

**1. Definitions and Interpretation**

In these Conditions:

**"Conditions"** means these standard terms and conditions of purchase;

**"Contract"** means the contract governed by these Conditions constituted by the Supplier's acceptance of the Order in the manner indicated below;

**"Goods"** means the goods (if any) described in the Order;

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Order"** means the Purchaser's purchase order to which these Conditions are annexed;

**"Price"** means the price or prices specified in the Order for the Goods and/or Services;

**"Purchaser"** means JenaValve Production Limited;

**"Supplier"** means the person, firm or company to whom the Order is addressed;

**"Services"** means the services (if any) described in the Order;

**"Site"** means the Purchaser's registered office situated in JenaValve Production Limited, Unit 9A Astley Way, Swillington, Leeds LS26 8XT, UK; or the site specified in the Order where the Goods are to be delivered or the Services performed (as applicable); and

**"Specification"** means all illustrations, drawings, calculations or any other technical description (if any) of the Goods contained or referred to in the Order.

**2. Contract**

The Order constitutes an offer by the Purchaser. Acceptance of the Order will bind the Supplier to these Conditions and no Goods or Services shall be supplied or performed by the Supplier, its employees, agents or representatives except in accordance with these Conditions. No terms and conditions submitted by the Supplier shall apply and these Conditions shall prevail over all other terms and conditions. No purported variation in price, date of delivery or specification of the Goods and/or Services shall be effective unless agreed in writing by the Purchaser.

**3. Performance**

3.1 All Goods and Services supplied or carried out shall be of best quality and in accordance with the Order.

3.2 Where relevant, the Supplier shall issue to the Purchaser any relevant certificates corresponding to

the Goods (including but not limited to the Certificate of Conformity (COC), the certificate of material or the certificate of analysis).

3.3 Each of the Goods supplied or Services carried out shall be performed to the satisfaction of the Purchaser, and in accordance with all of the Purchaser's reasonable directions.

3.4 The Purchaser reserves the right to reject any Goods or Services which are faulty or do not conform to the Order. The Purchaser may return rejected Goods at the Supplier's risk and expense.

3.5 Where the Purchaser informs the Supplier of a defect in the performance of the Services, the Supplier shall, at the Purchaser's option, either remedy the defect at its own cost or pay the Purchaser the costs incurred in having such defect remedied.

**4. Standards**

4.1 The Supplier warrants:

(a) that the quality and workmanship of Goods or Services supplied complies with all relevant English or European Community legislation, statutory rule, or order or regulations and applicable regulatory standards in force for the time being;

(b) that the use of the Goods by the Purchaser will not infringe any British or foreign patent, trademark, trade name, registered design or other intellectual property right;

(c) that Goods made to the Purchaser's Specification shall not be manufactured for or supplied to any other party;

(d) that the Goods will be free from defects in material and workmanship, that they are fit for the purpose for which they are requested and are new and free from any lien, charge or encumbrance; and

(e) that the Services will be performed with reasonable care and skill and in accordance with good industry practice, using trained, experienced and skilled staff.

**5. Price and Payment**

5.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise stated, shall be inclusive of all charges other than VAT (which shall be payable by the Purchaser subject to receipt of a valid VAT invoice). No increase in the Price may be made without the prior written consent of the Purchaser.

5.2 The Supplier shall send to the Purchaser a detailed invoice, clearly stating the Order number, and including the Purchaser's article number and the delivery note number of the Supplier and all information required to be stated on a tax invoice for VAT purposes.

5.3 If the Purchaser fails to pay any amount due in accordance with clause **Error! Reference source not found.** of these terms, the Supplier shall have the right to charge interest on the overdue amount at a rate of 2% per annum above the Bank of England

base rate from time to time from the due date to the date of actual payment.

## 6. **Delivery**

- 6.1 Goods shall be delivered to, and Services shall be performed at, the Site on the date or within the period stated in the Order, in either case during the Purchaser's usual business hours. The Purchaser reserves the right to amend any delivery instructions.
- 6.2 Delivery shall be deemed to be made on receipt of the Goods by the Purchaser in accordance with the terms of the Contract and damage caused during loading, transport and/or unloading shall be at the Supplier's expense.
- 6.3 The Purchaser shall not be obliged to return to the Supplier any packaging materials for the Goods.
- 6.4 Time of delivery of the Goods and of performance of the Services is of the essence of the Contract. Any breach of any condition by the Supplier shall entitle the Purchaser either to treat the Contract as repudiated or treat any such breach as a breach of contract giving rise to a claim for damages.
- 6.5 The Supplier shall provide the Purchaser with reasonable prior written notice of any delay in Delivery, and in any event within 24 hours of the time the Supplier became aware or should reasonably have become aware of such delay.
- 6.6 The Purchaser shall be entitled to rescind the Contract for Goods which have not been delivered in whole or in part (where the Purchaser had given prior written consent for such partial delivery).

