

## CONDITIONS OF PURCHASE

(March 2018 Edition)

### 1. DEFINITIONS - In these conditions:

**"Affiliates"** means any person or entity that controls, is controlled by or is under common control with a Party. For purposes of this definition only, "control" means (a) possess, directly or indirectly, the power to direct the management or policies of a person or entity, whether through ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) own, directly or indirectly, more than 50% of the outstanding voting securities or other ownership interest of such person or entity.

**"Contract"** means the contract formed between IKL and the Seller for the purchase and sale of the Goods and/or any Services, incorporating these conditions;

**"data controller", "data processor", "data subject", "personal data" and "processing"** shall have the meanings ascribed to them in the Data Protection Legislation;

**"Data Protection Legislation"** means all laws relating to the processing of personal data, privacy and security, including, without limitation, the EU Data Protection Directive 95/46/EC (as will be superseded by the EU General Data Protection Regulation 2016/679 ("GDPR")), the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented in each jurisdiction, and all amendments, or all other applicable international, regional, federal or national data protection laws, regulations and regulatory guidance.

**"Free Issue Materials"** means any materials made available to the Seller by IKL free of charge for incorporation by the Seller into the Goods to be supplied to IKL;

**"Goods"** means the goods and/or materials as ordered by IKL from the Seller hereunder, and/or any of them (as described in any Specification);

**"IKL"** means Invibio Knees Ltd (registered in England under number 8149440) whose registered office is Victrex Technology Centre, Hillhouse International, Thornton Cleveleys, Lancashire FY5 4QD;

**"IKL Personal Data"** means any personal data which may be supplied by IKL to the Seller under the Contract and/or which the Seller (and/or any Sub-Processor) generates, collects, stores, transmits or otherwise processes either on behalf of IKL.

**"Purchase Order"** means a written instruction from IKL detailing the Goods and/or Services to be delivered or provided on a specified date; and

**"Seller"** means the person, firm or company to whom the Purchase Order is addressed and who is to supply or procure the supply of the Goods and/or Services;

**"Services"** means the work and/or services as ordered by IKL from the Seller hereunder, and/or any of them;

**"Specification"** means the drawings, raw material specifications, notes, documents, technical details and other such information describing the Goods and/or Services; and

**"Sub-Processor"** means any person or entity which is not a Party to the Contract and which is engaged by the Seller to perform any or all of its obligations under the Contract, including for the avoidance of doubt, an Affiliate of the Seller.

### 2. ACCEPTANCE

- (a) This Purchase Order constitutes an offer on IKL's part to purchase the Goods and/or Services at the prices stated in the Purchase Order and upon these conditions.
- (b) This Purchase Order shall be deemed accepted on the earlier of: (i) the Seller issuing a written acceptance of the Purchase Order; or (ii) the Seller doing any act consistent with fulfilling the Purchase Order, at which time the Contract shall come into existence.
- (c) The Seller hereby acknowledges that acceptance of IKL's Purchase Order implies acceptance of these conditions which shall override any terms and conditions attached to the supply of the Goods and/or Services by the Seller, and no addition to or variations of these conditions shall be made (and if made shall not be valid) unless agreed in writing by IKL.

### 3. DELIVERY

- (a) Goods shall be delivered and/or Services shall be provided and completed on the date or during the period specified in the Purchase Order or if no date is specified, within a reasonable period provided that IKL shall be under no obligation to accept delivery/provision before the specified date, but reserves the right to do so. The Seller shall give reasonable notice of the proposed time and date of actual delivery/provision. The Seller shall give notice of any likely delay in supply as soon as practicable.
- (b) All Goods must be delivered to and Services provided at the delivery address(es) specified in the Purchase Order and if not

specified, at such address as IKL shall specify in due course. IKL may refuse delivery of Goods or acceptance of the Services not so delivered/supplied, or may at its option arrange for delivery or provision to the address at the expense and risk of the Seller. All Goods shall be delivered free of charge unless otherwise agreed in writing by IKL.

