

TRAJAN SCIENTIFIC EUROPE LTD

STANDARD TERMS AND CONDITIONS

1. Definitions, Formation and Scope of the Contract

- 1.1. In these Terms and Conditions:
- Contract** means any agreement for the sale of Goods entered into between Trajan and the Purchaser.
- Goods** means the goods or services to be supplied by Trajan as referred to in the Order.
- Order** means the Purchaser's order for the Goods from Trajan.
- Personal Information** means information that can be used to directly or indirectly identify an individual.
- Purchaser** means any person who purchases or agrees to purchase Goods from Trajan and any successor in title to those Goods.
- Terms and Conditions** means these terms and conditions of sale.
- Trajan** means Trajan Scientific Europe Ltd together with its agents, servants and employees.
- VAT** means value added tax as imposed by the *Value Added Tax Act 1994*.
- 1.2. Unless Trajan expressly agree in writing to the contrary, all Contracts entered into by Trajan shall incorporate these Terms and Conditions. Each Contract shall comprise and incorporate all written documentation specially prepared by Trajan in respect of and in anticipation of entering into that particular Contract (including any written specification as such Goods). In the event that any term contained in any such documentation conflicts with any term set out in these Terms and Conditions then the term contained in any such document shall prevail.
- 1.3. For the avoidance of doubt, the Purchaser's Terms and Conditions are expressly excluded, unless expressly agreed to in writing by Trajan. Any order placed by the Purchaser shall be conclusively deemed to have been made subject to the Terms and Conditions in force as at the date the Order is received by Trajan, irrespective of any contrary terms printed on or accompanying the Purchaser's order documentation, and such contrary terms shall in no circumstances prevail.
- 1.4. All references in these Terms and Conditions to any statute shall be construed as a reference to that statute as amended, re-enacted or extended at the any time.

2. Confirmation of Orders

No Order placed by the Purchaser shall be binding on Trajan unless and until Trajan accepts the Order by sending the Purchaser a written confirmation of Order. Any Order which has been accepted by Trajan may not be cancelled by the Purchaser except with the prior written consent of Trajan and in event that the Purchaser shall purport to cancel any Order without such consent, the Purchaser shall indemnify Trajan in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Trajan as a result of such cancellation.

3. Price

- 3.1. Unless otherwise expressly agreed in writing by Trajan the price payable for the Goods shall be such price as is indicated in Trajan's price list in force on the date of the formation of the Contract. Trajan reserves the right, by giving written notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any

increase in the cost to Trajan which is due to a factor beyond its control, including, without limitation, increases in the costs of labour, materials or other costs of manufacture.

- 3.2. Save where expressly stated to the contrary, all prices quoted by Trajan shall be deemed to be exclusive of VAT and where applicable Trajan shall be entitled to charge VAT on the price at the then prevailing rate.
- 3.3. The Purchaser undertakes that where no VAT has been charged by Trajan in respect of any Goods supplied because the parties mistakenly regarded the supply of those Goods as VAT-free or VAT exempt, the Purchaser shall indemnify Trajan for and in respect of the VAT (including any interest or penalty) subsequently determined to be due in respect of that supply.

4. Payment and Default

- 4.1. Unless otherwise expressly agreed in writing, the purchase price shall be paid to Trajan in full without deduction or set-off in the currency specified in the invoice thirty (30) days from the date of the invoice for the Goods notwithstanding that delivery may not have taken place and/or that the property in the Goods has not yet passed to the Purchaser.
- 4.2. In the event that the purchase price is not paid in full on the due date, Trajan has the right to charge interest on the balance outstanding, calculated from the due date until the date of payment at the interest rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue from day to day on the amount of the purchase price remaining unpaid up to the date of payment (whether before or after judgment).
- 4.3. The Purchaser shall indemnify Trajan against all costs and disbursements which Trajan may incur in recovering any sums due to be paid by the Purchaser to Trajan under any Contract, including but not limited to any debt recovery agency fees, court fees or legal fees.
- 4.4. In addition to its right under clause 4.2, Trajan has the right to cancel the remainder of the Contract or to suspend deliveries of Goods if the Purchaser does not observe the terms of payment as set out hereunder. Trajan also has the right to sell or otherwise dispose of Goods that are the subject of the Contract and to apply the proceeds of any such sale to the overdue account.
- 4.5. Payment of the purchase price shall become immediately due if
- the Purchaser makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
 - the Purchaser is unable or states that it is unable to pay its debts as and when they fall due
 - the Purchaser, being an individual, commits an act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against any part of the Purchaser's property or assets
 - the Purchaser, being a company, makes any voluntary arrangement with its creditors, passes a resolution for its winding up (otherwise than for a solvent reconstruction or amalgamation) or enters into liquidation or has an application for winding up filed against it;
 - an administrator or a receiver is appointed over any part of the property or assets of the Purchaser;

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- f) Trajan reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser; or
- g) the Purchaser experiences any analogous event having substantially similar effect to any of the events specified above.

