

The customer's attention is drawn in particular to the provision of clause 10.

1. INTERPRETATION

1.1 **Definitions.** In these terms and conditions, the following definitions apply:

Conditions: the terms and conditions set out in this document as varied in accordance with clause 14.4.

Confidential Information: has the meaning given in clause 11.1.

Contract: the contract between Mologic and the Customer for the sale and purchase of the Products in accordance with these Conditions.

Customer: the company which has signed these Conditions and is named in the Purchase Order to which the Products are being provided by Mologic.

Delivery Location: the address detailed on the Purchase Order, unless another document issued by Mologic confirms a different address for Delivery.

Delivery: actual delivery, collection or deemed Delivery in accordance with clause 4.1.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Group: in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

holding company and subsidiary: mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and.

month: a calendar month.

Mologic: Mologic Limited, registered in England and Wales with company number 04784437 and having its registered office at Bedford Technology Park, Thurlough, Bedford, Bedfordshire, MK44 2YP.

Purchase Order Acknowledgement: any written acknowledgment of a Purchase Order which may be issued in accordance with clause 2.3.

Products: the deliverables described in the Purchase Order produced by Mologic for the Customer.

Purchase Order: written order for the Products submitted by the Customer in accordance with clause 2.2.

Public Holiday: any bank holiday and/or public holiday in England and Wales.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

Working Day: any day except Saturday, Sunday, or any day falling on a Public Holiday.

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A **person** includes a natural person and any corporate or unincorporated body (whether or not having separate legal personality).

(b) Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

(c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

(d) A reference to a party includes its personal representatives, successors or permitted assignees.

(e) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or any previous or current course of dealing.

2.2 The Purchase Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Purchase Order are complete and accurate.

2.3 The Purchase Order shall only be deemed to be accepted when Mologic issues an Purchase Order Acknowledgement to the Customer, at which point the Contract shall come into existence and Mologic shall supply and the Customer shall purchase the quantities and type of Products confirmed in the Purchase Order.

2.4 A quotation for the Products given by Mologic shall not constitute an offer. A quotation shall only be valid for a period of 30 Working Days from its date of issue.

3. PRODUCTS

3.1 The Products are described in the Purchase Order.

3.2 Mologic reserves the right to amend the Purchase Order or Purchase Order Acknowledgement if required by any applicable statutory or regulatory requirements.

3.3 Where the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of the Products under this Purchase Order relates to medical devices and/or medicinal products (both as defined under any relevant law and guidance), Mologic warrants and undertakes that it will comply with such law and guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, Mologic warrants that:

(a) all Products which are medical devices shall have valid CE markings and valid marketing authorisations as required by applicable law and guidance and that all relevant marking, authorisation, labelling, registration, approval and documentation requirements as required under law and guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Products have been complied with; and

(b) it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) requirement in relation to the Products in accordance with applicable law and guidance.

4. DELIVERY

4.1 Mologic or its carriers (whomever is actually delivering the Products), shall make the Products available for Delivery to the Customer at the Delivery Location at any time after Mologic notifies the Customer that the Products are ready and, subject to clause 4.3(a), Delivery will take place on the Products' arrival at the Delivery Location.

4.2 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. Mologic shall not be liable for any delay in Delivery of the Products that is caused by:

(a) a Force Majeure Event; or

(b) the Customer's failure to provide Mologic with adequate instructions; or

(c) the Customer's failure to perform any of its Customer obligations detailed at clause 5; or

(d) Mologic exercising its rights to suspend deliveries under clause 8.5; or

(e) any other instructions that are relevant to the supply of the Products.

4.3 If the Customer fails to accept Delivery of the Products within three Working Days of Mologic notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or Mologic's failure to comply with its obligations under the Contract:

(a) Delivery of the Products shall be deemed to have been completed at 9.00 am on the third Working Day after the day on which Mologic notified the Customer that the Products were ready; and

(b) Mologic may store the Products until actual delivery or collection (as the case may be) takes place, and charge the Customer for all related costs and expenses (including insurance).

4.4 The Customer shall not be entitled to reject the Products if Mologic delivers up to and including 5% more or less than the quantity of Products ordered, but a pro rata adjustment shall be made to the Purchase Order invoice on receipt of notice from the Customer that the wrong quantity of Products was delivered.

