

ROTHAMSTED RESEARCH
GENERAL CONDITIONS OF CONTRACT

1 Definitions

- 1.1** The term "Buyer" shall be those described in the purchase agreement.
- 1.2** The term "Seller" shall mean the person, firm or company to whom the Purchase Order is issued.
- 1.3** The word "Goods" includes all goods covered by a Purchase Order.
- 1.4** The term "Purchase Order" shall mean Buyer's Purchase Order issued under the terms of the Purchase Agreement.
- 1.5** The word "Packages" includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 1.6** "The Contract" shall mean the contract between the Buyer and Seller consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.

2 BASIS OF CONTRACT

- 2.1** These conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2** The Purchase Order constitutes an offer by the Buyer to purchase the Goods in accordance with these conditions.
- 2.3** The Purchase Order shall be deemed to be accepted on the earlier of:
 - a) the Supplier issuing a written acceptance of the Purchase Order and
 - b) the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.
- 2.4** [The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these conditions.

3 Quality and fitness purposes

The Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and free from defects in material or workmanship. If the purpose for which the Goods are required is made known to the Seller expressly or by implication the Goods shall be fit for that purpose. The Goods shall conform with specifications, drawings descriptions and samples contained or referred to in the Contract. The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract. In the absence of a specification or sample, all goods supplied shall be within the normal limits of industrial quality.

4 Delivery date

The date of delivery of the Goods shall be that specified in a Purchase Order unless agreed otherwise between Buyer and Seller. Time shall be of the essence. Seller shall furnish such programmes of manufacture and delivery as Buyer may reasonably require and Seller shall give notice to Buyer as soon as practicable if such programmes are likely to be delayed. Buyer has the right to instruct Seller to take such action as is required to bring the Contract to completion or to reject the Goods for late delivery.

5 Incorrect delivery

All Goods must be delivered at the delivery point specified in the Purchase Order. If Goods are incorrectly delivered, Seller will be held responsible for any additional expense incurred in delivering them to their correct destination.

6 Passing of property and risk to Buyer

The property and risk in the Goods shall remain in Seller until they are delivered at the delivery point specified in the Purchase Order.

7 Terms of payment

5.1 The Purchase Order shall specify the time when invoices shall become due, and the manner in which invoices shall be submitted. Unless otherwise stated in the Purchase Order, payment will be made within 28 days of receipt of a properly prepared invoice.

5.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly nett extra charge.

8 Loss or damage in transit

8.1 Without prejudice to the rights of the Buyer under Clause 19 Buyer shall advise Seller and the Carrier (if any) in writing, otherwise than by a qualified signature on any Delivery Note, of any loss or damage within the following time limits:

- a) Partial loss, damage, defects or non-delivery of any separate part of a consignment shall be advised within seven days of date of delivery of the consignment or part consignment.
- b) Non-delivery of whole consignment shall be advised within 21 days of notice of despatch.

8.2 Seller shall make good free of charge to Buyer any loss of or damage to or defect in the Goods where notice is given by Buyer in compliance with this condition provided that Buyer shall not in any event claim damage in respect of loss of profits.

9 Acceptance

In the case of Goods delivered by Seller not conforming with the Contract whether by reason of being of quality or in a quantity measurement not stipulated or being unfit for the purpose for which they are required where such purpose has been made known in writing to Seller, Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase elsewhere as near as practicable to the same Contract specifications and conditions as circumstances shall permit but without prejudice to any other right which Buyer might have against Seller. The making of payment shall not prejudice Buyer's right of rejection. Before exercising the said right to purchase elsewhere Buyer shall give Seller reasonable opportunity to replace rejected Goods with Goods which conform to the Contract.

10 Variations

10.1 Seller shall not alter any of the Goods, except as directed in writing by Buyer; but Buyer shall have the right, from time to time during the execution of the Contract, by notice in writing to direct Seller to add to or to omit, or otherwise vary, the Goods, and Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract.

10.2 Where Seller receives any such direction from Buyer which would occasion an amendment to the Contract price Seller shall, with all possible speed, advise Buyer in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in Seller's tender. The Buyer shall confirm in writing all agreed amendments to Contract price.

10.3 If, in the opinion of Seller, any such direction is likely to prevent Seller from fulfilling any of his obligations under the Contract he shall so notify Buyer and Buyer shall decide with all possible speed whether or not the same shall be carried out and shall confirm his instructions in writing and modify the said obligations to such an extent as may be justified. Until Buyer so confirms his instructions they shall be deemed not to have been given.

11 Indemnity

11.1 The Seller shall keep the Buyer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:

- a) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
- b) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors; and
- c) any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or subcontractors.

11.2 This Clause 11 shall survive termination of the Contract.

12 Insurance

During the term of the contract (and for a period of 5 years thereafter), the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13 Force majeure

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control. Failure of sub-contractors and strikes are not force majeure.

14 Assignment and sub-contracting

The Contract shall not be assigned by Seller nor sub-contracted as a whole. Seller shall not sub-contract any part of the work without Buyer's written consent, but the restriction contained in this clause shall not apply to sub-contracts for materials, for minor details, or for any part of which the makers are named in the Contract. Seller shall be responsible for all work done and goods supplied by all sub-contractors.