5. Delivery Times

- 5.1 Subject to clause 5.2, Trajan shall use its reasonable endeavours to achieve any delivery times stated by Trajan in confirmation of Order, provided always that any such delivery times are estimates only and time shall not be of the essence.
- 5.2 In the event that Trajan fails to deliver any Goods within 8 weeks of the estimated delivery date stated by Trajan in its confirmation of Order the Purchaser's sole remedy shall be to cancel the Order without penalty. In such circumstances Trajan shall have no liability of whatever kind and howsoever arising in respect of such cancellation or the failure by Trajan to deliver the Goods within that time (or at all).

6. Delivery and Risk

- 6.1 Unless expressly agreed otherwise by Trajan, and subject to clauses 6.2 and 6.3, all Goods sold by Trajan to the Purchaser are sold on the basis that Trajan shall arrange to deliver the Goods to the Purchaser's address as stated in the Order or otherwise mentioned in the Contract. Risk of damage to or loss of such Goods shall pass to the Purchaser upon the earlier of either of the following: (a) the delivery of the Goods to the Purchaser; or (b) upon delivery being tendered during normal working hours at the correct address and such delivery being declined (for whatever reason).
- 6.2 Save where the purchase price for any Goods is expressly stated to include the cost of transportation and insurance during transit, the Purchaser shall be liable to reimburse Trajan for such costs which shall be payable in addition to the price payable for the Goods.
- 6.3 The Purchaser is solely responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for all local taxes and any customs or import duties payable for Goods delivered being delivered to a destination outside the United Kingdom.

7. Title to Goods

- 7.1 Irrespective of the time when risk in the Goods shall pass, property in the Goods shall remain with Trajan until the Purchaser has made payment in full to Trajan of the purchase price and any other amounts payable to Trajan in respect of those Goods (and in respect of any other goods supplied by Trajan to the Purchaser).
- 7.2 The Purchaser acknowledges that until payment of the purchase price and any other such amounts is made in full, the Purchaser holds the Goods as fiduciary agent and bailee for Trajan and the Purchaser agrees to : store the Goods separately from all other material in the Purchaser's possession; take all reasonable care of the Goods and keep them in reasonable condition; insure the Goods with a reputable insurer from the date of delivery against all risks for an amount at least equal to the Price noting Trajan's interest on the policy; ensure the Goods are clearly identifiable as belonging to Trajan; not remove or alter any mark on or packaging of the Goods; inform Trajan as soon as possible it becomes subject to any of

the events set out in clause 4.5; and provide Trajan with such information concerning the Goods as Trajan may request from time to time. However, the Purchaser may resell or use the Goods in the ordinary course of its business.

- 7.3 If, at any time, before property in the Goods has passed to the Purchaser, the Purchaser informs Trajan, or Trajan reasonably believes, that the Purchaser has or is likely to become subject to any of the events specified in clause 4.5, Trajan may: require the Purchaser to redeliver the Goods to Trajan and if the Purchaser fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8. Purchaser's Representations and Acknowledgments

- 8.1 The Purchaser acknowledges that it is responsible for informing Trajan in writing, prior to the formation of the Contract, of all requirements the Purchaser has relating to the use of the Goods in the country or state of intended use, including, but not limited to, all statutory or other like requirements relating to marking, labelling and/or packaging.
- 8.2 The Purchaser warrants that it has not advised Trajan of any particular purpose for which it requires the Goods, save for any purpose stated by the Purchaser to, and accepted by, Trajan in writing.
- 8.3 The Purchaser shall not be entitled to refuse to accept the Goods or pay the purchase price, nor shall Trajan be liable in any way whatsoever if the Goods fail to comply with any requirements not disclosed by the Purchaser in writing to, and accepted by, Trajan prior to the formation of the Contract. The Purchaser indemnifies Trajan in full against any loss or damage suffered by Trajan howsoever arising out of any failure to comply with any requirements not disclosed by the Purchaser in writing to, or not accepted by, Trajan prior to the formation of the Contract.
- 8.4 The Purchaser acknowledges that:
 - a) it has selected the Goods from a range of products offered by Trajan and the Purchaser has satisfied itself that the Goods meet the Purchaser's requirements;
 - b) no oral or written information, representation or advice given by or on behalf of Trajan, other than as contained in the Terms and Conditions, creates a warranty or in any way increases the scope of the Terms and Conditions; and
 - c) unless expressly agreed otherwise in writing, the Purchaser has not relied on any information, representation or advice given by or on behalf of Trajan in selecting the Goods; and
 - d) Trajan makes no representation that its Goods conform to country, state or local laws, ordinances, regulations, codes or standards (except as may otherwise be agreed to in writing by Trajan) and the Purchaser is responsible for complying with all local laws relating to the use of the Goods at its own cost and expense.

