods and/or Services it requires; and

(e) the date on which the Buyer would like the Goods to be delivered and/or the Services to be performed (such date not being binding on the Seller and being subject to Clause 5.1).

2.4 The Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:

(a) the issue by the Seller of an acknowledgement of the Purchase Order;

(b) notification by the Seller that the Goods are ready for delivery or that the Services can be performed; or

(c) delivery of the Goods and/or commencement of the performance of the Services (or any part of the Goods and/or Services).

and such occurrence shall create a Contract.

2.5 Nothing in these Conditions shall oblige the Seller to accept a Purchase Order from the Buyer.

2.6 Subject to Clause 20, these Conditions shall apply to the Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a Purchase Order has been issued.

2.7 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in any sales literature, quotation, price list or acknowledgment of Purchase Order, the Seller shall contact the Buyer and such document shall be subject to correction without any liability on the part of the Seller.

2.8 Any Purchase Order which has been accepted by the Seller pursuant to Clause 2.4 may only be cancelled, postponed or varied by the Buyer with the prior consent of the Seller.

3 BLANKET ORDERS

The following provisions in this Clause 3 shall apply where the Seller supplies the Goods under a blanket order received from the Buyer:

(a) if the blanket order is a scheduled Purchase Order where the maximum quantity of Goods required and the approximate dates (including the terminal date) on which the requirements will be called off are specified, the whole Purchase Order will be treated as a single Contract;

(b) if the blanket order is a non-scheduled Purchase Order where:

- (i) the maximum quantity of Goods required is not specified; or
- (ii) the maximum quantity of Goods specified is, in the opinion of the Seller, an unrealistic estimate of the Goods which are likely to be required by the Buyer; or
- (iii) where the call off dates for the Goods are not specified;

then each call off will be deemed to be a separate Contract.

4 SPECIFICATIONS, WARRANTIES AND REPRESENTATIONS

4.1 The Seller warrants that the Goods and/or Services sold to the Buyer shall comply with the agreed Specification.

4.2 Any suggestion or representation concerning any possible use of the Goods and/or Services made by the Seller in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Buyer to satisfy themselves fully as to the suitability of the Goods and/or Services for any particular purpose. No suggestion or representation relating to such possible use of the Goods and/or Services in the meaning of Clause 4.2 sentence 1 shall form part of the Contract.

4.3 The Buyer shall, without undue delay after the delivery of the Goods and/or performance of the Services, notify the Seller in writing of any defect by reason of which the Buyer alleges that the Goods delivered and/or Services performed are not in accordance with the Specification and which should be apparent on reasonable inspection and document the defects as clearly as possible.

4.4 If the Buyer fails to give notice under Clause 4.3 then, except for any defect that is not one which should be apparent on reasonable inspection, the Goods and/or Services shall be deemed conclusively to be in all respects in accordance with the Specification and accepted by the Buyer.

4.5 If defects occur, the Seller shall initially, by way of subsequent performance, be entitled to choose either to remove the defect or supply a replacement product within a reasonable period.

4.6 The Seller is entitled to make at least two attempts to correct errors or defects.

4.7 In the event of the final failure on the part of the Seller to effect subsequent performance within a reasonable period set by the Buyer therefore and permitting at least two attempts to correct errors or defects, the Buyer shall have the right, subject to fulfilment of the statutory requirements, to claim purchase-price reduction or, alternatively, to withdraw from the Contract. In addition, the Buyer shall have the right in such cases to claim damages as laid down in the provisions of Clause 7 below.

4.8 In derogation of the statutory provisions, the Buyer may, in the event of the final failure on the part of the Seller to effect subsequent performance within the period set by the Buyer, withdraw from the Contract and/or claim damages in lieu of performance if it notifies the Seller of such intention at the latest when the period for subsequent performance is set.

4.9 The Seller may make use of qualified subcontractors to remove the defects.

4.10 If investigations in connection with defects reveal that the Buyer has no claims or rights against the Seller under this Clause 4, the Seller is entitled to invoice the Buyer for any expenditure incurred in connection with the investigations on the basis of the current price list for services, provided that the Buyer acted intentionally or with gross negligence in notifying the defect.

4.11 The Seller's obligation under Clause 4.5 through Clause 4.8 will not apply where:

- (a) the Goods have been improperly altered in any way whatsoever, or have been subject to misuse;
- (b) the Goods have been improperly used;
- (c) the Goods have been mixed incorrectly with other products or mixed with incompatible products;
- (d) any instructions as to storage of the Goods have not been complied with in all respects;

unless the Buyer can provide evidence that the defects that have occurred are not due to such actions.

