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NEWMET LTD
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TERMS AND CONDITIONS OF SALE ISSUE 4 DECEMBER 2018

Definitions:

- Buyer:** means the person or firm who purchases the Goods and/or Services from the Seller.
- Conditions:** these terms and conditions.
- Contract:** the contract between the Seller and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.
- Data Protection Legislation:** the Data Protection Act 2018 and the General Data Protection Regulations.
- Goods:** the goods (or any part of them) set out in the Order.
- Seller:** Newmet Ltd, a company incorporated in England and Wales with company number 00427388 whose registered office address is at Newmet House, Rue De St. Lawrence, Waltham Abbey, Essex, EN9 1PF.
- Services:** the services, supplied by the Seller to the Buyer.

1. Basis of contract

- 1.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 1.2 Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force. Notwithstanding that a sample of the Goods has been exhibited to and inspected by the Buyer it is hereby declared that such sample was exhibited and inspected solely to enable the Buyer to judge for himself the quality and performance capabilities of the bulk and not so as to constitute a sale by sample under this Contract.
- 1.3 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4 Any quotation given by the Seller shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 1.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 1.6 Any contract between the Seller and the Buyer is conditional upon all governmental consents, approvals or licences, which may be required by the Seller to perform its obligations, being obtained.
- 1.7 Cancellation of the Buyer's order for Goods and/or Services or any part thereof will not be valid after the Buyer has ordered them (unless such a cancellation is accepted by the Seller in writing; any such cancellation shall be subject to agreement between the Buyer and Seller as to revision of prices quoted by the Seller).
- 1.8 The prices are based upon current costs of materials, energy, labour, freight insurance and foreign currency (where applicable) and upon current taxes and conditions of trading and are subject to increase without notice to take account of changes in the same. The Seller accordingly reserves the right to adjust the invoice price in the event of any such increase in the cost and/or to take account of any other costs which may arise as a result of legislation or by reason of any other fact not applying at the date of the Seller's quotation.
- 1.9 The Buyer shall be deemed to have full knowledge of the nature and properties of the Goods being supplied and any hazards they involve and the proper treatment, storage and handling thereof.
- 1.10 By entering into a Contract, the Buyer undertakes for the purposes of all necessary UK legislation and, in particular but not by way of limitation, the Control of Substances Hazardous to Health Regulations 1994 and the Health and Safety at Work Act 1974, that it will take such steps as are necessary to ensure that the Goods will be safe and without risk to health when properly used.

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- 1.11 Without prejudice to the generality of the foregoing the Buyer specifically undertakes that:
- (a) it will take such steps as are necessary to ensure that any defects in the Goods which could cause a danger to safety and/or a risk to health shall be made good and until the same are made good it will not permit the Goods to be used. For the purpose of determining if any such defect exists it shall prior to each use of the Goods or (in the event that the Goods are in constant use) at such intervals as may be prudent having regard to the type of Goods make a detailed inspection of the Goods including but not limited to all electrical connections; and
 - (b) it will not use or permit the Goods to be used beyond the limits and capacities set out in the relevant manufacturer's specification.
- 1.12 All the Goods and Services supplied by the Seller are supplied on the footing that the Seller's skill or judgement does not extend to the performance or suitability of the Goods for any specific or general purpose but instead that the Buyer has identified for itself the Goods it requires, having greater knowledge of its requirements than the Seller, and being expert as to the properties of the materials.
- 1.13 All Goods are sold for manufacturing, laboratory or diagnostic use only and are not intended for administration as a drug. The use of any of the Goods for medical or veterinary purposes may come within the scope of the Medicines Acts 1968-72 and the Seller does not imply the suitability of its Goods for such use nor does the Seller accept any liability whatsoever should the Goods be used for such purposes.
- 1.14 Goods sold are not intended for food use.
- 1.15 When ordering on the basis of drawings or samples, or when specific Goods or Goods in accordance with the Buyer's specifications are ordered, the Buyer is responsible for not infringing patents, copyright and any other industrial and/or commercial property rights of third parties and will fully indemnify the Seller in respect of all claims for such infringement together with all costs incurred by the Seller as a result thereof. The Seller gives no warranty that the use or sale of Goods supplied by the Seller will not cause the Buyer to infringe any letters patent or other industrial property rights.

