

# **NOVARA CELLMARK STANDARD TERMS AND CONDITIONS OF SALE**

## **1. INTERPRETATION**

1.1 Herein the terms of sale Novara CellMark, a registered tradename of CellMark Inc.

1.2 In these terms the following definitions apply:

“Affiliate”	in relation to any person, any person that Controls such person, is Controlled by such person or is under the common Control with such person;
“Agreement”	the agreement between the Seller and the Buyer comprised of the Order and these terms;
“Buyer”	the purchaser of the Product under the Agreement, identified in the Order;
“Confidential Information”	in relation to the Buyer or the Seller, all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to this Agreement, whether orally, or in documentary, electronic or other form;
“Control”	in relation to any person, the beneficial ownership of more than 50% of the issued share capital of, or the legal power to direct or cause the direction of the general management of the person in question or its holding company or parent undertaking;
“Event of Default”	has the meaning given in clause 20.1;
“Force Majeure Event”	any event which is beyond the reasonable control of the Seller or the Buyer as appropriate, and which affects the Seller’s or the Buyer’s performance, including acts of God, war, terrorism, fire, natural disasters, civil commotion, governmental actions, labour disputes, accidents, shortages of necessary raw materials, transport, fuel or utilities and breakdown or failure or malfunctioning of machinery;
“Insolvency Event”	shall have the meaning in clause 19.2;
“Loss” and “Losses”	includes all loss, damage, claims, cost and expense;
“Order”	a binding order, in the form the Seller requires, for the purchase of the Product at the Price, placed by the Buyer and accepted by the Seller;
“Price”	the price of the Product stated in the Order;
“Product”	the product identified in the Order or any of part thereof; and
“Seller”	CellMark Inc registered in California TIN 68-0012735 and whose registered office is at 88 Rowland Way, Suite 300, Novato, CA 94945, United States of America.

1.3 Except in relation to clause 2.1, if there is a conflict or inconsistency between any provision contained in these terms and any provision contained in an Order, the Order prevails to the extent of the conflict or inconsistency.

1.4 References to:

- 1.4.1 a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it;
- 1.4.2 either party includes, where appropriate, persons deriving title under it;
- 1.4.3 “indemnify” means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after tax basis;
- 1.4.4 “includes” or “including” shall be construed without limitation to the generality of the preceding words;
- 1.4.5 “writing” or “written” includes any method of reproducing words in a legible and non-transitory form, including e-mail; and
- 1.4.6 any document (including this Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with this Agreement.

## **2. ORDERS**

- 2.1 The Seller is prepared to sell Product or to enter into an agreement to sell Product on the provisions of these terms only, to the exclusion of any terms which the Buyer purports to apply, whether in a purchase order or otherwise, which are hereby rejected or (as appropriate) shall be excluded from the Agreement.
- 2.2 A quotation or any similar communication by the Seller is not an offer to supply any Product, unless it is in writing, expressly described as an offer, and signed by or on behalf of the Seller. A quotation or any similar communication is valid only for the period stated in it and is subject to withdrawal or revision by the Seller at any time.
- 2.3 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Product to the Buyer.
- 2.4 Each Order gives rise to an Agreement, and each Agreement is separate from each other Agreement, except to the extent provided in the Agreement in question.

## **3. RELIANCE ON INFORMATION**

- 3.1 Any prices, charges, samples, drawings, descriptions and any other performance or technical data relating to Product which is available from the Seller or published by the Seller (including in catalogues, brochures or on a website) are subject to variation without notice and shall not form part of the Agreement.
- 3.2 The Seller’s employees or agents are not authorised to make any statement or other representation concerning the Product unless confirmed by the Seller in writing.

## **4. SALE AND PURCHASE**

- 4.1 Subject to the Agreement, the Seller shall sell, and the Buyer shall buy, the Product.
- 4.2 At any time before delivery of the Product, the Seller may substitute the Product with product of equivalent specification.

