

1. INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings:
- 1.2 "Buyer" the person(s) firm or Seller from whom an order to supply Goods is received by the Seller;
- 1.3 "Buyer Materials" any documents or other materials and any data or other information provided by the Buyer relating to the Goods;
- 1.4 "Conditions" the standard terms and Conditions of sale as set out in this document;
- 1.5 "Contract" any Contract between the Seller and the Buyer for the sale and purchase of the Goods and/or the provision of Services;
- 1.6 "Components" the Components, articles or systems belonging to the Buyer, which are to be the subject of the Services;
- 1.7 "Delivery Point" the place where delivery of the Goods is to take place under Condition 4.1;
- 1.8 "Goods" any Goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).
- 1.9 "Seller" Hi Rel Limited, Fuller Road, Harleston, Norfolk IP20 9EA
- 1.10 "Seller Materials" any documents or other materials, and any data or other information provided by the Seller relating to the Goods;
- 1.11 "Services" any Services agreed in the Contract to be acquired by the Buyer from the Seller (including any part or parts of them)
- 1.12 "Specification" includes any plans, patterns, drawings, data or other information relating to the Goods or Services;
- 1.13 In these Conditions:
 - 1.13.1 references to legislation are to that legislation as amended;
 - 1.13.2 "include", "including", "in particular" or any similar words shall be interpreted with the words "without limitation" after them;

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and Conditions (including any terms or Conditions which the Buyer purports to apply under any purchase order, confirmation of order or of receipt, Specification, e-mail or other document none of which will form part of the Contract simply as a result of such document being referred to in the Contract).
- 2.2 These Conditions apply to all sales of Goods or provision of Services by the Seller and any variation to these Conditions and any representations about the Goods and/or the Services shall have no effect unless expressly agreed in writing and signed by the Seller.
- 2.3 Each order for Goods and/or Services by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods and/or to acquire Services subject to these Conditions (an "Order")
- 2.4 No Order placed by the Buyer shall be deemed to be accepted by the Seller until the Seller issues a written acknowledgement of Order or (if earlier) the Seller delivers the Goods to the Buyer.
- 2.5 Any quotation is given on the basis that no Contract will come into existence until the Seller dispatches the Goods, or starts to perform the Services or an acknowledgement of order is sent to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it
- 2.6 No Order which has been accepted by the Seller may be cancelled or varied by the Buyer without the express written permission of the Seller.
- 2.7 The Seller's employees, sub-contractors or agents are not authorised to make representations concerning the Goods or Services unless confirmed in writing by the Seller. The Buyer acknowledges it does not rely on, and waives any claim for breach of, any representations not so confirmed.
- 2.8 Suggestions, indications or advice given by the Seller or its employees, subcontractors or agents as to storage, application or use of the Goods which are not confirmed in writing by the Seller are followed at the Buyer's risk. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations not so confirmed.

3. DESCRIPTION

- 3.1 The quantity, quality and description of the Goods and/or the Services shall be as set out in the Seller's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or Illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of this Contract.
- 3.3 The Seller must provide the Buyer with a suitable Specification in respect of the use or purpose of the Goods or Services, which shall include any and all information relating to electrical, mechanical, transportation and environmental information which may affect the performance or usual functioning of the Goods or which may affect the provision of the Services. The Seller shall have no liability for any losses, howsoever arising, which arise as a result of any incorrect or inaccurate Specification or which arise where the Seller has provided the Goods or Services in accordance with the Specification.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Seller delivery of the Goods and/or performance of the Services shall take place at the Seller's place of business.
- 4.2 The Goods shall be delivered ex-works the Seller's premises at and the Services shall be performed at the Seller's local office or such other address as the parties agree in writing in advance.
- 4.3 Any dates specified by the Seller for delivery of the Goods or performance of the Services are intended to be an estimate and time for delivery or performance shall not be made of the essence by notice. If no dates are so specified, delivery or performance will be within a reasonable time.
- 4.4 Goods will be deemed to be delivered (and Services will be deemed to be performed) on the date on which the Goods were dispatched from the Seller's premises or tendered for delivery or the date on which the Seller notified the Buyer that the Goods were ready to be collected (or the date on which the Services were performed or performance was tendered by the Seller), in which case the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 4.5 In respect of Goods consisting of bare die or wafers, the Seller may deliver a quantity of Goods of up to 15% more or less than the quantity accepted by the Seller or, in respect of all other Goods, the Seller may deliver a quantity of Goods of 5% more or less than the quantity accepted by the Seller, in which case the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 4.6 The Seller may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other Instalments.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless, subject to Conditions 4.5 and 4.6, the Buyer notifies any shortage or excess within 10 days of delivery.
- 5.2 The Seller shall not be liable for any non-delivery of Goods or non-performance of the Services (even if caused by the Seller's negligence) unless written notice is given to the Seller within 10 days of the date when the Goods would in the ordinary course of events have been received or the Services performed.
- 5.3 Any liability of the Seller for non-delivery of the Goods or non-performance of the Services shall be limited to replacing the Goods or re-performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery (as defined in Condition 4.4).
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 6.2.1 the Goods; and
 - 6.2.2 all other sums which are or which become due to the Seller from the Buyer on any account
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - 6.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
 - 6.3.2 store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 6.3.3 not destroy, deface or obscure any Identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
 - 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following Conditions:
 - 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or the Buyer suffers a circumstance which would allow any of those events to occur; or
 - 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other Contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 6.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Buyer provides any products, items, goods, components or any other materials ("Buyer's Products") to the Seller in connection with the provision of the Goods or Services, the Seller accepts no liability for any loss of or damage to the Buyer's Products and the Buyer's Products remain at all times (including during transportation, storage and handling) at the Buyer's risk. It is the Buyer's responsibility to ensure that the Buyer's Products are suitably insured.

