

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

### 1. Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means these terms and conditions, together with the Order(s), and any other documents expressly incorporated by reference;
<b>“Business Day”</b>	means a day other than Saturday, Sunday or a public holiday, when banks in London are open for business;
<b>“Change”</b>	means a change to the type, quantity or means of delivery of the Goods, or any other change to the performance or terms of this Agreement;
<b>“Charges”</b>	means the charges payable for the Goods, as set out in the Order and as may be varied by these terms and conditions;
<b>“Confidential Information”</b>	means and any all technical and commercial information concerning the business, affairs, customers, suppliers, operations, processes, specifications, inventions, know-how, and/or Intellectual Property Rights of a Party, together with any information that a reasonable business person would regard as confidential, which is disclosed by one Party to the other Party and/or which the other Party becomes aware of as a result of or in connection with the performance of the Agreement;
<b>“Customer”</b>	means the legal person named as the Customer in the Order;
<b>“Delivery”</b>	means that the Goods have arrived at the Delivery Location and are made available to the Customer for loading/unloading, and “Deliver” and “Delivered” shall be construed accordingly;
<b>“Delivery Location”</b>	means the address(es) for delivery of the Goods, as specified in an Order or otherwise agreed by the Parties in writing;
<b>“Force Majeure”</b>	means any cause that is beyond the reasonable control of the affected Party including, but not limited to: power failure; internet service provider failure; strikes, lock-outs or other industrial action suffered by the Party or its suppliers or contractors; civil unrest; fire; explosion; flood; storms; earthquakes; pandemic; subsidence; acts of terrorism (threatened or actual); acts of war; governmental action; epidemic or other natural disaster;
<b>“Goods”</b>	means the goods (including any instalment of the goods or any parts or components of them) which the Supplier is to supply to the Customer, as specified in an Order;
<b>“Intellectual Property Rights”</b>	means any and all patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs (both registered or unregistered), database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction, whether registered or unregistered;
<b>“Order”</b>	means the written order for the Goods, which may be set out in (i) a quotation provided by the Supplier and signed by the Customer; (ii) a purchase order issued by the Customer; or (iii) another form of order agreed and signed by both Parties;
<b>“Supplier”</b>	means Avon Dynamic Calibration Limited a company incorporated and registered in England and Wales (company number 5268744), with its registered office at Unit 1, The Old Mill, Chapel Lane, Warmley, Bristol, BS15 4NQ;
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 and any similar, replacement, or additional tax.

1.2 Unless the context otherwise requires, each reference in these terms and conditions to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time and includes any subordinate legislation made under that statute or provision from time to time;
- 1.2.3 a clause is a reference to a clause of these terms and conditions, and clause headings are used for convenience only and shall not affect the interpretation of the terms and conditions;
- 1.2.4 a “Party” or the “Parties” refer to the Supplier and the Customer and their authorized representatives and assigns;

1.2.5 words signifying the singular shall include the plural and vice versa; and

1.2.6 any phrase or term introduced by the words **including, include, in particular** or any similar expression, shall be construed as illustrative only and shall not limit the sense of the words preceding those expressions.

## **2. Orders and application of these terms**

- 2.1 Each Order constitutes an offer by the Customer to purchase the Goods on and subject to these terms and conditions.
- 2.2 An Order shall be deemed to be accepted by the Supplier on the earlier of: (i) the Supplier countersigning the Order; (ii) the Supplier issuing written acceptance of the Order; or (iii) the Supplier commencing performance of the Goods set out in the Order.
- 2.3 Each Order shall form part of the Agreement, though each Order shall be separate and the completion, termination or other determination of one Order shall not affect the continuing in force of any other Order.
- 2.4 Any samples, drawings, descriptive matter or advertising issued or made available by the Supplier are illustrative only and shall not form part of the Agreement.
- 2.5 The Supplier may issue quotations and proposals to the Customer in connection with the supply of services, including in response to any request for services made by the Customer. Such quotations and proposals do not constitute an offer by the Supplier to perform the Goods therein and are not capable of acceptance, nor shall they form part of the Agreement. The Supplier may amend or revoke any quotation or proposal issued by it at any time in its discretion.
- 2.6 These terms and conditions apply to the Agreement (including each Order) to the exclusion of any other terms and conditions, including any previously issued terms, terms that may be implied by course of dealing, and/or any terms contained or referenced within any Customer purchase order.
- 2.7 Once in force, an Order may not be cancelled or varied by the Customer, except in accordance with these terms and conditions.

