

## CellMark Chemicals – Europe : Terms and Conditions of Purchase

These terms and conditions of purchase apply to all purchases of Goods and Services (each as defined below) in Europe by CellMark Chemicals Europe division and its representative legal entities: CellMark Services Ltd in the UK; Cellmark Deutschland GmbH Sp. z o.o. Oddział W Polsce in Poland; CellMark Deutschland GmbH in Germany; CellMark France SAS in France; CellMark Italy Srl in Italy; and CellMark Iberica SLU in Spain.

### 1. Definitions

**1.1.** In these terms and conditions of purchase, including any schedule, appendix and/or annexure hereto ("**Terms**"), the following definitions shall apply:

**Affiliate** means, in relation to any company, any other person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with such company.

**Applicable Law** means any applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory authority), guidance or industry code of practice, rule of court, delegated or subordinate legislation in force from time to time.

**CellMark** means the legal entity that issues the Purchase Order to the Seller.

**Confidential Information** means all information which is disclosed by one party to the other whether before or after the Contract commences, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a party's business including its services, operations, processes, plans or intentions, developments, trade secrets, know how, market opportunities, marketing, personnel, suppliers and customers, any information identified as Confidential Information in a Purchase Order, and all information derived from any of the above together with the existence and provisions of the Contract and the negotiations relating to it.

**Contract** means the Purchase Order as accepted by the Seller, these Terms, any Specification, and any other terms and conditions that the Purchase Order expressly states will apply to the supply of Goods and/or Services in accordance with these Terms.

**Control** means the ability to control or direct, directly or indirectly, the board, executive body, decision making process or management of an entity by virtue of ownership, right of appointment, right to control election or appointment, voting rights, the ability to control the exercise of voting rights, management agreement or any other agreement and "**Controls**", "**Controlled**" and "**Controlling**" shall be construed accordingly.

**Delivered** has the meaning given in clause 5.1, and "**Delivery**", "**Deliver**" and other commensurate terms shall be construed accordingly.

**Documentation** means any models, samples, drawings, data, materials and other documents provided by CellMark or produced by the Seller on behalf of CellMark.

**Good Industry Practice** means the exercise of the same degree of skill, care, prudence, efficiency, diligence, foresight and timeliness as would reasonably be expected from a well-managed supplier highly skilled and experienced in providing goods and services similar to the Goods and/or Services.

**Goods** means the goods specified in a Purchase Order which shall meet the requirements of the Specification.

**LD Percentage** means either the percentage set out in the Purchase Order of the liquidated damages to apply during each LD Period or, if the Purchase Order is silent on this, 1%.

**LD Period** means the time period set out in the Purchase Order as being the time period over which the LD Percentage applies or, if the Purchase Order is silent on this, the period of 1 week.

**Maximum LD Percentage** means the percentage set out in the Purchase Order as being the maximum overall percentage of liquidated damages that can apply or, if the Purchase Order is silent on this, 15%.

**Purchase Order** means a purchase order issued by Cellmark for Goods and/or Services, which incorporates these Terms.

**REACH** means the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation No 1907/2006 (as amended), UK REACH or any equivalent regime operating in any relevant jurisdiction.

**Sanctions Rules** has the meaning given in clause 4.4.

**Seller** means the person, firm or company that accepts Cellmark's Purchase Order.

**Services** means the services specified in a Purchase Order which shall meet the requirements of the Specification.

**Specification** means any specification for the Goods and/or Services set out or referred to in the Purchase Order or provided by the Seller in connection with the Goods and/or Services.

**1.2. Interpretation.** In these Terms, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its successors or permitted assigns;
- 1.2.3. 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;
- 1.2.4. any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5. a reference to writing or written includes emails.

### 2. Basis of Contract

**2.1.** Each Purchase Order constitutes an offer by CellMark to purchase Goods and/or Services from the Seller in accordance with these Terms.

**2.2.** This Purchase Order shall be deemed to be accepted on the earlier of the Seller:

- 2.2.1. issuing written acceptance of the Purchase Order; or
- 2.2.2. acting consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into effect.

**2.3.** These Terms supersede and shall govern the Contract to the exclusion of all other terms and conditions that the Seller may seek to impose or incorporate, or that may be implied by trade, custom, practice or in the course of dealing. Without prejudice to the foregoing, no terms or conditions delivered with or contained in the Seller's tender response, quotation, acknowledgement or acceptance of order, correspondence (whether by email or otherwise), specification, delivery note, invoice or similar document shall apply and the Seller waives any right which it otherwise may have to rely on such terms and conditions.

### 3. Bids and Quotations

3.1. Bids and price quotes provided by or on behalf of the Seller shall not entitle the Seller to any remuneration and shall not create any obligations on the part of CellMark.

