

## 1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:  
"Company" means Therakos (UK) Limited, a company registered in England and Wales (Company No. 8246321), whose registered office is at 3 Lotus Park, The Causeway, Staines-upon-Thames, Surrey, TW18 3AG.  
"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with Clause 2.3.  
"Contract" means the Order for the Goods accepted by the Company which incorporates these Conditions.  
"Customer" means the person or entity which purchases the Goods from the Company. "Goods" means the goods which the Company agrees to supply to the Customer as set out in the Order.  
"Order" means the Customer's order for the Goods, including any related plans and drawings that are agreed by the Company and Customer in writing.
- 1.2 Construction. In these Conditions, the following rules shall apply:
- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - a reference to a party includes its personal representatives, successors or permitted assigns;
  - 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 provisions includes any subordinate legislation made under and shall not limit the sense of the words preceding those terms;
  - 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; and
  - a reference to writing or written includes faxes and emails provided that confirmation of receipt is obtained.

## 2. INCORPORATION

- 2.1 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions which the Customer may purport to apply under any Order.
- 2.2 These Conditions constitute an offer by the Company to sell the Goods covered by the Order at the price and subject to the terms of these Conditions.
- 2.3 Except as set out in these Conditions, no variation of Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.
- 2.4 The Contract and these Conditions constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.5 All Orders made by the Customer must be submitted using the form provided by the Company, unless agreed otherwise by the Company in writing.
- 2.6 Insofar as an Order by the Customer constitutes an offer, the Company is entitled to accept or reject the offer within two (2) weeks of receipt of the Order and following acceptance of the offer a Contract will be formed between the parties incorporating these Conditions.

## 3. GOODS

- 3.1 The quantity and description of the Goods shall be as set out in the Order and such Goods shall be supplied in accordance with the Order and these Conditions.
- 3.2 The specifications and designs of the Goods (including the copyright, design right and other intellectual property in them) shall at all times remain the property of the Company.
- 3.3 The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 Except as set out otherwise in the Contract between the parties, the Customer shall not use any trade marks or trade names owned or used by the Company nor do or permit anything to be done whereby the goodwill or reputation of such trade marks or trade names may be prejudiced or damaged.
- 3.5 Save as otherwise permitted to comply with any applicable legal or statutory rights or obligations, the Customer shall not remove, cover or alter any packaging, labelling, notices or end user instructions which are placed on or which accompany the Goods.
4. samples
- 4.1 Where no Order is placed by the Customer and the Company provides Goods, free of charge to the Customer as part of a sampling programme, assessment, promotional campaign, clinical trial or compassionate use programme ("Samples"), these conditions, to the extent that they are applicable, shall apply to the Samples.
- 4.2 All Samples must be clearly identified as such and the Customer shall have no right to sell any Samples to a third party or treat Samples as replacement Goods.

## 5. DELIVERY AND ACCEPTANCE

- 5.1 Delivery of the Goods by the Company shall be to the location set out in the Order or such other location as the parties may agree in writing (the "Delivery Location") at any time after the Company notifies the Customer that the Goods are ready to be delivered.
- 5.2 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
- 5.3 The Customer shall take delivery of the Goods promptly whenever they are tendered for delivery (which shall include signing the relevant delivery note).
- 5.4 If the Customer fails to take delivery, or otherwise causes or requests a delay in delivery of the Goods within thirty (30) 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 or the Company's failure to comply with its obligations under the Contract:
- delivery of the Goods shall be deemed to have been completed on the date thirty (30) days after the day on which the Company notified the Customer that the Goods were ready;
  - the risk in the Goods shall pass to the Customer on the date specified in paragraph (a); and
  - the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.5 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 delivery of the Goods to the Customer.
- 5.6 If the Company fails to deliver the Goods, 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 Company 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 the Company with adequate delivery instructions or any other relevant instructions for the delivery of the Goods to the Customer.
- 5.7 If after thirty (30) days the Customer has not taken delivery of the Goods, the Company 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.

- 5.8 The Company reserves the right to withhold delivery of the Goods if any sum due to the Company under any contract with the Customer is overdue or if, in the reasonable opinion of the Company, the financial standing of the Customer has been impaired for any reason.

