

# Lab901 Limited General Conditions Of Sale

## 1. CONDITIONS OF CONTRACT

**1.1 Definition of Seller, Buyer, Goods:** In these General Conditions of Sale (the “Conditions”) the “Seller” means Lab901 Limited, which is a company incorporated in Scotland under the Companies Act 1985 (as amended) and having its registered office at Unit 53, Imex Business Centre, Dryden Road, Bilston Glen Industrial Estate, Loanhead, EH20 9LZ, and its successors, assignees, subcontractors and agents; the “Buyer” means any person, company or other legal entity, who orders or buys Goods and shall, if the context of these Conditions expressly permits, include his, her, its or their assignees, successors, executors and personal representatives; and the “Goods” means the products supplied or to be supplied by the Seller to the Buyer in terms of each individual Contract, including all replacements and renewals thereof.

**1.2 Definition of Contract:** Each purchase order for Goods from the Buyer to the Seller and which is accepted by the Seller shall constitute an individual legally binding contract between the Seller and the Buyer, hereinafter referred to as the “Contract”.

## 2. CONTRACT

**2.1 Exclusion of Other Conditions:** The Contract shall be governed in all respects by these Conditions. The Seller shall not be bound by any terms or conditions set out in any other order form, documents or correspondence of the Buyer. These Conditions shall supersede and prevail over any other terms and conditions stipulated or referred to by the Buyer, and no addition, alteration or substitution of these Conditions will bind the Seller or form part of any Contract, unless expressly accepted in writing by an authorised officer of the Seller. No previous correspondence, writings (other than the writings incorporated herein by reference in Condition 10 below), telexes, telegrams, electronic or verbal communications between the Buyer and the Seller nor any promotional or sales literature regarding the Goods (other than those expressly accepted in writing as being part of the Contract by an authorised officer of the Seller) shall form any part of or be incorporated into the Contract.

**2.2 Specification and Quality of Goods:** The Seller warrants that the Goods and any ancillary technical services shall be in accordance with the Seller’s published specifications (within accepted or stipulated tolerances) and shall be of reasonably satisfactory quality.

**2.3 Title to Goods:** The Seller warrants that the Seller has good title to the Goods and, subject always to Condition 7 below, will transfer such title as it may have in the Goods to the Buyer.

**2.4 Exclusion of Liability resulting from Buyer’s Specification:** To the extent that any quotation given by the Seller is based on the Buyer’s specifications as given to the Seller, the Seller shall not be held liable or responsible for the lack of sufficiency, fitness for purpose or satisfactory quality in respect of the Goods insofar as attributable to the Buyer’s specifications.

**2.5 Warranty Exclusions:** All other warranties in relation to the Goods and in relation to any technical services afforded to the Buyer by the Seller, whether express or implied, are hereby excluded, except in so far as such warranties may not validly be excluded by any applicable regulation or statute.

## 3. PRICE

**3.1 Pricing Conditions:** The prices of the Goods are as intimated by the Seller to the Buyer and current at the date of the Seller’s quotation but may be varied by the Seller to take account of any increase in any costs or charges of production, storage or transport or of any levy or taxes or any currency fluctuation which may occur at any time before shipment; provided, however, that where the Seller agrees to supply the Goods at a fixed price within a specified period, the Goods will be charged at such price if ordered and accepted for delivery within such period.

**3.2 Applicability of Quotations and Orders:** No quotations given by the Seller shall constitute an offer open for acceptance by the Buyer. The Goods are offered subject to availability. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it. No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller (if earlier) the Seller delivers the Goods to the Buyer.

**3.3. Price Exclusions and Additions:** Unless otherwise agreed in writing, all prices quoted exclude delivery charges, any applicable taxes and any cost to the Seller for special testing required by the Buyer. If applicable, the following shall be added to the price quoted: (i) Value Added Tax (or any tax or governmental levy imposed in any relevant jurisdiction); (ii) the cost to the Seller of carrying out any

special test, examination, inspection or process required to be carried out on the Goods; and (iii) charges for freight and shipping. The quoted price plus the other sums (insofar as applicable) in (i) to (iii) shall be the “Price” for the purposes of other conditions hereof.

**3.4 Return Goods:** Return of products. Before returning products, contact Customer Services for a Return Material Authorisation and shipping instructions.

## 4. DELIVERY

**4.1 Delivery Point:** Without prejudice to the passing of property in and title to the Goods, delivery of the Goods shall take place when the Goods are delivered by the Seller into the possession of the Buyer or its nominated carrier or recipient at which point risk in the Goods shall pass to the Buyer.

