

ENERGENICS TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1 "Seller" means Energenics Europe Limited of Begbroke Science Park, Begbroke Hill, Woodstock Road, Begbroke, Oxfordshire, OX5 1PF, United Kingdom;

1.2 "Buyer" means the party named in Seller's Order Acknowledgement;

1.3 "Conditions" means these terms and conditions of sale together with any others set out in the Order Acknowledgement or otherwise agreed in writing between Buyer and Seller. For the avoidance of doubt where there are any inconsistencies between these terms and conditions and those in other documents then such additional expressly agreed terms shall take precedence over these;

1.4 "Contract" means the contract for the purchase and sale of Goods which shall be subject to the Conditions;

1.5 "Goods" means the goods and/or services which Seller agrees to sell to Buyer in accordance with these Conditions;

1.6 "Order" means a written or oral request from Buyer for the supply of Goods at a price quoted by Seller;

1.7 "Order Acknowledgement" means the written acceptance by Seller (subject to these Conditions) of the Order including details of the Goods (including, without limitation, quantities, prices, taxes and other charges and an estimated delivery date) signed by an authorised representative of Seller;

1.8 "In writing" includes fax transmission and electronic communications but no formal written notice to be served under this agreement shall be served by electronic communications.

2. QUOTATION

2.1 Unless otherwise agreed in writing any quotation is valid only for a period of 30 days from its date of issue provided that Seller has not previously withdrawn it by written or oral notice to Buyer.

2.2 Seller reserves the right to amend a quotation at any time before a Contract is entered into.

3. ACCEPTANCE

3.1 The Seller shall sell and Buyer shall purchase the Goods in accordance with the Conditions which (subject to clause 15.1(B)) shall govern the Contract to the exclusion of any other terms and conditions including but not limited to those which Buyer purports to apply.

3.2 No terms or conditions endorsed upon, delivered with, referred to or stipulated or contained in any purchase order or other similar document delivered or sent by Buyer to Seller shall form part of the Contract.

3.3 The Contract shall be made only when Seller issues the Order Acknowledgement.

3.4 Unless otherwise agreed in writing all drawings, illustrations, descriptions, specifications, technical data, advertising and other similar information issued by

Seller or contained in Seller's catalogues, brochures, trade literature, price lists or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Goods described in them and shall not form part of the Contract.

4. CHANGES

4.1 Any variation to these Conditions shall only be effective if it is in writing signed by an authorised representative of both parties.

4.2 Orders submitted by Buyer which have been accepted by Seller may only be amended, postponed, cancelled or changed with Seller's prior written consent. In the event of such an occurrence Buyer shall indemnify Seller in full against all losses (including, but not limited to, loss of profit), costs, charges, expenses and damages Seller sustains, directly or indirectly, relating to such amendment, postponement, cancellation or change.

4.3 In the event of any dispute between the parties in connection with the loss etc specified in clause 4.2 certification of such loss etc by an independent firm of accountants appointed by Seller shall be conclusive.

5. DELIVERY, CLAIMS, DELAYS

5.1(A) Unless otherwise stated in the Order Acknowledgement delivery terms shall be Ex-Works (INCOTERMS 2000 Edition) the premises set out in the Order Acknowledgement or such other premises as may be agreed in writing between the parties from time to time ("Collection Point").

5.1(B) (Subject to the provisions of clause 5.1(C) below) Buyer shall collect the Goods from the Collection Point and delivery will be deemed to take place when Seller notifies Buyer that the Goods are ready for collection and unless otherwise agreed in writing Buyer shall collect the Goods within 3 working days of the date of issue of such notice.

5.1(C) In no event shall Seller have any obligation under sections 32(2) and (3) Sale of Goods Act 1979.

5.2 (Subject to clause 5.3) risk in the Goods shall pass to Buyer at the time of delivery or deemed delivery of the Goods in accordance with the terms of this clause 5 and loading shall be at Buyers risk. Section 20(2) of the Sale of Goods Act 1979 shall not apply.

5.3 If Seller is unable to deliver the Goods on time due to the fault of the Buyer the time of delivery shall be the time that Seller attempted to deliver or would have been in a position to make delivery of the Goods (but for Buyer's act or omission) and risk in the Goods shall pass to Buyer at such time. The Seller may store the Goods until actual delivery whereupon Buyer will be liable for all related reasonable costs and expenses.

