

CONDITIONS OF SALE

1 **Definitions and interpretation**

In these conditions of sale the following terms have the following meanings:

"Agreement" the agreement between Supplier and Customer which is made up of the Order and these conditions;

"Authorised Distributor" an authorised distributor of Goods appointed under a written contract with Supplier;

"Customer" the customer whose details appear on the Order;

"Delivery Address" the delivery address detailed on the Order;

"Goods" the goods listed on the Order;

"Order" Customer's order once accepted by Supplier;

"Price" the price detailed on the Order or, if no price is detailed on the Order, the price of the Goods calculated in accordance with Supplier's price list in force on the date of Supplier's acceptance of Customer's order;

"Specification" the description of the Goods provided by Supplier from time to time and the "Instructions for Use" contained therein and/or published on the Supplier's website from time to time; and

"Supplier" Probe Scientific Limited (company number 03598449) whose registered office is at Cornel Associates, 117 Alexandra Park Road, Muswell Hill, London, N10 2DP.

2 **Basis of sale**

2.1 These conditions apply to all contracts for the sale of goods entered into by Supplier to the exclusion of all others including, without limitation, any terms and conditions appearing on Customer's purchase order or implied by trade or a course of dealing. By placing an order, Customer agrees to deal with Supplier on these conditions.

2.2 All orders are subject to acceptance at Supplier's absolute discretion and are not binding upon Supplier until accepted by Supplier in writing.

2.3 Unless otherwise specified in writing, quotations are valid for 30 days from the date of issue.

2.4 Except where Customer is an Authorised Distributor, each Agreement contains all the terms agreed by the parties in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing. Each party acknowledges that in entering into an Agreement it has not relied upon any matter not set out therein.

2.5 Supplier may make changes to these conditions from time to time. Any such change shall apply to all orders placed by Customer after the date of the change. Customer is reminded of the need to periodically check these conditions for changes.

2.6 Supplier reserves the right to change the Specification without notice to Customer, including (without limitation) to comply with safety, regulatory and other requirements.

2.7 Customer shall only use the Goods in accordance with the Specification.

2.8 In the event of a conflict between these conditions and an Order, the terms of the Order shall take precedence but only to the extent that such term is unambiguously and expressly stated to vary these terms.

2.9 Customer may not cancel or vary any Order which Supplier has accepted orally or in writing without Supplier's express written consent. Supplier reserves the right to charge Customer reasonable cancellation charges in the event of such cancellation.

3 **Price and payment**

3.1 Unless otherwise specified on the Order, the Price is exclusive of the costs of delivery, packing, insurance, VAT and any other applicable taxes, duties and charges all of which must be paid by Customer in addition to the Price. If Supplier incurs any costs or expenses on behalf of Customer these costs or expenses shall be included in Supplier's invoice together with the Price.

3.2 The Price will be invoiced in advance of, or upon, shipment of the Goods. Each invoice must be paid without set off or deduction in such currency and by such due date as Supplier specifies on its invoice and where no such date is specified, within 30 (thirty) days of the date of the invoice. Time of payment shall be of the essence.

3.3 If Customer fails to pay any amount in full when it is due, Supplier may suspend deliveries to Customer and/or charge interest on the overdue amount at the rate of 6% above the official dealing rate of the Bank of England from time to time calculated on a daily basis from the due date until the date of payment. Customer shall indemnify and hold Supplier harmless in respect of any loss, liability, damage, cost and expense (including, without limitation, legal costs) suffered or incurred by Supplier in recovering any sums which Customer did not pay when due.

3.4 Supplier reserves the right to increase the Price at any time prior to delivery to reflect any increase in the cost of supplying the Goods due to factors beyond Supplier's reasonable control.

4 **Delivery**

4.1 Supplier will use reasonable endeavours to deliver the Goods to the Delivery Address on or before the estimated delivery date set out on the Order using any shipment method Supplier deems appropriate, but time of delivery shall not be of the essence.