**4.2 Inspection of Goods for Damage:** The Goods must be examined and signed for by the Buyer at the time of passing to the Buyer’s possession or control or at the earliest opportunity thereafter. Seller shall assist Buyer in pursuing any claim made against the carrier. No claims by the Buyer in respect of damage to, shortage or loss of some or all of the Goods in transit prior to delivery shall be made unless notice in writing of such damage, shortage or loss on delivery is given to the Seller and the carrier within 48 hours of their arrival at the Buyer’s premises or eventual place where the Buyer takes control or possession of the Goods as stipulated in the order. The Buyer accepts that this allows a reasonable period to allow such inspection. The Buyer shall be the responsible for the inspection of the Goods as soon as reasonably practicable after delivery and in any event, not more than seven (7) days after delivery to ensure that the quality, condition, quantity and specification of the Goods conform to the order. In the case of non-delivery of all or part of the Goods, it shall be the responsibility of the Buyer to intimate to the Seller in writing no later than seven (7) days after the due date for delivery that the Goods (or part of the Goods) have not been delivered.

## 5. DELAY IN DELIVERY

**5.1 Exclusion of Late Delivery Liability:** Any time or date for delivery given by the Seller to the Buyer is the Seller’s estimate of the date on which the Goods will be delivered to the Buyer, and the Seller will make every reasonable endeavour to meet such delivery date, but time shall not in any event be of the essence with regard to delivery. If no dates are so specified, delivery will be within a reasonable time. The Seller shall not be liable (in contract, delict, tort or otherwise howsoever) in respect of any liability, loss, expense, claim or damage incurred by the Buyer arising from any reasonable delay in delivery of the Goods or any part thereof or any delay due to circumstances beyond the Seller’s control (as described in Condition 11.2) and in no event shall the Seller be so liable for any special, indirect, consequential damage or economic loss including, without prejudice to the foregoing generality, loss of profit, arising from any delay in delivery, howsoever caused.

**5.2 Instalment Delivery:** The Seller shall be entitled to deliver the Goods by instalments and in such case each instalment shall constitute a separate contract and any failure in delivery of any one or more instalments shall not entitle the Buyer to repudiate the Contract for the supply of a series of instalments as a whole or to cancel any subsequent instalment. In times of shortage of availability of the Goods, the Seller shall be entitled to allocate supplies as it sees fit without being in breach of the Contract or incurring liability hereunder to the Buyer.

**5.3 Exclusion of Late Delivery Rejection:** The Buyer shall not be entitled to reject the Goods or part thereof by reason only of late delivery.

## 6. PAYMENT

**6.1 Payment Due Date:** Unless otherwise agreed by the parties, payment of the Price of each consignment of the Goods shall be made by the Buyer within 30 days of the date of the invoice issued in respect of such consignment (the “Due Date”), and time shall, in respect of payment, be of the essence of the Contract.

**6.2 Payment Method:** Payment shall be by any method agreed and in any currency stipulated by the Seller from time to time. Standing orders may be established to maintain shipping in accordance with the Buyer’s specific needs and instruction. Any changes or cancellation in standing orders require to be intimated to the Seller 14 days prior to scheduled dispatch date of the Goods.

**6.3 Late Payment:** The Seller shall be entitled without prejudice to any other of its rights to charge interest on all sums which may at any time be overdue for payment by the Buyer to the Seller in terms of the

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Contract (from the Due Date until such sums have been paid to the Seller in full) at the rate set out in The Late Payment of Commercial Debts (Interest) Act 1998 (as amended) for each month or fraction thereof or the maximum interest allowed by law, whichever is higher. Such interest shall be paid by the Buyer on demand by the Seller.

**6.4 Withholding of Payment:** Payments may not be withheld or set off for any reason without the Seller's consent, and the Seller may sue for the Price of the Goods and any other sums due even if title and property to the Goods have not passed to Buyer.

**6.5 Credit Terms:** The Seller reserves the right at any time to withdraw or vary credit terms in respect of further new consignments without explanation.

**6.6 Suspension of Deliveries:** Without prejudice to any other rights of the Seller, failure to make payment of the Price on the Due Date shall entitle the Seller to suspend any outstanding deliveries in respect of any Contract until payment is made and the Seller may treat such outstanding order as repudiated if the Buyer fails within 14 days to rectify any failure to pay.