5.4 The Seller reserves the right to make delivery in instalments, the specific terms relating to deliveries of and payments for such instalments being set out in the Order Acknowledgement. Deliveries of further

instalments may be withheld until the Goods comprised in earlier instalments have been paid for in full.

5.5 Delay in delivery of or any other breach affecting any instalment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries and shall not entitle Buyer to treat the Contract as a whole as repudiated.

5.6 On receipt by Buyer all Goods should be examined. The Seller will not be liable for any shortages in, non-delivery of or damage in transit to the Goods (even if caused by Seller's negligence) unless the same is notified in writing by Buyer to Seller (together with all relevant details) within 1 working day of the actual date of receipt. Any shortages in or non-delivery of part of the Goods will not affect the Contract in respect of the other parts of the Goods.

5.7 Subject to notice being provided in accordance with clause 5.6 Seller will, (if it is reasonably satisfied that any Goods have not been delivered as a result of Seller's fault) (in its sole discretion) either arrange for delivery as soon as reasonably possible or (where the Contract price has been invoiced) give credit (at the pro rata Contract price) to Buyer for such Goods.

5.8 The Seller shall use reasonable endeavours to meet the delivery date in the Order Acknowledgement but Buyer acknowledges that such date is an estimate only and time for delivery is not of the essence.

5.9 If Seller complies with its obligations in this clause 5 it will (subject to clause 9.11) have no further liability (for direct or indirect loss or otherwise) in contract, tort or otherwise for delay in delivery or any shortages or non-delivery.

5.10 Goods may not be returned for credit except with Seller's prior written agreement, in strict compliance with Seller's return shipment instructions and with all costs incurred to Buyer's account.

5.11 The Seller shall not be in breach of the Contract as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control including, without limitation, unsuccessful chemical reactions, acts of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, terrorism, strikes or other labour difficulties, lightning, flood, wind, storm or other acts of God, loss or failure to obtain any necessary consents, licences, authorisations or approvals, delay in transportation or inability to obtain necessary labour, fuel, materials, supplies or power.

5.12 Whilst Seller shall use reasonable endeavours to supply the exact quantity of Goods ordered by Buyer, Seller may supply and Buyer shall accept up to 10% more or less than the exact quantity ordered. A pro

rata charge or allowance at the Contract price will be made to cover any such variation.

6. PRICES, TAXES AND OTHER CHARGES

6.1 The price of the Goods shall be the price set out in the Order Acknowledgement in relation to such Goods.

6.2 The Seller may by giving notice to Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of supplying the Goods which is due to any factor beyond the control of Seller.

6.3 The Seller reserves the right to make additional charges for export, packaging, loading, unloading insurance or delivery where necessary, which charges shall be set out in the Order Acknowledgement.

6.4 Unless otherwise agreed in writing the price of the Goods is exclusive of any value added tax, sales tax, excise tax, duty, custom, inspection or testing fee or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on, or measured by, or arising from the transaction between Seller and Buyer, which charges shall be paid by Buyer in addition to the prices quoted or invoiced.

6.5 In the event that Seller is required to pay any such tax, fee, or charge Buyer shall reimburse Seller therefore unless, in lieu of such payment, Buyer shall have provided to Seller at the time the Order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

7. PAYMENT

7.1 Unless otherwise agreed in writing the payment terms set out in this clause 7 shall apply to the Contract.

7.2 The currency for payment shall be pounds sterling unless otherwise set out in the Order Acknowledgement.

7.3 Unless otherwise set out in the Order Acknowledgement, Buyer shall pay the total amount shown on Seller's invoice within 30 days of the date of issue of Seller's invoice and Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and title to the Goods has not passed to Buyer.

7.4 No payment shall be deemed to have been received until Seller has received cash or cleared funds.

7.5 The time for payment of the invoice shall be of the essence of the Contract.

7.6 In respect of all sums due from Buyer to Seller which are not paid on the due date Seller reserves the right to charge Buyer interest from the due date for payment at the annual rate of 4% over the base lending rate of Seller's banker from time to time accruing on a daily basis until payment is made in full or the maximum amount permitted by law, if lower, (both before and after any judgment).

7.7 If Seller in its reasonable opinion is concerned as to the ability of Buyer to pay for the Goods in

accordance with clause 7.3 Seller may without notice or liability to Buyer delay or postpone the delivery of the Goods and may change the terms of payment to payment in full or in part in advance of delivery of the entire undelivered balance of the Goods.