4.2 Customer shall provide all necessary labour and equipment to enable the Goods to be safely unloaded at the Delivery Address.

4.3 Notwithstanding condition 4.1, Supplier shall be entitled to allocate its stock of Goods to its customers as it sees fit. If Supplier holds insufficient stock to meet all its outstanding orders, Supplier shall be entitled to postpone the delivery date of any Order until such date as is, in Supplier's reasonable opinion, necessary.

4.4 Supplier shall be entitled to deliver the Goods in instalments. Each instalment shall be a separate contract and Supplier's default in relation to one instalment shall not entitle Customer to cancel any other instalment or treat the Agreement as repudiated.

4.5 Customer shall inform Supplier within 5 (five) days of the date of delivery if the Goods are damaged or less than the correct amount has been delivered. Customer's only remedy in respect of damaged or short delivery shall be (at Supplier's sole discretion) the provision of replacement goods or a refund. Supplier shall not be liable for any damage or under delivery that is not notified in this way.

4.6 Customer acknowledges that:

4.6.1 certain Goods must be stored under specific conditions or they will cease to meet the Specification and that accordingly such Goods are goods of a type which will deteriorate or expire rapidly; and

4.6.2 once delivered, Supplier cannot ascertain under which conditions Customer has stored Goods.

4.7 Customer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by Supplier or any of the circumstances set out condition 4.5 arising. If for any reason Customer fails to accept delivery of any of the Goods or Supplier is unable to deliver the Goods because Customer has not provided appropriate instructions, documents, licences or authorisations:

4.7.1 the Goods shall be deemed to have been delivered; and

4.7.2 Customer shall indemnify and hold Supplier harmless in respect of any loss, liability, damage, cost and expense (including, without limitation, the costs of storage and/or insurance of the Goods) suffered or incurred by Supplier as a result of Customer's failure to take delivery of the Goods.

4.8 Supplier may cancel, at any time, any Order if Supplier does not have any regulatory or other approvals necessary for the supply of Goods to, or use of Goods by Customer. Upon cancellation of any Order, Supplier shall refund any amounts paid by Customer to Supplier in respect of that Order.

5 **Risk and title**

5.1 The risk of loss of or damage to the Goods will pass to Customer when the Goods have been delivered to the carrier for delivery to Customer.

5.2 Ownership of the Goods will not pass to Customer until Supplier receives payment of the Price and all other sums due to Supplier in full in cleared funds.

5.3 Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.

5.4 Until ownership of the Goods passes to Customer, Customer shall hold the Goods as Supplier's fiduciary agent and bailee and shall keep them properly stored, insured and marked as Supplier's property. Prior to the passing of ownership Customer shall be entitled to sell (at full market value) or otherwise use the Goods at its own risk in the ordinary course of its business and in its own capacity.

5.5 Until such time as title to the Goods passes to Customer and, providing the Goods are still in existence and have not been re-sold or incorporated into other goods, Supplier shall be entitled to require Customer to deliver up the Goods and, if Customer fails to do so, to enter upon the premises where the Goods are kept to re-possess the same. Customer shall indemnify and hold Supplier harmless against any costs and expenses and/or liability that Supplier may incur to any third party in connection with any re-possession or attempted re-possession.

5.6 Customer may not pledge or charge the Goods by way of security for any indebtedness but, if it does so, all monies due to Supplier from Customer shall become immediately due and payable.

6 **Intellectual Property**

6.1 Supplier or its licensors shall retain all intellectual property rights (whether or not registered, unregistered or capable of registration) in all Goods and in all drawings, data, test results and other deliverables ("**Deliverables**") supplied to Customer under any Agreement.

6.2 Supplier grants Customer a personal, non-transferable, non-exclusive, royalty-free right to use the Deliverables only for the purpose for which Supplier supplies them to Customer and for the period during which Customer uses the Goods. Customer may not supply Deliverables separately from the Goods to any third party or use them for any other purpose.