## 7. PASSING OF PROPERTY

**7.1 Transfer of Title:** Property and title in the Goods delivered to the Buyer shall not pass to the Buyer until the Price for the Goods has been received in full by the Seller. Where the Goods to be supplied in terms of a Contract are supplied by part deliveries, this Condition will apply to each part delivery as if it formed the subject matter of a separate and independent contract. Until the Price has been received in full by the Seller, the Buyer will hold and store the Goods at the Buyer's risk as agent for the Seller and in a manner which clearly distinguishes them from other Goods of the Buyer and indicates that they are the property of the Seller.

**7.2 Reclamation of Goods:** In the event that:

- (i) on the expiry of any credit period the Seller shall not have received payment in full for the Goods; or
- (ii) a receiver (including an administrative receiver) is appointed over the whole or any part of the assets of the Buyer; or
- (iii) a resolution is passed or a petition is presented for winding up of the Buyer or any part of its assets or a provisional liquidator is appointed to the Buyer; or
- (iv) an administration order in relation to the Buyer is applied for under the provision of Part II of the Insolvency Act 1986 (as amended); or
- (v) the Buyer commits an act of bankruptcy or becomes apparently insolvent (or if the Buyer suffers any event in a foreign jurisdiction analogous to or comparable with any of the foregoing provisions of this Condition 7.2);

the Seller and its agents shall be entitled to enter the Buyer's premises to inspect the Goods and, at its own discretion, repossess the Goods which remain the property of the Seller or require the Buyer at the Buyer's expense to return them immediately to the Seller, and, should the Buyer fail to do so, the Seller is irrevocably authorised by the Buyer without notice to enter any premises occupied by the Buyer, or any premises where the Goods are held by a third party to the order of the Buyer, for the purpose of collecting and removing the Goods, and the Buyer shall be responsible for (and shall, on demand reimburse the Seller for) all of the Seller's costs and expenses in connection with such collection and removal.

**7.3 Further Conditions around Conditions 7.1 and 7.2:** Conditions 7.1 and 7.2 shall each be construed and receive effect and shall be enforceable as a separate Condition of these Conditions.

## 8. WARRANTIES, LIABILITY FOR DEFECTS; INDEMNITY

**8.1 Seller's Warranties:** Subject to Conditions 4.2 and 8.2 to 8.3 (inclusive) hereof, the Seller warrants that, at the time they are delivered to the Buyer in accordance with Condition 4, the Goods (without reliance upon instructions, specifications, or other directions provided by Buyer) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and reasonably fit for their purpose (as specified in the Seller's published specifications from time to time) and conform in all material respects with the said Seller's published specifications. This warranty shall remain valid until 12 months after the date of delivery of the Goods to the Buyer.

**8.2 Warranty Conditions:** The warranty contained in Condition 8.1 is personal only to the Buyer and may not be transferred. The warranty is contingent upon proper use of the Goods, including any Authorised Use (as defined in Condition 10) and shall not apply to Goods on which the original identification marks have been removed or altered. The Seller will have the right to inspect any Goods which are the subject of a claim by the Buyer. Subject to Condition 9.1, the Seller

hereby excludes all other warranties, express or implied, in relation to the Goods (in so far as permitted by law).

**8.3 Warranty Exclusions:** The warranty provided in Condition 8.1 shall not apply to defects or failure due to:-

- (i) accident, neglect or misuse of the Goods (unless by the Seller), including without limitation improper use of the Goods, use for purposes which are not expressly indicated by the Seller in writing as suitable for such Goods and use in breach of Condition 10 hereof; or
- (ii) failure or defect of electrical power, external electrical circuitry, air-conditioning or humidity control in connection with use of the Goods; or
- (iii) the use of items not provided by the Seller; or
- (iv) unusual stress; or
- (v) any party other than the Seller modifying or adjusting or attempting to repair the Goods; or
- (vi) the Buyer making any further use of such Goods after giving a notice of breach of warranty; or
- (vii) where 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.

**8.4 Defective Goods:** Without prejudice to Condition 4.2, the Buyer shall without delay notify the Seller in writing of any defect or non-conformity of the Goods with the warranty granted under Condition 8.2. Should the Seller be unable to correct a defect covered by Condition 8.1 after the expenditure of reasonable effort and time, ("reasonable" to be defined by the nature of the defect when encountered) the Buyer shall be entitled to return the Goods and receive either (i) a refund of the net Price actually paid for such Goods or (ii) a replacement of the defective Goods, and such refund or replacement shall constitute the Seller's maximum liability for breach of warranty. Any costs incurred by the Buyer pursuant to this Condition 8.4 with the Seller's prior written approval as to the nature and extent of the costs will be refunded by the Seller.