### 4. SPECIFICATION

- (a) All Goods and Services will conform to their relevant Specification. The method of manufacture of the Goods and/or raw materials used in the Goods must be in accordance with the Specification and shall not be changed without prior authorisation in writing by IKL.
- (b) Any proposed changes to a Specification, or the method of manufacture of the Goods and/or the raw materials used in the Goods, must be notified to IKL when acknowledging the Purchase Order and agreed in writing by IKL.

### 5. REJECTION

- (a) In the case of Goods delivered by the Seller not conforming with the Contract (including any Specification) in any respect or being unfit for the purpose for which they are intended to be used IKL shall have the right to reject them. The making of payment shall not prejudice IKL's rights under this clause.
- (b) Where Goods are so rejected such Goods shall after notice thereof to the Seller be held by IKL and returned to the Seller by IKL at the Seller's sole risk and expense or, at IKL's option, the Seller shall collect the same. In this event IKL shall be at liberty to terminate the Contract forthwith, without prejudice to any other rights and remedies of IKL under the Contract or otherwise howsoever, and to supply itself elsewhere with goods or materials similar to those in respect of which default has been made and the Seller will indemnify IKL against any loss IKL may sustain by reason of such default.

### 6. PRICE

IKL shall pay to the Seller in the manner laid down in the Purchase Order the agreed purchase price which is calculated in accordance with or is recorded in the Purchase Order and which shall unless otherwise agreed in writing by IKL be and remain firm.

### 7. TERMS OF PAYMENT

- (a) Unless otherwise stated in the Purchase Order or agreed in writing by IKL beforehand and subject to the prompt receipt of a valid invoice for the Goods or Services, payment will be made 30 days from the date of the invoice.
- (b) The Seller may charge interest on any late payments by IKL (other than late payments which are disputed by IKL) at a rate of 3% per annum above the base rate of Barclays Bank plc from time to time.

### 8. INCOTERMS

The latest edition of Incoterms (currently Incoterms 2010) shall apply to all purchases from overseas and the relevant Incoterm shall be the one referred to in the Purchase Order. Where there is any conflict between the Purchase Order or these conditions and the Incoterms, the Purchase Order and these conditions shall prevail.

### 9. CANCELLATION

IKL may cancel the Contract at any time subject to a minimum of seven days' written notice and IKL shall pay the Seller such a sum as may be equitable in respect to work performed prior to cancellation which directly relates to the cancelled Contract.

### 10. SELLER'S DEFAULT OR INSOLVENCY

- (a) If the Seller commits a breach of contract which is irremediable, or where the breach is capable of remedy fails within ten days of notice by IKL to rectify the breach, IKL may, without prejudice to any other of its rights terminate the Contract by notice in writing.
- (b) If any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Seller or if the Seller makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the seller) or becomes insolvent or bankrupt or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Seller or if the seller ceases or threatens to cease to carry on business or if the financial position of the Seller deteriorates to such an extent that in the reasonable opinion of IKL the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy, IKL shall be entitled, without prejudice to any other of its rights, to terminate and/or enforce the Contract forthwith by written notice to the Seller without liability to the Seller of any kind. In such event it shall be lawful for IKL to enter the premises

where the Goods or other materials are situated and take possession of the Goods and any other materials the property in which has passed to or is vested in IKL.

#### 11. FORCE MAJEURE

- (a) Subject to its compliance clause 11(b), no party shall be liable for any failure to fulfil any term or condition of the Contract to the extent that fulfilment has been delayed, hindered or prevented by event of force majeure including but not limited to any Act of God, strike, lock out or other industrial dispute involving the workforce of a third party (other than any group company or sub-contractor of the Seller), compliance with requirements of any government or international authority, or by any other circumstances beyond its reasonable control.
- (b) Promptly following the date any event of force majeure commences, the party concerned shall use reasonable endeavours to mitigate the effects of the event of force majeure (including without limitation by employing reasonable business continuity procedures) and advise the other party in writing of the date and the nature of the event. Upon receipt of such notification the operation of the Contract shall be suspended until the event of the force majeure ceases.