## **3. Delivery of Goods**

- 3.1 The Supplier agrees to supply the Customer agrees to receive the Goods set out in the Order.
- 3.2 The specification for the Goods shall be as set out in the Order. The Supplier reserves the right to make any changes in the specification of the Goods necessary to conform with applicable safety or other legal or regulatory requirements.
- 3.3 The Supplier shall exercise commercially reasonable and diligent efforts to meet any delivery date(s) specified in the Order but such dates shall be estimates only and time shall not be of the essence for Delivery of the Goods. In particular, the Customer acknowledges that certain Goods shall be subject to manufacturing and supply lead times, which may change from time to time, and the Supplier cannot guarantee the date(s) for Delivery of Goods not held in stock.
- 3.4 The Supplier shall notify the Customer when the Goods are ready for Delivery and the anticipated Delivery date, and the Customer shall take Delivery of the Goods at the Delivery Location. If the Customer fails to take Delivery of the Goods, including by failing to make the Delivery Location accessible and provide any necessary facilities and resources for the loading or unloading of the Goods, the Supplier shall not be liable for the failure to complete Delivery and may store the Goods pending re-Delivery at the Customer's cost.
- 3.5 The Supplier may deliver the Goods in instalments. Any delay or defect in one or more instalments shall not entitle to the Customer to reject or cancel any other instalment.

## **4. Customer obligations and acknowledgements**

- 4.1 The Customer shall:
  - 4.1.1 provide the Supplier with reasonable assistance and co-operation in connection with the supply of the Goods;
  - 4.1.2 ensure that all instructions, requirements, specifications and approvals provided to the Supplier are complete, up-to-date and accurate;
  - 4.1.3 be solely responsible for ensuring that the Goods meet the Customer's requirements and are fit for any purpose intended by the Customer; and
  - 4.1.4 store, use and maintain the Goods in accordance with the applicable specifications and any instructions provided by the Supplier or the manufacturer of the Goods.

## **5. Invoicing and payment**

- 5.1 The Supplier shall be entitled to invoice for the Charges at the time(s) and interval(s) specified in the Order, or otherwise in advance of the Delivery of the Goods, except where credit terms apply as per clause 5.3. Unless otherwise specified in the Order, the Customer shall pay each invoice in full and cleared funds, without deduction or set-off, within thirty (30) days of the invoice date.
- 5.2 The Supplier reserves the right, if the Customer is a new customer or has a poor credit rating or payment history, to require payment of a fixed deposit or some or all of the Charges in advance of delivery of the Goods. If this is the case, it will be specified in the Order and the Supplier shall not be required to Deliver any Goods unless and until payment of the relevant amount is received in full and cleared funds.
- 5.3 The Supplier may (at its sole discretion) provide credit terms enabling the Customer to place multiple Orders for Goods with invoicing and payment in arrears. Where the Supplier does so, it reserves the right to review the credit limit against the Customer's credit rating and payment history from time to time and increase, reduce or revoke the credit limit on written notice. If the credit limit is reached, the Supplier may either (i) issue an invoice in respect of Goods ordered but not yet invoiced; (ii) invoice and require advance payment of the Charges in respect of any further Goods to be delivered; or (iii) suspend the Customer's ability to place further Orders for Goods until the Customer's payment liability is reduced.
- 5.4 Except as otherwise stated in the Order, and unless otherwise agreed in writing between the Parties, the Charges are inclusive packaging costs. Other costs applicable to Delivery, including transportation and insurance, shall be set out separately and payable in addition to the Charges for the Goods.
- 5.5 The Charges are stated exclusive of VAT which, if applicable, shall be invoiced and payable in addition to and together with the Charges. The Charges are also exclusive of any other excise, import and/or export taxes and duties payable in respect of Delivery of the Goods.