4.12 Any claims the Buyer may have in respect of material defects or defects of title are subject to a statutory period of limitation of one (1) year from dispatch. If the Seller has fraudulently concealed the defect, the regular period of limitation of three (3) years applies.

5 DELIVERY

5.1 The Seller will use reasonable endeavours to deliver the respective Goods and/or Services in each of the Buyer's Purchase Orders it accepts by the Delivery Date, but the timing of delivery of the Goods and/or performance of the Services will not be of the essence in the Contract.

5.2 Delivery of the Goods shall be deemed to be made on the earliest occurrence of:

- (a) collection of the Goods by the Buyer or a third party carrier engaged by the Buyer from the Seller; or
- (b) delivery of the Goods by the Seller or a third party carrier engaged by the Seller to the Buyer at the Delivery Address.

5.3 The Buyer shall prepare the area for delivery of the Goods and/or performance of the Services with free access to such place and with free access to any services or facilities that may be required by the Seller to facilitate the delivery of the Goods and/or performance of the Services. Prior to delivery of the Goods and/or commencement of performance of the Services the Seller may request and the Buyer shall grant access to such place for an inspection. If following such inspection such place is not suitable for the delivery of the Goods and/or performance of the Services in the opinion of the Seller the Buyer shall do all such acts and things as the Seller may request to ensure such place becomes suitable and the Seller shall be without any liability towards the Buyer for non delivery of the Goods and/or non performance of the Services until such place is suitable for the delivery of the Goods and/or performance of the Services.

5.4 The Seller reserves the right to deliver the Goods and/or perform the Services in instalments and to invoice in instalments and in such event each instalment shall be treated as a separate Contract.

5.5 If the Buyer refuses or fails to take delivery of any of the Goods at the time stated for delivery (otherwise than by reason of any Force Majeure Event or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:

- (a) store the Goods at any location, including without limitation at the Buyer's premises, until actual delivery and charge the Buyer for the cost of storage, transport any related insurance and a handling fee; and/or

(b) after a previous warning in writing sell the Goods at the best prices obtainable in all the circumstances and after deducting all storage, insurance, transport and selling expenses, invoice the Buyer for the difference between the sum obtained by the Seller (less deductions) and the Price and the Buyer shall pay such sum immediately.

6 PACKAGES

6.1 Where the Buyer has an option to return packages and does so, the Buyer must return such packages empty in good order and condition (consigned "carriage paid" unless otherwise notified by the Buyer and agreed by the Seller) from the point of delivery to the location requested by the Seller, and must advise the Seller on the date of despatch.

6.2 Where packages are stated to be the Seller's property, they shall remain the property of the Seller at all times and the Buyer must return them empty (consigned "Carriage forward" unless otherwise agreed by the Seller) from the point of delivery to the location indicated by the Seller and must advise the Seller on the date of despatch. Any packages not returned in good order and condition within a reasonable period shall be paid for by the Buyer at the Seller's standard rate operating at the date of settlement by the Buyer for the lost or damaged packages unless failure to return is due to any cause for which the Seller accepts responsibility under these Conditions.

6.3 Loss of or damage to packages stated to be the Seller's property occurring:

(a) prior to the point of delivery shall be for the Seller's account provided notice has been given in accordance with this Clause 6 of these Conditions;

(b) subsequent to their being placed empty for return at the point of delivery shall be for the Seller's account provided advice at the time of despatch has been given to the Seller; and

(c) in the interval shall be the Buyer's responsibility where the Seller can show fault on the part of the Buyer.

7 LIMITATION OF LIABILITY

7.1 Unless otherwise agreed between the Parties in these Conditions or in the Agreement, the Seller shall be liable for non-performance of its obligations in accordance with Clauses 7.2 to 7.6 below:

7.2 Within the scope of the applicable law, the liability of the Seller for harm of life, body and health arising from wilful or negligent conduct on the part of the Seller, one of his legal representatives or one of his vicarious agents is unlimited.

7.3 The liability of the Seller is limited within the scope of the applicable law for other damages to the following extent:

(a) Seller shall be fully liable for any damage caused by intentional conduct or gross negligence on the part of Seller, any of its statutory representatives or any of its vicarious agents, or for any damages arising out of a warranty provided by the Seller.

