

1. Interpretation

1.1 In these terms and conditions the following words have the following meanings:

“**Buyer**” the person(s) or company whose order for the Goods is accepted by the Company; “**Delivery Point**” the place where delivery of the Goods is to take place under condition 4; “**Goods**” any goods which the Company is to supply to the Buyer (including any of them or any part of them); “**Contract**” any contract between the Company and the Buyer for the sale and purchase of the Goods.

“**Company**” means Pnueride Ltd., whose registered office is Unit A7 Holbrook Lane, Coventry CV6 4QX; “**Intellectual Property Rights**” patents, trade marks, service marks, copyright, design rights and moral rights and all other rights of a similar or comparable nature or effect which may subsist in any part of the world now or in the future, whether registered or unregistered, together with any or all goodwill relating or attached thereto; “**Writing**” includes in writing, facsimile transmission, electronic communication and comparable means of communication; “**IncoTerms**” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2. Formation And Incorporation

2.1 Subject to any variation under condition 2.4, the Contract will be on these terms and conditions set out below to the exclusion of all others, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document.

2.2 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, specification or similar document will form part of this Contract simply as a result of a reference to such document being referred to in this Contract.

2.4 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in Writing and signed by a senior manager of the Company.

2.5 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer’s acceptance of these terms and conditions.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it by notifying the Buyer in Writing.

2.8 Subject to condition 4.8 no order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses including loss of profit, costs including the cost of all labour and materials used, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

3. Description

3.1 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order including any applicable specification submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Company’s quotation or the Buyer’s order if accepted by the Company. The specification may refer to a drawing or part number issued by the Company.

3.3 All descriptive matter and advertising generally issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract unless they are on the Company’s quotation or otherwise agreed in Writing.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against any and all costs incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or Intellectual Property Rights of any other person which results from the Company’s use of the Buyer’s specification.

3.5 The Company may from time to time be required to make changes to the Buyer’s specification, design, materials or finishes of the Goods to conform with any applicable safety or other statutory requirements. In such circumstances the Company will seek the Buyer’s agreement to the change the cost of which is payable in addition to the Contract price.

3.6 The Company will endeavour to produce the Goods to the Buyer’s specification or design. If the Goods produced do not conform exactly to the specification or design but the variation does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Company the Buyer will continue to accept the Goods under terms agreed between the parties. The Company will investigate the reason for the variation and will notify the Buyer as to whether the Company will be able to produce Goods to the specification or design. If it is determined that the specification or design will have to change the Company will seek the Buyer’s agreement to the change.

3.7 If the Buyer does not consent to the change in clauses 3.5 or 3.6 the Company reserves the right to cease to supply the Goods requiring the change in design or specification and this will not constitute a breach of contract or impose any liability upon the Company.

4. Delivery

4.1 Unless otherwise agreed in Writing between the Buyer and the Company, the Goods shall be delivered *ex works* (Incoterms).

4.2 The Company will export Goods within the European Union but not elsewhere without specific written agreement between the parties in accordance with condition 12.

4.3 The Buyer will arrange to take delivery of the Goods within 28 days of the Company giving it notice that the Goods are ready for delivery.

4.4 If carriage is required, other than in accordance with condition 4.1, the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case.

4.5 The carrier shall be deemed to be the Buyer’s agent except for the purposes of sections 44, 45 and 46 Sale of Goods Act 1979.

4.6 Any dates specified by the Company for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.7 Subject to the other provisions of this Contract the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include without limitation, loss of profit, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence).

4.8 The Buyer must accept delivery of the Goods and pay for them in full unless the delay in delivery exceeds 180 days. In such a case if delay is caused by the Company’s negligence or fault and is not covered by condition 7 the Buyer may cancel this Contract to the extent it relates to the Goods which were the subject of such delivery, without further liability for such Goods.

4.9 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time, risk in the Goods will pass to the Buyer including, without limitation, for loss or damage caused by the Company’s negligence; the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:

4.9.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.9.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

5. Non-Delivery

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company’s place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods even if caused by the Company’s negligence unless written notice is given to the carrier and the Company within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.

5.4 A signature of qualified acceptance on a carrier’s delivery note shall not be written notice to the Company for the purpose of these terms and conditions.

6. Intellectual Property Rights

6.1 The Intellectual Property Rights relating to the specifications and designs of the Goods shall be the property of the Company. Where any designs or specifications have been supplied by the Buyer for manufacture by the Company then the Buyer retains the Intellectual Property Rights to those specifications, though the Intellectual Property Rights attaching to the Goods belong to the Company, unless otherwise agreed in Writing.

