

## GENERAL TERMS AND CONDITIONS UNDER THE CONTRACT BETWEEN TFDL AND THE CUSTOMER

### 1. INTERPRETATION

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

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.12.

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

**Customer:** the company or other entity who purchases the Goods from TFDL.

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

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

**Instrument:** any instrument provided by TFDL whether by lease or loan.

**Instrument Order:** the Customer's order for lease or loan of the Instrument, as set out in the Customer's purchase order form or in the Customer's written acceptance of TFDL's quotation as the case may be.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of TFDL's quotation as the case may be.

**Specification:** any specification for the Goods that is agreed in writing by the Customer and TFDL.

**TFDL:** Thermo Fisher Diagnostics (Ireland) Limited (registered in Ireland with company number 432207).

1.2 **Construction.** 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 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.

(e) A reference to writing or written includes faxes and email.

### 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 is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when TFDL issues a written acceptance of the Order within two (2) weeks from receipt of the Order, at which point the Contract shall come into existence. No Order which has been accepted by TFDL may be amended or cancelled by the Customer except with the agreement in writing of TFDL. The Customer shall indemnify TFDL in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by TFDL as a result of such amendment or cancellation.

2.4 TFDL shall have a lead-time as set out in the written acceptance of the Order or a quotation for the Goods to be supplied to the Customer. If any minimum purchase is set out in the quotation for the Goods given by TFDL, this minimum purchase amount must be reflected in the Order submitted by the Customer.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of TFDL which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter, or advertising produced by TFDL and any descriptions or illustrations contained in TFDL's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 A quotation for the Goods given by TFDL shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, provided that it has not been withdrawn by TFDL. TFDL may amend a quotation at any time to take account of any error or omission or any lack of information received from the Customer.

### 3. THE GOODS

3.1 The Goods are described in TFDL's catalogue as modified by any applicable Specification (which may be set out in TFDL's quotation or acceptance

of an Order). All samples, drawings, descriptive matter and advertising issued by TFDL are published for the sole purpose of giving an approximate idea of the Goods described in them and shall not form part of the Contract.

3.2 TFDL reserves the right, without notice to the Customer, to amend the Specification if required by any applicable statutory or regulatory requirements or to make any changes in the Specification which are required to conform with any applicable safety or other statutory requirements or, where the Goods are supplied in accordance with a Specification supplied by TFDL, which do not materially affect their quality or performance, even if the Contract has already been concluded.

3.3 Some Goods may be multi-packed, in which case the Customer must order the Goods in multiples of the pack sizes, as directed by TFDL.

3.4 The Customer shall, at its own expense, obtain any licence or consent of any government or other authority, permit or licence necessary for the acquisition, carriage, storage, use or sale of the Goods by the Customer and if necessary shall produce evidence of same to TFDL upon demand.

3.5 The Customer acknowledges that some Goods may be dangerous if not properly stored or used and the appropriate precautions taken. The Customer accordingly agrees to use all reasonable endeavours to eliminate or reduce any risk to health and/or safety to which the Goods may give rise.

### 4. PLACEMENT OF INSTRUMENTS

The terms and conditions set out in this Clause 4 shall apply to any placement of Instruments, whether by lease or loan.

4.1 The Price of the placement of the Instrument shall be as set out in the Instrument Order.

4.2 Unless otherwise agreed by the Customer and TFDL, delivery of the Instrument shall be made in accordance with the Instrument Order and as set out in this Clause 4.2. TFDL shall deliver the Instrument to the location set out in the Instrument Order (or such other location as the parties may agree). The Instrument will be delivered per the incoterms, and to the location, agreed between the parties.

4.3 If the Instrument is not delivered on the delivery date set out in the Instrument Order, Customer's sole and exclusive remedy (and TFDL's only obligation) shall be to revoke the lease or loan of the Instrument and TFDL shall then repay to Customer the fees, if any, paid in advance by Customer for the lease period. For the avoidance of doubt and to the largest extent admitted by applicable law, TFDL shall not be liable to pay damages in respect of such delay and revocation.

4.4 The Customer shall store the Instrument properly and in accordance with TFDL's instructions from time to time. Customer agrees to insure the Instrument, at Customer's cost, against loss, damage and theft. Customer shall notify TFDL of any loss or damage to the Instrument without undue delay. The Customer assigns all claims against the insurance company arising out of the insurance contract to TFDL in advance. TFDL accepts said assignment.

4.5 During the loan or lease period set out in the Instrument Order, Customer is granted a limited, personal right to use the Instrument.

4.6 Customer agrees that (i) the title to and ownership of the Instruments remains with TFDL, (ii) the Instrument may not be removed from the site specified in the Instrument Order, (iii) the Instrument may be used by Customer and its employees only, and (iv) Customer may not assign, sub-lease, sub-let or otherwise transfer the right to use the Instrument set out in Clause 4.5.

