

CONDITIONS OF SALE

1 **Definitions and interpretation**

In these conditions of sale the following terms have the following meanings:

"Agreement" the agreement between Supplier and Customer which is made up of the Order and these conditions;

"Authorised Distributor" an authorised distributor of Goods appointed under a written contract with Supplier;

"Customer" the customer whose details appear on the Order;

"Delivery Address" the delivery address detailed on the Order;

"Goods" the goods listed on the Order;

"Order" Customer's order once accepted by Supplier;

"Price" the price detailed on the Order or, if no price is detailed on the Order, the price of the Goods calculated in accordance with Supplier's price list in force on the date of Supplier's acceptance of Customer's order;

"Specification" the description of the Goods provided by the Supplier from time to time; and

"Supplier" Myconostica Limited (company number 5693850) whose registered office is at South Court, Sharston Road, Sharston, Manchester, Lancashire, M22 4SN.

2 **Basis of sale**

2.1 These conditions apply to all contracts for the sale of goods entered into by Supplier to the exclusion of all others including, without limitation, any terms and conditions appearing on the Customer's purchase order.

2.2 All orders are subject to acceptance at Supplier's absolute discretion and are not binding upon Supplier until accepted by Supplier in writing. Customer may not cancel or vary any order which the Supplier has accepted orally or in writing.

2.3 Except where Customer is an Authorised Distributor, each Agreement contains all the terms agreed by the parties in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing. Each party acknowledges that in entering into an Agreement it has not relied upon any matter not set out therein.

2.4 Supplier may make changes to these conditions from time to time. Any such change shall apply to all orders placed by Customer after the date of the change. Customer is reminded of the need to periodically check these conditions for changes.

2.5 Supplier reserves the right to change the Specification without notice to Customer, including (without limitation) to comply with safety, regulatory and other requirements.

2.6 Customer shall only use the Goods in accordance with the Specification.

3 **Price and payment**

3.1 The Price is exclusive of the costs of delivery, packing, insurance, VAT and any other applicable taxes, duties and charges all of which must be paid by Customer in addition to the Price. If Supplier incurs any costs or expenses on behalf of Customer these costs or expenses shall be included in Supplier's invoice together with the Price.

3.2 The Price will be invoiced in advance of, or upon, shipment of the Goods. Each invoice must be paid without set off or deduction in such currency and by such due date as Supplier specifies on its invoice. Time of payment shall be of the essence.

3.3 If Customer fails to pay any amount in full when it is due, Supplier may suspend deliveries to Customer and/or charge interest on the overdue amount at the rate of 4% above the base rate of Barclays Bank PLC from time to time.

3.4 Supplier reserves the right to increase the Price at any time prior to delivery to reflect any increase in the cost of supplying the Goods due to factors beyond Supplier's reasonable control.

4 **Delivery**

4.1 Supplier will use reasonable endeavours to deliver the Goods to the Delivery Address on or before the estimated delivery date set out on the Order but time of delivery shall not be of the essence.

4.2 Notwithstanding clause 4.1, Supplier shall be entitled to allocate its stock of Goods to its customers as it sees fit. If Supplier holds insufficient stock to meet all its outstanding orders, Supplier shall be entitled to postpone the delivery date of any Order until such date as is, in Supplier's reasonable opinion, necessary.

4.3 Supplier shall be entitled to deliver the Goods in instalments. Each instalment shall be a separate contract and Supplier's default in relation to one instalment shall not entitle Customer to cancel any other instalment or treat the Agreement as repudiated.

4.4 Customer shall inform Supplier within 3 (three) working days of the date of delivery if the Goods are damaged or less than the correct amount has been delivered. Customer's only remedy in respect of damaged or short delivery shall be (at Supplier's sole discretion) the provision of replacement goods or a refund. Supplier shall not be liable for any damage or under delivery that is not notified in this way.

4.5 Customer acknowledges that:

4.5.1 certain Goods must be stored under specific conditions or they will cease to meet the Specification and that accordingly such Goods are goods of a type which will deteriorate or expire rapidly; and

4.5.2 once delivered, Supplier cannot ascertain under which conditions Customer has stored Goods.

4.6 Except where the Customer is an Authorised Distributor and notwithstanding clause 4.4, unless the Goods are personalised for Customer or are Goods which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly (in which case Customer shall not have any right to cancel its Order), Customer has seven (7) full working days from delivery of the Goods to cancel its Order and receive a full refund for the returned Goods. Customer will be responsible for the cost of return of the Goods unless Supplier has provided Goods different to those specified in the Order, in which case Supplier shall be responsible for the costs of return.

4.7 Customer may inform Supplier in accordance with clause 4.4, or an order may be cancelled, by contacting Supplier (i) at the above address or (ii) by telephone on +44 (0) 161 902 2492 or (iii) by email at mycosales@myconostica.co.uk. Supplier may refuse to accept the return of Goods which have been used, are not in their original packaging or Customer has not taken reasonable care of and Supplier may return such Goods to the Customer and invoice or charge the Customer for the costs of carriage.

