

**VIOMEDEX LIMITED**  
**TERMS & CONDITIONS OF SALE**

**Important : Viomedex's liability and amount of insurance cover is detailed in Clause 10.**

**1. Definitions**

1.1 In these Conditions :-

"**the Buyer**" means the person who buys or agrees to buy the Goods from the Seller

"**Conditions**" means the terms and conditions set out herein and any special terms and conditions agreed in writing by the Seller

"**Confirmation of Order**" means the Seller's form of confirmation of the Buyer's order for the Goods

"**Contract**" means the contract for sale and purchase of the Goods

"**Delivery Date**" means the date specified by the Seller for delivery of the Goods on the Confirmation of Order

"**Goods**" means the goods to be supplied by the Seller in accordance with these Conditions

"**Price**" means the price of the Goods set out in the Seller's Quotation or Confirmation of Order (as may be amended by these Terms and Conditions)

"**Proprietary Information**" means any and all information which is now or at any time hereafter in the possession of the Seller and which relates to the Goods including without limitation data, know-how, formulae, processes, designs, photographs, drawings, specifications, registered or unregistered intellectual property rights, software programs and samples and any other material bearing or incorporating any proprietary information

"**Quotation**" means the Seller's form of quotation for the sale of Goods

"**the Seller**" means Viomedex Limited of Unit 13 Swan Barn Business Centre, Old Swan Lane, Hailsham, East Sussex BN27 2BY

1.2 Any reference in these Conditions to any provision of any statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their construction or interpretation

## 2. **Conditions**

2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions and any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

2.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.5 Any typographical error, clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. **Price and Payment**

- 3.1 Subject to Clause 3.4, the Price shall be the Seller's quoted price. The Price is exclusive of Value Added Tax and, unless otherwise stated, exclusive of all charges for shipping, carriage and insurance of the Goods and any duties, imports or levies thereon
- 3.2 The Seller reserves the right to require a deposit to be paid before Goods or any part thereof are ordered from a third party or delivered to the Buyer.
- 3.3 Payment of the Price and Value Added Tax shall be due 30 days after the date of the Seller's invoice without any deduction or set-off. Time for payment shall be of the essence. Where the Buyer sends payment by bank transfer or similar means, sufficient additional monies must be sent to cover both the Seller's and the Buyer's bank charges for receiving monies by bank transfer
- 3.4 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may :-
- 3.4.1 suspend or cancel deliveries of any Goods due to the Buyer;
  - 3.4.2 appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit;
  - 3.1.3 treat the Contract as repudiated by the Buyer; and
  - 3.4.4 charge the Buyer interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at the rate of 2% above National Westminster Bank Plc's base rate from time to time in force and such interest shall accrue at such rate after as well as before any judgment
- 3.5 The Price shall remain fixed for a period of 3 months from the date of the Quotation

provided the Buyer's requirements or specifications do not change or until earlier acceptance by the Buyer. Thereafter, the Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture) or which is due to changes in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or as a result of any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions

3.6 Any discounts offered on the Price will only apply if the terms of payment in these Conditions are met

#### 4. **Goods and Sale by Sample**

4.1 The quantity and description of the Goods shall be as set out in the Quotation

4.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods

4.3 Where the contract is sale by sample the following shall apply:-

4.3.1 the bulk of the Goods will correspond with the sample in quality provided that the Seller shall have no liability to the Buyer unless more than 5% of the Goods do not so correspond;

4.3.2 the Buyer shall be deemed to have had a reasonable opportunity of comparing the bulk of any consignment of Goods with the sample after 7 days from delivery have expired;

4.3.3 upon the Buyer having been deemed to have had a reasonable opportunity of comparing the bulk of any consignment with the sample the Buyer will

also be deemed to have had notice of any defect rendering the Goods not in accordance with the Contract and to have accepted all the Goods so delivered

4.4 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:-

4.4.1 such discrepancy in quantity shall not exceed 5%;