- 5.6 The Supplier reserves the right to review the Charges from time to time and shall notify the Customer at least seven (7) days in advance of any increase in the Charges taking effect. An increase in the Charges shall not apply to any Goods already Delivered as at the date of the increase. Without prejudice to the foregoing, the Supplier may give notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond its control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 5.7 In the event that any amounts remain unpaid following the due date for payment, the Supplier may (without prejudice to any other rights and remedies it may have):
- 5.7.1 charge interest on the overdue sum at the rate of 8% per annum above the Bank of England base rate, calculated daily and due and payable together with the overdue sum (whether before or after judgment); and/or
  - 5.7.2 suspend Delivery of the Goods without liability to the Customer unless and until payment is received.
- 5.8 The remedies in clause 5.7 shall not apply to any invoice that is subject of a genuine dispute. If the Customer reasonably disputes any invoice under this Agreement, it shall notify the Supplier promptly and, in any event, within seven (7) days of receipt of the invoice.

## 6. Change control process

- 6.1 If either Party wishes to make a Change at any time (**Change Requesting Party**), the Change Requesting Party may request such a Change (a **Change Request**) under the procedure set out in this clause:
- 6.1.1 each Change Request shall be submitted by the Change Requesting Party in writing and shall include such information necessary to enable the Parties to assess the impact of the proposed Change;
  - 6.1.2 where the Customer issues a Change Request, the Supplier shall confirm in writing whether it is agreeable to the Change Request and, if so, shall detail the impact of the proposed Change on this Agreement, including any consequent amendment of the Scope of Work, Goods, Charges and/or other terms of this Agreement (**Change Order**). Where the Supplier is issuing a Change Request, it shall do so via a draft Change Order; and
  - 6.1.3 a Change Order shall only become binding on the Parties once signed by an authorised representative of both Parties and no Change shall be valid unless the provisions of this clause are complied with.

## 7. Inspection and acceptance

- 7.1 The Customer agrees to inspect the Goods promptly on Delivery and notify the Supplier in the event that any Goods are missing, incomplete or defective.
- 7.2 The Supplier shall not be liable for any loss, shortage, damage or defect that would be apparent on a reasonable inspection where the Customer fails to report the same within three (3) days of Delivery of the Goods.
- 7.3 On receipt of any notification under this clause 7, the Supplier's obligation and the Customer's sole and exclusive remedy shall be for the Supplier (at its option) to either (i) make good any damage or defect by repairing or replacing the affected Goods; (ii) making good any shortage by delivering the missing Goods; and/or (iii) refund the cost of the affected Goods, in each case as soon as reasonably practicable and subject to the Customer returning (at its cost) any damaged or defective Goods.
- 7.4 If no notification is received in accordance with clause 7.2, the Customer shall be deemed to have accepted the Goods.

## 8. Risk and title

- 8.1 Risk in the Goods shall pass to the Customer on Delivery.
- 8.2 Title to the Goods shall pass to the Customer once the Supplier has received payment of the Charges for such Goods in full and cleared funds.
- 8.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 8.4 The Supplier reserves the right to repossess any Goods in which the Supplier retains title without notice. The Customer irrevocably authorises the Customer to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which the Supplier retains title or inspecting the Goods to ensure compliance with the storage and identification requirements in clause 8.5.
- 8.5 The Customer's right to possession of the Goods in which the Supplier maintains legal and/or beneficial title may be terminated by the Supplier if any event in clause 11.1 occurs.
- 8.6 Any and all Intellectual Property Rights in or arising out of or in connection with the design, manufacture and supply of the Goods (including without limitation any Intellectual Property Rights in any processes, software and programs incorporated within the Goods) shall, as between the Parties, be owned by the Supplier or its licensors. The Customer shall have no right to reverse-engineer, disassemble, modify, adapt, create derivative works of or remanufacture the Goods.