9. Use of Goods & Recall

- 9.1 Use of Goods.

The Purchaser warrants that it shall use its best endeavours to procure that the end-user(s) of the Goods shall use the Goods in conformity with:

 - a) laboratory practices that are consistent with industry practice;

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- b) any instructions or guidelines attached to the Goods or issued by Trajan from time to time;
 - c) all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies; and
 - d) any patent or other proprietary rights of third parties, and shall, in any event inform any end-user in writing of the above requirements for the use of the Goods.
- 9.2 **Recall**
The Purchaser must keep Trajan informed of all customer complaints concerning the Goods and must comply with any directions of Trajan in any issues, proceedings or negotiations relating to such complaints. Trajan may at its discretion recall any Goods already sold to the Purchaser (whether for a refund, credit or replacement of the Goods) and the Purchaser must comply with any notice issued by Trajan for such recall. The delivery costs incurred by the Purchase in returning the Goods shall be borne by Trajan.
- 10. Product Warranty**
- 10.1 Save to the extent otherwise stipulated in any caveat or contrary indication contained in any documentation that forms part of the Contract, and subject always to clause 10.3, Trajan warrants that all Goods manufactured by it shall conform to any specification which forms part of the Contract and shall be free from substantive defects in materials and workmanship for a period of 45 days from date of delivery.
- 10.2 In respect of any Goods which are not manufactured by Trajan which are supplied with the benefit of a manufacturer's warranty then Trajan shall have no liability whatsoever in respect of any defects arising in such Goods, but in the event that no manufacturer's warranty is supplied the warranty in clause 10.1 shall apply.
- 10.3 The warranty contained in clause 10.1 shall not apply in the following circumstances:
- a) in respect of loss or damage caused by the use of the Goods other than strictly in accordance with the terms of use of the Goods, including without limitation loss or damage caused as a result of a failure to use the Goods in accordance with Trajan's instructions, or caused by rough or negligent handling of the Goods;
 - b) in respect of loss or damage for Goods that are not stored or shipped in accordance with Trajan's storage and shipping instructions;
 - c) in respect of loss or damage caused by an act of God or any other cause not within Trajan's control or otherwise not related to the Goods.
- 10.4 Trajan's liability for breach of the warranty contained in shall be limited to one of the following, at the sole discretion of Trajan:
- a) replacement of the Goods; or
 - b) reimbursement of the purchase price paid for such Goods.
- 10.5 Trajan shall not be liable (whether for breach of the Contract, negligence or otherwise) to the Purchaser for any loss of profit or for any special, consequential or indirect loss or damage suffered or incurred by the Purchaser.
- 10.6 Save for the express warranties herein contained all other conditions and warranties (whether as to the quality, fitness for purpose or any other matter) expressed or implied by statute, the common law, equity, trade custom, usage or otherwise are hereby expressly excluded provided that nothing in these Terms and Conditions shall exclude or limit the liability of any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.
- 10.7 Goods returned under warranty for testing shall incur a charge, determined by Trajan, if no fault is found.
- 10.8 The Purchaser shall bear any cost of delivery and insurance of any Goods returned under warranty.
- 10.9 Where the Purchaser has advised Trajan in writing that the Goods are faulty but has not as yet returned the Goods, Trajan may, at its sole discretion and subject to clause 10.10, provide to the Purchaser with a replacement item.
- 10.10 Trajan shall be entitled to invoice the Purchaser in respect of a replacement item provided to the Purchaser in accordance with clause 10.9 at the full price of that replacement item if the defective Goods to be returned by the Purchaser are not received by Trajan within 30 days of the despatch of the replacement item.
- 10.11 Notwithstanding the provisions of this clause 10 nothing contained in any written warranty or in these Terms and Conditions shall have the effect of restricting or excluding the liability of Trajan in respect of death or personal injury resulting from the proven negligence of Trajan or for any liability arising under the Consumer Protection Act 1987. In addition, nothing in these Terms and Conditions affects the liability of either party for fraudulent misrepresentation.
- 11. Claims**
- 11.1 No claims shall be recognised by Trajan in respect of any mistake or shortage or over supply of Goods after seven (7) days from the delivery date.
- 11.2 Unless otherwise expressly agreed in writing, Trajan shall not accept any conditions providing for the payment by Trajan of liquidated damages or other penalties for delayed delivery of Goods or provision of information or for any other reason whatsoever.
- 12. Return of products**
- Goods are not supplied on a sale or return basis, however at Trajan's sole discretion, Trajan may accept the return of Goods supplied, subject to the following conditions:
- a) Goods marked 'non returnable' are non returnable;
 - b) Goods must be returned to Trajan or a nominated agent in good order and condition, be resaleable and be returned within seven (7) days of the date of delivery;
 - c) before returning Goods the Purchaser must first obtain a Return Authorisation Number (RAN) from Trajan;
 - d) when returning Goods the Purchaser shall quote the invoice number, RAN and date;
 - e) the Purchaser shall pay freight charges to return the Goods to the place of business of Trajan; and
 - f) the Purchaser shall pay a restocking fee of an amount determined by Trajan at its sole discretion for handling;
- 13. Intellectual Property Rights**
- The Purchaser acknowledges that Trajan is the sole owner or authorised licensee of all intellectual property rights in the Goods (and each of them) including without limitation all or any patents, trade marks, design rights and any other intellectual property rights. The Purchaser agrees that it will not, and shall procure that its servants or agents shall not, do or attempt to do anything which infringes any such rights.
- 14. Indemnity**