- 5.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.10 The Customer shall ensure that adequate and safe facilities and procedures are in place at the Delivery Location for the delivery and storage of the Goods.
- 5.11 The Customer shall immediately notify the Company's Customer Support Team in the event the Goods are not delivered to the Delivery Location within fifteen (15) days of receipt of the invoice.
- 5.12 Subject to Clause 5.13, the Customer shall be deemed to have accepted the Goods ten (10) days after the date of delivery to the Customer. After this date the Customer shall not be entitled to reject any Goods which are not in accordance with the terms of the Contract and the Company shall be liable in no way whatsoever to the Customer in respect of the Goods.
- 5.13 The Customer must notify the Company's Customer Support Team of any defect, shortage in quantity, damage, loss or failure to comply with the Order within fifteen (15) days of receipt of the Goods.
- 5.14 Where the Customer believes that the Order contains errors, the Customer must notify the Company's Customer Support Team no later than ten (10) days after the date of the Order if it wishes to have the Company review and, where applicable, amend and reissue the Order.

## 6. Quality

- 6.1 The Company warrants that on delivery the Goods shall:
- conform with their description;
  - be free from material defects in design, material and workmanship; and
  - be fit for any purpose held out by the Company.
- 6.2 Subject to Clause 6.3, if:
- the Customer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 6.1;
  - the Company is given a reasonable opportunity of examining such Goods; and
  - the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Company shall not be liable for the failure of the Goods to comply with the warranty set out in Clause 6.1 in any of the following events:
- the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.2;
  - 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;
  - the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
  - the Customer alters or repairs such Goods without the prior written consent of the Company;
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this Clause 6, the Company shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in Clause 6.1.
- 6.5 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.
- 6.6 These Conditions shall continue to apply to any repaired or replacement Goods supplied by the Company.
- 6.7 In the event the Customer wishes to return the Goods to the Company for a reason not provided for under this Clause 6, the Company must first authorise the return of the Goods in writing and following the return of the Goods will only provide a credit note to the Customer for the purchase price of the Goods, which will be creditable against the cost of other products supplied by the Company.

## 7. Title and risk

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- the Goods; and
  - any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as the Company's bailee;
  - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - notify the Company immediately if it becomes subject to any of the events listed in Clause 9.2; and
  - give the Company such information relating to the Goods as the Company may require from time to time.
- 7.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Clause 9.2, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Customer 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.
- 7.5 Until such time as property in the Goods passes from the Company, if the Customer:
- enters into liquidation or has a winding up order made against it or has an administrator, receiver or manager appointed in respect of its assets; or
  - fails to make payment in accordance with these Conditions, the Customer shall upon request deliver up to the Company such of the Goods as have not ceased to be in existence or resold. If the Customer fails to do so, the Company may enter onto the premises of the Customer where the Goods are located and repossess the Goods.
- 7.6 The Customer shall not pledge or in any way charge by way of security for an indebtedness any of the Goods which are the property of the Company. If the Customer does so, all sums owing to the Company by the Customer shall forthwith become payable.