15 Copies of sub-orders

When Buyer has consented to the placing of sub-contracts copies of each sub-order shall be sent by Seller to Buyer immediately it is issued.

16 Progress and inspection

Buyer's representatives shall have the right to progress and inspect all Goods at Seller's works and the works of sub-contractors at all reasonable times and to reject goods that do not comply with the terms of the Contract even for slight defects. Seller's sub-contracts shall include this provision. Any inspection, checking, approval or acceptance given on behalf of Buyer shall not relieve Seller or his sub-contractors from any obligation under the Contract.

17 Buyer's rights in specifications, plans, process information etc

Any specifications, plans, drawings, process information, patterns or designs supplied by Buyer to Seller in connection with the Contract shall remain the property of Buyer, and any information derived therefrom or otherwise communicated to Seller in connection with the Contract shall be kept secret and shall not, without the consent in writing of Buyer, be published or disclosed to any third party, or made use of by Seller except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Buyer must be returned to Buyer on fulfilment of the Contract.

18 Free-issue materials

Where Buyer for the purposes of the Contract issues materials "free of charge" to Seller such materials shall be and remain the property of Buyer. Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall be made good at Seller's expense. Without prejudice to any other of the rights of the Buyer, Seller shall deliver up such materials whether further processed or not to the Buyer on demand.

19 Hazardous goods

19.1 Hazardous Goods must be marked by Seller with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. Seller shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of hazardous Goods.

19.2 All information held by, or reasonably available to, Seller regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to Buyer.

20 Packages

20.1 Where Buyer has an option to return Packages and does so, Buyer will return such Packages empty in good order and condition (consigned "carriage paid" unless otherwise agreed) to Seller's supplying works or depot indicated by Seller, and will advise Seller the date of despatch.

Packages returned promptly in the manner aforesaid shall be subject to an allowance at Seller's standard rate operating at the time of delivery to Buyer.

20.2 Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle.

20.3 Where goods are delivered by tank wagons these will be emptied and returned without delay.

21 Warranty

Seller shall soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, Seller's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties, expressed or implied. Repairs and

replacements shall themselves be subject to the foregoing obligations for a period of 12 months from date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. Seller shall further be liable in damages (if any) in respect of each Purchase Order up to the limit of the price of the Goods covered by that Purchase Order.

22 Insolvency and bankruptcy

If Seller becomes insolvent or bankrupt or (being a Company) makes an arrangement with its creditors or has and administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), Buyer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to Seller or any person in whom the Contract may have become vested and shall be entitled to the return of any monies paid in advance.

23 General conditions in the tender

No conditions submitted or referred to by Seller when tendering shall form part of the Contract unless otherwise agreed to in writing by Buyer.

24 Applicable Law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

25 Notices

Any notice to be sent under this Agreement should be sent to the addresses given on page one and served personally or by pre-paid registered or recorded delivery letter or fax confirmed by first class post. Letters shall be deemed served 48 hours after posting and faxes on despatch.

26 Waiver

No delay or omission by Buyer in exercising any of its rights or remedies under this Agreement or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

27 Headings

The headings in this Agreement are for ease of reference only and shall not affect the construction thereof.

28 Severance

In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Agreement so far as possible.

29 Termination

29.1 The Buyer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Contract. The Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

29.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by

giving written notice to the Seller if:

- a) the Seller commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- b) the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- c) the Seller takes any step or action in connection with the Seller being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business [or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- d) the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- e) the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

29.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

29.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

30 Remedies

30.1 If the Goods are not delivered on the delivery date, or do not comply with the undertakings set out in Clause 2 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Buyer may exercise any one or more of the following remedies:

- a) to terminate the Contract;
- b) to reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
- c) to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods if paid;
- d) to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- e) to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party; and
- f) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.

30.2 The Buyer's rights and remedies under these conditions are in addition to its rights and remedies implied by statute and common law.

31 Anti-Bribery and Anti-Corruption

31.1 No Party shall offer or agree to give any person working for or engaged by the other Parties any gift or other

consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Parties;

31.2 Without prejudice to Clause 32.1:

- a) Each Party shall comply with the Bribery Act 2010;
- b) No Party shall engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- c) Each Party shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption;
- d) Each Party shall use all reasonable endeavours to ensure that all its staff who are working on the Project shall comply with its obligations in Clause 32.2 to the extent applicable.
- e) Any breach or alleged breach of this clause 32 by either Party shall be deemed to be a material breach of this Agreement.
- f) Notwithstanding any other provision set out in the Agreement, in the event of any breach or alleged breach of this clause 28 by one Party, the other Party shall be entitled at any time and without liability, to immediately terminate the Agreement. The breaching Party shall be responsible for and shall indemnify, the other from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities however so arising in respect of any breach or alleged breach of this clause 32.

32 Anti-Slavery

Each party shall comply with the Modern Slavery Act 2015 and shall take reasonable steps to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business.