7.8 The Buyer shall not at any time set off or otherwise deduct any amount owed by Buyer to Seller against any amount owed by Seller to Buyer.

8. RETENTION OF TITLE

8.1 Notwithstanding that risk in the Goods shall pass to Buyer in accordance with the provisions of clause 5, title and property in the Goods (both legal and equitable) shall only pass to Buyer when Seller has received in full (in cash or cleared funds) all monies due to it from Buyer in respect of:

8.1.1 the Goods, and

8.1.2 all other amounts which are or which become due to Seller from Buyer on any account (whether immediately due or not).

8.2 Until such time as title and property pass to Buyer in accordance with clause 8.1, Buyer shall:-

8.2.1 hold the Goods in a fiduciary relationship as Seller's bailee;

8.2.2 store the Goods safely and separately from other goods in Buyer's possession in such a way that they remain readily identifiable as Seller's property;

8.2.3 not destroy, deface or obscure any identifying mark on the Goods or their packaging;

8.2.4 maintain the Goods in a satisfactory condition, insured on Seller's behalf for their full price against all risks to the reasonable satisfaction of Seller and on request produce such policy of insurance to Seller;

8.2.5 hold all proceeds of the insurance referred to in clause 8.2.4 on trust for Seller and not mix it with any other money or pay the proceeds into any overdrawn bank account;

8.2.6 ensure that no charge, lien or other encumbrance is created over the Goods;

8.2.7 deliver up the Goods to Seller upon demand.

8.3 The Seller shall be entitled without further notice to recover possession of any Goods to which it retains title and for that purpose to enter Buyer's premises where the same may be situated without prejudice to any other rights that Seller may have.

8.4 The Buyer grants to Seller (or its successors in title to the Goods) and their respective employees and agents an irrevocable licence to enter at any time any premises where the Goods are or may be situated for the purpose of inspecting or removing any such Goods the title in which has remained with Seller.

8.5 The Seller may maintain an action for the price of the Goods notwithstanding that title to them has not passed to Buyer.

8.6 The Buyer may resell, use or otherwise dispose of the Goods before title has passed to it only if any such sale, use or disposition will be effected in the ordinary course of Buyer's business and shall be a sale, use or

disposition of Seller's property on Buyer's own behalf and Buyer shall deal as principal. Seller shall be legally and beneficially entitled to the proceeds of sale of the Goods which shall be paid forthwith to Seller in satisfaction of the sums owing or until such time shall be held in trust for Seller and shall not be mixed with other money or paid into an overdrawn bank account and shall be at all material times identified as Seller's money

8.7 The Goods shall be deemed sold or used in the order delivered to Buyer so that any unpaid invoices shall be deemed to relate, so far as possible, to Goods unused by Seller

9. WARRANTIES AND LIABILITY

9.1 Subject to the terms of this clause 9, Seller warrants to Buyer that on the date of delivery, the Goods shall substantially conform in all material respects to the Seller's technical specification available on Buyer's request and any services provided by Seller will (except as otherwise expressly provided in these Conditions) be performed with reasonable skill and care by properly qualified and experienced persons.

9.2 The Buyer acknowledges that Seller does not hold itself out as having any particular expertise in relation to the products in which Buyer intends to incorporate the Goods into or to the functionality of the Goods and as such Buyer agrees that it relies entirely on its own skill and judgement in evaluating the suitability and fitness of the Goods for Buyer's own purpose.

9.3 The Buyer acknowledges that, as a result of the matters set out in clause 9.2 the warranty in clause 9.1 is in substitution for and, to the fullest extent permitted by English law, excludes all other terms, conditions and warranties (except for the conditions relating to title implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) including, without limitation, those as to satisfactory quality, fitness for any particular purpose, and non-infringement whether express or implied by statute, common law or otherwise.

9.4 The Buyer shall:

9.4.1 properly evaluate, test, use, manufacture and market any goods and/or materials produced with the Goods in accordance with industry standards and practices and all applicable laws and regulations now and hereinafter enacted;

9.4.2 observe the precautions contained in Seller's material safety data sheets or any other instructions supplied by Seller;

9.4.3 not misuse the Goods;

9.4.4 conduct any research necessary to discover the hazards involved in Buyer's proposed uses of the Goods; and

9.4.5 warn its customers, employees, auxiliary personnel and all appropriate third parties of any risks involved in using or handling the Goods and any product in which Buyer incorporates the Goods into.

