

MICRO MATERIALS LIMITED - TERMS AND CONDITIONS OF SALE

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 13

1. Interpretation
 - 1.1. The definitions and rules of interpretation in this clause apply in these conditions:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 23.

Contract: the contract between Micro Materials and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Micro Materials.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 16.1.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, which are set out in the Quotation.

Indenter: a probe that is used in conjunction with the NanoTest for testing materials.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Micro Materials: Micro Materials Limited registered in England and Wales with company number 02332065.

Micro Materials' Materials: has the meaning set out in clause 9.1.5.

NanoTest: a system offering a comprehensive range of nanomechanical and nanotribological tests.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Quotation.

Order Acknowledgment: Micro Materials' written acceptance of the Order.

Quotation: a quotation sent by Micro Materials to the Customer.

Services: the services provided by Micro Materials in conjunction with the use of the Goods which shall include after-sales support, testing and calibrating the Goods, ensuring that the Goods have been set up correctly and training operators who are going to be using the Goods.

Testing Services: the testing of samples using the NanoTest.
 - 1.2. Clause headings shall not affect the interpretation of this agreement.
 - 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
 - 1.6. Words in the singular shall include the plural and vice versa.
 - 1.7. A reference to one gender shall include a reference to the other gender.
 - 1.8. A reference to any party shall include that party's personal representatives, successors or permitted assigns.
 - 1.9. A reference to **writing** or **written** includes email but not faxes.
 - 1.10. 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.
 - 1.11. Any reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.
 - 1.12. 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.
 - 1.13. References to clauses are to the clauses of this agreement.
 - 1.14. 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. The Order constitutes an offer by the Customer to purchase:
 - 2.1.1. Goods,
 - 2.1.2. Services; and/or
 - 2.1.3. Testing Servicesin accordance with these Conditions.
 - 2.2. The Order shall only be deemed to be accepted when Micro Materials issues the Order Acknowledgment at which point and on which date the Contract shall come into existence.
 - 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Micro Materials which is not set out in the Contract.
 - 2.4. Any samples, drawings, descriptive matter or advertising issued by Micro Materials and any descriptions of the Goods or illustrations or descriptions of the Services contained in Micro Materials' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
 - 2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 - 2.6. Unless otherwise specified in the Quotation Document any Quotation shall not constitute an offer, and is only valid for a period of 90 Business Days from its date of issue.
 - 2.7. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1. The Goods are described in the Goods Specification. If there is an inconsistency between the Order Acknowledgement and the Quotation the terms and specification set out in the Order Acknowledgement shall prevail. Micro Materials is not obliged to provide Goods or Service beyond those set out in the Goods Specification.
- 3.2. Micro Materials reserves the right to amend the Specification of the Goods, if required by any applicable statutory or regulatory requirements.
- 3.3. Micro Materials is not obliged to provide any goods or services other than those set out in the Order Acknowledgement.

4. Delivery of Goods

- 4.1. Micro Materials shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Micro Materials reference numbers, the type and quantity of the Goods.
- 4.2. Micro Materials shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree (Delivery Location) at any time after Micro Materials notifies the Customer that the Goods are ready.
- 4.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Micro Materials shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Micro Materials with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5. If Micro Materials fails to deliver the Goods, its liability shall be limited to the price of the Goods. Micro Materials shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Micro Materials with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6. If the Customer fails to accept or take delivery of the Goods within 5 Business Days of Micro Materials notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Micro Materials' failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which Micro Materials notified the Customer that the Goods were ready; and
 - 4.6.2. Micro Materials shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If 20 Business Days after Micro Materials notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, Micro Materials may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. Quality of Goods

- 5.1. Micro Materials warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), that each NanoTest shall:
 - 5.1.1. conform in all material respects with the Goods' Specification;
 - 5.1.2. be free from material defects in design, material and workmanship;

5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4. be fit for any purpose held out by Micro Materials.

5.2. Subject to clause 5.3, if:

5.2.1. the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery, which shall not be later than 30 days from the date of discovery, that some or all of the Goods do not comply with the warranty set out in clause 5;

5.2.2. Micro Materials is given a reasonable opportunity of examining such Goods;

5.2.3. the Customer (if asked to do so by Micro Materials) returns such Goods to Micro Materials' place of business at the Customer's cost;

Micro Materials shall, at its option: repair or replace the defective Goods, which may require a Micro Materials representative to attend the Customer's premises; grant an appropriate price reduction; or refund the price of the defective Goods in full. Micro Materials shall not be responsible for any charges or expenses relating to any claim unless approved in writing by Micro Materials.