## **5. PRICE**

- 5.1 The Price is exclusive of value added tax, which shall be payable by the Buyer in addition where applicable.
- 5.2 The Price is calculated based on delivery being made FCA place of shipping (Incoterms 2020) or such other Incoterm as is specified in the Order.
- 5.3 If no Incoterm is specified in the Order, the Price excludes all costs of delivery, including transport, packaging, insurance and any taxes, duties and surcharges, all of which shall be payable by the Buyer in addition.
- 5.4 Reasonable surcharges may be added to the Price in the event of unavoidable events outside the control of the Seller including acts of God, war, terrorism, fire, natural disasters, civil commotion, governmental actions, labour disputes, fuel or utilities, customs duties, taxes, changes in raw material costs and expenses.

## **6. PAYMENT**

- 6.1 The Buyer shall pay the Price in full when due and without set-off or counterclaim in respect of any liability of the Seller.
- 6.2 Unless otherwise agreed in writing between the parties, all payments due under the Agreement shall be paid within twenty (20) days after the end of the month in which the invoice was issued by the Seller.
- 6.3 Unless otherwise agreed in writing between the parties, payment shall be made in the Euros.
- 6.4 The Buyer shall pay the Seller interest on overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, after as well as before judgment.
- 6.5 Where the Buyer fails to pay the Price in full on or before the due date, the Seller is entitled to suspend or stop the transmission, and resume possession, of all or any of the Product until payment is received, and the costs of the Seller doing so are for the Buyer's account.

## **7. OWNERSHIP**

- 7.1 Ownership of the Product passes to the Buyer upon the Seller receiving payment in full of the Price and all other amounts due to the Seller from the Buyer from time to time.
- 7.2 Until ownership of the Product passes to the Buyer or (if earlier) the Buyer exercises its rights under clause 7.3 in relation to particular Product:
  - 7.2.1 the Buyer shall hold the Product as the Seller's fiduciary bailee;
  - 7.2.2 the Buyer shall keep the Product separate from all other Product held by the Buyer and readily identifiable as the property of the Seller;
  - 7.2.3 the Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Product;
  - 7.2.4 the Buyer shall maintain the Product in a satisfactory condition, insured on the Seller's behalf for their full price against all risks;
  - 7.2.5 the Buyer shall hold the proceeds of insurance referred to in clause 7.2.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn account; and
  - 7.2.6 the Seller shall be entitled by its employees or other representatives to enter the premises of the Buyer where the Product is stored without notice to recover the Product and the Buyer shall at the request of the Seller procure the right for the Seller, its employees and

representative to enter any premises of any third party where the Product is stored to recover the Product.

- 7.3 During the period following delivery of the Product and prior to ownership having passed to the Buyer in accordance with clause 7.1, the Buyer may use or sell the Product to a bona fide purchaser in the ordinary course of the Buyer's business, in which case, provided the Product remains identifiable and severable, it remains subject to the terms of the Agreement.
  - 7.4 The Buyer's rights under clause 7.3 shall continue unless and until the earlier to occur of the following:-
    - 7.4.1 the Seller terminates the right to do so by notice to the Buyer; or
    - 7.4.2 an Insolvency Event occurs in relation to the Buyer, in which case the right to do so terminates with immediate effect.
  - 7.5 Where any goods to which clause 7.6 refers are sold by the Buyer before ownership of the Product passes to the Buyer:-
    - 7.5.1 the proceeds of sale which represent or are equivalent to the amount owed by the Buyer to the Seller in respect of the Product shall be held by the Buyer upon trust for the Seller and paid into a separate bank account designated for that purpose; and
    - 7.5.2 the Seller shall be entitled to trace the proceeds of sale into that bank account (or wherever the proceeds may in fact be located) and the Buyer authorises the Seller to make enquiries of its bankers relating to those proceeds.
  - 7.6 For the purposes of clause 7.5, the goods to which this clause 7.6 refers are the Product or other goods which the Product has been incorporated into, attached to or mixed with, provided that the Product remains identifiable and severable.
- ## **8. RISK**
- Risk of loss of or damage to the Product passes to the Buyer on delivery.
- ## **9. DELIVERY**
- 9.1 Subject to receipt of all amounts payable by the Buyer (whether under the Agreement or otherwise) due before delivery, the Seller shall deliver the Product, and the Buyer shall take delivery of the Product, in accordance with the Order and otherwise in accordance with this clause 9.
  - 9.2 The method of delivery shall be as specified in the Order. Where the Order does not stipulate a delivery term, delivery shall be FCA place of shipping (Incoterms 2020).
  - 9.3 Delivery shall take place on the earliest to occur of any of the following, as appropriate to the provisions of the Order:
    - 9.3.1 the Seller giving to the Buyer or any other person having apparent authority to receive the Product on behalf of the Buyer custody of the Product, and in default of any such person being present at the relevant time, the Seller may effect delivery by leaving the Product at the delivery address identified in the Order;
    - 9.3.2 the Seller agreeing in writing to hold the Product on behalf of the Buyer or its nominee; or
    - 9.3.3 the Seller giving any carrier engaged by the Seller custody of the Product for the purposes of carriage to the Buyer.
  - 9.4 It is a condition of the Agreement that the Buyer receives or arranges for the receipt of the Product when delivery is effected by the Seller and shall provide all necessary labour, materials and plant, prepare the site and procure all licences and other authorisations required for the Seller or the carrier (as appropriate) to effect delivery in accordance with this clause 9.