3.2. The Seller shall explicitly expose any discrepancies between the response given in its quote or tender response and CellMark's enquiry. Where the Seller has an alternative solution to an enquiry which it considers may be technologically and/or economically superior to that for the initial enquiry, it shall also present this option to CellMark.

### 4. Supply of Goods

4.1. The Seller shall ensure that the Goods Delivered shall:

- 4.1.1. correspond with their description and fully conform to and performs in accordance with the Contract, including any Specification referenced in or attached to the Purchase Order or these Terms;
- 4.1.2. be of satisfactory quality and fit for their intended purpose, including any purpose held out by the Seller or made known to the Seller by CellMark, expressly or by implication;
- 4.1.3. conform in all respect with any samples supplied;
- 4.1.4. where applicable, be free from any defects (whether actual or latent) in design, materials or workmanship;
- 4.1.5. comply with all Applicable Laws and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods of the territory/ies in which the Goods are to be used or as noted in the Specification, and without prejudice to the generality of the above; and
- 4.1.6. be free from any lien, charge or encumbrance.

4.2. The Seller shall pass to CellMark the benefit of any manufacturer and other warranties and/or guarantees relating to the Goods.

4.3. The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.4. The Seller represents and warrants that none of the Goods provided, including all parts, components and raw materials, have been produced, delivered or performed in whole or in part in violation of any Applicable Law applicable trade or economic sanction, export control, embargo or similar legal order or prohibition, regulation, rule, measure, restriction, license, including without limitation of those of the European Union, Switzerland, the United States and the United Nations (hereinafter the "**Sanctions Rules**") and that none of the third parties (such as auxiliaries or subcontractors) engaged in the production of Goods and/or the performance of the Services are subject to any applicable Sanctions Rules.

4.5. The Seller represents and warrants that all materials contained in the Goods have been pre-registered, registered, or are exempt from the obligation to register and, if relevant, authorised in accordance with the applicable requirements of REACH for the uses disclosed by CellMark.

4.6. If the Goods are classified as an article in accordance with Article 7 of REACH, the requirements of clause 4.5 shall also apply to substances released from such Goods.

4.7. The Seller shall notify CellMark if a component of the product contains a substance in a concentration exceeding 0.1 mass percent (W/W) if this substance satisfies the criteria of Articles 57 and 59 of REACH (so-called substances of very high concern). This clause also applies to packaging materials used by the Seller in the performance of its obligations under the Contract.

4.8. CellMark may inspect and/or test the Goods at any time before Delivery. The Seller shall remain fully responsible for the Goods despite any inspection or testing and any inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.

4.9. If following an inspection or testing CellMark considers that the Goods are not or are not likely to comply with the Contract, CellMark shall require the Seller to (and the Seller shall) take such remedial action as is necessary to ensure compliance.

4.10. CellMark may conduct further inspections and tests after the Seller has carried out its remedial actions.

4.11. The Seller shall not change the materials used in the Goods or the processes or specification without CellMark's prior written approval, following any inspection or testing carried out by CellMark, prior to the Delivery of the Goods, nor shall the Seller change the location where the Goods are manufactured or assembled without notifying CellMark in advance.

### 5. Delivery, Shipping, Packaging, Passing of Risk and Title

5.1. Deliveries of Goods shall be made to the place of destination (and in accordance with any instructions) set out in the Purchase Order. Unless alternative Incoterms are set out in the Purchase Order, or are otherwise agreed in writing, deliveries shall be made on a Cost Insurance and Freight (Incoterms 2020) basis. Goods shall be deemed delivered to CellMark when delivered in accordance with the relevant Incoterms, at the delivery location (where stated) specified in the Purchase Order (which may be the same as the place of destination), together with two copies of the delivery note, the packing list, cleaning and inspection certificates in accordance with the agreed Specifications and all other necessary documents including, but not limited to, any document or information required in accordance with the Contract. If known, the following details must be given in all shipping documents and, in the case of Goods, also stated on the outer packaging: Purchase Order number, gross and net weight, the number of packages and whether the packaging is disposable or reusable, completion date as well as the place of destination (unloading point) and consignee ("**Delivered**").

5.2. The Seller shall:

- 5.2.1. ensure that the Goods are packed properly, in accordance with the requirements of the relevant Purchase Order and the packaging requirements of CellMark and secured in such manner so as to avoid damage during transport and to enable the Goods to reach their place of destination in good condition;
- 5.2.2. package, label and ship hazardous Goods in accordance with all Applicable Laws, including in compliance with its obligations under REACH at its own cost to the extent permitted by law;
- 5.2.3. maintain a valid REACH registration /pre-registration for all relevant substances within the Goods for CellMark's use; and
- 5.2.4. in all cases provide CellMark with a safety data sheet according in the national language of the recipient country.