2. Delivery of Goods and title & risk

- 2.1 Any dates given by the Seller for delivery or otherwise are given in good faith but in no way are to form part of any Contract between the Seller and the Buyer and the Seller will not be liable for any loss, injury, damage or expenses arising directly or indirectly from any delay however caused. Any time limits in the Contract for the performance of the Seller of its obligations shall not be and cannot ever be of the essence of the Contract.
- 2.2 If the manufacture, delivery or supply of Goods or Services shall be delayed as a result of circumstances beyond the control of the Seller the obligations of the Seller shall be suspended for so long as such circumstances prevail. By way of illustration only and without limiting the generality of the foregoing, such circumstances include war, civil commotion and strikes, lock outs and industrial disputes, failure of deliveries by suppliers for any reason, shortage of materials, power, fuel or labour, failure of plant, acts of competent authorities, fire and the elements whether affecting the Seller directly or any supplier to or haulier for the Seller.
- 2.3 In the event that the Seller requires information from the Buyer at any time, the obligations of the Seller shall be suspended until the Seller receives such information.
- 2.4 The Goods shall be at the Buyer's risk when the Goods are delivered to a carrier by loading them on to the collection vehicle (if the agent of the Buyer) or when the Goods are delivered to the Buyer or its agent by unloading them from the delivery vehicle (if the agent of the Seller), or when the Goods are collected by the Buyer or its agent from the Seller's place of business.
- 2.5 The Goods shall remain the legal property of the Seller (notwithstanding 2.4 above) until full payment of the contract price has been received by the Seller. Until such time as the Seller has been paid in full, the Buyer shall ensure that the goods are stored separately and in such a way as to be readily identifiable as the property of the Seller, and the Buyer shall hold the Goods as bailee on behalf of and in a fiduciary capacity for the Seller.
- 2.6 The Seller may at any time recover and resell the Goods if any of the events specified in Clause 8.4 below shall occur.

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- 2.7 Unless otherwise agreed in writing the Goods are to be collected by the Buyer from the Seller and the quoted price excludes the cost of delivery.
- 2.8 If it is agreed that the Seller shall deliver any goods:
- (a) the Buyer shall give adequate forwarding instructions to the Seller;
 - (b) the Seller may choose any means of transport and shall not be required to offload the Goods at their destination. The Buyer shall offload the Goods in those circumstances; and
 - (c) the Seller shall be under no liability to the Buyer if the Seller is unable to secure adequate or any transport.
- 2.9 No claims will be entertained unless notification in writing is received by the Seller's Shipping Department and the Carriers entrusted with the delivery of the Goods:
- (a) within 3 (three) days from the day of delivery in respect of any shortage or damage;
 - (b) within 10 (ten) days from the date of Seller's advice note in the case of non delivery; or
 - (c) within 10 (ten) days from the date of delivery in the case of any claim that the goods do not comply with specification or are otherwise contrary to the terms of the Contract; the Buyer should therefore examine them promptly after delivery.
- 2.10 If the Seller does not receive forwarding instructions or if the Buyer fails to tender the price and collect the Goods within seven days following notification by the Seller that the Goods are ready for dispatch the Seller shall cease to be under any liability for the Goods and shall be entitled to charge one-half per centum of the contract price for each week or part thereof during which the Seller stores the Goods.
- 3. Quality of Goods**
- 3.1 The Seller warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods specification; and
 - (b) be free from material defects in design, material and workmanship.
- 3.2 Subject to clause 3.3, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Buyer gives notice in writing within 14 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.1;
 - (b) the Seller is given a reasonable opportunity of examining such Goods; and
 - (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost.
- 3.3 The Seller shall not be liable for the Goods' failure to comply with the warranty in clause 3.1 if:
- (a) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 3.2;
 - (b) 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;
 - (c) the defect arises as a result of the Seller following any drawing, design or Goods specification supplied by the Buyer;
 - (d) the Buyer alters or repairs such Goods without the written consent of the Seller;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from their description or the Goods specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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3.4 Except as provided in this clause 3, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 3.1.