- 9.5 If the Buyer fails to take delivery of the Product, the Seller may store the Product at the risk and cost of the Buyer.
- 9.6 Where the Product is delivered in bags rather than in bulk, the Buyer shall unload the Product and shall provide all necessary equipment and labour to do so.

#### **10. DELIVERY TIMES**

- 10.1 Unless otherwise stated in the Order, all dates or other times for delivery of the Product stated in the Order are estimates only, except the Seller shall use its reasonable endeavours to make delivery no later than the date or time stated, and in default of a date or time stated in the Order, the Product shall be delivered within a reasonable time after the date of the Order, time for which is not of the essence.
- 10.2 The Buyer may not postpone the delivery of the Product except with the prior consent in writing of the Seller.
- 10.3 Subject to clause 20, in the event of a valid termination of the Agreement by the Buyer as a result of a failure by the Seller to deliver the Product, the Seller's liability is limited to the price incurred by the Buyer in obtaining replacement product of an equivalent or similar description and quality to the Product at the lowest price such product is available in the market, less an amount equal to the Price.

#### **11. DELIVERY QUANTITIES**

- 11.1 The Seller shall be permitted to make delivery in instalments. The size of each instalment shall be determined by the Seller.
- 11.2 Where the Product is delivered in instalments, any claim by the Buyer in respect of one or more instalments shall not entitle the Buyer to treat the Agreement as a whole as repudiated.
- 11.3 The Seller shall not be obliged to supply Product:
- 11.3.1 in excess of any maximum supply quantities; or
- 11.3.2 in respect of Orders which do not meet any minimum supply quantities,
- which are notified to the Buyer by the Seller from time to time (whether such maximum or minimum supply quantities apply on an Order, monthly, annual or other basis).
- 11.4 The Supplier is permitted to deliver up to 5% more or 5% less than the quantity ordered and the quantity delivered shall be deemed to be the quantity ordered. The Price shall be adjusted on a pro-rata basis in respect of any under or over delivery.
- 11.5 Where the Product is to be delivered in instalments, clause 11.4 shall also apply to each instalment.
- 11.6 If there is any dispute regarding the quantity of Product delivered, the Seller's weights taken prior to dispatch shall prevail except in the case of manifest error.

#### **12. QUALITY, INSPECTION AND ACCEPTANCE**

- 12.1 The Seller undertakes that on the date of delivery the Product shall comply with any specification for the Product supplied to the Buyer by the Seller in relation to the Order.
- 12.2 The warranty in clause 12.1 applies to Product of first grade quality only and shall not apply to any Product sold as sub-standard by the Seller.
- 12.3 The Buyer shall accept all Product which meets the requirements of clause 12.1 and may reject Product which does not do so, provided the breach is not so slight that it would be unreasonable for the Buyer to reject the Product.
- 12.4 The Buyer has a reasonable period, not exceeding five (5) days after delivery of the Product, in which to inspect and test the Product and to notify the

Seller of any shortfall in delivery, any defects revealed and whether the Product is rejected in accordance with clause 12.3. In default of any such notice within this period, the Seller is deemed to have complied with its obligations under this Agreement in relation to delivery, quantity and quality of the Product and the Buyer is deemed to have accepted the Product and there shall be no further liability whatsoever of the Seller to the Buyer

- 12.5 Where the Buyer rejects the Product, subject to the provisions of clause 12.4, the Buyer shall in accordance with the Seller's instructions and at the Seller's cost, return the defective Product to the Seller or make it available for collection by the Seller.

