



1. Interpretation

1.1 Definitions:

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

Company: Molecular Products Limited (registered in England and Wales with company number 02721125).

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4.

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Company.

Expert: the expert appointed pursuant to Condition 11

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

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

Order: The Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification: the code(s) on the Order which corresponds with the information provided on the Specification Sheet or in the absence of such, any specification for the Goods that is agreed in writing by the Customer and the Company.

Specification Sheet: the written information provided to the Company by the Customer providing details as to how the Goods are to be formulated.

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) 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.
- (c) a reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless expressly stated otherwise.

3. Goods

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1 The Company shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, 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
- (b) if the Company requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

4.2 The Company will notify the Customer when the Goods subject to the Order are ready for collection

4.3 The Customer shall within five Business Days of the Company notifying the Customer that the Goods are ready either: -

- (a) collect the Goods from the Company's premises; or
- (b) give the Company instructions for delivery to a location nominated by the Customer at the Customer's expense (**Delivery Location**)

4.4 Delivery shall be completed on either the collection of the Goods by the Customer from the Company's premises or immediately the Goods leave the Company's premises for delivery to a location nominated by the Customer, whichever is applicable.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company 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 the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 The Company will use its reasonable endeavours to have the Goods ready for delivery, but if it fails to have the Goods ready for delivery on the date agreed in writing with the Customer, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Customer shall not be entitled to terminate the Contract by reason of the Company's failure to have the Goods ready for delivery on the agreed date.

4.7 The Company shall have no liability for any failure to have the Goods ready for delivery to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.8 If the Customer fails to take delivery of the Goods or to give the Company instructions for delivery pursuant to Condition 4.3 within five Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event the Company may exercise any of the following rights:-

- (a) Treat the Customer's failure as a repudiation of the Contract with immediate effect and in such case the Company may do any of the following, either alone or as a combination of remedies:
 - (i) retain any payments received by the Customer;
 - (ii) the Company shall store the Goods at the Customer's risk and cost until delivery takes place, and charge the Customer for all related costs and expenses (including insurance and a service fee for the Company providing such services) on an indemnity basis; or
 - (iii) 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.

4.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. Each delivery shall constitute a separate

Contract and failure by the Company to deliver any one or more instalments shall not entitle the Customer to terminate the Contract or treat the Contract as repudiated.

4.10 The Company shall not be liable for any direct or indirect consequential loss suffered by the Customer arising from the Company's late delivery of the Goods or failure to have the Goods ready for delivery.

5. Quality and Quantity

5.1 The Company warrants that on delivery the Goods shall:

- (a) conform in all material respects with the Specification and with any sample referred in the Specification;
- (b) be fit for any purpose held out by the Company.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Company within 21 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, otherwise the Company shall have no liability for the Goods failure to comply with the warranty set out in clause 5.1.

5.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Company 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 implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

5.7 In the event the Company delivers more or less than the agreed quantity of Goods then the Company shall have no liability to the Customer in respect of the excess or the shortfall unless the Customer gives the Company notice of the excess or shortfall within seven days of delivery. If the Customer gives such notice:-

- (a) In the case of excess delivery, the Company will make arrangements for the excess to be return to the Company at its own expense;
- (b) In the case of a short delivery, the Company at its absolute discretion shall
 - (i) make good the shortfall by one or more further deliveries; or
 - (ii) reduce the Contract price by the same proportion as the shortfall bears to the Contract quantity.

5.8 The Customer shall not be entitled to reject any delivery on the grounds of any excess or short delivery but shall pay the Contract price, subject to the Company exercising its rights pursuant to Condition 5.7 (b)(ii) as applicable.

5.9 Save as provided in this Condition 5, the Company shall not be liable for any losses suffered by the Customer caused by any excess or short delivery.