9.5 (A) The Seller shall not be liable in contract, tort or otherwise) for any breach of any of the warranties in clause 9.1 or under any other term of the Contract in the event that (i) Buyer is in breach of clause 9.4; or (ii) such liability results from specifications or instructions relating to the Goods dictated to Seller by Buyer, from fair, wear and tear, abnormal working conditions, wilful damage, negligence, alteration of the Goods not made by Seller, or incorporation of the Goods with other products or (iii) such liability results from parts, materials or equipment forming part of the Goods not manufactured or workmanship not performed by Seller (and in respect of which Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Seller).

9.5 (B) The Seller will not be liable in contract, tort or otherwise) for any breach of any of the warranties in clause 9.1 unless (i) where the defect is apparent on reasonable inspection Buyer gives written notice of the defect to Seller within 10 working days of the date of Buyer's receipt of the Goods and (ii) where the defect is not apparent on reasonable inspection Buyer gives written notice of the defect to Seller within 10 working days of the date when Buyer discovers or ought reasonably to have discovered the defect.

9.6 The parties acknowledge and agree there are no representations, agreements, promises or understandings between Buyer and Seller that are not expressed herein and Seller shall not be liable to Buyer in respect of any such matters.

9.7 (Subject always to clause 9.11) Seller's sole and exclusive liability in contract, tort or otherwise and Buyer's sole and exclusive remedy with respect to Goods proved to Seller's reasonable satisfaction to be in breach of clause 9.1 shall be repair or replacement of such Goods without charge, re-performance of such services or refund of the purchase price, in Seller's sole discretion, upon the return of such Goods in accordance with Seller's instructions.

9.8 (Subject to clauses 9.9 and 9.11) Seller's total liability in contract, tort or otherwise arising out of or in connection with the Contract shall not exceed the price payable under the Contract.

9.9 (Subject to clause 9.11) Seller shall not in any event be liable in contract, tort or otherwise for any economic loss including, without limitation, liability for loss of use, loss of work in progress, down time, loss of revenue or profits, loss of goodwill, failure to realise savings, loss of products of Buyer or other use, for indirect, incidental, consequential or special damages of any kind resulting from any use or failure of the Goods even if Seller has been advised of the possibility of such damage or any liability of Buyer to a third party on account of such loss or for any labour or any other expense.

9.10 (Subject to clause 9.11) all claims shall be brought within one year of delivery regardless of their nature.

9.11 Nothing in this clause 9 or in any other clause of these Conditions shall exclude or restrict Seller's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.

9.12 The parties acknowledge that the terms of this clause 9 are reasonable in all the circumstances and that they have been agreed on a commercial basis. The prices charged for the Goods are based strictly on the understanding of acceptance by Buyer of the provisions in the Contract for the limitation of Seller's liability and quality assurances. Should Buyer require Seller to accept additional liability or quality assurances this may be discussed between the parties and the price increased accordingly.

10. BUYER'S REPRESENTATIONS AND INDEMNITY

10.1 The Buyer acknowledges and agrees that it shall be wholly responsible for ensuring compliance with any and all appropriate laws and regulations relating to its use of the Goods and to any product in which the Goods are incorporated.

10.2 The Buyer agrees to indemnify and hold harmless Seller its employees, agents, successors, officers and assigns from and against any suits, losses, claims, demands, liabilities, costs and expenses (including but not limited to legal costs and accounting fees) that Seller may sustain or incur as a result of (i) the negligence, breach of contract, liability in tort, or misrepresentation of Buyer in connection with the Contract and the performance or failure to perform its obligations contained herein; (ii) any claims, or potential claims by third parties which may arise either directly or indirectly out of such third party's handling or use or misuse of any Goods or any products incorporating such Goods and/or (iii) any claims that the Goods infringe the Intellectual Property Rights of a third party where such Goods have been manufactured or altered to the specifications or instructions of Buyer.

10.3 The Buyer shall notify Seller in writing within 15 days of Buyer becoming aware of any accident or incident involving the Goods which results in death, personal injury or damage to property and Buyer shall fully co-operate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements reports and tests made by Buyer or made available to Buyer by others.

10.4 The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

11. INTELLECTUAL PROPERTY

11.1 All intellectual property and other proprietary rights in the Goods (including, without limitation,

patents, know how, rights in inventions, copyrights, trademarks, service marks, trade and business names, design rights, designs, trade secrets and all confidential technical information (“Intellectual Property Rights”) are the sole property of Seller and shall remain vested in Seller.