#### **13. BUYER'S REMEDIES**

- 13.1 If the Buyer identifies a defect in the Product as a result of any breach of clause 12.1, the Seller shall, at its sole discretion, replace the defective Product as soon as reasonably practicable after notification of the defect by the Buyer or reimburse the Buyer the Price paid for the affected Product.
- 13.2 Where Seller supplies any replacement Product in accordance with clause 13.1, the provisions of the Agreement shall apply to such replacement Product, and the Seller shall acquire all right, title and interest in and to the original Product to the extent replaced.
- 13.3 The remedies set forth in clause 13.1 shall be the Buyer's sole and exclusive remedy for any defective Product supplied by the Seller under this Agreement and the Seller shall have no further liability to the Buyer in respect of the failure of the Product to comply with clause 12.1.

#### **14. SELLER'S REMEDIES**

The Seller is entitled to terminate the Agreement and re-sell the Product (without being under a duty of care to the Buyer in relation to the price of them) where the Buyer:

- 14.1 fails to pay the Price in full when due;
- 14.2 fails to take delivery of the Product in breach of clause 9.4; or
- 14.3 rejects the Product in breach of clause 12.3.

#### **15. REQUIREMENTS OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION**

The Seller shall use reasonable endeavours to comply with the requirements of the United States Food and Drug Administration and to provide certification where applicable.

#### **16. TECHNICAL ASSISTANCE**

- 16.1 Upon request, the Seller shall endeavour to provide such technical advice or assistance as it has available in relation to the use of Product by the Buyer.
- 16.2 Subject to clause 20.2, the Seller shall not have any liability for any technical advice or assistance provided or results obtained therefrom, and the Buyer accepts all such advice or assistance at its own risk.

#### **17. BUYER'S OBLIGATIONS**

The Buyer shall and shall procure that its employees, contractors, agents and customers shall:

- 17.1 provide, in a timely manner, such materials and other information Seller may require and ensure that it is accurate and complete in all material respects; and
- 17.2 follow safe handling, use, selling, storage, transportation and disposal practices which are relevant to the Product.

#### **18. RELIEF EVENTS**

- 18.1 The Seller is discharged from performing the Agreement where, to the extent, and for so long as the following circumstances affect performance:

- 18.1.1 the Buyer is in breach of this Agreement; or

- 18.1.2 where the responsibilities of the Buyer or any third party engaged by or on behalf of the Buyer which need to be performed in order for the Seller to perform its obligations are not met other than due to a breach by the Seller of this Agreement.
- 18.2 Except to the extent the Seller may be liable to the Buyer under this Agreement, the Buyer shall indemnify the Seller against any Losses:
- 18.2.1 arising in connection with the Seller's use of any information, instructions, specifications, materials or products supplied by the Buyer to the Seller in respect of the Product;
- 18.2.2 arising in connection with the incorrect use, processing, storage or handling of Product by the Buyer;
- 18.2.3 arising in connection with the Buyer's breach of this Agreement; and
- 18.2.4 incurred by the Seller towards a third party arising out of or in connection with the Product supplied by the Seller or its use and whether arising by reason of the negligence of the Seller or otherwise, including any claims from customers of the Buyer.
- 19. TERMINATION**
- 19.1 Either party may by giving notice to the other terminate the Agreement as from the date of expiry of the notice if the other commits a fundamental breach of this Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) days after the terminating party has given notice containing details of the breach, and requiring the breach to be remedied.
- 19.2 Either party may at any time, by notice to the other terminate this Agreement as from the date of expiry of the notice if any of the following (each being an "Insolvency Event") occurs in relation to the Buyer or the Seller (being the "Relevant Party"):
- 19.2.2 any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction (which in each case which is not withdrawn or dismissed as soon as reasonably practicable) in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iii) the enforcement of any security over any assets of the Relevant Party; (iv) a debt relief order being made in respect of the Relevant Party; (v) the attachment, sequestration, distraining upon or execution over or affecting any material asset of the Relevant Party;
- 19.2.2 the Relevant Party is unable to pay its debts as they fall due or is insolvent; or
- 19.2.3 the Relevant Party enters into a composition or arrangement with its creditors or any class of them;
- 19.2.4 the party ceases to carry on its business or substantially all of its business, or is struck off; or
- 19.2.5 the commencement of any analogous procedure or step in relation to such party in any jurisdiction other than the United States of America.
- 19.3 If at any time before delivery of the Products any condition shall exist or arise which shall impede or restrict the free exchange of currency or products between the country of the Buyer and the country of origin of the Product, delivery of any Product so affected may be suspended during the continuance of any such conditions or either party may by giving notice to the other terminate the Agreement as from the date of expiry of the notice.
- 19.4 Termination of the Agreement does not affect:
- 19.4.1 the rights or liabilities of the parties which have accrued on or before termination; and
- 19.4.2 the continuance in force of any provision which expressly or by implication is intended to come into or remain in force on or after termination, including this clause 19.4 and clauses 6.4, 7, 10.3, 13, 16.2, 18, 20 and 21, which survive termination of the Agreement.
- 20. LIMITATION OF LIABILITY**
- 20.2 The following provisions of this clause 20 set out the maximum liability of the Seller in respect of the following (each being an "Event of Default"):
- 20.1.1 a breach by the Seller of the Agreement; and
- 20.1.2 a tortious act or omission (including negligence), breach of statutory duty, or misrepresentation or misstatement, of the Seller in connection with the Agreement.
- 20.2 Nothing in this Agreement shall affect the liability of the Seller for death or personal injury, fraud, or any other liability to the extent it cannot be excluded or limited by law.
- 20.3 The Seller's total financial liability under this Agreement arising out of or in relation to an Event of Default shall not exceed an amount equal to the Price paid and payable under the Agreement for the Product to which the Event of Default relates.
- 20.4 The Seller shall not have any liability to the Buyer in respect of Losses which could have been avoided by the Buyer undertaking adequate testing of the Product after delivery.
- 20.5 In no event shall the Seller be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Agreement for any Loss for which the Buyer has assumed the risk under the Agreement, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.
- 20.6 All warranties, conditions or terms not set out in this Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to title to Product) are hereby excluded except to the extent they may not be excluded or limited by law.
- 20.7 The Buyer shall only be entitled to bring a claim against the Seller where the Buyer issues legal proceedings against the Seller within the period of twenty four (24) months commencing on the date upon which the Buyer ought reasonably to have known of its entitlement to bring such a claim.
- 20.8 The Price is determined on the basis of the exclusions from and limitations of liability contained in the Agreement. The Buyer accepts that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Buyer against Seller for certain acts or omissions of Seller may be disproportionately greater than the price.

## **21. CONFIDENTIALITY**

- 21.1 Each party undertakes to the other in relation to the Confidential Information of the other:
- 21.1.1 to keep confidential all Confidential Information;
  - 21.1.2 not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
  - 21.1.3 not to use Confidential Information except for the purposes of performing its obligations under this Agreement (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
  - 21.1.4 to keep separate from all other information all Confidential Information in its possession or control.
- 21.2 The provisions of clause 21.1 shall not apply to Confidential Information to the extent that it is or was:
- 21.2.1 already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
  - 21.2.2 in the public domain other than as a result of a breach of clause 21.1;
  - 21.2.3 required to be disclosed:
    - (a) pursuant to any law, regulation or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
    - (b) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,but only to the extent and for the purpose of that disclosure.
- 21.3 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of clause 21.1 and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of clause 21.1.