**8.5 Exclusion of Liability:** Notwithstanding the foregoing Condition, the Seller shall not be liable for any claims, losses, liabilities, expenses or damages arising from:-

- (i) misuse of the Goods, including without limitation improper use of the Goods, use for purposes which are not expressly indicated by the Seller in writing as suitable for such Goods or, use in breach of Condition 10 hereof;
- (ii) negligence on the part of any person other than the Seller;
- (iii) improper storage or treatment of the Goods or any part of the Goods by the Buyer or any subsequent user or use by the Buyer or any subsequent user of the Goods which are retained after expiry of the shelf life recommended by the Seller; or
- (iv) loss or theft of the whole or any part of the Goods.

**8.6 Liability, Consequential Damage** The Seller shall not be liable for any special, indirect, incidental, consequential or exemplary loss or damage, including loss of profit, business, contracts or goodwill or increased costs of working, whether notice of the likelihood of such damage is given to the Seller and whether arising, without limitation, through breach of contract, negligence, strict liability in delict, tort, warranty, or statutory duty, howsoever arising, which the Buyer may sustain in connection with the Goods supplied or to be supplied under the Contract.

**8.7 Buyer Responsibility for Suitability of Goods:** The Buyer agrees that the Buyer has satisfied itself as to the suitability of the Goods for the purpose or purposes for which the Buyer requires them. The Buyer shall indemnify, defend, and hold harmless the Seller, its affiliates, its distributors, and the directors, officers, employees and agents of each such entity (together, the "Indemnified Persons") from and against all claims, liabilities, losses, expenses (including without limitation reasonable legal fees and expenses) or damages incurred by the Indemnified Persons which result directly or indirectly from:

- (i) use of the Goods, or supply of the Goods by the Buyer to any third party, for uses not expressly authorised in writing by the Seller;
- (ii) resale of the Goods by the Buyer to any third party, whether or not for uses expressly authorised in writing by the Seller;
- (iii) breach by the Buyer of its obligations and/or warranties in Condition 10 hereof;
- (iv) use of the Goods by the Buyer in a manner that infringes or is claimed to infringe the Intellectual Property (as defined in Condition 9) rights of any third party; or
- (v) manufacture or sale of the Goods by the Seller in a manner that infringes or is claimed to infringe the Intellectual Property rights of any third party to the extent resulting from any specification or instruction furnished by the Buyer.

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Nothing in this Condition 8.7 shall be construed as granting any rights in addition to or contrary to the Authorised Uses (as defined in Condition 10 below).

**8.8 Liability for Personal Injury:** Nothing in these Conditions shall limit or exclude the Seller's liability for (i) personal injury or death resulting from any negligence of the Seller or its employees, or (ii) which may be established as resulting from a proven defect in the Goods, or (iii) any other liability which by law the Seller cannot limit or exclude.

**8.9 Exclusion of Regulatory Misuse by Buyer:** The Seller shall not be liable or responsible for a failure by the Buyer to abide by any administrative, licensing or other regulatory requirements for use or sale of the Goods in the country in which Goods are destined for such use or sale.

## 9. INTELLECTUAL PROPERTY RIGHTS

**9.1 Warranty (and Exclusions) Against IP Infringement:** The Seller warrants to the Buyer that the Seller owns or has all the necessary rights to any patents, trademarks, copyright and other registered or unregistered intellectual property rights (the "**Intellectual Property**") contained in or used in connection with the Goods (without reliance upon instructions, specifications, or other directions provided by Buyer) which may be required for the manufacture and sale of the Goods. The Seller does not warrant that the manufacture and sale by Seller of Goods manufactured in reliance upon instructions, specifications, or other directions provided by Buyer or Buyer's use or resale of Goods delivered hereunder will not infringe the claims of any Intellectual Property of any third party.

**9.2 Claims for IP Infringement:** Should any claim be made against Buyer for infringement of Intellectual Property rights arising from the manufacture or sale of Goods by the Seller in circumstances in which the manufacture of such Goods was not based upon instructions, specifications, or other directions provided by the Buyer, the Seller shall conduct any ensuing litigation and all negotiation for settlement of such claims and will bear the costs of any payment made in settlement or resulting from an award; provided that the Buyer shall give the Seller the earliest possible notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection with such matter and shall permit the Seller to have conduct of claim and shall (at the Seller's expense) give all reasonable information, co-operation and assistance to the Seller (including without limitation lending its name to proceedings) in relation to the conduct of the claim.