11.2 The sale of the Goods to Buyer shall not be construed as a licence, transfer or sale of any Intellectual Property Rights by Seller or its licensors to Buyer.

11.3 The Buyer acknowledges that the Goods incorporate the valuable trade secrets of Seller or its licensors. The Buyer agrees not to copy or incorporate or permit its affiliates to copy or incorporate any features of design or construction peculiar to the Goods supplied by Seller into any of Buyer's or a third party's products. Except as permitted by applicable law, Buyer shall not mechanically, optically or otherwise analyse, or deconstruct the Goods or their packaging, or otherwise seek to extract from the Goods or packaging any information about their composition or physical attributes. The Buyer shall use the Goods only as intended in the ordinary course of its business and in strict accordance with Seller's instructions.

12. EXPORT TERMS

12.1 Where the Goods are supplied for export from the United Kingdom or other country of origin, if the provisions of this clause 12 are inconsistent with any other provision of these Conditions, and unless Seller and Buyer have agreed otherwise in writing, the provisions of this clause 12 shall prevail.

12.2 The Buyer shall be responsible for complying with any legislation or regulation governing the export of the Goods from the United Kingdom or other country of origin and importation of the Goods into the country of destination and for the payment of any relevant duties and taxes.

12.3 The Uniform Laws on International Sales Act 1967 shall not apply.

12.4 Unless otherwise agreed in writing where the Goods are supplied for export from the United Kingdom or other country of origin the currency will be pounds sterling and the Buyer will establish and maintain in favour of Seller an irrevocable and confirmed letter of credit or such other form of payment as Seller may from time to time request. All bank charges and other expenses in relation to the letter of credit will be borne by Buyer

12.5 Unless otherwise agreed in writing Goods shall be sold Ex-Works (INCOTERMS 2000 Edition) the premises set out in the Order Acknowledgement or such other premises as may be agreed in writing between the parties from time to time ("Collection Point").

13. TERMINATION

13.1 If Buyer defaults in the payment of any sum due to Seller or commits any other breach of any of the

terms or conditions herein or if there is a material change in the ownership or financial condition of Buyer, then Seller may, without any prejudice to any other rights which may have accrued or which may accrue to it, whether under contract or at law or equity, refuse to accept any Order, may terminate any Order immediately, and may defer delivery, cancel the Contract, and/or sell any undelivered Goods on hand for the account of Buyer and apply such proceeds as a credit against the Contract price and Buyer agrees to pay the balance then due to Seller on demand.

13.2 On termination, Buyer shall pay to Seller all costs, expenses (including legal and other fees incurred), arrears, charges or other payments arising in respect of the Contract.

13.3 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

14. MISCELLANEOUS

14.1(A) The Buyer will keep confidential all technology, technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to Buyer by Seller or its agents and any other confidential information concerning Seller's business or its products which Buyer may obtain as a result of or in connection with the Contract.

14.1(B) The Goods supplied are also subject to the provisions of any existing confidentiality and disclosure agreement between the parties.

14.2 Except as otherwise expressly stated herein, nothing in this Contract confers any rights on any person other than the parties hereto pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.3 The Seller's failure to enforce any term or condition of the Contract or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to enforce such terms or conditions or exercise such right thereafter.

14.4 Unless otherwise expressly provided all rights and remedies under the Contract are cumulative and are in addition to any other rights and remedies that Seller may have at law or in equity.

14.5 Any waiver of a default hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter.

14.6 If any provision of the Contract shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

14.7 The headings herein are for convenience only and shall not affect the interpretation of the Conditions.

14.8 Any reference in these Conditions to any statute or statutory provision shall (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended,

consolidated, modified, extended, re-enacted or replaced from time to time.

14.9 The Contract shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, the Contract is personal to Buyer and Buyer may not assign, sub-licence or otherwise transfer its rights and obligations hereunder without the prior written consent of Seller.

14.10 Any notice required under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or any other address notified by the receiving party to the party giving the notice. Any notice shall be deemed to be served:-

14.10.1 if sent by pre-paid first class post to the party to whom it is given, on the second business day after posting; or

14.10.2 if sent by fax to the recipient's fax number at the date and time given on the sender's transmission acknowledgement slip or (in the case of manifest error or loss of the slip) on receipt.

14.11 The Buyer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of Seller prior to the Contract upon which Buyer relied in entering into the Contract whether such statement was made orally or in writing.

15. GOVERNING LAW

15.1 The Contract will be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.