## **22. FORCE MAJEURE**

- 22.1 Neither party shall be liable for any delay in performance or for partial performance or failure to perform any of its obligations under the Agreement where such delay or failure results from the occurrence of a Force Majeure Event. Such delay, partial performance or failure shall not constitute a breach of the Agreement and the time for its performance shall be extended by such period as is equal to the delay by which performance is prevented.
- 22.2 As soon as reasonably possible after commencement of the Force Majeure Event, the affected party shall notify the other party of the occurrence of the Force Majeure Event and shall use reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement.
- 22.3 For the avoidance of doubt, in the event of any Force Majeure Event affecting the Seller, the Seller shall not be obliged to source Product from other members of the Seller's group or any third party to comply with its supply obligations hereunder.
- 22.4 In the event that the Seller's supply during a period is limited by any reason of any Force Majeure Event, the Seller shall apportion its available supply of Product

among all its internal and external customers with which it has binding contractual commitments which existed prior to the Force Majeure Event arising on a pro rata basis in proportion to the quantity of Product which the Seller has available to supply, except to the extent such distribution is prevented by law. For the avoidance of doubt, a requirement for the supply of Product to the Seller's own downstream business shall constitute a binding contractual commitment for the purpose of this clause.

## **23. NOTICES**

- 23.1 Any notice to be given by either party to the other under this Agreement must be in writing addressed to that other party at its registered office or principal place of business or such other address or electronic mail ("email") address as may have been notified for these purposes. Notices shall be delivered personally, sent by prepaid recorded, special delivery or first class post (or in the case of overseas post, by airmail) or sent by email.
- 23.2 A notice is deemed to have been received if delivered by hand, at the time of delivery, if sent by prepaid recorded, special delivery or first class post, on the second working day after posting and if sent by prepaid air mail post, on the fifth business day from the date of posting. Any notice sent by email will be effective only when actually received in readable form and service shall be deemed to be effected on the same day on which it is sent.
- 23.3 In proving service:
- 23.3.1 by delivery by hand, it shall be necessary only to produce a receipt for the notice signed for at the place of business of the addressee;
  - 23.3.2 by post, it shall be necessary only to prove that the notice was contained in an envelope which was properly addressed and posted; and
  - 23.3.3 by email, it will be sufficient to prove that the email was properly addressed.
- 23.4 The provisions of this clause 23 shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any proceedings.

## **24. RIGHTS OF THIRD PARTIES**

- 24.1 Except as provided in this Agreement, this Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.
- 24.2 The Seller has concluded this Agreement as principal on its own behalf and for the benefit of its Affiliates.
- 24.3 An Affiliate of the Seller may in its own right enforce the provisions of this Agreement in accordance with the Contracts (Rights of Third Parties Act) 1999, except that the parties may rescind or vary this Agreement without the consent of any Affiliate of the Seller.

## **25. GENERAL**

- 25.1 This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior representations, including all pre- contract misrepresentations and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties, except that this clause does not affect the liability of either party for fraud or fraudulent misrepresentation.
- 25.2 An amendment to this Agreement is ineffective unless it is in writing, expressly purports to amend this Agreement and is executed by both parties.
- 25.3 The rights and remedies of the Seller provided by the Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any Agreement (including the right to receive the whole or part of the Price)

and subcontract its obligations.

- 25.4 The rights of the Buyer under the Agreement are the Buyer's only rights relating to the subject matter of the Agreement, and are to the exclusion of any other rights of the Buyer provided by law, other than the right to claim damages for breach of contract which is not otherwise excluded by the Agreement.
- 25.5 Any failure or neglect by either party to enforce any of the provisions of this Agreement shall not be construed nor deemed to be a waiver of that party's rights and does not affect the validity of the whole or part of this Agreement nor prejudice that party's rights; any waiver by either party of its rights under this Agreement does not operate as a waiver in respect of any subsequent breach.
- 25.6 If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.
- 25.7 The Buyer shall not without the prior written consent of the Seller assign, transfer, charge, dispose of, deal with or subcontract its rights or obligations under the Agreement. The Seller may assign its rights under the rights or remedies of the Seller provided by law or in the Agreement.

- 25.8 Nothing in this Agreement or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.

**26. GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement 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 laws of The United States of America.
- 26.2 The Buyer agrees for the exclusive benefit of the Seller that the Chancery Court in California shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Agreement ("Proceedings").
- 26.3 The submission to the jurisdiction of The Chancery Court in California shall not limit the right of the Seller to take Proceedings against the Buyer in any other court of competent jurisdiction and the taking of Proceedings in one or more jurisdictions shall not preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.