3.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

4. Charges and Payment

4.1 Unless special arrangements are otherwise agreed in writing, payment shall become due and be paid on notification to the Buyer that the Goods are ready for despatch. In the event of the Buyer being in default of any agreed credit or delayed payment terms the Seller shall be entitled to charge interest at the rate of 5% per month above the base rate of Barclays Bank PLC from time to time on the sum outstanding for the period in which the Buyer remains in default.

4.2 An overseas Buyer unless otherwise agreed in writing must instruct his banker to issue an irrevocable letter of credit for the entire contract price to be confirmed by a London banker acceptable to the Seller such letter of credit in all other respects to be in the usual form and free of any conditions except those contained herein and the issue and confirmation of such letter shall be conditions precedent to any contract between the Seller and an Overseas buyer.

4.3 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Seller's published price list as at the date of delivery; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Buyer.

4.4 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

5. Returns

5.1 Goods returned without the consent of the Seller shall not be available for credit and the fact that the Seller takes delivery of them shall not be construed as an admission that the Goods do not accord with the Contract and shall not impose any liability on the Seller as bailee for them.

6. General clauses

6.1 No representation or statement made or purporting to be made by any person on behalf of the Seller shall be binding on the Seller nor shall it be relied upon by the Buyer unless confirmed in writing by the Seller.

6.2 The Contract shall be governed by and construed in accordance with English law and the Buyer (if not English) hereby submits to the exclusive jurisdiction of the English courts.

6.3 If the Buyer shall make or offer to make any arrangement or composition with creditors or commit any acts of bankruptcy or if any petition or receiving order is presented or made against the Buyer, or if the Buyer is a company, any resolution or petition to wind it up or to appoint an administrator shall be passed or presented or a receiver manager or administrative receiver of all or any of its assets shall be appointed then the Seller may immediately and without notice terminate this Contract without prejudice to any rights which may have accrued to the Seller prior to termination.

6.4 All packing cases, skids, crates, pallets or other materials will be charged for at cost and are non-returnable unless otherwise stated. Returnable items must be returned "carriage paid".

6.5 Orders for poisons included in the First Schedule of the Rules under section 7 of the Poisons Act 1972 must be signed by the Buyer in his own handwriting, stating his name, address, trade or business and the purpose for which the Goods are required.

6.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or

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withholding (other than any deduction or withholding of tax as required by law).

7. GDPR/Data Protection

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the controller and the Seller is the processor.
- 7.3 The Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Seller for the duration and purposes of the Contract.
- 7.4 The Seller shall, in relation to any personal data processed in connection with the performance by the Seller of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Buyer unless the Seller is required by the Data Protection Legislation to otherwise process that personal data. Where the Seller is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Seller shall promptly notify the Buyer of this before performing the processing required by the Data Protection Legislation unless the Data Protection Legislation prohibits the Seller from so notifying the Buyer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - (i) the Buyer or the Seller has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) the Seller complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the personal data;
 - (e) assist the Buyer, at the Buyer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Buyer without undue delay on becoming aware of a personal data breach;
 - (g) at the written direction of the Buyer, delete or return personal data and copies thereof to the Buyer on termination of the Contract unless required by Data Protection Legislation to store the personal data; and

- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6.

8. Termination

- 8.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;
 - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or 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;
 - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 8.1(a) to clause 8.2(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitations on liability

- 9.1 Nothing in these Conditions shall limit or exclude the Seller'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) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.2 Subject to clause 8.1:
- (a) the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including 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) the Seller's total liability to the Buyer 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 in no circumstances exceed 150% of the price of the Goods.