## 9. Warranty and liability

- 9.1 Where Goods are supplied with a manufacturer warranty, the Supplier shall insofar as possible assign the benefit of such warranty to the Customer and shall provide reasonable assistance to the Customer in enforcing the warranty. Otherwise, the Goods are supplied "as is" and without any warranty or guarantee of any kind. Any implied conditions, warranties and representations, including any implied by statute or law, are excluded from the Agreement to the fullest extent permitted by law.
- 9.2 The Supplier shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal conditions, failure to follow the Supplier's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Supplier's prior written approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- 9.3 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling of the Goods by the Customer is carried out in accordance with directions given by the Supplier, manufacturer, or any competent governmental or regulatory authority and the Customer will indemnify the

Supplier against any liability loss or damage which the Supplier suffered as a result of the Customer's failure to comply with this condition.

- 9.4 The Supplier shall not be liable to the Customer under or in connection with the Agreement and its performance or non-performance, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- 9.4.1 loss of use of the Goods;
  - 9.4.2 interruption to business;
  - 9.4.3 loss of income, revenue, business;
  - 9.4.4 loss of business opportunity;
  - 9.4.5 loss of profit or contracts;
  - 9.4.6 loss or corruption of software, data or information;
  - 9.4.7 loss of anticipated savings; or
  - 9.4.8 any indirect, special or consequential loss, damage, costs, expenses or other claims.
- 9.5 Without prejudice to the exclusion of liability set out in clause 9.3, the Supplier's total liability to the Customer in respect of any one claim or series of connected claims, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the higher of (i) the Charges paid and payable under the Order; or (ii) £50,000 (fifty thousand pounds).
- 9.6 Nothing in these terms and conditions shall exclude or limit either Party's liability for (i) death or personal injury caused by its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be lawfully limited or excluded.

## **10. Confidentiality and data protection**

- 10.1 Each party shall keep confidential all Confidential Information of the other and shall only use the same as required to perform the Agreement. The provisions of this clause shall not apply to:
- 10.1.1 any information which was in the public domain at the date of the Agreement or subsequently comes into the public domain other than as a consequence of any breach of the Agreement or any other duty of confidentiality;
  - 10.1.2 any information which is independently developed by the receiving party without using information supplied by the disclosing party; or
  - 10.1.3 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Agreement.
- 10.2 The Supplier may disclose the Customer's Confidential Information to its employees, contractors, agents and suppliers to the extent necessary for the proper performance of the Agreement.
- 10.3 The obligations in relation to Confidential Information shall remain in force for a period of five (5) years from the termination or expiry of the Agreement.
- 10.4 The Supplier may disclose and publicise the Customer's name for marketing and promotional purposes.

## **11. Termination**

- 11.1 Either Party may terminate the Agreement at any time with immediate effect by giving notice in writing to the other Party if:
- 11.1.1 the other Party commits a material breach of the Agreement, and such breach is not remediable;
  - 11.1.2 the other Party commits a remediable material breach of the Agreement, which is not remedied within fourteen (14) days of receiving written notice of such breach;
  - 11.1.3 the other Party is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, makes any voluntary arrangement with its creditors or becomes subject to an administration order or serves notice of administration, or has a receiver, manager or administrative receiver appointed over its assets or (being an individual) shall become bankrupt or (being a company) shall have a winding-up order made against it or shall go into liquidation (except for the purposes of a solvent amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on the predecessor company under this Agreement); or
  - 11.1.4 the other Party stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so.
- 11.2 The Supplier may terminate the Agreement at any time with immediate effect by giving notice in writing to the Customer if the Customer fails to pay any Charges by the due date for payment and remains in default fourteen (14) days after receiving written notice requiring it to make payment.
- 11.3 Termination or expiry of the Agreement shall not affect any accrued rights and liabilities of the Parties at any time up to the date of termination.
- 11.4 In the event of early termination of the Agreement:
- 11.4.1 the Customer shall immediately pay any Charges invoiced and in respect of Charges accrued but not invoiced, the Supplier shall be entitled to issue an invoice, which shall be payable immediately on receipt; and
  - 11.4.2 subject to payment of all outstanding Charges, the Supplier shall deliver up or make available for collection of any Goods ready for Delivery.