#### 12. PROPERTY AND RISK

Subject only to clause 13 (Free Issue Materials) property and risk in Goods supplied under the Contract shall remain with the Seller until they are delivered to and signed for as accepted by IKL provided that if the Goods are subsequently rejected by IKL for any reason whatsoever and whether or not IKL is entitled to do so in accordance with the terms herein property and risk in the Goods shall revert to the Seller.

#### 13. FREE ISSUE MATERIALS

Where IKL provides Free Issue Materials to the Seller they shall remain the property of IKL but shall be at the risk of the Seller during the period they remain in the Seller's possession. Seller shall maintain all such Free Issue Materials in good order and condition and shall use them economically and safely in accordance with the Contract. Surplus Free Issue Materials shall be disposed of at IKL's direction. Waste or loss of Free Issue Materials shall be made good at the Seller's expense.

#### 14. PACKAGING

- (a) All Goods must be packed by or on behalf of the Seller securely so as to be delivered to IKL in perfect condition and in the event that the Goods are not delivered in perfect condition it shall be deemed that the Goods were not packed in accordance with this provision.
- (b) Packaging shall be clearly marked with any appropriate instalment number and shall be in accordance with any requirements specified from time to time by IKL, and all Goods and materials supplied will carry such information as specified by IKL. Packages containing Goods supplied against our drawings, part numbers or catalogues must be marked with the appropriate reference or as otherwise directed by IKL.

#### 15. HAZARDOUS GOODS & DANGEROUS SUBSTANCES

- (a) All hazardous Goods must be marked by Seller with international danger symbol(s) and display name of material in English. Transport and other documents must include declaration of hazard and name of material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. SELLER'S ATTENTION is drawn to all UK and International Agreements relating to the packing, labelling and carriage of hazardous Goods and Seller must comply with all statutory or other regulations (including without limitation the UK REACH Regulations 2006 or similar legislation which may be applicable in any relevant jurisdiction) and observe all codes of practice which are applicable.
- (b) As soon as possible following the acceptance of a Purchase Order the Seller shall supply any information and instructions which may be required and in particular regarding any potential hazards known or believed to exist to ensure that Goods supplied are transported, handled, stored and used correctly and in a manner likely to avoid any danger to the health or safety of IKL employees or any other persons on IKL premises or those of its sub-contractors to whom delivery is made.

#### 16. SELLER'S WARRANTIES

The Seller undertakes and warrants that:

- (a) Goods supplied to IKL shall be manufactured, and (where applicable) packaged, with competence and due care, be of satisfactory quality and fit for the purposes for which they are required by IKL and shall comply in every respect with all relevant Specifications and any statute, statutory order, directive or regulation or relevant British Standard (or equivalent required expressly by IKL) in force at the time of delivery;
- (b) all action required to minimise and eliminate any risk to health and safety resulting from use of the Goods for the purpose for which they are designed has been carried out and that any information

which is relevant, in any way whatsoever, to risks to health or safety will be brought to the attention of IKL in writing upon acceptance of the Purchase Order. IKL has the right to demand and receive proof that the above undertakings have been carried out;

