

## **FERMIONX LTD - TERMS AND CONDITIONS**

### **1. Interpretation**

In these Conditions:

- (a) "Customer" means the person who accepts a quotation of the Supplier (i) for the sale of the Goods or whose order for Goods is accepted and/or (ii) for the supply of Services or whose order for Services is accepted, subject to these Conditions by the Supplier;
- (b) "Contract" means the agreement for (i) the sale of products and/or (ii) the supply of services specified in the Customer's order or the Supplier's acknowledgement;
- (c) "Goods" means the products (including any instalment of the products or any parts for them) which the Supplier is to supply in accordance with the Contract and includes, where the context admits, products assembled by the Supplier from components provided by the Customer;
- (d) "Supplier" means Fermionx Ltd (registered in England under number 02712511) whose registered address is Technology Centre, Easting Close, Worthing, West Sussex BN14 8HQ;
- (e) "Services" means the services to be provided by the Supplier in accordance with the Contract (including without limitation the assembly of components into finished products on behalf of the Customer).

### **2. Contract**

- 2.1 Quotations issued by the Supplier are, unless stated otherwise in writing, valid for 21 days from the date of quotation. Any order made in response to a quotation must state the quotation reference and all telephone orders must be confirmed in writing by the Customer. Subsequent communications from the Customer in respect to an order must state the number and date of the order, a description of the Goods and the quotation reference number.
- 2.2 All orders received from the Customer (whether or not in response to a quotation) are subject to express acceptance in writing by the Supplier. The Contract between the Customer and the Supplier shall only come into existence once the Supplier expressly accepts the order in writing or, if the order is accepted with variations, once the Customer has agreed the variations.
- 2.3 The Contract shall be subject to these Conditions. No modification of these Conditions (including any contrary terms set out in any communication by the Customer) shall apply to the Contract unless expressly accepted by the

Supplier in writing. Without prejudice to the foregoing, any clerical errors and omissions are subject to correction by the Supplier.

- 2.3 No order which has been accepted by the Supplier may be cancelled by the Customer except with the written agreement of the Supplier and subject to the payment by the Customer of a cancellation charge equal to 25% of value of (i) the Goods ordered (excluding carriage and packaging) and/or (ii) the Services ordered, plus VAT, as applicable.

### **3. Price of the Goods**

- 3.1 Subject to clauses 3.2 and 3.3, the price of Goods shall be the Supplier's then current published price on the day the order is accepted by the Supplier ("List Price") except where the Supplier has provided a specific written quotation for the Goods. In the event a quotation expires, the List Price will apply unless the Supplier provides a further specific quotation.

- 3.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or the Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the Supplier's control including, without limitation, (a) foreign exchange rate fluctuations, (b) increases in the costs of labour, materials or other costs of manufacture or assembly, (c) changes in delivery dates, quantities or specifications for the Goods which are requested by the Customer, (d) delays caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions or (e) changes in applicable legislation or regulations.

- 3.3 The List Price or quoted price is exclusive of any applicable carriage and delivery charges, which the Customer shall be additionally liable to pay the Supplier.

### **4. Terms of Payment**

- 4.1 Unless expressly agreed otherwise by the Supplier in writing, payment terms shall be strictly net 30 days from date of invoice without deduction or set-off of any kind. The Supplier reserves the right to require the Customer to produce a sufficient letter of credit from a reputable financial institution before despatching Goods or performing Services.

### **5. Packing**

- 5.1 The Supplier warrants that it is not subject to the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 and consequently all packaging, crates and other containers are non-returnable, except with the express written agreement of the Supplier.

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5.2 Goods will be delivered in the Supplier's standard packaging and charged at the Supplier's then current rates and it is the Customer's responsibility to ensure that such standard packaging meets the Customer's requirements. If the Customer has specific packaging specifications, these must be communicated in writing to the Supplier at the time the order is placed and may require additional charges to be levied.

### **6. Delivery**

6.1 The Supplier will use reasonable endeavours to meet any agreed delivery or service completion dates but time of delivery or performance shall not be of the essence and the Supplier shall not be liable for any delay, however occasioned, or for the consequences of any delay. No delivery or Service shall be considered as overdue until the Customer has made a written request for delivery or completion of the Service and given the Supplier reasonable time to comply with such a request.

6.2 Deliveries of Goods shall be effected EXW (Incoterms 2010) the Customer's specified warehouse notwithstanding the fact that the Supplier may also arrange carriage of the Goods to the Customer's address on behalf of the Customer.

6.3 If Goods are for export, it will be Customer's responsibility to obtain all export and import licences and settle all applicable duty and other imposts, taxes and charges. The Supplier, even where it has agreed to do so, shall not be required to arrange carriage on behalf of the Customer unless it is in receipt of documentary evidence that all such matters have been properly dealt with. If no such evidence is produced, the Supplier shall be entitled to terminate the Contract and the Customer shall indemnify the Supplier against all loss, damages and expenses incurred or suffered by the Customer as a result of such termination.

6.3 If the Customer fails to take delivery of the Goods, the Supplier shall be entitled (without being obliged to do so and without prejudice to any other right it may have) to store the Goods at the Customer's cost and risk.