6.2 The Buyer undertakes not to remove, alter, or deface any identification marks or trademarks on the Goods.

6.3 No right or licence is granted to the Buyer under any Intellectual Property Rights except the right to use or resell the Goods.

6.4 The Buyer shall indemnify and hold the Company harmless against any claim which may be brought against the Company by any third parties which may arise, directly or indirectly, out of the loss or damage which is caused by the Goods (i) to any kind of property if the loss or damage occurs whilst the Goods are in position of the Buyer; or (ii) to products manufactured by the Company or to products in which the products of the Buyer are a part, or of loss or damage to any kind of property caused by such products.

7. Force Majeure

7.1 The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of this Contract (subject to condition 13) because of any delay in performing or any failure to perform any of the Company’s obligations under this Contract if the delay or failure was due to any cause beyond the Company’s reasonable control.

7.2 Without prejudice to the generality of condition 7.1 the following shall be included as causes beyond the Company’s reasonable control: governmental actions, terrorism or threat of terrorism, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition, act of God, fire, explosion, flood, epidemic or accident, import or export regulations or embargoes, labour disputes or inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour, or delays affecting carriers.

8. Risk/Ownership

8.1 The risk in the Goods shall pass from the Company to the Buyer upon delivery of such Goods to the Buyer. However, notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for all Goods delivered to the Buyer under this and all other contracts between the Company and the Buyer for which payment of the full price of the Goods thereunder has not been paid.

8.2 Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Buyer under which the Goods were delivered.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

8.3.1 hold the Goods on a fiduciary basis as the Company’s bailee;

8.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;8.3.3 Store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property.

8.3.4 maintain the Goods in satisfactory condition insured on the Company’s behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

8.3.5 hold the proceeds of the insurance referred to in condition 8.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Buyer’s business at full market value and the Buyer shall account to the Company accordingly; and

8.4.2 any such sale shall be a sale of the Company’s property on the Buyer’s own behalf and the Buyer shall deal as principal when making such a sale.

8.5 Where the Goods are attached to or incorporated in other goods or are altered by the Buyer, ownership of the Goods shall not pass to the Buyer by virtue of the attachment, incorporation or alteration if the Goods remain identifiable and, where attached to or incorporated in other goods, can be detached or removed from them.

8.6 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

8.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.8 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer’s right to possession has terminated, to recover them.

9. Price

9.1 The Company may by giving notice to the Buyer at any time up to 7 days before delivery increase the price of the Goods to reflect any increase in the cost of manufacture or distribution of the Goods which is due to:

9.1.1 any factor beyond the reasonable control of the Company; this includes (without limitation) foreign exchange fluctuation, currency regulation, alteration of duties and taxes, increase in cost of labour, materials and other manufacturing costs and transport costs;

9.1.2 any change in delivery dates, quantities or specifications for the Goods requested by the Buyer; or

9.1.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

9.1.4 Any dispute as to the amount of any increase in price shall be determined by the Company’s auditors whose decision shall be conclusive and binding on the Company and the Buyer

9.1.5 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.

9.2 The price for the Goods is given on an ex-works basis and where the Delivery Point is other than at the Company’s premises the Buyer, unless otherwise agreed in Writing, shall pay the Company’s charges for transport, packaging, loading, unloading and insurance in addition when it is due to pay for the Goods.

10. Payment

10.1 The Company may invoice the Buyer for the Goods at any time after despatch of the Goods.

10.2 Time for payment shall be as set out in clause 10.3 and shall be of the essence.

10.3 Payment of the price for the Goods is 21 days from the end of the month in which despatch of the Goods from the Company’s premises occurred unless otherwise agreed in Writing between the parties.

10.4 No payment shall be deemed to have been received until the Company has received cleared funds.

10.5 All payments payable to the Company under this Contract shall become due immediately upon termination of this Contract despite any other provision.

10.6 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

10.7 The Company may apportion any payment made by the Buyer to the Company to such of the Goods as the Company thinks fit despite any purported apportionment by the Buyer.

10.8 If the Buyer fails to make any payment under this Contract on the due date then without prejudice to its other rights and remedies the Company may:

10.8.1 charge the Buyer interest both before and after judgement on the amount unpaid at the annual rate of 8% above Santander PLC’s base rate from time to time until payment is made in full, a part of a month being treated as a full month for the purpose of calculating interest;

10.8.2 Suspend further deliveries or terminate the Contract by notice in writing to the Buyer.

11. Quality

11.1 Whilst the Company is not the manufacturer of the Goods the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

11.2 The Company warrants that subject to the other provisions of these terms and conditions upon delivery the Goods will, and for a period of 12 months from the date of delivery, be of satisfactory quality within the meaning of the Sale of Goods Act 1994.