- (c) it has disclosed any circumstances known to the Seller which would reduce the lifespan of the Goods and, furthermore, hereby undertakes to inform IKL in writing of any such information that should at any time in the future come to the Seller's attention (with such disclosure to be without prejudice to any rights or remedies IKL may have in respect of the relevant Goods);
- (d) all Goods and Services shall be supplied in accordance with all then applicable legislation and/or standards, including all provisions relating to health and safety and noise emission, and the Seller shall provide all certificates reasonably requested by IKL to evidence the Seller's compliance with such applicable legislation;
- (e) without prejudice to the generality of the warranty at clause 16(d) the Seller shall not use in the supply of the Goods and Services materials sourced directly or indirectly from conflict-affected and high-risk territories and shall comply with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- (f) all Services supplied to IKL will be supplied with competence and due care and skill by suitable, qualified and experienced personnel in accordance with IKL instructions for the provision of such Services and will comply in every respect with all Specifications (whether provided or specified by IKL to the Seller);
- (g) during the term of provision of Goods and/or Services to IKL the Seller shall carry insurance cover in such amount and in respect of the Seller's obligations under the Contract and such risks as IKL shall require from time to time, including (without prejudice to the generality of the foregoing) Product Liability and Public Liability insurances (or similar) in respect of all employees, agents and sub-contractors of the Seller as shall be on IKL premises at any time for, or in connection with, the provision of the Services; and
- (h) the Seller will bring to the attention of all employees, agents sub-contractors and representatives of the Seller as shall be involved in any way in the provision of Services to IKL, the requirement of IKL health and safety requirements and contractors on-site requirements and the Seller shall be responsible for ensuring that such requirements are duly observed by all such employees, agents, sub-contractors and representatives of the Seller.

#### 17. REMEDIES

Without prejudice to any other remedies it may have under the Contract or otherwise, if the Seller does not provide the Goods and/or Services in accordance with these conditions IKL may:

- (a) terminate the Contract with immediate effect by giving written notice to the Seller;
- (b) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Seller attempts to make;
- (c) recover from the Seller any costs incurred by IKL in obtaining substitute goods and/or services from a third party;
- (d) require the Seller to re-perform the relevant Services;
- (e) where IKL has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, to have such sums refunded by the Seller; and/or
- (f) claim damages for any additional costs, loss or expenses incurred by IKL which are in any way attributable to the Seller's failure to meet such dates.

#### 18. INDEMNITIES

- (a) The Seller will indemnify and shall keep IKL fully indemnified in respect of any and all damages, costs, claims, liabilities, expenses, losses (including consequential loss) and demands incurred by IKL, directly or indirectly as a result of the Seller's breach of any of the warranties and undertakings contained in Clause 16 above or any other warranties and conditions in respect of the Goods and/or Services (as the case may be), whether express or implied, by statute or otherwise.
- (b) Without prejudice to the foregoing, in the event of any employee of IKL or any other person on IKL premises being injured or otherwise suffering loss through any default or negligence on the Seller's part (including without prejudice to the generality of the foregoing any failure by the Seller or the Seller's agents, employees or sub-contractors to comply with any provision of the Health & Safety at Work Etc Act 1974 (and any amendments or modifications thereof) or any regulations or code of practice thereunder) the Seller will indemnify IKL in respect of any action, civil or criminal, which may result.
- (c) The Seller shall fully indemnify IKL against any and all actions, costs, claims, liabilities, demands and expenses arising from or

incurred by reason of any infringement of any third party patent, registered design, trade mark, copyright or other industrial or commercial rights of a similar nature, by the use or sale of any goods or materials or Services supplied by the Seller (including Goods and Services) but this indemnity shall not apply to Goods made to IKL design or where the infringement results from the making up of goods or materials by IKL.

- (d) The Seller will indemnify IKL against all loss, damage, costs, claims and expenses arising from any negligent acts and/or omissions of the Seller's employees, agents, sub-contractors or representatives (save to the extent that such loss, damage, costs, claims or expenses arise from negligent acts and/or omissions of IKL employees, agents, sub-contractors and representatives).
- (e) The Seller undertakes to insure itself against any and all liability under this Contract and IKL has the right to demand proof in writing that this insurance requirement has been complied with. All monies received by the Seller under this clause are to be held in trust for IKL.

