

Terms and Conditions

The Distributor's attention is particularly drawn to the provisions of clause 11 – Limitation of Liability

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in Belfast are open for business.

Commencement Date: has the meaning set out in clause 2.2 (b).

Conditions: these terms and conditions as amended from time to time in accordance with the Distributor Agreement.

Contract: the contract between the Supplier and the Distributor for the supply of Products in accordance with these Conditions and the Distributor Agreement.

Delivery: has the meaning set out in clause 4.4.

Delivery Location: has the meaning set out in clause 4.3.

Distributor: the person or firm who purchases the Products from the Supplier.

Distributor Agreement: the Distributor Agreement entered into between the Supplier and the Distributor under which the Supplier appoints the Distributor to be the Supplier's Distributor of the Products (as defined in the Distributor Agreement) in the Territory (as defined in the Distributor Agreement).

Force Majeure Event: has the meaning given to it in clause 11.

Order: the Distributor's order for the supply of Products, as set out in the Distributor's purchase order form, or the Distributor's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Products: as specified in the Distributor Agreement.

Products Specification: any specification for the Products.

Sales and Marketing Plan: the agreed sale methods to be employed by the Distributor to promote the sale of the Product in the Territory.

Sale Year: from 1st January to 31st December, unless otherwise stated by the Supplier.

Supplier: Randox Food Diagnostics Limited.

Supplier Materials: has the meaning set out in clause 7.1(a).

Technical Query: any communication between the parties relating to Products performance or Products Specification.

Territory: shall be as defined in the Distributor Agreement.

Trade Marks: any and all trade mark registrations and applications that the Supplier may permit, or procure permission for the Distributor to use in the Territory in respect of the Products.

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) 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; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Distributor to purchase Products in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when:

- (a) the Distributor issues written acceptance of the Pro Forma Invoice or Order Prep as supplied by the Supplier upon receipt of the Distributor's Purchase Order
- (b) at which point and on which date the Contract shall come into existence (**Commencement Date**). In the event the Distributor pays a deposit but does not complete the Order, the Supplier shall be entitled to retain the deposit without prejudice to any other remedies the Supplier might have.

2.3 The Contract constitutes the entire agreement between the parties. The Distributor acknowledges that it has not 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.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Distributor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 3 calendar months from its date of issue.

2.6 In the event of a conflict between these Conditions and the Distributor Agreement, the latter shall prevail.

3. PRODUCTS

3.1 Where appropriate the products are specified in the Distributor Agreement.

3.2 The Supplier may make changes to the specifications of the Products, provided the changes do not adversely affect the quality of the Products. The Supplier shall give notice of any changes to Product specifications to the Distributor as soon as reasonably practicable.

3.3 The Supplier reserves the right to amend the specification of the Products if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF PRODUCTS

- 4.1 The Supplier shall ensure that each Delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Distributor and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any).
- 4.2 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Distributor that the Products are ready for despatch.
- 4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 4.4 Any dates quoted for Delivery of the Products 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 Products that is caused by a Force Majeure Event, delays caused by customs or the Distributor's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.5 The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event, the Distributor's failure to provide the Supplier with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.6 If the Distributor fails to accept or take delivery of the Products upon arrival of the Products at the Delivery Location, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Products, delivery of the Products shall be deemed to have been completed at 9.00am on the day on which the Products were delivered to the Delivery Location.
- 4.7 If the Distributor has not accepted or taken Delivery of the Products on the day they were delivered to the Delivery Location, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Distributor for any excess over the price of the Products or charge the Distributor for any shortfall below the price of the Products.
- 4.8 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in Delivery or defect in an instalment shall not entitle the Distributor to cancel any other instalment.

5. QUALITY OF PRODUCTS

- 5.1 The Supplier warrants that on Delivery the Products shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- (a) the Distributor gives notice in writing within 3 Business Days after the date of Delivery (or, in respect of a latent defect, after a reasonable time following discovery of the latent defect) that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Products; and
 - (c) the Distributor (if asked to do so by the Supplier and after having been given a return products number by the Supplier) returns such Products to the Supplier's place of business at the Distributor's cost,
the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

- 5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:
- (a) the Distributor makes any further use of such Products after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Distributor failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Products Specification supplied by the Distributor;
 - (d) the Distributor alters or repairs such Products without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Distributor in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Supplier under clause 5.2.