6.3 Supplier may inform third parties that it provides, or has provided, the Goods to Customer. For this sole purpose, Customer grants Supplier a licence to use its corporate name and any logo.

6.4 Nothing in these conditions will be construed as any representation or warranty by Supplier that the design, manufacture, use or sale of the Goods will not infringe any third party intellectual property rights.

7 **Technical Assistance**

On request, Supplier may (in its sole discretion) provide technical assistance and information with respect to the Goods. Nothing in these conditions will be construed as any representation or warranty by Supplier as to merchantability or fitness for any particular purpose of Goods in respect of which such technical assistance (e.g. as to the use, selection, application or suitability of the Goods) is provided by Supplier.

8 **Warranties and defects**

8.1 Supplier warrants that the Goods shall comply with the Specification:

8.1.1 upon delivery; and

8.1.2 until the expiry date specified on the Good's packaging, or, where no expiry date is specified, the period notified to Customer by Supplier in writing, provided that the Goods are: (i) stored and used in accordance with the Specification; (ii) used in accordance with all instructions notified to Customer from time to time; and (iii) used in accordance with any industry standards and practice.

8.2 Customer's only remedy in respect of a breach of the warranty in condition 8.1 will be (at Supplier's sole discretion) (i) repair or replacement of the Goods or (ii) a refund of the Price and any other costs or expenses invoiced by Supplier under condition 3.1.

8.3 All warranties, conditions, guarantees and representations that may be implied by statute, common law or otherwise are hereby excluded by Supplier to the fullest extent permitted by law.

8.4 Customer is responsible for verifying any hazards and conducting any further research necessary to learn the hazards involved in using the Goods. Customer shall warn its purchasers, employees or auxiliary personnel of any risks involved in using or handling the Goods. Customer shall indemnify and hold Supplier harmless in respect of any loss, liability, damage, cost and expense (including, without limitation, legal costs) suffered or incurred by Supplier as a result of Customer's failure to comply with this condition 8.4.

9 **Liability**

9.1 Save as provided in condition 9.2 below:

9.1.1 Supplier's total aggregate liability under each Agreement (whether in contract, tort (including, but not limited to, negligence) or otherwise) shall not exceed the total amount payable to Supplier by Customer under an Agreement; and

9.1.2 Supplier will not be liable for any claim to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, injury to reputation, third party losses or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability and regardless of whether Supplier knew or had reason to know of the possibility of the loss or damage in question.

9.2 Supplier's liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation, damage suffered as a result of the breach of the warranties as to title and quiet enjoyment implied under English law and/or any other loss or damage the exclusion or limitation of which is prohibited by English law is not limited or excluded by these conditions or any Agreement.

10 **Force Majeure**

Supplier shall not be liable for failure to perform under an Agreement caused by a circumstance or event beyond its reasonable control including, without limit, strikes or industrial disputes (whether involving Supplier's workforce or that of a third party), shortages of or inadequate sources of raw materials, component parts or essential utilities. In case of any shortages of raw materials or component parts we reserve the right to apportion Goods on an equitable basis in our sole discretion.

11 **General**

11.1 Customer may not transfer, assign or otherwise part with the whole or any part of any Agreement without Supplier's prior written consent. Supplier may transfer, assign or otherwise part with the whole or any part of any Agreement at any time.

11.2 All notices shall be given in writing and sent by special delivery post, or any other post where the recipient must sign to acknowledge receipt, to the recipient's address detailed in the Order (or as may be notified to the other party in accordance with this clause from time to time) and shall be deemed to have been served upon delivery or when returned to the sender marked "gone away" or similar.

11.3 Neither party's failure to enforce or rely on or delay in enforcing or relying on any right will prevent that party from later enforcing or relying upon that or any other right.

11.4 If a court or other regulatory body finds that any part of this Agreement is invalid or unenforceable, the remainder of the Agreement shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.

11.5 Nothing in any Agreement shall confer any rights upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.6 These conditions and each Agreement (including any associated non-contractual claims and disputes) shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.