4.8 Customer shall indemnify and hold Supplier harmless in respect of any loss, liability, damage, cost and expense (including, without limitation, the costs of storage and/or insurance of the Goods) suffered or incurred by Supplier as a result of Customer's failure to take delivery of the Goods.

4.9 Payment of Supplier's invoice shall be made in advance and Supplier will not deliver any Goods until payment of its invoice has been received in full as cleared funds in Supplier's bank account.

4.10 Supplier may cancel, at any time, any Order if Supplier does not have any regulatory or other approvals necessary for the supply of Goods to, or use of Goods by Customer. Upon cancellation of any Order, Supplier shall refund any amounts paid by Customer to Supplier in respect of that Order. Supplier shall not be obliged to pay Customer any interest on any amount so refunded.

5 **Risk and title**

5.1 The risk of loss of or damage to the Goods will pass to Customer when the Goods have been delivered to the carrier for delivery to the Customer.

5.2 Ownership of the Goods will not pass to Customer until Supplier receives payment of the Price and all other sums due to Supplier in full in cleared funds.

5.3 Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.

5.4 Until ownership of the Goods passes to Customer, Customer shall hold the Goods as Supplier's fiduciary agent and bailee and shall keep them properly stored, insured and marked as Supplier's property. Prior to the passing of ownership Customer shall be entitled to sell (at full market value) or otherwise use the Goods at its own risk in the ordinary course of its business and in its own capacity.

5.5 Until such time as title to the Goods passes to Customer and, providing the Goods are still in existence and have not been re-sold or incorporated into other goods, Supplier shall be entitled to require Customer to deliver up the Goods and, if Customer fails to do so, to enter upon the premises where the Goods are kept to re-possess the same. Customer shall indemnify and hold Supplier harmless against any costs and expenses and/or liability that Supplier may incur to any third party in connection with any re-possession or attempted re-possession.

5.6 Customer may not pledge or charge the Goods by way of security for any indebtedness but, if it does so, all monies due to Supplier from Customer shall become immediately due and payable.

6 **Intellectual Property**

6.1 Supplier or its licensors shall retain all intellectual property rights in all Goods and in all drawings, data, test results and other deliverables ("**Deliverables**") supplied to Customer under any Agreement.

6.2 Customer may use Deliverables only for the purpose for which Supplier supplies them to Customer and for the period during which Customer uses the Goods. Customer may not supply Deliverables separately from the Goods to any third party or use them for any other purpose.

7 **Warranties and defects**

7.1 Supplier warrants that, provided the Goods are stored in accordance with the Specification, upon delivery the Goods shall comply with the Specification until the expiry date specified on the Goods' packaging.

7.2 Customer's only remedy in respect of a breach of the warranty in clause 7.1 will be (at Supplier's sole discretion) (i) repair or replacement of the Goods or (ii) a refund of the Price and any other costs or expenses invoiced by Supplier under clause 3.1.

7.3 All warranties, conditions, guarantees and representations that may be implied by statute, common law or otherwise are hereby excluded by Supplier to the fullest extent permitted by law.

8 **Liability**

8.1 Save as provided below:

8.1.1 Supplier's total aggregate liability under each Agreement (whether in contract, tort (including, but not limited to, negligence) or otherwise) shall not exceed the total amount payable to Supplier by Customer under an Agreement;

8.1.2 Supplier will not be liable for any claim to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, injury to reputation, third party losses or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability and regardless of whether Supplier knew or had reason to know of the possibility of the loss or damage in question; and

8.1.3 Supplier will not be liable for any delay in or failure to comply with its obligations to the extent that such failure results from circumstances beyond Supplier's reasonable control.

8.2 Supplier's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation, damage suffered as a result of the breach of the warranties as to title and quiet enjoyment implied under English law and/or any other loss or damage the exclusion or limitation of which is prohibited by English law is not limited or excluded by these conditions or any Agreement.

9 **General**

9.1 Customer may not transfer, assign or otherwise part with the whole or any part of any Agreement without Supplier's prior written consent. Supplier may transfer, assign or otherwise part with the whole or any part of any Agreement at any time.

9.2 All notices shall be given in writing and sent by special delivery post, or any other post where the recipient must sign to acknowledge receipt, to the recipient's address detailed in the Order (or as may be notified to the other party in accordance with this clause from time to time) and shall be deemed to have been served upon delivery or when returned to the sender marked "gone away" or similar.

9.3 Neither party's failure to enforce or rely on or delay in enforcing or relying on any right will prevent that party from later enforcing or relying upon that or any other right.

9.4 If a court or other regulatory body finds that any part of this Agreement is invalid or unenforceable, the remainder of the Agreement shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.

9.5 Nothing in any Agreement shall confer any rights upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

9.6 These conditions and each Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.