## **12. Complaints and dispute resolution**

- 12.1 If the Customer has any query or complaint regarding the performance of the Agreement, it may contact the Supplier and the Supplier shall endeavour to resolve the same in accordance with its complaints procedure.
- 12.2 In the event of any dispute concerning the performance of the Agreement, either Party may initiate a dispute resolution process by serving notice in writing on the other Party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute. The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

- 12.2.1 within seven (7) days of service of the notice, an authorised representative of each of the Parties shall meet to discuss the dispute and attempt to resolve it;
  - 12.2.2 if the dispute has not been resolved within seven (7) days of the first meeting of the authorised representatives, then the matter shall be referred to a senior manager or director of each of the Parties, who shall meet to discuss the dispute and attempt to resolve it; and
  - 12.2.3 If the dispute remains unresolved fourteen (14) days following escalation under clause 12.2.2, either Party may refer the dispute for mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 12.3 Either Party may issue formal legal proceedings at any time whether or not the steps referred to in this clause 12 have been completed.

### 13. Notices

- 13.1 Any notice given by a Party under these terms and conditions shall:
- 13.1.1 be in writing and in English;
  - 13.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 13.1.3 be sent to the relevant party at the address set out in the Agreement.
- 13.2 Notices may be given, and are deemed received:
- 13.2.1 by hand: on receipt of a signature at the time of delivery;
  - 13.2.2 by standard (first-class or equivalent) post: at 9.00 am on the second Business Day after posting;
  - 13.2.3 by international (tracked, signed-for or equivalent) post: at 9.00 am on the fifth Business Day after posting; and
  - 13.2.4 by email: on the next Business Day following transmission, provided the email is sent to the correct address and no delivery failure notification is received.
- 13.3 This clause does not apply to notices given in legal proceedings or arbitration.

### 14. Miscellaneous

- 14.1 **Variation.** The Supplier reserves the right to update these terms and conditions from time to time. Any changes will only apply to new Orders that contain or reference the updated terms and conditions, unless the Supplier notifies the Customer of the changes in advance, in which case they shall also apply to existing Orders.
- 14.2 **Force Majeure.** Neither Party shall be liable to the other for any delay in performance or non-performance of its obligations under the Agreement (other than an obligation to pay amounts due) to the extent caused by Force Majeure. If a Party is affected by Force Majeure, it agrees to promptly notify the other Party and to exercise reasonable efforts to minimize the impact and duration of the Force Majeure.
- 14.3 **No waiver.** No failure or delay by either Party in exercising any rights under these terms and conditions constitutes a waiver of that right, and no waiver of a breach of any provision of these terms and conditions means that a Party will waive any subsequent breach of the same or any other provision.
- 14.4 **No assignment.** The Customer may not assign, transfer, subcontract or otherwise dispose of or encumber any of its rights or obligations under the Agreement, in whole or in part, without the Supplier's prior written consent.
- 14.5 **No partnership or agency.** The Parties are independent persons and are not partners, principal and agent or employer and employee and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither Party shall have, nor shall represent that it has, any authority to make any commitments on the other Party's behalf.
- 14.6 **Severance.** If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.
- 14.7 **Third Party Rights.** No part of the Agreement is intended to confer rights on any third parties.
- 14.8 **Entire Agreement.** The documents comprising the Agreement contain the entire agreement between the Parties with respect to its subject matter. Each Party acknowledges that, in entering into the Agreement, it has not relied on any representation, warranty or other provision except as expressly provided in the documents comprising the Agreement, provided that nothing in this clause shall exclude any liability for fraudulent misrepresentation.
- 14.9 **Export.** The Customer warrants and represents that it is not subject to any sanctions, export restrictions or other economic restrictions, and that its use of the Services and Instruments shall comply with any applicable national and international export control laws.
- 14.10 **Conflicts within Agreement.** If there is any conflict between these terms and conditions and the terms of the Order and/or Scope of Work, these terms and conditions shall take precedence except where expressly stated otherwise in these terms and conditions.
- 14.11 **Law and Jurisdiction.** The Agreement and any dispute or claim arising out of, or in connection with it, its subject matter, or formation (including non-contractual disputes or claims) shall be governed by English Law and the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.