5.3. Micro Materials shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1. the Customer fails to notify Micro Materials of any defect in accordance with clause 5.2.1;

5.3.2. the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2.1 without obtaining the written consent of Micro Materials;

5.3.3. the defect arises because the Customer failed to follow Micro Materials' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods.

5.3.4. the Customer alters or repairs such Goods without the written consent of Micro Materials;

5.3.5. the Customer has received Micro Materials' written consent to alter or repair the Goods, but such instructions are not complied with carefully or diligently;

5.3.6. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

5.3.7. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4. Except as provided in this clause 5, Micro Materials shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Micro Materials under clause 5.2.

6. Title and Risk

6.1. The risk in the Goods shall pass to the Customer when the Goods arrive at the Customer's premises unless agreed otherwise.

6.2. Title to the Goods shall not pass to the Customer until Micro Materials has received payment in full (in cash or cleared funds) for:

6.2.1. the Goods; and

6.2.2. any other goods or services that Micro Materials has supplied to the Customer.

6.3. Until title to the Goods has passed to the Customer, the Customer shall:

- 6.3.1. hold the Goods on a fiduciary basis as Micro Materials' bailee;
 - 6.3.2. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Micro Materials' behalf from the date of delivery;
 - 6.3.3. notify Micro Materials immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12; and
 - 6.3.4. give Micro Materials such information relating to the Goods as Micro Materials may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, or Micro Materials reasonably believes that any such event is about to happen and notifies the Customer accordingly then without limiting any other right or remedy Micro Materials may have, Micro Materials may, at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1. Micro Materials shall provide the Services, as specified in the Order Acknowledgement, to the Customer.
- 7.2. Micro Materials shall use all reasonable endeavours to provide the Services on the dates specified in the Order Acknowledgement but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3. Micro Materials warrants to the Customer that the Services will be provided using reasonable care and skill. Any advice given by Micro Materials and/or the testing of samples will be provided/undertaken in a diligent and careful manner, however Micro Materials is not warranting or providing any guarantees in relation to the accuracy of any test results or any advice given. The use and/or reliance on any test results or advice provided by Micro Materials shall be solely at the Customer's risk.
- 7.4. Micro Materials will provide training to the Customer's operators in relation to the use of Goods (Training). If requested Micro Materials will provide the Customer's operators with certificates of competence in relation to their ability to operate the Goods. Micro Materials excludes liability in relation to the Customer's operators' operation of the Goods or their interpretation of the data produced by the Goods. Micro Materials is not certifying the operators' competence in reading, analysing and interpreting the data produced by the Goods.
- 7.5. Micro Materials may, as agreed with the Customer, provide such additional services as are requested by the Customer. Any additional services will be charged at Micro Materials' usual daily rate.

8. Testing Services

- 8.1. Micro Materials shall provide Testing Services, as specified in the Order Acknowledgement to the Customer.
- 8.2. Micro Materials shall use all reasonable endeavours to provide the Services on the dates specified in the Order Acknowledgement but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. Unless otherwise agreed in writing with Micro Materials, the Customer grants Micro Materials a non-exclusive perpetual licence to use the results of any Testing Services for academic and publicity purposes. Micro Materials will own the rights to the running of the test, which shall include any Intellectual Property Rights relating to the process and technique of testing the sample and any machinery used in testing the sample.
- 8.4. Micro Materials shall use reasonable skill, care and diligence when carrying out the Testing Services and shall use its reasonable endeavours to ensure that any result

emanating from the Testing Services (Results) is accurate. Micro Materials shall provide a report setting out the Results once the testing has been undertaken.

- 8.5. The Customer acknowledges that Micro Materials is not providing any warranty or guarantees or making any representations in relation to the accuracy of any Results, and that the Testing Services are undertaken for demonstration purposes only. You agree not use the Results in any application and no reliance shall be placed on the Results.
- 8.6. The Customer agrees to indemnify, and at all times keep Micro Materials indemnified, against any and all liability, damages, claims, proceedings (including without limitation legal expenses and expert's fees) arising out of or in connection with any use of any information including Results supplied by Micro Materials to you or any third party to whom you make the same available.