7. PRICE

- 7.1 Unless otherwise agreed by the Seller in writing the price for the Goods or Services shall be the price specified in the quotation unless the price is amended in accordance with Condition 7.3.
- 7.2 The price for the Goods or Services shall be in Pounds Sterling (unless otherwise agreed by the Seller in writing) and exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
- 7.3 The Seller is entitled to increase the price at any time in the following circumstances:-
 - 7.3.1 If there is an increase in any of the Seller's costs associated with providing the Goods or performing the Services, including any fluctuation in currency exchange rates connected to provision of the Goods/Services;
 - 7.3.2 if the Goods and/or Services required by the Buyer are different from the Goods and/or Services initially requested by the Buyer; or
 - 7.3.3 where the Buyer's Order was insufficiently clear to the Seller; and in each case the increase in price will be limited to the aggregate of the increase suffered by the Seller.

8. PAYMENT

- 8.1 Payment of the price for the Goods or Services is due and payable within 30 days of the date of invoice,
- notwithstanding that delivery of the Goods or performance of the Services may not have taken place and title in the Goods may not have passed.
- 8.2 The Seller shall be entitled to issue an invoice on or after delivery of the Goods or performance of the Services, in accordance with Condition 4.4.
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 8.5 The Seller shall be entitled to suspend delivery of any Goods or provision of any Services if any sums remain unpaid by the Buyer.
- 8.6 All payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of setoff, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 8.8 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

9. WARRANTIES

- 9.1 Where the Seller is not the manufacturer of the Goods, the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller, but gives no other warranties or guarantees in respect of such Goods.
- 9.2 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery of the Goods or performance of the Services and for a period of 12 months thereafter:-
 - 9.2.1 the Goods will be of satisfactory quality, will materially correspond with their Specification and will be free from defects in material and workmanship; and
 - 9.2.2 the Services will be performed with reasonable care and skill.
- 9.3 All warranties, Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4 Subject to Condition 9.6, the Seller shall not be liable for a breach of any of the warranties in Condition 9.2:
 - 9.4.1 If the Buyer fails to give written notice of the defect to the Seller, and (if the defect is as a result of damage in transit) to the carrier, within 21 days of the date of first use or delivery (whichever is the earliest) and in any event no later than one month after the date of delivery;
 - 9.4.2 If the Seller is not given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer fails (if asked to do so by the Seller) to return such Goods to the Seller's place of business at the Buyer's expense,
 - 9.4.3 If the Buyer makes any further use of such Goods after giving such notice;
 - 9.4.4 If the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 9.4.5 If the Buyer alters or repairs such Goods without the written consent of the Seller.
- 9.5 Subject to Condition 9.4, if any of the Goods do not conform with any of the warranties in Condition 9.2 the Seller shall at its option repair or replace such Goods (or re-perform the Services or the defective part) or refund the price of such Goods/Services at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 9.6 If the Seller complies with Condition 9.6 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of the Goods/Services.
- 9.7 Any Goods/Services replaced or re-performed will belong to the Seller and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.
- 9.8 If any Goods returned to the Seller or Services alleged to be defective under Condition 9.4 are found not to be defective (or any defect found is attributable to the Buyer's Specification or materials the Seller reserves the right to charge a handling fee of 15% of the price paid for the Goods/Services together with any VAT thereon.
- 9.9 The Buyer warrants that it will not use the Goods/Services or rely on the Services in any life support device (including those intended for surgical implant).
- 9.10 The Buyer warrants that the Goods and/or Services are suitable for the Buyer's purposes, needs and requirements, and that any parts that it provides to the Seller in connection with the provision of the Goods and/or Services are not faulty or defective in any way.