4.7 Customer shall mark the Instrument and at all times keep it marked in a way that clearly indicates to a third party that the Instrument is the property of TFDL. The inventory list of Customer shall reflect TFDL's ownership to the Instrument.

4.8 Unless otherwise agreed between the Customer and TFDL, TFDL extends, to the largest extent admitted by applicable law, no representations or warranties of any kind, express or implied, with respect to the Instrument. TFDL, however, will endeavour, at TFDL's option, to see to it that the Instrument shall materially conform to its technical specifications during the term of the loan or lease. In the event that despite TFDL's endeavours, the Instrument will not materially conform to its technical specification, Customer's sole and exclusive remedy (and TFDL's only obligation) shall be to return the Instrument, at Customer's cost and risk, and to receive a refund of any fees paid in advance for the remainder of the lease period. For the avoidance of doubt and to the largest extent permitted by applicable law, TFDL shall not be liable to pay damages in respect of such return.

4.9 Customer, at its own cost, shall properly maintain and repair the Instrument and promptly return it, at Customer's cost and risk, to TFDL on the expiration of the loan or lease period set out in the Instrument Order.

### 5. DELIVERY OF THE GOODS

5.1 TFDL shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and TFDL reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of

Goods remaining to be delivered; and

(b) if TFDL requires the Customer to return any packaging materials to TFDL, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as TFDL shall reasonably request. Returns of packaging materials shall be at TFDL's expense.

5.2 Unless otherwise agreed by the Customer and TFDL, the Goods will be delivered to the destination specified by the Customer (Delivery Location) FCA (Incoterms 2010) TFDL's premises, at any time after the date agreed between the Customer and TFDL or the date when TFDL notifies the Customer that the Goods are ready. TFDL reserves the right to stop delivery of Goods in transit and to withhold shipments in whole or in part if the Customer fails to make any payment to TFDL when due or otherwise fails to perform its obligations hereunder.

5.3 Delivery of the Goods shall be completed on the completion of loading of the Goods to the carrier.

5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. TFDL 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 TFDL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.5 If TFDL fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. TFDL 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 TFDL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If the Customer fails to take delivery of the Goods within two Business Days of TFDL notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or TFDL's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day after the day on which TFDL notified the Customer that the Goods were ready; and

(b) TFDL shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.7 If 30 Business Days after the day on which TFDL notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, TFDL may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods. The Customer shall indemnify TFDL against all costs, claims, expenses (including without limitation demurrage) or damages howsoever arising as a result of the Customer's failure to take or delay in taking delivery.

5.8 TFDL may deliver the Goods 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 Customer to cancel any other instalment.

## 6. QUALITY OF THE GOODS

6.1 TFDL warrants that, for a period of ninety (90) days from the date of delivery, or the shelf-life of the Goods as indicated on the Goods' label or the product documentation or package inserts, whichever is longer (Warranty Period), the Goods shall:

(a) conform in all material respects with the Specification;

(b) be free from material defects in material and workmanship,

in both cases subject to normal, proper and intended usage by properly trained personnel.

6.2 Subject to clause 6.3, if:

(a) the Customer gives notice in writing to TFDL 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 6.1;

(b) TFDL is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by TFDL) returns such Goods to TFDL's place of business at the Customer's risk and cost, TFDL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 TFDL shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;

(b) the defect arises because the Customer failed to follow TFDL'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 regarding the same;

(c) the defect arises as a result of TFDL following any drawing, design

or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of TFDL;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 If TFDL determines that Goods for which the Customer has requested warranty services are not covered by the warranty hereunder, the Customer shall pay or reimburse TFDL for all costs of investigating and responding to such request at TFDL's then prevailing time and materials rates. If TFDL provides repair services or replacement parts that are not covered by the warranty provided in this warranty, the Customer shall pay TFDL therefor at TFDL's then prevailing time and materials rates.

6.5 Except for intended use explicitly stated on Goods label, TFDL does not warrant that the Goods are fit for any particular purpose or intended use by the Customer and it is for the Customer to satisfy itself that the Goods are so fit.

6.6 Except as provided in this clause 6, TFDL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.8 These Conditions shall apply to any repaired or replacement Goods supplied by TFDL.

6.9 Notwithstanding the foregoing, Goods supplied by TFDL that are obtained by TFDL from an original manufacturer or third party supplier are not warranted by TFDL, but TFDL agrees to assign to Customer any warranty rights in such Goods that TFDL may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

## 7. TITLE TO AND RISK OF LOSS OF THE GOODS

7.1 Subject to TFDL's right to stop delivery of Goods in transit, title to and risk of loss of the Goods will pass to the Customer upon loading of the Goods to the carrier.