## 7. **Property and Risk**

- 7.1 Property and risk in the Goods shall, without prejudice to any rights or remedies of the Purchaser, pass to the Purchaser on Delivery.

## 8. **Inspection and Testing**

- 8.1 The Supplier shall allow the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require prior to the Goods being despatched and the Supplier shall provide all reasonable facilities and assistance to the Purchaser free of charge at his premises. No failure to make complaint at the time of such inspections or tests and no approval given during or after such inspections or tests shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.
- 8.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Order. Such notice shall be given within a reasonable time after Delivery of the Goods concerned; and for the purpose of this clause 8.2 "reasonable time" shall mean 10 business days. If the Purchaser rejects any of the Goods pursuant to this Clause, the Purchaser shall be entitled to have the Goods concerned as quickly as possible either repaired by the Supplier or (at the option of the Purchaser) replaced by the Supplier with Goods which comply in all respects with the requirements of the Order.
- 8.3 The Purchaser shall be entitled to conduct further inspections and tests after the Supplier has carried any of the remedial actions provided for at Clause 8.2.

## 9. **Liability**

- 9.1 The Supplier will indemnify the Purchaser on demand against all claims, demands, proceedings, damages, losses, costs, expenses, fines and charges awarded against or incurred or paid by the Purchaser in consequence of any default or delay by the Supplier in duly performing its obligations under the Contract.
- 9.2 The Supplier shall indemnify the Purchaser and hold the Purchaser harmless on demand from and against any and all direct and consequential liabilities, loss, damages, injury, costs, fines, interests and expenses (including legal and other professional fees and expenses) awarded against, suffered, incurred or paid by the Purchaser as a result of or in connection with:
  - (a) a breach of any of the warranties in Clause 4.1;
  - (b) any claim or allegation that the Goods infringe, or their importation, use, manufacture or resale infringes the Intellectual Property Rights of any third party (except to the extent a claim arises from compliance with any Specification supplied by the Purchaser).

## 10. **Insurance**

- 10.1 The Supplier shall take out and maintain adequate insurance at its own expense for its liability under the Contract [and in any event such insurance shall provide a minimum cover of GBP three million for each of professional indemnity and product liability insurance].
- 10.2 The Supplier shall produce evidence of such policy to the Purchaser on demand.

## 11. **Force Majeure**

- 11.1 Neither the Supplier nor the Purchaser shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, to the extent that the delay or failure was beyond that party's reasonable control (including but not limited to strike, lock out or other form of industrial action),

## 12. **Cancellation**

- 12.1 The Purchaser shall be entitled to cancel an Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance without incurring any liability to the Supplier other than to pay for Goods and/or Services already delivered or performed at the time of such notice.
- 12.2 If either before or after acceptance of the Order the Supplier becomes bankrupt or insolvent or compounds with its creditors, or being a limited company, commences to be wound-up or if a receiver is appointed over any part of the Supplier's assets, the Purchaser shall be at liberty by written notice to cancel the Contract, without being liable for loss or damage of any kind arising from such cancellation, and without prejudice to any rights or remedies which have accrued or shall accrue thereafter to the Purchaser.

**13. Intellectual property rights**

13.1 All Intellectual Property Rights in any Goods developed solely in accordance with the Purchaser's guidelines, instructions or Specification shall vest exclusively in the Purchaser on creation. To the extent that such Intellectual Property Rights do not vest automatically in the Purchaser, the Supplier hereby irrevocably and unconditionally assigns by way of present assignment of present and future rights all such Intellectual Property Rights to the Purchaser and the Supplier shall execute such documents and take such steps as the Purchaser may reasonably require in order to transfer such Intellectual Property Rights to the Purchaser.

13.2 All Intellectual Property Rights in materials provided by the Purchaser to the Supplier in relation to the Order shall remain the property of the Purchaser and nothing in these Conditions shall operate to transfer such Intellectual Property Rights to the Supplier. All such materials and any copies thereof shall be returned to the Purchaser following the termination of the Contract or fulfilment of the Order, at the Purchaser's request.

**14. Confidentiality**

14.1 Any information disclosed by the Purchaser to the Supplier (including but not limited to these terms and the Order) shall be confidential and the Supplier shall not disclose it to any third party without the prior written consent of the Purchaser or use such

confidential information for any purpose than fulfilling an Order.

14.2 After the fulfilment of the Order, unless otherwise confirmed in writing by the Purchaser, this clause 14.1 shall remain in full force indefinitely.

**15. General**

15.1 The Supplier shall not without the prior written consent of the Purchaser sub-contract or assign the Contract to any other party.

15.2 Each clause and sub-clause in these conditions of purchase is separate and severable and enforceable accordingly.

15.3 No term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

15.4 The Contract together with any documents referred to in the Order set out the entire agreement between the parties in respect of the subject matter of the Contract.

15.5 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.

**16. Governing law and jurisdiction**

The construction and performance of the Contract shall be in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.