4.4.2 the Price shall be adjusted pro rata to the discrepancy

4.5 The specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any specifications or designs have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those specifications or designs for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party

4.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation

## 5. **Delivery**

5.1 The Seller will use its reasonable endeavours to deliver the Goods to the Buyer or ensure the Goods are available for collection (as is agreed) on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. The Buyer shall therefore ensure that adequate labour and facilities are made available by the Buyer at the Buyer's expense to carry out prompt and safe unloading at the place at which delivery is requested by the Buyer. If the Buyer for any reason is unable to accept delivery of the Goods when they are tendered for delivery or fails to give the Seller adequate delivery instructions at the

time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

5.1.1 store the Goods until actual delivery but at the risk and cost of the Buyer or

5.1.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Price.

5.2 Any Delivery Date is approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.3 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with these Conditions

5.4 The failure of the Seller to deliver the Goods on the Delivery Date shall not entitle the Buyer to treat the Contract as repudiated. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all

5.5 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly, the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 2 months of the Delivery Date

5.6 The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase and delivery of the Goods. The Seller shall upon request supply all documents reasonably required by the Buyer for this purpose

5.7 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the

payment of any duties on them

## **6. Acceptance of Goods**

- 6.1 The Buyer shall be deemed to have accepted the Goods 7 days after delivery to the Buyer. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract
- 6.2 If the Buyer properly rejects any of the Goods which are not in accordance with the Contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller within 7 days after delivery to the Buyer and at the Buyer's cost promptly return such Goods to the Seller. If the Seller determines that the Goods are faulty, the Seller will reimburse the Buyer the reasonable cost of returning the Goods upon production of receipts showing the expenses incurred by the Buyer
- 6.3 No Goods delivered to the Buyer which are in accordance with the Contract will be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller which shall include a restocking fee of 20% of the Price

## **7. Title and Risk**

- 7.1 Risk of damage to or loss of the Goods shall pass immediately on delivery of the Goods to the Buyer or to the Buyer upon collection of the Goods by the Buyer or the Buyer's agent or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods
- 7.2 Despite delivery having been made, the property in the Goods shall not pass from the Seller until the Buyer shall have paid the Price plus Value Added Tax in full and no other sums whatever shall be due from the Buyer to the Seller

- 7.3 Until property in the Goods passes to the Buyer in accordance with Clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property
- 7.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business and full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal where making such sales or dealings
- 7.5 The Seller shall be entitled to recover the Price (plus Value Added Tax) notwithstanding that property in any of the Goods has not passed from the Seller
- 7.6 Until such time as the property in the Goods passes from the Seller, the Buyer shall upon request deliver up to the Seller such of the Goods as have not ceased to be in existence or resold. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer or any third party where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 7.4 shall cease
- 7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable
- 7.8 In addition to any other right to which the Seller may have by law, the Seller shall have a general lien on all goods of the Buyer in the Seller's possession (whether or not paid for) for the unpaid price of any Goods sold and delivered under any Contract.
- 7.9 The Buyer shall insure and keep insured the Goods to the full Price against "All Risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of



the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable

**8. Proprietary Information**

8.1 It is hereby confirmed and acknowledged that all Proprietary Information shall remain with and belong to the Seller

8.2 The Buyer is purchasing the finished Goods and has no other right or interest in the Proprietary Information

8.3 Notwithstanding that the Seller may have designed or completed the specification of the Goods for the Buyer, the Seller shall be free to use the same design or other Proprietary Information for other actual or potential customers or buyers of the Seller or for demonstration purposes

**9. Force Majeure**

If delivery of the Goods is delayed by causes totally outside the control of the Seller, then the Seller shall give written notice of such cause within 28 days of its occurrence or earlier if delivery is due within this 28 day period, providing particulars of the circumstances and their effect, and the Buyer shall agree to allow such extra time for delivery of the Goods as is, in the Seller's sole opinion, reasonable in the circumstances