### **7. Title and Risk**

7.1 Where the Goods have been paid for in advance of delivery, risk of loss and title to the Goods will transfer to the Customer on delivery. Where payment has not been made in advance, risk of loss shall pass on delivery but title shall not pass until full payment has been received by the Customer for the Goods. The foregoing shall apply to each instalment of Goods where delivery is made by instalment.

7.2 Until title in the Goods passes to the Customer, it will hold the same as bailee for the Supplier and keep them safe and store them separately so that the Goods can be recognized as the property of the Supplier and forthwith upon request shall deliver the Goods back to the Supplier or allow the Supplier unrestricted access to any premises in which the Goods are being held for any purpose (including the removal of the Goods).

7.3 The Customer may resell the Goods (but only in the ordinary course of business) notwithstanding that at the time of resale the Goods remain the property of the Supplier by virtue of the foregoing provisions provided that the Customer as trustee shall account to the Supplier for the proceeds of such resale.

7.4 Where the Customer has provided components to the Supplier to be used in the performance of the Services, risk of loss and title to the components shall at all times remain with the Customer who shall be solely responsible for insuring the components, if it wishes to do so.

### **8. Force Majeure**

The Supplier shall not be liable for any delay or failure to perform any of its obligations under the Contract due to any matter outside the Supplier's control including without limitation strikes, lock-outs, acts of God, war, fire, tempest, computer interruptions, riots, terrorism, epidemics, quarantine restrictions, accident or damage to machinery, or delay in obtaining or inability to obtain through scarcity of materials ("Force Majeure"). In the event of Force Majeure, the Supplier shall notify the Customer as soon as reasonably practicable and the Supplier may, at its option, either suspend delivery until a reasonable time after the end of Force Majeure or cancel the Contract, without compensation to the Customer.

### **9. Warranty**

9.1 The Supplier warrants the Goods (excluding those assembled from components provided by the Customer) to be free from defects in material and workmanship for a period of 12 months unless otherwise specified from the date of delivery ("Warranty Period"). The Supplier warrants that the Services will be provided with reasonable skill and care. The Supplier accepts no responsibility whatsoever for the accuracy of drawings, particulars, weights and dimensions, patterns, specifications, performance figures or other data in any quotation, catalogue, advertisement, price list, leaflet or other publication or document issued by the Supplier ("General Specifications") unless the same are expressly set out in the Contract. Under no circumstances shall

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General Specifications be impliedly incorporated into the Contract or be construed as representations inducing the Contract.

- 9.2 In the event of a valid claim during the Warranty Period, the Supplier's liability shall be limited to, at its option, repairing or replacing the Goods or re-performing the Services.
- 9.3 As a condition of this warranty, any defects must be brought to the Supplier's attention for verification within 14 days of discovery and the Goods alleged to be defective (or to have been defectively assembled) must be returned to the Supplier within a further 14 days. The Supplier reserves the right when repairing or re-assembling defective Goods to use improved designs of any parts to be replaced.
- 9.4 The warranty in clause 9.1 does not apply to any Goods which have been repaired or altered by anyone other than the Supplier or to any defect due to misuse, negligence, accident or any other cause other than normal and reasonable use.
- 9.5 The warranty in clause 9.1 is in lieu of all statutory warranties (express or implied) including without limitation any warranty in respect of merchantability or satisfactory quality or fitness for purpose.

### **10. Lien**

The Supplier shall have a general lien on all Goods to which title has passed to the Customer (or to which title already belonged to the Customer) and which are in the Supplier's possession from time to time as security for any sum to be paid by the Customer under any Contract or otherwise (including without limitation in respect to invoices which are not yet due for payment).

### **11. Waiver**

The Supplier's rights shall not be affected or restricted by any indulgence or forbearance granted to the Customer. No waiver by the Supplier of the breach of any provision of a Contract shall operate as a waiver of any subsequent breach of the same or any other provision.

### **12. Limitation of Supplier's Liability**

- 12.1 SUBJECT TO CLAUSE 12.2, IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER FOR ANY LOSS OF PROFITS OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY) ARISING OUT OF OR IN RELATION TO ANY CONTRACT, GOODS OR PARTS FOR GOODS SUPPLIED BY

THE SELLER OR SERVICE PERFORMED BY THE SELLER WHETHER OR NOT THE COMPANY HAS BEEN ADVISED IN ADVANCE OF THE RISK OF SUCH LOSS OR DAMAGES. THE SELLER'S MAXIMUM LIABILITY UNDER ANY CONTRACT SHALL NOT EXCEED THE AGGREGATE VALUE OF THE INVOICES ISSUED UNDER THAT CONTRACT.

- 12.2 Nothing in clause 12.1 shall operate to limit or be construed as limiting the Supplier's liability for death or personal injury caused by the Supplier's negligence.

### **13. General**

- 13.1 If any provision or part of any provision of these Conditions is or becomes unenforceable, the enforceability of any provision or remainder of that provision will not be affected.
- 13.2 No person who is not a party to a Contract shall have any rights under that Contract or these Conditions.
- 13.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 13.4 These Conditions, the Contract and any matter arising under or in respect to these Conditions or the Contract are governed by and shall be construed in accordance with English law. The Customer agrees to submit to the exclusive jurisdiction of the courts of England and Wales.