

MICRO MATERIALS LIMITED - TERMS AND CONDITIONS OF PURCHASE

Background

- (1) Micro Materials sells a product called the NanoTest. The Goods are used by Micro Materials either as a component of the NanoTest or as a product that is used in conjunction with the NanoTest.
- (2) The Supplier is in the business of supplying the Goods. Micro Materials wishes to purchase the Goods from the Supplier.

Agreed Terms

1. Definitions and Interpretations

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Background Intellectual Property: any Intellectual Property, other than Foreground Intellectual Property, arising in respect of the Technology, which is used in manufacturing the Goods.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.

Contract: the contract between Micro Materials and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Foreground Intellectual Property: any Intellectual Property that arises or is obtained or developed by, or by a contractor on behalf of, either party in the course of or in connection with the manufacture or supply of the Goods.

Goods: the goods (or any part of them) set out in the Purchase Order.

Intellectual Property: all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist.

Purchase Order: Micro Materials' written instruction to supply the Goods, incorporating these conditions.

Specification: any specification for the Goods that is agreed in writing by Micro Materials and the Supplier.

Supplier: the person or firm from whom Micro Materials purchases the Goods.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Words in the singular shall include the plural and vice versa.
- 1.5. A reference to one gender shall include a reference to the other gender.
- 1.6. A reference to writing or written includes emails but not faxes.

- 1.7. Documents in agreed form are documents in the form agreed by the parties and initialled by or on behalf of them for identification.
- 1.8. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
- 1.9. A reference to a document is a reference to that document as varied or novated in each case, other than in breach of the provisions of this agreement at any time.
- 1.10. Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Basis of Contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Purchase Order constitutes an offer by Micro Materials to purchase the Goods in accordance with these Conditions.
- 2.3. The Purchase Order shall be deemed to be accepted on the earlier of:
 - 2.3.1. the Supplier issuing a written acceptance of the Purchase Order; and
 - 2.3.2. the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.

3. The Goods

- 3.1. The Supplier shall ensure that the Goods supplied:
 - 3.1.1. correspond with their description and any applicable Specification;
 - 3.1.2. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Micro Materials expressly or by implication, and in this respect Micro Materials relies on the Supplier's skill and judgement;
 - 3.1.3. are free from defects in design, material and workmanship and remain so for 12 months after Delivery;
 - 3.1.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.1.5. are supplied or constructed so as to be safe and without risk to health and comply with all requirements under the Health and Safety at Work Act 1974

(or any statutory amendment or re-enactment thereof for the time being in force) and that all necessary information and instructions for the safe and proper use of the Goods will be supplied prior to the delivery of the Goods; and

- 3.1.6. meet the requirements of the Electromagnetic Compatibility Regulations 2006 and bear (and meet the requirement for) any appropriate CE mark required by legislation.
- 3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3. The Supplier warrants that it has the right to supply the Goods and that any Goods that are supplied are free from any encumbrance from a third party. The Supplier also warrants that, to the best of their knowledge, supply of Goods will not infringe any intellectual property rights. The Supplier undertakes to indemnify Micro Materials fully against all claims and demands of every nature arising from any infringement of such rights.
- 3.4. Micro Materials shall have the right to inspect and test the Goods at any time before delivery.
- 3.5. If following such inspection or testing Micro Materials considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Micro Materials shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Micro Materials shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery

- 4.1. The Supplier shall ensure that:
 - 4.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.3. if the Supplier requires Micro Materials to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

- 4.2. The Supplier shall deliver the Goods:
 - 4.2.1. on the date specified in the Purchase Order (Delivery Date);
 - 4.2.2. to Micro Materials' premises at Willow House, Yale Business Village, Ellice Way, Wrexham, LL13 7YL, UK or such other location as is set out in the Purchase Order, or as instructed by Micro Materials prior to delivery (Delivery Location); and
 - 4.2.3. during Micro Materials' normal business hours, or as instructed by Micro Materials.
- 4.3. The Supplier acknowledges that time is of the essence in relation to the delivery of the Goods. If, at any time, it becomes apparent that the Supplier is unable to meet the delivery time as specified in the Purchase Order then they shall inform Micro Materials immediately. This shall not prejudice Micro Materials' rights to exercise any of the remedies set out in clause 5.
- 4.4. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and the signing of the delivery note by a representative of Micro Materials Limited.
- 4.5. The Supplier shall not deliver the Goods in instalments without Micro Materials' prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Micro Materials to the remedies set out in clause 5.