(b) For generally foreseeable and contractually typical damage to property and pecuniary loss, the Seller is liable for the negligent breach of material contractual obligations by him or one of his statutory representatives or vicarious agents.

(c) The Seller is not liable for any further cases due to ordinary negligence. A Claim for expenses incurred in vain by the Buyer is not permitted.

7.4 The above provisions of this Clause 7 shall not apply mutatis mutandis to the seller's liability for the provision of costs.

7.5 Liability within the meaning of the Product Liability Act remains unaffected.

7.6 Within the scope of these provisions, the Seller's liability for data loss is limited to damage that would also have occurred given the correct, regular use by the Buyer of a data back-up system commensurate with the importance of the data, provided that the Buyer has access thereto.

7.7 *Insofar as the seller is liable for damages in accordance with the preceding provisions, he shall only be liable for indirect damages and consequential damages resulting from defects of the delivered item to the extent that such damages are typically to be expected when the delivery item is used as intended. The following damages and losses shall, without limitation, be regarded as indirect and consequential damages: (i) any loss of profit, (ii) any loss of production, (iii) any economic loss, including without limitation, inflation and exchange or interest rate fluctuation, (iv) any other disappointed expectations, (v) any expenses incurred, (vi) any loss of goodwill, and (vii) any other reputational damages.*

8 PRICES AND PAYMENT

8.1 The respective Price is exclusive of all taxes and duties including, but without limitation, value added tax, which, if applicable, shall be payable by the Buyer in addition to any additional delivery costs as detailed in any quotation issued by the Seller to the Buyer.

8.2 The Buyer shall pay the Price (including value added tax or any other applicable tax or duty together with any items specified in Clause 8.1 of these Conditions) by the date specified in the acknowledgement of the Purchase Order, or if no date is stipulated or no acknowledgement of Purchase Order is issued, by the last Business Day falling on or before the 20th day of the month following the month in which the Goods were despatched and/or Services were performed. Payment shall be made via Direct Debit, BACS or CHAPS.

8.3 If any sum payable under the Contract is not paid when due then without prejudice to the Seller's other rights under these Conditions, that sum will bear statutory interest for default. Assertion of claims for further losses is not excluded.

8.4 No payment will be deemed to have been received until the Seller has received the Price in full in cleared funds.

8.5 Time for payment will be of the essence under the Contract and the Buyer will indemnify the Seller against all expenses and legal costs incurred by the Seller in recovering overdue amounts within the statutory provisions.

8.6 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.

8.7 Without prejudice to Clause 20 of these Conditions, if the Buyer fails to pay the Price when due the Seller may demand payment of all sums due, treat the Contract as repudiated by the Buyer and/or suspend all future performance of the Contract until all overdue sums have been paid.

8.8 The Seller shall be entitled to set off and retain any and all sums due to the Buyer against any contingent or actual liabilities of the Buyer to the Seller.

8.9 The Seller reserves the right to increase the Price if any extra cost is incurred by the Seller after quoting the Price as a result of the inaccuracy or incompleteness of any instructions issued by the Buyer, or as a result of any failure to supply any information, drawings or specification required to enable the Seller to proceed with the Contract.

8.10 The Seller reserves the right upon notice to the Buyer at least 14 days before the Delivery Date to vary the price of the Goods and/or Services to compensate for any significant increase which has arisen in the cost to the Seller of manufacturing or acquiring or delivering the Goods and/or Services. Upon receiving such notice, the Buyer shall be entitled to cancel the Purchase Order relating to the Goods and/or Services providing it serves notice to the Seller of cancellation within 7 days of its receipt of the Seller's notice.

9 RISK AND PROPERTY

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

(a) In the case of Goods to be collected from the premises of the Seller, at a time when the Seller passes the Goods to the Buyer or a third party carrier engaged by the Buyer; or

(b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address; or

(c) in the case the Buyer refuses or fails to collect the Goods from the Seller's premises at the agreed time.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price payable for the Goods.

9.3 Until ownership of the Goods has passed to the Buyer pursuant to Clause 9.2, the Buyer will:

(a) hold the Goods on a fiduciary basis as trustee of the Seller;

(b) keep the Goods free from any charge, lien or other encumbrance;

(c) not destroy, deface or obscure any identifying mark on the Goods or their packaging;

- (d) maintain the Goods in a satisfactory condition;
- (e) insure the Goods for the Price in full on behalf of the Seller against all usual risks to the reasonable satisfaction of the Seller;
- (f) not mix the Goods with other things; and
- (g) hold all proceeds of the insurance policy referred to in Clause 9.3(e) of these Conditions if any claim is made on the policy on trust for the Seller and not mix it with any other money or pay the proceeds into any overdrawn bank account.