6. TITLE AND RISK

- 6.1 The risk in the Products shall pass to the Distributor on completion of Delivery.
- 6.2 Title to the Products shall not pass to the Distributor until the Supplier has received payment in full (in cash or cleared funds) for the Products.
- 6.3 Until title to the Products has passed to the Distributor, the Distributor shall:
- (a) hold the Products on a fiduciary basis as the Supplier's bailee;
 - (b) store the Products separately from all other products held by the Distributor so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of Delivery; and
 - (e) give the Supplier such information relating to the Products as the Supplier may require from time to time,
- but the Distributor may resell or use the Products in the ordinary course of its business.

7. DISTRIBUTOR'S OBLIGATIONS

- 7.1 The Distributor shall:
- (a) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Distributor's premises in safe custody at its own risk.
 - (b) monitor and control their stock to ensure customer supply.
 - (c) utilise and maintain a Customer Relationship Management (CRM) database system to manage their sales and enquiry processes.
 - (d) employ and ensure training for dedicated Radox staff to ensure a focused sales approach (see clause 7.3 for more information).
 - (e) be mindful of its reputation in the market, quality surveys should be conducted regularly to monitor levels of customer satisfaction.
 - (f) ensure that they promote the full range of products available to them under their agreement with the Supplier.
 - (g) Be responsible for obtaining and paying for all necessary product registrations as laid out in clause 13.1.

- 7.2 Regarding advertising and promotion, the Distributor shall
- (a) Fully represent the brand to the suppliers satisfaction in the territory.
 - (b) display advertising materials and other signs provided by the Supplier, as well as holding sufficient supply of product brochures.
 - (c) observe all directions and instructions given by the Supplier for promotion and advertisement of the Products.
 - (d) not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Supplier.
 - (e) establish and maintain an up-to-date website approved by the Supplier and in accordance with the Supplier's Distributor Operating Standards.
 - (f) produce an annual Sales and Marketing Plan for the Products, to be submitted to the Supplier within 14 working days of signing a Distributor Contract. If a contract is being renewed, the Sales and Marketing Plan must be supplied 28 working days prior to the current contract expiry. For contracts exceeding one year (multiyear contract), the Sales and Marketing Plan will be expected 28 days prior to each sales year commencement.
- 7.3 In relation to training, the Distributor shall:
- (a) ensure they inform the Supplier of all members of their sales and technical teams involved in the sale, promotion and servicing of the Products and keep all records up-to-date through the provision of full organograms for their business. Details provided should include names, contact details (including email and telephone numbers), relevant experience, territory to be covered, Product group to be represented and disclosure of other brands to be represented.
 - (b) all members of the Distributor's Product sale teams must undertake Product and on-line sales training through the Radox Training Academy and pass appropriate assessments to an agreed standard.
 - (c) new sales staff dealing with the Products should begin training on the Products within one month of commencing employment with the Supplier and should successfully complete all training modules assigned to them within 3 months of commencing training.
 - (d) all sales staff involved with the Products must retake training and assessment to an agreed standard every 12 months.
 - (e) the Distributor shall employ sufficiently trained engineers and applications staff for all relevant analysers and Products
 - (f) the first training on an analyser for the Distributor's staff shall be paid for by the Supplier, with the flight and accommodation costs to be paid for by the Distributor. Any further engineering training will be solely at the cost of the Distributor.
 - (g) the Distributor shall ensure annual on-line training of all staff involved in the sales and marketing of the Products. The Distributor is responsible for revising on-line training every 6 months.
- 7.4 In relation to Technical Support, the distributor should:
- (a) provide adequate technical support to its customers.
 - (b) inform the Supplier of all technical queries, including the following:
 - (i) provide the Supplier with full Product details and full details of the complaint and supporting data;
 - (ii) provide the Supplier with an up-to-date system database where the complaint relates to an analyser;
 - (iii) provide the Supplier with any further data or information requested by the Supplier within 48 hours of such a request; and
 - (iv) on resolution of the complaint, provide the Supplier with feedback confirming the issue is resolved and the customer is satisfied.

In order to receive assistance from the Supplier regarding Technical Queries, the Distributor (or the Distributor's staff) must:

- (a) be suitably trained and signed off to the Supplier's standards; and

- (b) provide the Supplier with staff details.