7.2 If the Customer fails to pay for the Goods within the time limit set out in clause 8.6 below, TFDL may at any time:

(i) require the Customer to, at Customer's cost, deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) 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 (at Customer's cost).

## 8. PRICE AND PAYMENT

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in TFDL's published price list in force as at the date of delivery.

8.2 TFDL may increase the prices for the Goods no more than once in any calendar year, usually on the first day of January, by giving notice to the Customer at least 60 days prior to the effective date of such change. Notwithstanding the foregoing, TFDL may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond TFDL's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give TFDL adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be borne by, or invoiced to, the Customer.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) at the rate applicable by law from time to time, customs and excise duties and all other surcharges, taxes and duties imposed (directly or indirectly) with respect to the sale, delivery and use of the Goods, all of which must be paid by the Customer in addition to the price of the Goods. The Customer shall, on receipt of a valid VAT invoice from TFDL, pay to TFDL such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 TFDL may invoice the Customer for the Goods on or at any time after loading of the Goods to the carrier (or when the Goods shall be deemed to be delivered in accordance with Clause 5.6 above).

8.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by TFDL. Time of payment is of the essence.

8.7 If the Customer fails to make any payment due to TFDL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclay PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In addition, TFDL shall have the right to stop delivery of Goods in transit and to withhold shipments in whole or in part as set out in Clause 5.2 above.

8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). TFDL 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 TFDL to the Customer.

#### 9. TERMINATION AND SUSPENSION

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, TFDL may terminate the Contract with immediate effect by giving written notice to the Customer.

9.2 For the purposes of clause 9.1, the relevant events are:

(a) 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 or limited liability partnership) 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;

(b) 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;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than 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;

(d) 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;

(e) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(g) 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;

(h) 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 9.2(a) to clause 9.2(f) (inclusive);

(i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and

(j) the Customer's financial position deteriorates to such an extent that in TFDL's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without limiting its other rights or remedies, TFDL may suspend provision of the Goods and the Instruments under the Contract or any other contract between the Customer and TFDL if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(j), or TFDL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to TFDL all of TFDL's outstanding unpaid invoices and interest.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### 10. LIMITATION OF LIABILITY AND INDEMNITY

10.1 Nothing in these Conditions shall limit or exclude TFDL's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) any matter in respect of which it would be unlawful for TFDL to exclude or restrict liability.

10.2 Subject to clause 10.1:

(a) TFDL shall under no circumstances whatever be liable to the

Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of goodwill or any indirect or consequential loss arising under or in connection with the Contract; and

(b) TFDL'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 in no circumstances exceed the price of the Goods which give rise to the liability in question.

10.3 TFDL agrees to indemnify, defend and save Customer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, claims, demands, losses, costs and expenses ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or wilful misconduct of TFDL, its employees, agents or representatives or contractors in connection with the performance of services at Customer's premises under this Contract and (ii) claims that the Goods infringe any valid third party intellectual property; provided, however, TFDL shall have no liability under this clause to the extent any such Indemnified Items are caused by either (i) the negligence or wilful misconduct of Customer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of Goods in combination with equipment or software not supplied by TFDL where the Goods would not themselves be infringing, (iv) compliance with Customer's designs, specifications or instructions, (v) use of the Goods in an application or environment for which it was not designed or (vi) modifications of the Goods by anyone other than TFDL without TFDL's prior written approval. Customer shall provide TFDL prompt written notice of any third party claim covered by TFDL's indemnification obligations hereunder. TFDL shall have the right to assume exclusive control of the defence of such claim or, at the option of the TFDL, to settle the same. Customer agrees to cooperate reasonably with TFDL in connection with the performance by TFDL of its obligations in this Clause.

10.4 Notwithstanding the above, TFDL's infringement related indemnification obligations shall be extinguished and relieved if TFDL, at its discretion and at its own expense (a) procures for Customer the right, at no additional expense to Customer, to continue using the Goods; (b) replaces or modifies the Goods so that they become non-infringing, provided the modification or replacement does not adversely affect the Specification of the Goods; or (c) in the event (a) and (b) are not practical, refund to Customer the amortised amounts paid by Customer with respect thereto, based on a five (5) year amortisation schedule. The foregoing indemnification provision states TFDL's entire liability to Customer for the claims described herein.

10.5 Customer shall indemnify, defend with competent and experienced counsel and hold harmless TFDL, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses to the extent arising from or in connection with (i) the negligence or wilful misconduct of Customer, its agents, employees, representatives or contractors; (ii) use of the Goods in combination with equipment or software not supplied by TFDL where the Goods themselves would not be infringing; (iii) TFDL's compliance with designs, specifications or instructions supplied to TFDL by Customer; (iv) use of the Goods in an application or environment for which they were not designed; or (v) modifications of the Goods by anyone other than TFDL without TFDL's prior written approval.