9. Customer's Obligations

- 9.1. The Customer shall:
 - 9.1.1. ensure that the Goods' Specification is complete and accurate;
 - 9.1.2. co-operate with Micro Materials in all matters relating to the Services;
 - 9.1.3. provide Micro Materials, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Micro Materials to provide the Services;
 - 9.1.4. provide Micro Materials with such information as Micro Materials may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 9.1.5. keep and maintain all materials, equipment, documents and other property of Micro Materials (Micro Materials' Materials) at the Customer's premises in safe custody at its own risk, maintain Micro Materials' Materials in good condition until returned to Micro Materials, and not dispose of or use Micro Materials' Materials other than in accordance with Micro Materials' written instructions or authorisation; and
 - 9.1.6. follow any instructions given by Micro Materials in relation to Health & Safety.
- 9.2. If Micro Materials' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
 - 9.2.1. Micro Materials shall, without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Micro Materials' performance of any of its obligations;
 - 9.2.2. Micro Materials shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Micro Materials' failure or delay to perform any of its obligations as set out in this clause 9.2; and
 - 9.2.3. the Customer shall reimburse Micro Materials on written demand for any costs or losses sustained or incurred by Micro Materials arising directly or indirectly from the Customer Default.

10. Charges and Payment

- 10.1. The price for Goods and charges for Services and Testing Services provided by Micro Materials to the Customer shall be the price set out in the Order Acknowledgement (**Total Price**). Unless stated otherwise in the Order Acknowledgement, the price of the Goods is exclusive of all the following costs and charges which shall be paid by the Customer when it pays for the Goods: packaging,

insurance, transport of the Goods, VAT, export and import charges and any applicable local duties and taxes.

- 10.2. The Customer shall pay for Orders for Goods valued less than GBP10,000 within 30 days of delivery.
- 10.3. The Customer shall pay for Orders for Goods valued at GBP10,000 or more as follows:
- 10.3.1. 30% of the Total Price of the Goods as an advance payment within 10 Business Days of the receipt of the Order Acknowledgment;
- 10.3.2. 60% of the Total Price on delivery of the Goods in accordance with clause 4.2; and
- 10.3.3. 10% after the Training has been completed.
- 10.4. The Customer shall pay for Services and Testing Services within 30 days of completion of the Services.
- 10.5. Micro Materials reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Micro Materials that is due to:
- 10.5.1. any factor beyond the control of Micro Materials (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 10.5.2. any request by the Customer to change the delivery date or the Goods Specification; or
- 10.5.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Micro Materials adequate or accurate information or instructions in respect of the Goods.
- 10.6. Micro Materials reserves the right to increase the price of the Services by giving notice to the Customer at any time that is due to:
- 10.6.1. any factor beyond the control of Micro Materials (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 10.6.2. any request by the Customer to change the Services provided as set out in the Order Acknowledgement; or
- 10.6.3. any delay caused by any instructions of the Customer or failure of the Customer to give Micro Materials adequate or accurate information or instructions or failure to allow Micro Materials to access the Customer's operators and/or Goods to enable it to provide Services.
- 10.7. In respect of Goods, Services and Testing Services, Micro Materials shall invoice the Customer on or at any time after completion of delivery, except for an advance payment for Goods which shall be invoiced at the same time as the Order is acknowledged.
- 10.8. The Customer shall pay each invoice submitted by Micro Materials:
- 10.8.1. on the terms set out in the Order Acknowledgement failing which within 30 days of the date of the invoice; and
- 10.8.2. in full and in cleared funds to a bank account nominated in writing by Micro Materials, and
- 10.8.3. time for payment shall be of the essence of the Contract.
- 10.9. All amounts payable by the Customer 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 Micro Materials to the Customer, the Customer shall, on receipt of a valid VAT invoice from Micro Materials, pay to Micro Materials 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.

- 10.10. If the Customer wishes to cancel the Contract in respect of its order for a NanoTest the Customer will be entitled to do so at any time up to 14 days prior to the Delivery Date upon giving Micro Materials written notice and upon paying Micro Materials a sum as agreed liquidated cancellation charges (Charges). The Charges shall be calculated by calculating the number of days before the Delivery Date that Micro Materials receives the written notice:

Period before Delivery Date	Charges to be paid
More than 63 days	30% of Total Price
43 days – 62 days	40% of Total Price
14 days – 42 days	80% of Total Price
Less than 14 days	100% of Total Price

- 10.11. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Micro Materials in order to justify withholding payment of any such amount in whole or in part unless otherwise agreed in writing by Micro Materials. Micro Materials may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Micro Materials to the Customer.

11. Intellectual Property Rights

All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall be owned by Micro Materials.