9.4 Notwithstanding the provisions of Clause 9.3 of these Conditions, the Buyer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Buyer's business and will be a sale, use or disposition of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal. The Seller shall, by reason of the relationship between the Buyer (as trustee) and of the Seller (as beneficiary) be and remain legally entitled to the proceeds of sale and the Buyer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all of the proceeds of the sale are kept by or on behalf of the Buyer in a separate and identifiable form and not paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Buyer shall discharge its debt to the Seller and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

9.5 The Buyer's right to possession of the Goods shall cease in the event of withdrawal or any similar or analogous event from the Contract by the Seller. In such circumstances, the Seller may upon notice enter any premises occupied by the Buyer where the Goods are stored and repossess the Goods and the Buyer shall procure a right for the Seller to enter any premises not occupied or owned by the Buyer.

10 BUYER'S DEFAULT AND TERMINATION OF THE CONTRACT

10.1 In the event the Contract is in form of skeleton or frame agreement, the provision of this Clause 10 shall apply. Either Party shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:

- (a) the other Party being in material breach of any term of these Conditions and such breach not being capable of remedy;
- (b) the other Party being in material breach of any term of these Conditions and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) the other Party is threatened with insolvency or insolvency, or insolvency proceedings are instituted against the assets of the other party, or insolvency proceedings are instituted, or insolvency proceedings are denied due to lack of assets or if the other party is under receivership (whether or not in accordance with the Insolvency Act 1986) ; or
- (d) the other Party suffering the equivalent of any similar or analogous event in (c) (above) in any jurisdiction.

10.2 Without prejudice to any of its other rights or remedies, the Seller shall have the right to terminate the Contract without any liability to the Buyer:

- (a) immediately upon written notice, if, in the reasonable opinion of the Seller after an inspection into the Buyer's financial or trade status or in light of any report considered by the Seller, the Seller at its absolute sole discretion deems that the Buyer may not be able to pay the Price; or
- (b) upon 3 months' prior written notice, if the plant which has been used by the Seller to produce the majority of Goods sold to the Buyer in the preceding 12 month period (or shorter if less than 12 months has passed since the commencement of the Contract) is either shut-down or is in the process of being shut-down.

11 CONFIDENTIALITY

11.1. Each Party hereby undertakes not at any time to divulge any of the terms of the Contract or use any information in relation to the other Party's business or any other information received from the other Party in relation to the Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Seller can divulge such information to any party to whom it assigns or transfers all or part of this Contract.

11.2. The Parties shall meet the requirements of any applicable legislation in relation to the protection of information regarding identifiable individuals ("Personal Data"), including the General Data Protection Regulation 2016/679. The Parties agree that Personal Data shall be considered as Confidential Information for the purpose of these Conditions".

12 OWNERSHIP OF INTELLECTUAL PROPERTY

12.1 The ownership of and sole rights to obtain the ownership of all Intellectual Property Rights relating to the Goods and/or the Services shall at all times be vested in the Seller and the Seller shall be responsible for the registration and other protection of such Intellectual Property Rights in the Goods and/or Services as the Seller deems fit.

12.2 The Buyer shall not use the Seller's name, logo or any other identification marks for the purpose of advertising or publicity without the prior written consent of the Seller.

12.3 If the Goods have been manufactured to the specification or design of the Buyer, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any infringement of any Intellectual Property Rights of any third party where such liability arises as a consequence of the specification or a modification of the specification supplied by the Buyer.

13 SANCTIONS

13.1 The Buyer confirms that neither it nor any of its subsidiaries, nor any directors or officers of its subsidiaries:

- (a) Is a Restricted Person;
- (b) Save as disclosed to the other Party, is in breach of any Sanctions;
- (c) Has engaged or is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Person that would reasonably be expected to result in the other Party being in breach of Sanctions or which is in breach of any Sanctions;
- (d) Will directly or indirectly use, lend, contribute or otherwise make available all or any part of the Goods:
 - (i) For any trade, business or other activities of, with or involving, or for the benefit of, any person or entity that is subject to Sanctions, or owned or controlled or acting on behalf of a person or entity that is the subject of Sanctions; or
 - (ii) In any other manner that would reasonably be expected to result in the Seller being in breach of any Sanctions or becoming the subject of Sanctions.

