

1. **INTERPRETATION**
 - 1.1 **Definitions.** In these Conditions, the following definitions apply:

Conditions: the terms and conditions set out in this document (as amended from time to time in accordance with clause 10.5.)

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or entity who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given in clause 9.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods in a form or by a method acceptable to the Supplier (including telephone orders).

Supplier: Alba Diagnostics Limited, a company incorporated under the Companies Acts (Company No SC147684) and having its registered office at Unit 1, Bankhead Avenue, Bankhead Industrial Estate, Glenrothes, Fife KY7 6JG.
 - 1.2 **Construction.** In these Conditions, the following rules apply:
 - 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
 - 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. In these Conditions a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - 1.2.5 A reference to **writing** or **written** includes faxes.
2. **BASIS OF CONTRACT**
 - 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 - 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order are complete and accurate.
 - 2.3 No Order placed by the Customer shall be deemed to be accepted by the Supplier until either a written acknowledgement of order is issued by the Supplier or (if earlier) the Supplier delivers the Goods to the Customer.
 - 2.4 The Contract constitutes the entire agreement and understanding between the parties for the sale and purchase of the Goods. The Customer acknowledges that it has not (in purchasing the Goods pursuant to the Contract) relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods.
 - 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.
3. **DELIVERY**
 - 3.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of dispatch of the Order, all relevant Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
 - 3.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**").
 - 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
 - 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 - 3.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 - 3.6 If the Customer fails to take delivery of the Goods then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract
 - 3.6.1 the Supplier shall store the Goods until delivery takes place, and may (at the Supplier's sole discretion) charge

- the Customer for all related costs and expenses (including insurance).
- 3.7 If 14 days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs charge the Customer for any shortfall (resulting from such resale or disposal) below the price of the Goods.
- 3.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4. QUALITY**
- 4.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier in respect of the Goods.
- 4.2 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery or from the date of the relevant invoice for the Goods delivered (which ever is the later) ("**Warranty Period**"), the Goods shall:
- 4.2.1 conform in all material respects with their description and any applicable specification;
- 4.2.2 be free from material defects in design, material and workmanship; and
- 4.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 4.2.4 be fit for any purpose held out by the Supplier.
- 4.3 Subject to clause 4.5, if:
- 4.3.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.2; and
- 4.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 4.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.4 If the Supplier:-
- 4.4.1 replaces the defective Goods, the warranty set out in clause 4.2 will apply to the goods which have replaced the defective Goods for a period of 12 months from the date of delivery of the replacement goods to the Customer; or
- 4.4.2 repairs the defective Goods without the use of any replacement parts, the warranty set out in clause 4.2 shall apply to the repaired Goods for the remaining term of the Warranty Period; or
- 4.4.3 repairs the defective Goods using replacement parts ("**Parts**"), the warranty set out in clause 4.2 shall apply:-
- 4.4.3.1 to the Parts for a period of 3 months from the date of repair of the defective Goods; and
- 4.4.3.2 to the Goods (excluding the Parts) for the remaining term of the Warranty Period.
- 4.5 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 4.2 if:
- 4.5.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 4.3; or
- 4.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
- 4.5.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
- 4.5.4 the Customer alters or repairs such Goods in any way whatsoever; or
- 4.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 4.6 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.2.
- 4.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5. TITLE AND RISK**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

- 5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
- 5.2.2 all other sums which are or which become due to the Supplier for sales of the Goods to the Customer.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Supplier's trustee;
- 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 5.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2; and
- 5.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
6. **PRICE AND PAYMENT**
- 6.1 The price of the Goods shall be the price set out in the Order or the price agreed between the Supplier and Customer, or, if no price is set out in the Order or agreed prior to delivery of the Goods, the price set out in the Supplier's invoice printed on the day of the dispatch of the Goods to the Delivery Location .
- 6.2 The Supplier may, by giving notice to the Customer at any time up to 14 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 6.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification for the Goods; or
- 6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.3 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). However, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 6.5 The Customer shall pay the relevant invoice in full and in cleared funds within 30 days of the date of such invoice. Payment shall be made to the bank account nominated in writing by the Supplier in the relevant invoice. Time of payment is of the essence.
- 6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**Due Date**"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of Scotland plc base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
7. **CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 7.1 If the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 7.2 For the purposes of clause 7.1, the relevant events are:
- 7.2.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is

deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

- 7.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- 7.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 7.2.4 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 7.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- 7.2.6 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 7.2.7 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 7.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.2.1 to clause 7.2.7 (inclusive); or
- 7.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 7.2.10 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 7.2.11 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or

physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.1.2 fraud or fraudulent misrepresentation; or
- 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.1.4 defective products under the Consumer Protection Act 1987; or
- 8.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.2 Subject to clause 8.1:

- 8.2.1 the Supplier shall not be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract and
- 8.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods (excluding VAT).

9. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. GENERAL

10.1 Assignment and subcontracting.

- 10.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under the Contract.
- 10.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under the Contract without the prior written consent of the Supplier.
- 10.2 Notices.
- 10.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or fax.
- 10.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 10.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.3 Severance.
- 10.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 10.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted or modified, the provision shall apply with the minimum modification or deletion necessary to make it legal, valid and enforceable.
- 10.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.5 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer and the Supplier.
- 10.6 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.