10. INDEMNITIES AND LIMITATION OF LIABILITY

- 10.1 Subject to Condition 10.2, the following provisions of this Condition 10 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub* contractors) to the Buyer in respect of:
 - 10.1.1 any breach of these Conditions; and
 - 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, Conditions and other terms implied by statute or common law (save for the Conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract
- 10.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.
- 10.4 Subject to Conditions 10.2 and 10.3, the Seller's total liability in Contract tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the value of the actual Goods and/or Services from which the liability arose.
- 10.5 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract
- 10.6 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any loss, damage or liability arising from or in connection with the Buyer's Specification or as a result of any instructions provided by the Buyer.
- 10.7 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any loss, damage or liability arising out of or in connection with fair wear and tear, abnormal working Conditions, alteration or repair or use of the Goods except as permitted by the Seller.
- 10.8 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any loss, damage or liability in any circumstance where the Seller has not received payment of the price of any Goods or Services.

- 10.9 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any loss, damage or liability arising out of or in connection with any failure to provide the Goods or Services in accordance with the Contract is due to circumstances beyond the Seller's reasonable control.
- 10.10 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any loss, damage or liability arising out of or in connection with any failure in any Goods which have not been manufactured by the Seller (whether provided by the Seller to the Buyer or not).
- 10.11 Subject to Conditions 10.2 and 10.3, the Seller shall not be liable to the Buyer for any reliance placed on any Goods or Services for any critical functions unless the Seller has agreed such use or reliance in writing in advance.
- 10.12 Subject to Conditions 10.2 and 10.3, the Seller shall have no liability to the Buyer arising out of misuse of the Goods or failure by the Buyer to follow any instructions provided to the Buyer in accordance with Condition 2.8.
- 10.13 Subject to Conditions 10.2 and 10.3, where the Goods provided by the Seller consist of bare die or wafers, the Seller shall have no liability to the Buyer once the Goods have been die bonded by eutectic, epoxy, solder or any other form of bonding to a substrate [except where such bonding was undertaken by the Seller as part of the Contract] or are otherwise not capable of being tested by the Seller under its normal test Conditions.
- 10.14 The Buyer agrees that it will indemnify the Seller and keep the Seller indemnified for any and all losses, damages, claims, costs, expenses (whether legal or otherwise) and charges arising out of or in connection with:-
 - 10.14.1 breach of Contract; and/or
 - 10.14.2 infringement or alleged infringement of third party intellectual property rights by any Component or Specification supplied by the Buyer, or any configuration or use of the Goods in conjunction with any other materials supplied to or on behalf of or used by the Buyer or any process applied to the Goods by or on behalf of the Buyer; and/or
 - 10.14.3 Breach of Conditions 2.8, 8.1, 8.3, 8.7, 9.9, 9.10 and 12.1.

11. INTELLECTUAL PROPERTY

- 11.1 Each party shall retain all Intellectual property rights (including without limitation) patents, designs, trademarks, know-how, ideas, slogans, proprietary information, techniques and databases, whether registered or capable of registration or not) in all materials developed, owned or used under licence ("Intellectual Property Rights") by it prior to the start of a Contract.
- 11.2 The Seller shall, subject to Condition 11.3, retain ownership of all intellectual Property Rights developed during the provision of the Goods or Services, including in respect of any Specification provided by the Buyer to the Seller.
- 11.3 The Buyer grants the Seller a perpetual, free, irrevocable, worldwide licence to use any Intellectual Property Rights which arise from or in connection with the provision of the Goods or Services.

12. ASSIGNMENT AND SUB-CONTRACTING

- 12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 12.2 The Seller may assign the Contract or any part of it, and may subcontract any or all of its obligations under the Contract to any person, firm or Seller.

13. FORCE MAJEURE

- 13.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, either party shall be entitled to give not less than 1 week's notice in writing to the Seller to terminate the Contract

14. COMMUNICATIONS

- 14.1 Unless otherwise agreed in writing, all communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to the address set out in these Conditions.
- 14.2 Communications shall be deemed to have been received:
 - 14.2.1 2 working days after posting, on day of delivery by hand or on the day of transmission (if before 4:00pm on a working day or else on the next working day) respectively.

15. GENERAL

- 15.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not
- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, void, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect
- 15.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract
- 15.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract
- 15.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it
- 15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.