13.2 The Buyer confirms that they will comply with all Sanctions.

13.3 The Buyer shall, to the extent permitted by law, promptly upon becoming aware of them supply to the Seller details of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by a Sanctions Authority.

13.4 Without affecting any other right or remedy available to it, the Seller may at its sole discretion terminate the Contract with immediate effect by giving a written notice to the Buyer if:

- (a) The Buyer commits a breach of this Clause 13 which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so; or
- (b) The Contract would, or in the Seller's reasonable opinion would, result in a breach by the Parties or any of their Affiliates in respect of Sanctions.

13.5 The Seller will not be liable for any loss, damage, cost or expense suffered by the Buyer by reason of the Seller's terminating the Contract pursuant to Clause 13.

13.6 The Buyer will be liable for all loss, damage, cost or expense suffered by the Seller by reason of the Seller's terminating the Contract pursuant to Clause 13.

13.7 The Seller is permitted to disclose to any relevant Sanctions Authority such documentation or information as may be required.

13.8 The Parties will cooperate as necessary and without unreasonable delay to provide any documentation or information as may be required by any relevant Sanctions Authority.

14 ANTI-BRIBERY LEGISLATION

14.1 The Buyer shall, and shall procure that its directors, officers, agents, sub-contractors, Affiliates and employees shall, whether directly or indirectly in connection with this Contract:

- (a) Not commit any act or omission which causes or could cause either of the Parties to breach, or commit an offence under, any Anti-Bribery Legislation; and
- (b) Comply with all applicable Anti-Bribery Legislation.

14.2 The Buyer shall promptly notify the Seller of:

- (a) Any claim, proceeding, formal notice or investigation with respect to Anti-Bribery Legislation, whether directly or indirectly in connection with this Contract and
- (b) Any breach of this clause.

14.3 If the Buyer breaches Clause 14.1 or Clause 14.2:

- (a) Without affecting any other right or remedy available to it, the Seller may at its sole discretion terminate the Contract with immediate effect by giving a written notice to the Buyer; and
- (b) Without prejudice to the Seller's other rights and remedies, the Buyer shall indemnify and keep the Seller indemnified from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs, judgments and expenses which the Seller incurs or suffers directly or indirectly in any way as a result of any breach by the Buyer of any of its obligations under this Clause 14 of this Contract, including without limitation, the costs of selling the Goods to a person or entity other than the Buyer.

15 INDEMNITY

Without prejudice to any rights or remedies implied by statute or common law or under any provision of these Conditions or the Contract, the Buyer shall indemnify the Seller and keep the Seller indemnified in full against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any and all acts and omissions of the Buyer, its employees, agents or sub-contractors relating to the use, misuse, marketing, advertising and sale of the Goods and/or Services.

16 HEALTH AND SAFETY

Goods supplied by the Seller to its own specification or design are designed to be safe and without risk to health provided they are used strictly in accordance with any instructions or information issued by the Seller as to their use and are also used with any necessary safety precautions. If the Buyer is unclear as to the correct use of the Goods it should immediately contact the Seller for clarification. It is the responsibility of the Buyer to meet all safety standards in the application, use and sale of the Goods.

17 REACH (THE REGISTRATION EVALUATION AUTHORISATION AND RESTRICTION OF CHEMICALS REGULATION 1907/2006)

17.1 The Seller does not make or give any representation or warranty that the Goods are or will be compliant with the requirements of REACH (the Registration Evaluation Authorisation and Restriction of Chemicals Regulation 1907 / 2006 (as amended)) and all implied warranties as to compliance with REACH ("**REACH Compliance**") are hereby excluded to the fullest extent permitted by law. Save to the extent caused by any breach by the Seller of the warranty at Clause 17.2, the Seller shall not be liable to the Buyer for any REACH Compliance failure by the Seller or any third party in respect of the Goods.

17.2 Without prejudice to the foregoing Clause 17.1 the Seller warrants that it shall use its reasonable endeavours to obtain and maintain REACH Compliance in respect of the Goods or procure the same. The foregoing warranty shall not apply in respect of any substance where, pursuant to REACH, it is the Buyer's responsibility to obtain and/or procure REACH Compliance or to the extent any non-compliance is caused by any act or omission of the Buyer.