8. PRODUCT SPECIFIC DISTRIBUTOR OBLIGATIONS

8.1 RX

- (a) the Distributor shall hold a smart stock in accordance with the Supplier's recommendation.
- (b) the Distributor shall commit to preventative maintenance servicing as recommended by the Distributor.
- (c) spare parts for Products shall only be purchased from the Supplier.
- (d) analysers are only to be installed by trained engineers. Failure to comply with this clause will result in loss of warranty for such an analyser.
- (e) the Supplier shall be entitled to audit the Distributor to ensure compliance with the Contract. An audit would include reviewing invoicing, staff training records, engineer and service history and parts stock. The Distributor agrees to allow the Supplier access to all relevant premises, books and records for the purpose of such audit.
- (f) the Distributor shall at all times during the Contract hold a demonstration analyser in stock.
- (g) the Distributor acknowledges and accepts that all RX analysers have a known lead time of 14 weeks.
- (h) the Distributor shall provide an up-to-date list of current RX installations on a quarterly basis.
- (i) dedicated RX reagents must be used on all RX analysers unless the contrary is approved in writing by the Supplier.

8.2 RIQAS/QC

- (a) the Distributor shall ensure all staff involved with the Products sign the RIQAS policy document (Policy Document) on or before the Commencement Date and when the Supplier issues updates and shall ensure its staff comply with it.
- (b) the Distributor shall hold user group meetings once per year and shall keep the Supplier informed of the dates of such meetings so that the Supplier may attend if it so wishes. Where the Supplier does not attend, the Distributor shall provide the Supplier with feedback from the meetings.
- (c) the Distributor shall place orders by the due date as notified by the Supplier in writing as outlined in the Policy Document.

8.3 REAGENTS

- (d) The Distributor shall ensure applications are assessed and approved by the Supplier
- (e) The Distributor's application staff must ensure provision of evaluation data upon receipt of preliminary protocols.
- (f) The Distributor shall provide an up to date list of all current third party instruments using Randox reagents (on a quarterly basis).
- (g) Should the Distributor's application staff make any adjustments to any protocol they must notify the Supplier immediately with relevant data. Failure to do so may result in further charges for technical support.
- (h) The Supplier is entitled to audit the distributor to ensure compliance with contract. Such an audit would include assessing technical capabilities as well as application expertise.

9. CHARGES AND PAYMENT

9.1 The price for Products shall be provided by the Supplier and are subject to change. The price of the Products is exclusive of all costs and charges of shipment packaging, insurance, transport of the Products, which shall be paid by the Distributor when it pays for the Products. Prices do not include import taxes and other charges as detailed in clause 13.1.

9.2 The Supplier reserves the right to:

- (a) increase the price of the Products, by giving notice to the Distributor at any time before Delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:

- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Distributor to change the Delivery date(s), quantities or types of Products ordered, or the Product Specification; or
- (iii) any delay caused by any instructions of the Distributor in respect of the Products or failure of the Distributor to give the Supplier adequate or accurate information or instructions in respect of the Products.

9.3 The Distributor shall pay each invoice submitted by the Supplier:

- (a) in accordance with the payment terms agreed between the parties from time to time; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.4 All amounts payable by the Distributor under the Contract are exclusive of amounts in respect of sales tax (or any similar tax) chargeable from time to time (Sales Tax).

9.5 Without limiting any other right or remedy of the Supplier, late payments may incur penalties. Where relevant, if the Distributor fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of:

- (a) 4 per cent per annum above the then current Bank of England base rate; or
- (b) the rate specified from time to time under the Late Payments of Commercial Debts (Interest) Act 1998, as amended, together with the applicable amount of compensation provided for under this Act

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, and compounding quarterly.

10. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, pricing, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY: THE DISTRIBUTOR'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

11.2 Subject to clause 11.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Distributor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of

profit, or any indirect or consequential loss arising under or in connection with the Contract ;
and

- (b) the Supplier's total liability to the Distributor 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 in no circumstances exceed a sum equal to the amount paid by the Distributor to the Supplier under the particular Contract in respect of which the relevant cause of action arises.
- 11.3 The terms implied by sections 13 to 15 of the Sales of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 The Distributor shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- (a) any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products by the Distributor;
 - (b) any claim made against the Supplier arising out of, or in connection with, the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Distributor, its employees, agents or subcontractors; and
 - (c) any claim made against the Supplier for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Distributor, its employees, agents or subcontractors.
- 11.5 This clause 11 shall survive termination of the Contract.

12. FORCE MAJEURE

- 12.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 12.2 The Supplier shall not be liable to the Distributor as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 12.3 If the Force Majeure Event prevents the Supplier from providing any of the Products for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Distributor.

13. COMPLIANCE WITH LAWS AND REGULATIONS

- 13.1 The Distributor shall be responsible for obtaining (and paying for) and maintaining any necessary import licences, permits and product registrations necessary for the entry of the Products into the Territory, or their delivery to the Distributor (including paying any legalisation, consularisation or similar fees). The Distributor shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products. The Distributor shall provide the Supplier with copies of all licences, permits and product registrations obtained in respect of the Products to include any renewals.