5. Remedies

- 5.1. If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, Micro Materials shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
 - 5.1.1. to terminate the Contract;
 - 5.1.2. to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.1.3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 5.1.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 5.1.5. to recover from the Supplier any costs incurred by Micro Materials in obtaining substitute goods from a third party; and
 - 5.1.6. to claim damages for any other costs, loss or expenses incurred by Micro Materials which are in any way attributable to the Supplier's failure to

carry out its obligations under the Contract.

5.2. If Goods are not delivered on or by the Delivery Date to reduce the value set out on the invoice by 10%. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.3. The Supplier shall keep Micro Materials indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by Micro Materials as a result of or in connection with:

5.3.1. any claim made against Micro Materials for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

5.3.2. any claim made against Micro Materials by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

5.3.3. any claim made against Micro Materials by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 5.3 shall survive termination of the Contract.

5.4. Micro Materials' rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. Title and Risk

Title and risk in the Goods shall pass to Micro Materials on completion of delivery of the Goods.

7. Price and Payment

7.1. The price of the Goods shall be the price set out in the Purchase Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

7.2. The price of the Goods is exclusive of amounts in respect of Value Added Tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Micro Materials.

7.3. Micro Materials shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4. The Supplier may invoice Micro Materials for the Goods on or at any time after the completion of delivery.

7.5. Micro Materials shall pay correctly rendered invoices in the first full week of the second month after the invoice has been issued. For example any invoices issued in September are due to be paid the first week of November, save for circumstances under which the Goods do not comply with the warranties set out in clause 3.1 and Micro Materials has decided to exercise its rights under clause 5.1. Payment shall be made to the bank account nominated in writing by the Supplier to Micro Materials.

7.6. Micro Materials may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

8. Micro Materials' Property and Intellectual Property

8.1. The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by Micro Materials to the Supplier (Micro Materials' Materials) and all rights in Micro Materials' Materials are and shall remain the exclusive property of Micro Materials. The Supplier shall keep Micro Materials' Materials in safe custody at its own risk, maintain them in good condition until returned to Micro Materials, and not dispose or use the same other than in accordance with Micro Materials' written instructions or authorisation.

8.2. All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom the right to use the Background Intellectual Property has derived).

8.3. Foreground Intellectual Property shall vest in and be owned absolutely by Micro Materials. For the avoidance of doubt Micro Materials shall be entitled to pass on any Foreground Intellectual Property to any other parties, which shall include, but shall not be limited to, any person who is engaged to supply Goods to Micro Materials.

8.4. The Supplier shall not represent, warrant or undertake that it has any rights in or title to the Foreground Intellectual Property.

8.5. The Supplier shall inform Micro Materials if it becomes aware of any infringement or potential infringement of Micro Materials' Intellectual Property.

8.6. The Supplier shall indemnify Micro Materials against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Micro Materials arising out of or in connection with any claim made against Micro Materials for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the Goods.

9. Insurance

The Supplier shall confirm that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which

may arise in connection with this agreement including public liability of not less than £5,000,000 and product liability of not less than £1,000,000 per claim or series of related claims per year. The Supplier shall, at its own expense, maintain such policy in force for the term of this agreement and seven years thereafter.

10. Confidentiality

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11. Termination

11.1. Micro Materials may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Micro Materials shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2. Micro Materials may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

11.2.1. the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

11.2.2. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

11.2.3. (being a company) a petition is filed, a notice is given, a resolution is passed, or a Purchase Order is made, for or in connection with the winding up of the Supplier;

11.2.4. (being an individual) the Supplier is the subject of a bankruptcy petition or Purchase Order;

11.2.5. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is

levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

11.2.6. (being a company) an application is made to court, or a Purchase Order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;

11.2.7. (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;

11.2.8. a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;

11.2.9. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 inclusive;

11.2.10. the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

11.2.11. the Supplier's financial position deteriorates to such an extent that in Micro Materials' opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

11.2.12. (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. Assignment and Subcontracting

12.1. Micro Materials may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

12.2. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without Micro Materials' prior written consent.

13. Notices

13.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in

accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or e-mail.

- 13.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the third Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 13.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14. Severance

- 14.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16. Third Party Rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17. Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Micro Materials.

18. Governing Law and Jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.