#### 11. 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.

#### 12. GENERAL

12.1 Medicare / Medicaid If the Customer is a recipient of Medicare/Medicaid funds, the Customer acknowledges that it has been informed of and agrees to fully and accurately account for, and report, including on its cost report if applicable, the total value of any discount, rebate or other compensation paid hereunder in a way that complies with all applicable federal, state and local laws and regulations which establish 'Safe Harbor' for discounts. The Customer shall make written request to TFDL in the event that the Customer requires additional information from TFDL in order to meet its reporting requirements. The Customer acknowledges that agreement to such reporting requirement was a

condition precedent to TFDL's agreement to provide the Goods and that TFDL would not have entered into this Contract had the Customer not agreed to comply with such obligations.

12.2 It is the obligation of the Customer to obtain and maintain, at its own expense, any non-United States governmental consents, authorisations, approvals, filings, permits or licenses required for it to export the Goods and for each of the Customer and TFDL to exercise its rights and to discharge its obligations under the Contract including, without limitation, all consents and filings with any non-United States governmental body.

12.3 The Customer acknowledges that the Goods and all related technical information, documents and materials may be subject to export controls under the U.S. Export Administration Act of 1969, as amended, and the rules and regulations promulgated from time to time thereunder and under the laws of other countries including the United Kingdom (collectively, the "Export Act"), restricting exports and re-exports of software media, technical data and direct products of technical data. The Customer (i) shall comply strictly with all legal requirements established under the Export Act, (ii) shall cooperate fully with TFDL in any official or unofficial audit or inspection related to the Export Act, and (iii) shall not distribute or supply the Goods to any person if there is reason to believe that such person intends to export, re-export or otherwise take such Goods to, or use such Goods in, any country in violation of the Export Act. Without limitation to the foregoing, the Customer agrees to commit no act that, directly or indirectly, would violate any United States law, regulations, treaty or agreements, to which the United States adheres or complies or those of any other country including all European Union member states, relating to the export or re-export of any Goods.

12.4 The Customer agrees not knowingly to export or re-export Goods or any part thereof, directly or indirectly, without first obtaining permission to do so from the United States Office of Export Administration and other appropriate governmental (including the Governments of other countries including all European Union member states) agencies, into any of those countries listed from time to time at the time of any shipment of the Goods in Title 15 of the code of Federal Regulations of the United States of America (or any successor or additional provision) as "prohibited or restricted" countries or any other country to which such exports of re-exports may be restricted (collectively, the "Prohibited Countries"). The Customer agrees not to distribute any Goods or any part thereof to any person if the Customer has reason to believe that such person intends to export, re-export or otherwise take the same to, or to use the same in, any of the Prohibited Countries and the Customer agrees to seek reasonable written assurances in the form of binding covenants from customers as may from time to time be requested by TFDL. The Customer agrees to indemnify and to hold TFDL harmless from, or in connection with, any violation of the provisions of this clause by the Customer or its customers.

12.5 Training. If the Customer is a legal entity located outside of France, TFDL may, in its sole discretion, provide (1) applicable Goods training to the Customer or its employees, or (2) samples of Goods to Customer for distribution to patients of the Customer. The Customer agrees that any such samples shall be distributed to patients for patient use or, if not so distributed, returned to TFDL. The Customer shall not use such samples to provide care to patient and shall not bill patients or third party payers for the provision of such samples.

12.6 If the Customer is a legal entity located in France, TFDL may, in its sole discretion, provide samples of the Goods to the Customer for distribution to patients of the Customer. The Customer agrees that any such samples shall be distributed to patients for patient use or, if not so distributed, returned to TFDL. The Customer shall not use such samples to provide care to patient and shall not bill patients or third party payers for the provision of such samples. If training is provided for by TFDL as indicated in the Contract / terms and conditions, as the case may be, the cost of this training and all expenses relating thereto are part of the total price agreed upon by TFDL and the Customer in the Contract.

#### 12.7 Assignment and other dealings.

(a) TFDL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer hereby agrees to do all such things and sign such documents as may be necessary for TFDL to exercise its rights under this provision.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of TFDL. Any attempt to do this without the consent of TFDL will be null and void.

#### 12.8 Notices.

(a) 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 or other next working day delivery service or commercial

courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 12.9 Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.10 Waiver. A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.11 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.12 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by TFDL.

12.13 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.14 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims), provided that nothing in this Contract shall limit the right of the TFDL to seek provisional or protective relief in the courts of Ireland or to bring enforcement proceedings in another state pursuant to an English order for provisional or protective relief or to take any legal proceedings in Ireland to recover any amount due and owing to it under this Contract. The application to the Contract of the UN Convention on Contracts for the International Sale of Goods is hereby expressly excluded.