5.10 If there is any disagreement between the Customer and the Company as to whether the Goods comply with the warranty set out in clause 5.1, the matter shall at the written request of either party, be determined by an Expert pursuant to Condition 11.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer from the time that the Company notifies the Customer that the Goods are available for collection pursuant to Condition 4.2.
- 6.2 Title to the Goods shall not pass to the Customer until:
- (a) the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and]
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) Hold the Goods as the Company's fiduciary agent and bailee and store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Company immediately if it becomes subject to any of the events listed in clause 8.1; and
 - (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Company's agent;
 - (b) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs; and
 - (c) the Customer will hold the proceeds of any such resale as trustee for the Company, separate from its own monies in a separate identifiable bank account.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Company may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Company may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) 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 and the Customer hereby grants the Company, its employees and agents, an irrevocable licence at any time to enter any premises where the Goods are stored in order to inspect them or where the Customers right to possession has terminated under the terms of these Conditions to repossess them.
- 6.6 The Customer shall not without the Company's written consent resell any of the Goods from which any label or logo has been removed or altered.
- 6.7 The Customers right to possession of the Goods shall terminate if the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or a petition is presented for his bankruptcy (as applicable), if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 6.8 The Customer shall not pledge or encumber or in any way charge or by way of security any of the Goods and if the Customer is in breach of this Condition 6.7 all monies due and owing to the Company shall become immediately repayable.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list as at the date of delivery shall apply.

- 7.2 The Company may, by giving notice to the Customer at any time up to ten Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer;
 - (c) the quoted price for the Goods is valid for 30 days only after which time it may be altered by the Company without giving notice to the Customer.
- 7.4 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice, unless otherwise agreed in writing. Payment shall be made to the bank account nominated in writing by the Company. Time for payment is of the essence.
- 7.6 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then
- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
 - (b) cancel the Order or suspend any deliveries to the Customer;
 - (c) appropriate any other payment made by the Customer towards the Goods or any other payment made towards Goods supplied under any other order or contract as the Company deems fit
 - (d) commence court proceeding against the Customer notwithstanding that title to the Goods has not passed to the Customer.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 8. Termination**
- 8.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 8.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) the Company shall under no circumstances whatsoever 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; and
 - (b) the Company's 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 amount of the Company's applicable insurance policy in force at the time.

10. Export Terms

- 10.1 In these Conditions "Incoterms" means the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce as in force at the date of the Contract. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions, but if there is any conflict between these Conditions and the Incoterms, then these Conditions shall prevail.
- 10.2 Where the Goods are supplied for Export from the United Kingdom, the following Conditions shall apply:-
- (a) the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of all duties and taxes on them;
 - (b) the Customer shall be responsible for arranging all testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability whatsoever for any claim by the Customer in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of damage during transit
 - (c) unless otherwise agreed in writing between the parties, all amounts due to the Company shall be paid by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a British Bank in London acceptable to the Company. All bank charges are at the Customers expense.

11. Expert Determination

- 11.1 Where under any provisions of these Conditions or the Contract any matter is to be determined by reference to an expert, the matter shall be referred at the instance of either party to an independent person (Expert) to be appointed by agreement between the parties or, failing that, within 21 days of the request first being made, nominated on the application of either party by the president for the time being of the Institute of Chemical Engineers in the UK.
- 11.2 The Expert shall act as an expert and not as an arbitrator and shall be entitled to appoint such technical experts or other experts as he considers necessary to assist him in determining the matter referred to him. The decision of the Expert (which shall be given in writing stating his reasons for the decision) shall be final and binding on the parties save in the case of manifest error.
- 11.3 Each party shall provide the Expert with such information as he may reasonably require for the purposes of his determination. If either party claims any such information to be confidential to it then, provided that in the opinion of the Expert that party has properly claimed the same as confidential, the Expert shall not disclose the same to the other party or to any third party.

- 11.4 The costs of the Expert, including the costs of any person in appointing him and of any technical expert appointed by him, shall be borne in such proportions as the Expert may determine to be fair and reasonable in the circumstances or by the parties in equal proportions if no determination is made by the Expert.
- 12. Force majeure**
- Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for six months, the party not affected may terminate this Contract by giving 10 days written notice to the affected party.
- 13. General**
- 13.1 Assignment and other dealings.**
- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.
- 13.2 Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or Company's of the other party or of any member of the group to which the other party belongs, except as permitted by clause 13.2(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 13.3 Entire agreement.**
- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 13.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.5 Waiver.** 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.7 Notices.**
- (a) 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, sent by pre-paid first class post or other next working day delivery service or by prepaid airmail, commercial courier, or by email

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if by prepaid airmail at 9 am GMT on the fifth 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 email at the time of transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.8 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

13.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have the exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

I acknowledge receipt and acceptance of these Conditions.

.....
Authorised signatory of the Customer

Name..... Title Date