- 13.2 To the extent it is legally permissible to do so, all permits and product registrations which are required to enable the entry of the Products into the Territory, shall be in the sole name of the Supplier.
- 13.3 In the event it is not legally permissible to register the permits and product registrations in the sole name of the Supplier under clause 13.2, or the Distributor has failed to so register in the sole name of the Supplier, the provisions of clause 16.5 shall apply on termination of this agreement howsoever caused.
- 13.4 The Distributor warrants to the Supplier that it has informed the Supplier of all laws and regulations affecting the manufacture, sale, packaging and labelling of Products which are in force within the Territory or any part of it (Local Regulations) at the date of this agreement.
- 13.5 The Supplier, in turn, warrants to the Distributor that the Products comply with the Local Regulations in force at the date of this agreement.
- 13.6 The Distributor shall give the Supplier as much advance notice as reasonably possible of any prospective changes to Local Regulations within the territory.
- 13.7 On receipt of notification from the Distributor under clause 13.6, the Supplier shall use reasonable endeavours to ensure that the Products comply with any change in the Local Regulations by the date of implementation of that change, or as soon as is reasonably possible afterwards.

14. ANTI-BRIBERY COMPLIANCE

- 14.1 The Distributor shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures to ensure compliance with the Relevant Requirements and clause 14.1(b), and will enforce them where appropriate;
 - (d) promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Distributor in connection with the performance of this agreement; and
 - (e) immediately notify the Supplier (in writing) if a foreign public official becomes an officer or employee of the Distributor or acquires a direct or indirect interest in the Distributor, and the Distributor warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement.
- 14.2 Breach of this clause 14.1 by the Distributor shall be deemed a material breach for the purposes of the termination provisions set out in the Distributor Agreement.

For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

15. TRADE MARKS

- 15.1 The Supplier hereby grants to the Distributor the non-exclusive right, in the Territory, to use the Trade Marks in the promotion, advertisement and sale of the Products, subject to, and for the duration of, this agreement. The Distributor acknowledges and agrees that all rights in the Trade Marks shall remain in Supplier, and that Distributor has and will acquire no right in them by virtue of the discharge of its

obligations under this agreement, except for the right to use the Trade Marks as expressly provided in this agreement.

- 15.2 The Distributor shall market and sell the Products only under the Trade Marks, and not in association with any other trade mark, brand or trade name, except as permitted in any branding manual issued by the Supplier. The Distributor shall ensure that the appropriate Trade Marks shall appear on all Products, containers and advertisements for the Products, followed by the symbol ®, or the letters "RTM", as appropriate.
- 15.3 All representations of the Trade Marks that the Distributor intends to use shall be submitted to the Supplier for written approval before use.
- 15.4 The Distributor shall comply with all rules for the use of the Trade Marks issued by the Supplier (including those set out in any branding manual issued by the Supplier) and shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks. The Distributor shall not alter, deface or remove any reference to the Trade Marks, any reference to the Supplier or any other name displayed on the Products or their packaging or labelling.
- 15.5 The Supplier makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties in the Territory.
- 15.6 The Distributor shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under this agreement.
- 15.7 The Distributor shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.
- 15.8 The Distributor shall immediately on request enter into any further agreements with the Supplier, in a form satisfactory to the Supplier, necessary for the recording, registration or safeguarding of the Supplier's Trade Mark rights for the marketing of the Products under the Trade Marks.
- 15.9 Each party shall promptly give notice in writing to the other if it becomes aware of:
 - (a) any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Products within the Territory; or
 - (b) any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party.
- 15.10 In respect of any matter that falls within clause 15.9(a):
 - (a) the Supplier shall in its absolute discretion, decide what action to take in respect of the matter (if any);
 - (b) the Supplier shall conduct and have sole control over any consequent action that it deems necessary; and
 - (c) the costs of that action and any sums that may be paid or awarded as a result of that action shall be shared equally by the parties.
- 15.11 In respect of any matter that falls within clause 15.9(b):
 - (a) the Supplier and the Distributor shall agree:
 - (i) what steps to take to prevent or terminate the infringement; and
 - (ii) the proportions in which they shall share the cost of those steps and any damages and other sums that may be awarded to or against them; and
 - (b) failing agreement between the parties, either party may take any action as it considers necessary or appropriate, at its own expense, to defend the claim and shall be entitled to and responsible for all damages and other sums that may be recovered or awarded against it as a result of that action.