17.3 In the event that the Seller receives written notice from any competent authority, or in its reasonable opinion decides, that any of the Goods are not or will not become REACH compliant it shall inform the Buyer in writing within a reasonable time.

17.4 The Seller may at any time on or after informing the Buyer pursuant to Clause 17.3 suspend any further deliveries of the relevant Goods and/or terminate this Contract in respect of the relevant Goods.

17.5 The Buyer represents, warrants and undertakes to the Seller that it shall promptly provide such information as may reasonably be required from time to time in order to obtain and maintain REACH Compliance in respect of the Goods and shall comply with its obligations under REACH.

18 COSTS AND EXPENSES

Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of each Contract.

19 RELATIONSHIP OF PARTIES

Nothing in these Conditions or any document referred to in either document or any arrangement contemplated by the Parties shall be construed as creating a partnership between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.

20 AMENDMENTS AND VARIATIONS

No variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

21 WAIVERS

No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.

22 ASSIGNMENT

22.1 The Seller shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract or these Conditions through any Affiliate and any act or omission of such Affiliate shall for the purposes of the Contract be deemed to be an act or omission of the Seller.

22.2 The Seller shall be entitled to carry out its obligations under the Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.

22.3 The Seller may at any time assign or transfer individual rights and/or obligations under the Contract or these Conditions, including, without limitation, pursuant to any receivables purchase arrangements or similar transactions which the Seller may from time to time enter into. The Buyer may not assign, sub-contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Contract or these Conditions without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).

22.4 If required to do so to give legal effect to any permitted assignment pursuant to the provisions of Clause 22.3 of these Conditions, the Parties shall enter into a novation agreement and shall use all reasonable endeavours to procure that the assignee or transferee enters into such novation agreement.

23 SET-OFF; RIGHT OF RETENTION

23.1 The Buyer may only set off a claim to remuneration accruing to the Seller out of this Contract if the reason for such set-off and the amount thereof is acknowledged by the Seller, uncontested or recognized by declaratory judgment.

23.2 Subject to the requirements under Clause 23.1 above, the Buyer has a right of retention, if the Buyer's claim is based on the same contractual relationship.

24 SEVERABILITY

If any provision of these Conditions becomes completely or partially void, ineffective or unenforceable, the validity and enforceability of all other provisions in these Conditions shall not be affected. The parties hereby undertake to replace the void, ineffective or unenforceable provision with the most effective and enforceable provision that comes closest to the purpose of the void, ineffective or unenforceable provision. The same applies to any gaps in these terms and conditions.

25 DISPUTE RESOLUTION

25.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to these Conditions or the Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiation between appropriate representatives of the Parties, the dispute shall be dealt with using the escalation procedure set out in this Clause 25.

25.2 The dispute shall be referred by either Party to the chief executives of each of the Parties and they or their nominees shall meet in good faith in order to try and resolve the dispute.

26 ENTIRE AGREEMENT

26.1 These Conditions and the acknowledgement of Purchase Orders represent the entire agreement between the Parties relating to the sale and purchase of Goods and/or Services and supersede all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods and/or Services.

26.2 Each Party acknowledges that in entering into the Contract it places no reliance on any representation, warranty or other statement relating to the subject matter of the Contract, other than as expressly set out in these Conditions and any acknowledgement of the applicable Purchase Order.

26.3 Neither Party shall have any liability or remedy in respect of any representation warranty or other statement being false, inaccurate and/or incomplete unless it was made fraudulently or is contained in these Conditions. Nothing in these Conditions shall exclude or limit the liability of either Party for a fraudulent misrepresentation.

26.4 Each Party agrees that its only remedy for breach of the Contract shall be for breach of contract.

26.5 If these Conditions are translated into any language other than English, the English language text shall prevail.

27 NOTICES

27.1 Notices under these Conditions may be served by personal delivery, by post or by facsimile.

27.2 Notices shall be deemed to be served

(a) on delivery when delivered personally; or

(b) on receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party or in the case of delivery by post two days after dispatch, provided that the letter was sufficiently franked and correctly addressed.

28 GOVERNING LAW

These Conditions and the Contract shall be governed by German law excluding the Conflict of laws rules. The UN Convention on Contracts for the International Sale of Goods shall not be applicable. The Courts of Frankfurt am Main shall be exclusive venue for any disputes between the Parties arising from or in connection with the Contract or these Conditions or any Purchase Order.