4.5 Mologic may make the Products available for Delivery by instalments, each of which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in making a particular instalment available for Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.6 If, for whatever reason, Mologic suggests the Customer obtain alternative replacement Products of similar description and quality in the cheapest market available to the Products – for the avoidance of doubt:

(a) no warranty is provided; and

(b) no liability is accepted,

by Mologic in relation to the replacement Products or the recommendation of them.

5. CUSTOMER OBLIGATIONS

5.1 The Customer shall:

(a) co-operate with Mologic in all matters relating to the Contract;

(b) if the Delivery Location is the Customer's premises or a location other than Mologic's premises, provide in a timely manner such access to the relevant premises as is requested by Mologic, or any of its carriers, assignees, subcontractors or agents;

(c) be responsible (at its own cost) for preparing the relevant premises for the supply of the Products.

5.2 The Customer shall ensure that the order and description of the Products in the Purchase Order are complete and accurate.

5.3 On Delivery, the Customer shall:

(a) unpack and inspect the Products and notify Mologic in writing of any shortage in quantity, damage or defect within fourteen working days of such Delivery; and,

(b) failing any such notification, the Customer shall be deemed to have accepted the Products for all purposes.

In the case of (i) latent defects; or (ii) actual collection taking place subsequent to a deemed Delivery under clause 4.3(a), the period of fourteen working days shall commence when the latent defect is discovered or ought to have been discovered, as the case may be; or, when there has been a deemed Delivery, within fourteen working days after the date of the deemed Delivery.

5.4 The Customer will co-operate in assessing and minimising any health and safety hazards to a reasonable level and will notify Mologic of all such hazards in relation to the Contract prior to the Delivery of the Products.

5.5 If Mologic's performance of any of its relevant obligations under the Contract is prevented or delayed by any act by the Customer or by any omission by the Customer to perform any of its relevant obligations ("**Customer Default**"):

(a) Mologic shall, without limiting its other rights or remedies, have the right to suspend performance of its obligations under the Contract until the Customer remedies the Customer Default;

(b) Mologic shall not be liable for any costs, expenses or losses incurred by the Customer arising directly or indirectly from any Customer Default; and

(c) the Customer shall reimburse Mologic on written demand for any costs, expenses or losses incurred by Mologic arising directly or indirectly from any Customer Default.

6. QUALITY

6.1 On Delivery, Mologic warrants the performance of the Products until its expiry date and instructions for use.

6.2 Subject to clause 6.3, if:

(a) the Customer gives notice in writing to Mologic within fourteen (14) working days of Delivery that some or all of the Products do not comply with the warranty set out in clause 6.1; and

(b) Mologic is given a reasonable opportunity of examining such Products; and

(c) the Customer (if asked to do so by Mologic) returns such Products to Mologic's place of business,

Mologic shall, at its option, repair or replace the defective Products, or refund the price of the defective Products.

6.3 Mologic shall not be liable for Products' failure to comply with the warranty set out in clause 6.1 in any of the following events:

(a) the Customer makes any further use of such Products after giving notice in accordance with clause 6.2(a);

(b) the Customer makes any further use of such Products after discovering that some or all of the Products do not comply with the warranty set out in clause 6.1;

(c) the Customer fails to perform any of its obligations set out in clause 5;

(d) the defect arises because the Customer failed to follow Mologic's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;

(e) the Customer alters or repairs such Products without the prior written consent of Mologic;

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

(g) the Products differ from their description or the Purchase Order as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; and/or

(h) the Products are used for an unusual purpose which: (A) was not stated in the Purchase Order and accepted by the Purchase Order Acknowledgement; and (B) was not therefore within the contemplation of the parties when the Contract was made.

6.4 Except as provided in this clause 6, Mologic shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Products supplied by Mologic.

7. TITLE AND RISK

7.1 The risk in the Products shall pass to the Customer on Delivery.

7.2 Title to the Products shall not pass to the Customer until Mologic has received payment in full (in cash or cleared funds) for:

(a) the Products; and

(b) any other products or services that Mologic has supplied to the Customer, whether under the Contract or any other contract.

7.3 Until title to the Products has passed to the Customer, the Customer shall:

(a) hold the Products on a fiduciary basis as Mologic's agent;

(b) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Mologic's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

(d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;

(e) notify Mologic immediately if it becomes subject to any of the events listed in clause 9.2; and

(f) give Mologic such access and information relating to the Products as Mologic may require from time to time, but the Customer may resell or use the Products in the ordinary course of its business.