**10. Warranties, Liabilities and Remedies of the Buyer**

10.1 Subject to the conditions set out in this Clause 10 and the limitation of liability set out in Clause 10.7, the Seller warrants to the Buyer that :-

10.1.1 the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship until the "use by" date given for the Goods

10.1.2 the Goods are manufactured in accordance with ISO 9001 and ISO 13485 and such other specification as may be given by the Seller in a Certificate of Conformity

10.2 The above warranty is given by the Seller subject to the following conditions:-

10.2.1 where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the Contract

10.2.2 the Seller shall be under no liability whatever to the Buyer for any consequential or indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these Conditions

10.2.3 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer

10.2.4 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price has not been paid in full by the due date for payment

10.2.5 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) or guidelines and manuals published from time to time, failure to store the Goods in accordance with the Seller's guidelines, misuse, alteration or repair of the Goods without the Seller's prior approval

10.2.6 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller

- 10.3 In the event of any breach of the Contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price
- 10.4 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing who is a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law or whether implied or made expressly by the Seller, its servants or agents (other than those express warranties set out in the Quotation or the Seller's specification) are excluded to the fullest extent permitted by law
- 10.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions
- 10.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods under proper use or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods or the part in question free of charge or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.
- 10.7 The Seller accepts liability to the extent it results from the negligence of the Seller and its employees:-
- 10.7.1 for death or personal injury without limit;
- 10.7.2 in all other cases not falling within Clause 10.7.1 the Seller's total liability (whether in contract, tort or otherwise) under or in connection with the sale of the Goods or based on any claim for contribution or indemnity will not

exceed the sum of £5,000,000.00 (Five Million Pounds) in aggregate

## 11. **Cancellation**

The Seller shall be entitled to cancel the Contract at any time by giving written notice to the Buyer. If the Seller exercises its right of cancellation it shall have no liability in respect of the Contract or in respect of any damage whatever arising from such cancellation

## 12. **Indemnity**

12.1 Subject to Clause 12.2 and SAVE WHERE the designs are produced or prepared by the Buyer, the Seller shall keep the Buyer fully and effectively indemnified against any and all claims for infringement of letters, patent or registered design, trademarks or trade name by reason of the use or sale of the Goods and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in such actions

12.2 Where the Buyer produces or prepares the designs for the Goods, the Buyer shall keep the Seller fully and effectively indemnified against any and all claims, expenses, damages, charges or liability whatsoever in respect of or arising from any infringement of letters, patent, registered or unregistered design, trademarks, copyright or trade name or any other industrial or intellectual property right by reason of the use or sale of the Goods and against all costs and damages which the Seller may incur in any action for such infringement or for which the Seller may become liable in such actions

## 13. **Bankruptcy**

If the Buyer shall become bankrupt or insolvent or the subject of a receiving order, an administration order or winding-up proceedings (not being a members' voluntary winding-up for the purposes of reconstruction or amalgamation) or the Buyer ceases, or threatens to cease, to carry out the business or the Seller reasonably apprehends that any of the events aforementioned is about to occur in relation to the Buyer and notifies the Buyer accordingly, the Seller may either :-

- 13.1 terminate the Contract forthwith by notice in writing to the Buyer or to the receiver, administrator or liquidator or to any person in whom the Contract may become vested;  
or
- 13.2 give any such receiver, administrator, liquidator or other person the option of carrying out the Contract subject to such person providing a guarantee for the due and faithful performance of the Contract

14. **General**

- 14.1 The Contract is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its duties or obligations under the Contract
- 14.2 The Seller reserves the right to assign, transfer or sub-contract any of its rights, duties or obligations under the Contract
- 14.3 No waiver by the Seller or any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby
- 14.5 These Conditions shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts
- 14.6 These terms and conditions do not create any right enforceable by any person not a party to the Contract

\*\*\*\*\*