- 15.12 Each party shall, at the request and expense of the other, provide any reasonable assistance to the other (including the use of its name in, or being joined as a party to, proceedings) with any action to be taken by the other party under this clause, provided that that party is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance.
- 15.13 The Supplier alone is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Distributor shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names the same as or similar to the Trade Marks.
- 15.14 The Distributor shall not use the Trade Marks as part of the name under which Distributor conducts its business, or any connected business, or under which it sells or services any products (except the Products), or in any other way, except as expressly permitted hereunder.
- 15.15 The Distributor shall not sub-license, assign, transfer, charge, or otherwise encumber the right to use, reference, or designate the Trade Marks to any other party, except as otherwise expressly permitted under this Agreement.
- 15.16 Upon termination of this Contract for any reason, the Distributor will immediately stop using all or any part of the Trade Marks.

16. PRODUCT LIABILITY AND INSURANCE

- 16.1 Subject to the Distributor fulfilling all the conditions in this clause, the Supplier shall indemnify the Distributor against any liability incurred by the Distributor in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability (Relevant Claim), except to the extent the liability arises as a result of the action or omission of the Distributor.
- 16.2 The Distributor shall, as soon as it becomes aware of a matter which may result in a Relevant Claim:
- (a) give the Supplier written notice of the details of the matter;
 - (b) give the Supplier access to and allow copies to be taken of any materials, records or documents as the Supplier may require to take action under clause 16.2(c);
 - (c) allow the Supplier the exclusive conduct of any proceedings and take any action that the Supplier requires to defend or resist the matter, including using professional advisers nominated by the Supplier; and
 - (d) not admit liability or settle the matter without the Supplier's written consent.
- 16.3 The Distributor undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products or batches of Products from the retail or wholesale markets. These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and e-mail address).
- 16.4 The Distributor shall give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Products from the retail or wholesale market.
- 16.5 The Distributor shall, upon request by the Supplier, provide the Supplier with an up-to-date list of all product registrations held by the Distributor in relation to the Products in the Territory. Such list shall include catalogue numbers and details of the expiry dates of such product registrations. To the extent that these product registrations are not in the sole name of the Supplier, the Distributor shall relinquish all rights in the product registrations and, to the extent it is legally permissible to do so, at the Supplier's request and the Distributor's cost, shall transfer all rights in the product registrations to the Supplier or a third party nominated by the Supplier, within 3 Business Days of such a request from the Supplier.

17. CONSEQUENCES OF TERMINATION

- 17.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 17.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 17.3 On termination:
- (a) the Supplier shall have the option to buy from the Distributor any stocks of the Products at such price as the Supplier reasonably considers to be their current market value. To exercise the option, the Supplier must give notice to the Distributor within 30 days of termination, stating the quantities of Products it wishes to buy. The Distributor shall deliver such Products to the Supplier within 30 days of receiving the Supplier's notice, and the Supplier shall pay for the Products in full within 30 days of their delivery. The Distributor shall be responsible for the costs of packaging, insurance and carriage of the Products;
 - (b) if the Supplier chooses not to exercise its option to buy back the Products under clause 17.3(a), or purchases only part of the Distributor's stocks of Products, the Distributor shall dispose of its remaining stocks of Products as directed by the Supplier;
 - (c) if the Supplier chooses to buy back the Products under clause 17.3(a) the Distributor shall at the Supplier's option promptly destroy or return all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers that relate to the Supplier's business that the Distributor may have in its possession or under its control (other than correspondence between the parties); and
 - (d) the termination of this agreement shall not of itself make the Supplier liable to pay any compensation to the Distributor, including compensation for loss of profits or goodwill.
- 17.4 Subject to clause 17.3, all other rights and licences of the Distributor under this agreement shall terminate on the termination date.
- 17.5 The Supplier may cancel any orders for Products placed by the Distributor before termination if delivery would fall due after termination, whether or not they have been accepted by the Supplier. The Supplier shall have no liability to the Distributor in respect of such cancelled orders.
- 17.6 Subject to the Distributor supplying the Supplier with copies of original invoices evidencing any sums paid in respect of obtaining and maintaining the product registrations referred to in clause 13.1, in the event of termination by the Supplier, the Supplier may, at its sole discretion, pay to the Distributor an amount not exceeding the pro-rata amount so expended by the Distributor in obtaining and maintaining the product registrations.
- 17.7 Where the Distributor has supplied analysers to its customers, the Supplier shall continue to provide products for such analysers still under contract between the Distributor and the relevant customer for the remainder of that contract provided the Distributor provides the Supplier with a list of such contracts within one week of termination of the Contract. This list must include details of the terms and obligations of the contract, including any associated pricing.