- 7.7 The risk in any Samples shall pass to the Customer on delivery of the Samples to the Customer. Title to any Samples shall not pass to the Customer, unless agreed in writing with the Company. With effect from the delivery of the Samples to the Customer, the Customer shall hold the Samples for the Company in accordance with the terms of Clauses 7.3, 7.4, 7.5 and 7.6 until such Samples are returned to the Company.
- 7.8 The terms of this clause shall survive upon termination of the Contract.
8. Price and Payment
- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted or mutually agreed, the price set out in the Company's published price list in force as at the date of delivery.
- 8.2 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the goods that is due to any factor beyond the Company's control (including but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions).
- 8.3 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) and all other applicable taxes and duties. The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.6 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Company.
- 8.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of two (2) per cent above the base rate from time to time quoted by Barclays Bank plc. 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.
- 8.8 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.
- 8.9 All payments payable to the Company under the Contract shall become due immediately on its termination, despite any other provision.
9. termination
- 9.1 If the Customer becomes subject to any of the events listed in Clause 9.2, or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of Clause 9.1, the relevant events are:
- (a) the Customer 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 or limited liability partnership) 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;
- (b) the Customer 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;
- (c) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) a creditor or encumbrancer of the Customer 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 twenty (20) days;
- (e) 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 Customer;
- (f) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause (a) to Clause (g) (inclusive);
- (h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
- (i) 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.
- 9.3 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.
10. Limitation of liability
- 10.1 Save as expressly provided in the Contract, all warranties, conditions or other terms implied by statute are excluded to the fullest extent permitted by law.
- 10.2 Nothing in these Conditions shall limit or exclude the Company's liability to the Customer 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; or
- (c) any matter in respect of which it would be unlawful for the Company to try to limit or exclude the Company's liability, including but limited to a breach of the terms implied under Section 12 of the Sale of Goods Act 1979 or for defective products under the Consumer Protection Act 1987.
- 10.3 Subject to the above Clause 10.2, the Company shall under no circumstances be liable to the Customer, in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss or loss of profit, arising under or in connection with the Contract.
- 10.4 Subject to Clause 10.2 where any valid claim in respect of the Goods is made or notified to Company by the Customer in accordance with these Conditions, the Company shall be entitled to repair or replace the Goods (or the part in question) or at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), and the Company shall have no further liability to the Customer.
- 10.5 Subject to Clause 10.2, the Company's total liability to the Customer in respect of all losses arising under Clause 10.3 shall not exceed one million pounds (£1,000,000) in any one (1) year.
- 10.6 For the avoidance of doubt, the Company shall have no liability in respect of any damage arising from fair wear and tear, fire or accident, wilful damage or negligence by the Customer its agents, employees or subcontractors, abnormal working conditions, failure to follow the Company's instructions, misuse or unauthorised installation, alteration or repair of the Goods. The Customer must pass the Company's instructions for use of the Goods onto any purchasers or potential users of Goods.
11. Force Majeure
- 11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 11.2 A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference, by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Company or subcontractors.
- 11.3 If such Force Majeure Event continues for more than one (1) month the Company may, at its sole discretion, terminate the Contract without liability.
12. Assignment
- 12.1 The Company may at any time assign, transfer, mortgage, charge or subcontract the Contract or any part of it to any other company, firm or organisation.
- 12.2 The Customer shall not assign, transfer, mortgage, charge or subcontract the Contract, in whole or in part, nor shall the Customer sublet or lend any item of Goods without the prior written consent of the Company. Any such attempt by the Customer to sublet or lend any of the Goods, or assign or pledge the Contract, shall be null and void and of no effect against the Company.
13. Export
- 13.1 Where the Customer intends to export the Goods from the country of origin, the Customer shall be responsible for obtaining all necessary licences and complying with all applicable legislation and regulations governing export of the Goods from the country of origin and the importation of the Goods into the country of destination and shall be responsible for the payment of all duties on the Goods.
14. no resale
- 14.1 The Goods covered by this Order are intended for the Customer's own use and the Goods are not for resale to any third parties unless agreed in writing with the Company.
15. Communication
- 15.1 Any notice or communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or its principal place of business 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 Business Day delivery service, commercial courier, fax.
- 15.2 In the absence of evidence of earlier receipt, any notice shall be deemed to be duly delivered:
- (a) if sent by first class post, two working days after posting;
- (b) if delivered personally, when left at the relevant address; or
- (c) if sent by email, one working day after transmission.
- 15.3 For the avoidance of doubt, the provisions of this Clause 15 shall not apply to the service of any proceedings or other documents in legal action, which shall be in writing and delivered by pre-paid registered post.
16. Confidentiality
- 16.1 Both parties, their employees and agents shall at all times keep confidential and secret and shall not disclose to any person any information, materials or documents acquired in connection with the Contract, which concerns the other party its employees or business unless disclosed other than due to a failure of the relevant party to comply with the Contract.
- 16.2 On termination of the Contract the parties obligations under this Clause 16 shall continue.
17. Severance
- 17.1 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.
18. Waiver
- 18.1 A waiver of any right or remedy under the Contract or law 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 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.
19. Third party rights
- 19.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.
20. Variation
- 20.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.
21. Governing law
- 21.1 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 the law of England and Wales.
22. Jurisdiction
- 22.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).