**9.3 Exclusion of IP Infringement resulting from the Buyer's Instructions:** The provisions of Condition 9.2 shall not apply to any infringement caused by the Seller's having followed specifications or instructions furnished by the Buyer or his agent or representative.

**9.4 Sole and Exclusive Remedies for IP Infringement:** The foregoing provisions shall be the Seller's entire liability to the Buyer and the Buyer's sole and exclusive remedies against the Seller in connection with claims based on or resulting from the infringement of Intellectual Property rights of any kind whatsoever of third parties.

## 10. AUTHORISED USES

**10.1 Non Transferable Rights of Use by the Buyer:** The purchase of the Goods only conveys to the Buyer the non-transferable, non-exclusive right for only the Buyer to use the quantity of the Goods and components of the Goods purchased in compliance with the applicable intended use statement, limited use statement or limited label licence, if any, contained in the Seller's catalogues or on the label or other documentation accompanying the Goods (all such statements or licences being incorporated herein by reference as if set forth herein in their entirety).

**10.2 Use for Research Purposes Only:** Unless otherwise expressly indicated in the Seller's catalogues or on the label or other documentation accompanying the Goods, the Goods are intended for *in vitro* laboratory purposes and are not intended for use and are not to be used for any other purposes including, but not limited to, *in vitro* diagnostic purposes, *ex vivo* or *in vivo* therapeutic purposes, in foods, drugs or cosmetics of any kind, for consumption by or use in connection with or administration or application to humans or animals or for any other unauthorised commercial purposes. The Buyer acknowledges that the Goods have not been tested by or for the Seller in relation to any such use unless expressly stated in the Seller's catalogues or on the label or other documentation accompanying the Goods. Without limiting the foregoing restrictions, the Buyer warrants to the Seller that should the Buyer for any reason use the Goods for any use other than *in vitro* laboratory purposes, the Buyer shall

conduct all necessary tests, and comply with all regulatory requirements in the territory in question and shall issue all appropriate warnings and information to subsequent purchasers and/or users.

**10.3 Re-sale of Goods:** The Buyer agrees that the Buyer shall not be permitted to distribute or resell the Goods to third parties without the prior written consent of the Seller (such consent not to be unreasonably withheld).

## 11. GENERAL

**11.1 Confidentiality:** The Buyer shall keep confidential and shall not without the prior consent in writing of the Seller disclose to any third party any technical or commercial information acquired from the Seller as a result of discussions, negotiations and other communications between the Buyer and the Seller in relation to the Goods.

**11.2 Force Majeure:** The Seller shall not be responsible or liable in any manner whatsoever for any loss or damage whether direct, indirect or consequential, arising from any delay or default in the performance of any of the Seller's obligations in terms of these Conditions where such delay or default arises as a result of any circumstances or conditions beyond the control of the Seller including (but without prejudice to the generality of the foregoing) war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform, failure of production equipment, any statute, rule, bylaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority.

**11.3 Waiver of Rights:** No relaxation, delay or waiver by the Seller of its rights in respect of any breach of obligation of the Buyer pursuant to these Conditions shall constitute a waiver of any other rights in respect of any prior or subsequent breach or obligation.

**11.4 Invalidity:** The invalidity in whole or in part of any of these Conditions shall not affect the validity of any other provision.

**11.5 Severability:** Each of these Conditions shall be separate and severable and shall be enforceable accordingly.

**11.6 Authority:** Both parties warrants that it has full power and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents to carry out the actions contemplated under these Conditions and any Contract.

**11.7 Relationship of Parties:** Nothing in these Conditions and no action taken by the parties pursuant to these Conditions shall constitute or be deemed to constitute a partnership or joint venture between the parties, or shall constitute either party as the agent, employee or representative of the other party. The parties to this Agreement are independent parties.

**11.8 Third Party Rights:** No term of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

**11.9 Notices:** Any notice required to be given, shall be deemed to have been served (i) 6 business days after time of posting if sent by airmail (ii) 48 hours after time of posting if sent by first class or prepaid UK post or (iii) at the time of delivery, if delivered by hand or sent by fax or e-mail.

## 12. GOVERNING LAW AND JURISDICTION

These Conditions and any other provisions which constitute a Contract between the parties in relation to the supply of the Goods shall be governed by and construed in all respects in accordance with the Law of Scotland. The parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts for the determination of any question or dispute between them.