#### 19. IKL'S RIGHT IN MATERIALS

- (a) Any samples, prototypes, Free Issue Materials, specifications, plans, process know-how, drawings, patterns, design formulae or any written instructions or confidential information supplied by IKL (or a customer of IKL) or produced by the Seller in connection with the Contract shall remain the property of IKL (or where relevant the customer of IKL) and must be returned to IKL on fulfilment of the Contract at the expense of the Seller. Any such information and information derived therefrom or otherwise communicated to the Seller in connection with the Contract shall not, without the written consent of IKL, be used for the supply of Goods to any third party, or copied, published or disclosed to any third party except for the purpose of carrying out this Contract.
- (b) The Seller shall keep in good condition the information and matters referred to in this clause and shall provide for insurance of the property at its full value to the IKL. The Seller shall provide proof of compliance with this insurance requirement on demand.

#### 20. CONFIDENTIALITY

Each party agrees that all information received from the other party under the Contract, including the nature of the Goods and/or Services to be provided by the Seller and the existence of any Contract shall be maintained in confidence and not disclosed to others, and the receiving party agrees not to use such information for any purpose other than the fulfilment of a Contract without the prior written consent of the other party. Each party shall use the same standard of care to protect the confidentiality of information received from the other party as it uses to protect its own confidential information, and shall limit disclosure of such information to those of its personnel and consultants who have an actual need to know and have a written obligation to protect the confidentiality of such information. Seller shall expressly not, without the prior written consent of IKL, advertise, or make public in any way, any business association between Seller and IKL arising from the provision of Goods and/or Services to IKL, or the existence of any Contract, and the nature of any Goods and/or Services provided to IKL.

#### 21. ANTI-BRIBERY

- (a) Each party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in any jurisdiction relevant to the parties and the supply of the Goods and Services ("**Applicable Bribery Law**"). No party shall place the other in breach of the Applicable Bribery Law.
- (b) Each party shall maintain in place throughout the term of this Contract its own adequate policies and procedures to ensure compliance with the Applicable Bribery Law, and will enforce them where appropriate. Where requested, both parties shall promptly answer reasonable enquiries relating to those policies and procedures.
- (c) The Seller shall promptly report to IKL any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Contract.
- (d) The Seller shall ensure that any of its personnel who perform Services or provide goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this clause ("**Applicable Bribery Terms**"). The Seller shall be responsible for the observance and performance by its personnel of the Applicable Bribery Terms, and shall be directly liable to IKL for any breach by such persons of any of the Applicable Bribery Terms.
- (e) Breach of this clause shall be deemed a material breach and not capable of remedy.
- (f) In order to determine the Seller's compliance with this clause, IKL shall have the right to inspect the Seller's records such as travel and entertainment expenses and other disbursements incurred on behalf of IKL or in the course of providing the Goods and/or Services.

- (g) The Seller is aware of IKL's Code of Conduct and agrees that it will observe the terms thereof.

#### 22. LICENCES AND CONSENTS

If a licence or consent of any third party (including without limitation any governmental or other authority) is required in connection with the Seller supplying the Goods and/or the Services, the Seller shall obtain the licence or consent at its own expense and produce evidence of it to IKL on demand.

#### 23. DATA PROTECTION

- (a) The categories of IKL Personal Data to be processed by the Seller and the processing activities to be performed under the Contract are set out in the Contract.

(b) To the extent that the Seller gets access to any personal data from IKL or during the supply of the Goods and/or Services, the parties agree that the Seller processes such personal data on behalf of and as a data processor for IKL, save where the Seller processes such data for the purpose of managing its business relationship with IKL.

- (c) Upon termination or expiry of the Contract, the Seller shall, at IKL's request, promptly delete or return all IKL Personal Data and delete the copies thereof (unless applicable law requires the storage of such IKL Personal Data) and shall certify to IKL that it has done so.