12. Confidentiality

- 12.1. A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives, results of any sample testing which are of a confidential nature and have been 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 or its products or its services or the results of any testing undertaken which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

12.2. This clause 12 shall survive termination of the Contract.

13. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1. Nothing in these Conditions shall limit or exclude Micro Materials' liability for:
- 13.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 13.1.2. fraud or fraudulent misrepresentation;
- 13.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 13.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 13.1.5. defective products under the Consumer Protection Act 1987.
- 13.2. Subject to clause 13.1:
- 13.2.1. Micro Materials shall under no circumstances be liable to the Customer for any results obtained through use of the Goods or through use of the Goods with other products. Micro Materials shall

under no circumstances whatever be liable to the Customer, 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;

- 13.2.2. Micro Materials, its directors, officers, employees and agents shall have no liability whether in contract, tort, negligence or otherwise for any loss or damage arising out of and/or in connection with any of the Results and/or any information supplied by Micro Materials;
- 13.2.3. Micro Materials' total liability to the Customer 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 the price paid for the Good and/or Services. The Customer is responsible for making arrangements for insurance in relation to any excess loss.
- 13.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4. This clause 13 shall survive termination of the Contract.

14. Termination

- 14.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1. the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 20 days after receipt of notice in writing of the breach;
- 14.1.2. the other party 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;
- 14.1.3. the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 14.1.6. a creditor or encumbrancer of the other party 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 10 days;
- 14.1.7. an application is made to court, or an 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 other party (being a company);

- 14.1.8. a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
- 14.1.11. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 14.1.12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.2. Without limiting its other rights or remedies, Micro Materials may terminate the Contract:

- 14.2.1. by giving the Customer 3 months' written notice;
- 14.2.2. if at any time before the delivery of Goods between the United Kingdom and the Delivery Location or the country in which the Customer is based a condition exists to impede or restrict the free exchange of currency or goods and the delivery of Goods may be affected, Micro Materials may suspend the delivery of such Goods or the provision of Services until such condition ceases or the contract may be terminated by either party;
- 14.2.3. with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.3. Without limiting its other rights or remedies, Micro Materials shall have the right to suspend the deliveries of Goods and supply of Services under the Contract or any other contract between the Customer and Micro Materials if:

- 14.3.1. the Customer fails to pay any amount due under this Contract on the due date for payment; or
- 14.3.2. the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9, or Micro Materials reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of Termination

15.1. On termination of the Contract for any reason:

- 15.1.1. the Customer shall immediately pay to Micro Materials all of Micro Materials' outstanding unpaid invoices and interest;
- 15.1.2. the Customer shall return all of Micro Materials' Materials which have not been fully paid for. If the Customer fails to do so, then Micro Materials may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 15.1.3. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.1.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15.1.5.

16. Force Majeure

- 16.1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Micro Materials including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 16.2. Micro Materials shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3. If the Force Majeure Event prevents Micro Materials from providing any of the Services and/or Goods for more than 6 months, Micro Materials shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17. Assignment and Subcontracting

- 17.1. Micro Materials may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 17.2. The Customer shall not, without the prior written consent of Micro Materials, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. Notices

- 18.1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered:
- 18.1.1. to the other party personally; or
- 18.1.2. sent by prepaid first-class post, recorded delivery or by commercial courier, to its registered office (if a company) or (in any other case) its principal place of business; or
- 18.1.3. sent by email to the email address that each party has provided to the other.
- 18.2. Any notice or other communication shall be deemed to have been duly received if delivered personally. If sent by prepaid first-class post or recorded delivery the communication shall be deemed to have been delivered at 9.00 am on the third Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, one hour after transmission.
- 18.3. This clause 18 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails and for the avoidance of doubt notice given under this Contract shall, subject to the provisions of clause 18.1.3, be validly served if sent by e-mail.

19. Waiver and Cumulative Remedies

- 19.1. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.
- 19.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

20. Severance

- 20.1. If a court or any other 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 deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 20.2. 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.

21. No Partnership

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party becoming the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

22. Third Parties

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

23. Variation

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

24. Governing Law and Jurisdiction

This 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.

25. Conflict

If the Goods and Services are supplied under a Distribution, Representative or Agency Agreement and there is a conflict between this Contract and the Distribution, Representation or Agency Agreement the terms of the Distribution, Representation or Agency Agreement shall prevail.

26. Arbitration

If at any time there is a dispute between Micro Materials and the Customer in relation to or arising out of the Contract, such dispute shall be referred to the decision of an Arbitrator in England to be appointed, and in default of an agreement upon the choice of an Arbitrator by the President for the time being of the Law Society.