11.3 The Company shall not be liable for a breach of the warranty in condition 11.2 unless:

11.3.1 the Buyer gives written notice of the defect to the Company and, (if the defect is as a result of damage in transit), to the carrier within 2 days of:

11.3.1.1 the date of delivery where the defect would be apparent to the Buyer upon a reasonable inspection; or

11.3.1.2 the date when the Buyer knew or ought reasonably to have known of the defect where the defect would not be apparent to the Buyer upon a reasonable inspection; and

11.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer if asked to do so by the Company returns such Goods at the Buyer’s risk and expense to the Company’s place of business for the examination to take place there.

11.4 The Company shall not be liable for a breach of the warranty in condition 11.2 if:

11.4.1 the defect arises because the Buyer failed to follow the Company’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

11.4.2 the Buyer alters or repairs such Goods without the written consent of the Company; or

11.4.3 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.

11.5 If the Buyer makes a valid claim against the Company based on a defect in the quality of the Goods, the Company shall at its option repair or replace such Goods or the defective part or refund the price of such Goods at the pro-rata Contract rate

11.6 If the Company complies with condition 11.5 it shall have no further liability for a breach of the warranty in condition 11.2 in respect of the quality of such Goods.

11.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms and conditions for the unexpired portion of the 12 month period.

12. Export Terms

12.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

12.2 Where the Goods are supplied for export from the United Kingdom in accordance with condition 4.2 the provisions of this clause shall, unless otherwise agreed in Writing between the Buyer and the Company apply notwithstanding any other provision of these Terms.

12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country or destination and for payment of any duties on import.

12.4 Unless otherwise agreed in Writing between the Buyer and the Company, the Goods shall be delivered FAS and the carrier nominated by the Buyer and the Company shall be under no obligation to give notice under section 32(3) Sale of Goods Act 1979.

13. Limitation Of Liability

13.1 The following provisions and the provisions of conditions 4.7 and 11 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

13.1.1 any breach of these terms and conditions; and

13.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.

13.3 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company’s negligence or fraudulent misrepresentation.

THE BUYER’S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 13.4 AND 13.5

13.4 Subject to conditions 13.2 and 13.3:

13.4.1 the Company’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the amount payable under this Contract; and

13.4.2 the Company shall not be liable to the Buyer or third party by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any direct loss of profit or any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever whether or not caused by the negligence of the Company, its employees, agents or sub-contractors which arise out of or in connection with the Contract.

13.5 The Buyer shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Company by any third party except to the extent the Company is liable to the Buyer in accordance with these terms and conditions.

14. Termination

14.1 The Contract will terminate immediately upon the happening of any one or more of the following events: the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or being a body corporate convenes a meeting of creditors whether formal or informal or enters into liquidation whether voluntary or compulsory, except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

14.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Buyer on the happening of any one or more of the following: the Buyer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other Contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or the Buyer ceases to trade.

14.3 The Company’s rights contained in condition 8 but not the Buyer’s rights shall continue beyond the discharge of the Buyer’s and the Company’s primary obligations under the Contract consequent upon its termination.

14.4 The termination of the Contract however arising shall be without prejudice to the rights and duties of the Company accrued prior to termination.

15. General

15.1 Time for performance of all obligations of the Buyer is of the essence.

15.2 Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company whether under this Contract or not.

15.3 The Buyer undertakes not to exhibit or advertise for sale the Goods in the United Kingdom, Eire or the Channel Islands without first obtaining the express written consent of the Company.

15.4 Any provision of this Contract which is held by any court or other competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of this Contract and the remainder of such provision shall not be affected.

15.5 Failure or delay by the Company to enforce or partially enforce any provision of this Contract will not be construed as a waiver of any of its rights under this Contract.

15.6 If the Company should at any time waive its rights due to breach or default by the Buyer of any provisions of the Contract, such waivers shall not be construed as a continuing waiver regarding other breaches or defaults of the same or other provisions of the Contract.

15.7 The Company may assign, license or sub-contract all or any part of its rights or obligations under this Contract without the Buyer’s consent.

15.8 This Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under this Contract without the Company’s prior written consent.

15.9 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15.10 The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. Communication

16.1 All communications between the parties about this Contract must be in Writing :-

16.1.1 (in case of communications to the Company) to its registered office or such other address as shall be notified to the Buyer by the Company; or

16.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

16.2 Communications shall be deemed to have been received:-

16.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

16.2.2 if delivered by hand, on the day of delivery;

16.2.3 if sent by facsimile transmission or electronic mail on a working day prior to 4:00pm, at the time of transmission and otherwise on the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.