7.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or Mologic reasonably believes that any such event is

about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Mologic may have, Mologic may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored to the Customer's order in order to recover them.

8. TERMS OF PAYMENT

8.1 Payment, including the payment of any deposit to account of the price of the Products, will be due as stated in the quotation and/or the Purchase Order Acknowledgement and/or invoice, as the case may be.

8.2 Unless any delay is caused by Mologic, subsequent changes of the date upon which the Products are to be delivered will not change the due date for payment of any part of the price.

8.3 The Customer shall pay invoices in full and in cleared funds on the date detailed on the invoice and/or as stipulated in writing by Mologic to the Customer. Payment shall be made to the bank account nominated in writing by Mologic.

8.4 Any discounts or other reductions in the price granted by Mologic are subject to the Customer's compliance with its whole obligations under the Contract and may be withdrawn by notice to the Customer if the Customer breaches any obligation.

8.5 Without limiting its rights in any way, Mologic reserves the right to suspend deliveries and demand immediate payment for all Products which have been ordered if any payment under any contract between the Customer, or any person associated with the Customer, and Mologic becomes overdue.

8.6 All payments payable to Mologic under these Conditions shall become due immediately on the termination of the Contract.

8.7 The price of the Products is inclusive of the costs and charges of packaging of the Products.

8.8 The price of the Products is exclusive of any transport costs which shall be invoiced in addition to the Customer if transport is arranged by Mologic. Alternatively, 'Ex Works' will be stated on the Quotation whereby the Customer is responsible for arranging transport of the Products and hence no additional charges would be invoiced by Mologic.

8.9 The price of the Products is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from Mologic, pay to Mologic such additional amounts in respect of VAT as are chargeable from time to time on the supply of the Products.

8.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Mologic in order to justify withholding payment of any such amount in whole or in part. Mologic may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Mologic to the Customer.

9. CUSTOMER'S INSOLVENCY

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or Mologic reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Mologic, Mologic may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Mologic without incurring any liability to the Customer, and all outstanding sums in respect of Products delivered to the Customer shall become immediately due.

9.2 For the purposes of clause 9.1, the relevant events are:

(a) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any 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;

(b) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(c) the Customer's financial position deteriorates to such an extent that in Mologic's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude Mologic's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

(d) any other matter in respect of which it would be unlawful for Mologic to exclude or restrict liability.

10.2 Subject to clause 10.1:

(a) Mologic shall not in any circumstances be liable whether in contract, tort (including for negligence), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) Mologic's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total price paid by the Customer under the Contract.

11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's Intellectual Property Rights including its operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("**Confidential Information**"), except with the prior written consent of the other party or when such disclosure is permitted by clause 11.2.

11.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of carrying out the party's obligations under these Conditions, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 as though they were a party to these Conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

(b) as may be required by law, court order or any governmental or regulatory authority.

11.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Right held, made, obtained or licensable by either party now or in the future.

12. INTELLECTUAL PROPERTY

All Intellectual Property Rights in the Products is and shall remain the exclusive property of Mologic (or, where applicable, the third party from whom Mologic's right to use the Intellectual Property Rights has derived).

13. FORCE MAJEURE

13.1 Mologic (or any person acting on its behalf) shall not have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

13.2 Should Mologic wish to claim the benefit of this provision it shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

(a) notify the Customer of the nature and extent of such Force Majeure Event; and

(b) use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as feasible.

13.3 If the Force Majeure Event prevails for a continuous period of more than three (3) months, either party may terminate the Contract by giving 14 Working Days' notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of these Conditions prior to such termination.

13.4 If termination occurs under clause 13.3, all sums paid to Mologic for any Products (which have not yet been delivered) shall be refunded to the Customer, except that Mologic shall be entitled to payment on a quantum meruit basis for all work done before said termination, provided that Mologic takes all reasonable steps to mitigate the amount due.

14. GENERAL

14.1 Assignment and subcontracting.

(a) Mologic may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Mologic.

14.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, at the time of transmission and otherwise on the next Working Day provided that the sender is not notified of any server failure, data overload, interception by spam filters, or any other delivery failure notice.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance.

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.4 Waiver and Variation.

(a) A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Mologic.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.