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- The Purchaser shall indemnify and hold Trajan harmless from and against any and all losses, costs and expenses of Trajan, including legal fees and expenses, in any way relating to:
- a) any use of Goods not in compliance with these Term and Conditions;
 - b) any failure by Purchaser to comply with laboratory practices that are consistent with industry practice, laws, guidelines or decisions in the handling or use of the Goods;
 - c) any violation or infringement of any patent or other proprietary rights of third parties by the Purchaser in the handling or use of the Goods; or
 - d) any other use or misuse of the Goods by the Purchaser.
- 15. Modifications to Goods**
- 15.1 Where the Purchaser provides information and / or instructions in writing to Trajan and where Trajan makes any modifications, alterations or adjustments to any Goods as a result of or in reliance upon the information or instructions provided by the Purchaser, the Purchaser shall indemnify Trajan from and against any loss or damage suffered by Trajan howsoever arising out of any reliance by Trajan on the information or instructions provided by the Purchaser.
- 15.2 Where the Purchaser provides information and / or instructions to Trajan on which modifications, alterations or amendments to the Goods are made, the Purchaser shall indemnify Trajan from and against any loss or damage suffered by Trajan where any such modifications, alterations or amendments are challenged by a third party as being in breach of that third party's intellectual property rights.
- 16. Privacy and Data Protection**
- In relation to any Personal Information which is obtained by Trajan in connection with its supply of the Goods to the Purchaser, Trajan will collect, process, use and store that Personal Information in accordance with Trajan's Privacy and Security policy published on the Trajan website, as may be amended from time to time.
- 17. General**
- 17.1 No Waiver
Failure by Trajan to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver of any term, warranty or condition, or of any rights Trajan may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 17.2 Severance
If any provisions of these Terms and Conditions shall become void or unenforceable for any reason, such void or unenforceable provisions or part thereof shall be severed from the remaining provisions and the remaining provisions shall continue in full force and effect.
- 17.3 Assignment
The Purchaser shall not be entitled to assign any of its rights or obligations under this Contract without the prior written consent of Trajan.
- 17.4 Notices
Any notice to be served in respect of the Contract shall be made in writing and either delivered personally or sent by registered post to the latest notified address of the other party and shall be deemed served upon delivery where delivered personally or when recorded by the delivery agent if sent by registered post.
- 17.5 Third Party Rights
None of the provisions of this Contract are intended to or shall operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Contract.
- 17.6 Variation
No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of Trajan and the Purchaser.
- 17.7 Entire Agreement
This contract constitutes the entire agreement between the parties in relation to its subject matter and no other terms shall apply.
- 17.8 Force majeure
- a) Trajan will not be liable for any failure to perform because of strikes, differences with workmen, accidents, fire, floods or shutdowns of manufacturing plant or plants supplying it, order or requirements of the U.K. Government, embargoes, inability to secure transportation facilities, or other contingencies beyond the control of Trajan, including those arising out of or due to national defence activities, or emergency conditions. Customer's performance, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, shall likewise be suspended in the event that the Force Majeure events set forth herein actually and totally prevent taking delivery of the Products.
 - b) Upon giving written notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under these Terms and Conditions of Sale, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party of the termination of such event. During the period that the performance by one of the parties has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable
- 18. Governing Law**
- Any Contract between Trajan and the Purchaser shall be subject to the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.