- (d) The Seller shall:

(i) only process IKL Personal Data in accordance with the documented instructions given from time to time by IKL, including with regard to transfers, unless required to do otherwise by applicable law. In which event, the Seller shall inform IKL of the legal requirement before processing IKL Personal Data other than in accordance with IKL's instructions, unless that same law prohibits the Seller from doing so on important grounds of public interest;

(ii) implement appropriate technical and organisational measures to protect IKL Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, which shall include any information security policies and procedures of IKL which IKL notifies to the Seller from time to time;

(iii) without prejudice to any other provisions of the Contract, ensure that its personnel are subject to binding obligations of confidentiality with respect to IKL Personal Data;

(iv) to the extent possible and taking into account the information available to the Seller, provide cooperation and assistance to IKL as IKL may require to allow IKL to comply with its obligations as a data controller, including in relation to data security, data breach notification, data protection impact assessment, prior consultation with data protection authorities, any enquiry, notice or investigation received from a data protection authority, and the fulfilment of data subject's rights; and

(v) promptly, and without delay, notify IKL in writing of any actual, alleged, or potential unauthorised disclosure, loss, destruction, compromise, damage, alteration, or theft of IKL Personal Data.

- (e) The Seller shall make available to IKL all information reasonably necessary to demonstrate its compliance with the obligations set out in this clause **Error! Reference source not found.** and allow for and co-operate with any audits, including physical inspections of the Seller's premises, required by IKL.

- (f) The Seller shall not authorise any third party or Sub-Processor to process the IKL Personal Data other than with the prior written consent of IKL. Where IKL gives such consent, Seller shall impose obligations on its Sub-Processors that are the same as or equivalent to those set out in this clause **Error! Reference source not found.** by way of written contract, and shall remain fully liable to IKL for any failure by a Sub-Processor to fulfil its obligations in relation to the IKL Personal Data.

- (g) The Seller shall ensure that no IKL Personal Data is processed outside the European Economic Area (EEA) without the express prior written consent of IKL. If IKL gives such consent, the Seller shall comply with the requirements of IKL to ensure that adequate safeguards are put in place to protect IKL Personal Data.

#### 24. EXPORT CONTROLS

- (a) Notwithstanding anything to the contrary herein, nothing in this Contract is intended, and nothing herein should be interpreted or construed, to induce or require either party to act or refrain from acting (or agreeing to act or refrain from acting) in any manner which is inconsistent with, penalised or prohibited under any laws, regulations or decrees or other mandatory official government requirements of the United Kingdom or the United States of America, EU or UN (as may be amended from time to time)

applicable to such party which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

- (b) The Seller agrees not to provide Goods or procure Services directly or indirectly from any country which is United Kingdom or the United States of America or EU or UN or other applicable government embargoed (or becomes so embargoed). Furthermore, the Seller hereby agrees to indemnify IKL for all costs, liabilities, direct damages, claims, for any breach of this clause 24.

**25. RIGHTS OF THIRD PARTIES**

- (a) The Seller agrees that the controls, benefits, rights, licences and indemnities granted to IKL under the Contract are also granted to each member of IKL's Group and that any loss suffered by IKL or a member of IKL's Group as a result of any action or omission under the Contract shall be deemed to be a loss of IKL and recoverable from the Seller under the Contract (subject to the agreed exclusions and limits on liability).
- (b) Other than as set out in clause 25(a) above, a person who is not a party to this Contract will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms

**26. ASSIGNMENT AND SUB-CONTRACTING**

- (a) The Seller shall not without the written consent of the IKL assign any of the rights of the Seller or sub-contract any of the obligations of the Seller provided for by this Contract to any third party.
- (b) The Supplier shall ensure that any approved sub-contractor is contracted on terms no less onerous than this Contract (but the Supplier acknowledges that this shall not affect its liability for failure to perform its obligations under this Contract).

**27. LAW**

These conditions and any Contract made under them shall be governed by and construed in accordance with English Law and the courts of England shall have non-exclusive jurisdiction, provided that: (i) any claim brought against IKL must be brought within the courts of England; and (ii) either party may elect to refer a dispute for arbitration in London in accordance with the arbitration rules of the International Chamber of Commerce.