5.3. The Seller must comply with the Delivery date set out in the Purchase Order. Any early or partial Delivery of the Goods shall be subject to CellMark's prior written consent.

5.4. If the Seller anticipates that it will not be able to Deliver the Goods and/or perform the Services on the agreed dates, the Seller shall notify CellMark promptly of this in writing stating the reason(s) for the delay and specifying when Delivery and/or performance can be expected, provided always that CellMark's acceptance of any delayed Delivery of the Goods or delayed performance of the Services shall not release the Seller from its liability for the delay.

5.5. If the Seller requires CellMark to prepare any documents to enable the Seller to fulfil the Purchase Order, it is the Seller's responsibility to request such documents of CellMark in a timely manner.

- 5.6.** For third country deliveries (imports), CellMark shall be the importer of record and the Seller shall:
- 5.6.1. obtain all licences and permits that are required in the country of origin and/or provenance; and
  - 5.6.2. support CellMark with all documents and information necessary to complete and lodge a true import declaration to authorities responsible for customs, as required in the customs requirements of the country of import.
- 5.7.** The Seller shall bear the risk of loss or damage of the Goods up until they have been Delivered.
- 5.8.** Title in the Goods shall transfer to CellMark on Delivery.

## **6. Supply of Services**

- 6.1.** The Seller shall from the date set out in the Contract and for the duration of the Contract provide the Services to CellMark in accordance with the terms of the Contract.
- 6.2.** The Seller shall meet any performance dates for the Services specified in the Contract or notified to the Seller by CellMark or, in the absence of any such notification or specification, within a reasonable time taking into account CellMark's requirements.
- 6.3.** In providing the Services, the Seller shall:
- 6.3.1. co-operate with CellMark in all matters relating to the Services, and comply with all instructions of CellMark;
  - 6.3.2. perform the Services in compliance with all Applicable Laws and in accordance with the requirements of the Contract;
  - 6.3.3. perform the Services with all due skill, care and diligence and in accordance with Good Industry Practice;
  - 6.3.4. use only sufficiently skilled, experienced, qualified and trained personnel and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with the Contract;
  - 6.3.5. ensure that the Services and deliverables will conform with all descriptions and specifications set out in the Specification, and that the deliverables shall be fit for any purpose expressly or impliedly made known to the Seller by CellMark;
  - 6.3.6. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 6.3.7. use the best quality goods, materials, standards and techniques, and ensure that the deliverables, and all goods and materials supplied and used in the Services or transferred to CellMark, will be free from defects in workmanship, installation and design;
  - 6.3.8. obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws and regulatory policies and guidelines which may apply to the provision of the Services;
  - 6.3.9. observe all health and safety rules and regulations, and any other security requirements that apply at any of CellMark's premises;
  - 6.3.10. hold all materials, equipment and tools, drawings, specifications and data supplied by CellMark to the Seller in safe custody at its own risk and maintain the same in good condition until returned to CellMark, and not dispose of or use them other than in accordance with CellMark's written instructions or authorisation; and
  - 6.3.11. not do or omit to do anything which may cause CellMark to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that CellMark may rely or act on the Services.

## **7. CellMark Remedies**

- 7.1.** If the Seller fails to Deliver the Goods and/or perform the Services by the applicable Delivery date and or performance date, CellMark shall, without limiting or affecting its other rights or remedies, have one or more of the following rights:
- 7.1.1. to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Seller;
  - 7.1.2. to refuse to accept any subsequent performance of the Services and/or Delivery of the Goods which the Seller attempts to make;
  - 7.1.3. to require an immediate refund from the Seller of sums paid for Goods and/or Services that have not been Delivered and/or provided;
  - 7.1.4. to recover from the Seller any costs incurred by CellMark in obtaining substitute goods and/or services from a third party; and
  - 7.1.5. to claim damages for any additional costs, loss or expenses incurred by CellMark which are in any way attributable to the Seller's failure to meet such dates.
- 7.2.** If the Seller fails to Deliver the Goods and/or perform the Services by any Delivery date and/or performance date, CellMark may, at its option, claim or deduct the LD Percentage of the total price of the relevant Goods and/or Services as liquidated damages for each LD Period (or any part of such period) of delay until the earlier of Delivery of the Goods and/or performance of the Services as applicable, or termination of the Contract (in whole or in part) by CellMark, subject to the Maximum LD Percentage of the price of the relevant Goods and/or Services. If CellMark exercises its rights in respect of late Delivery and/or performance under this clause 7.2, it shall not be entitled to any of the remedies set out in clause 7.1 in respect of the late Delivery and/or performance.
- 7.3.** If the Seller Delivers Goods that do not comply with clause 4.1, then, without limiting its other rights or remedies, CellMark shall have one or more of the following rights:
- 7.3.1. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense;
  - 7.3.2. to terminate the Contract with immediate effect by giving written notice to the Seller;
  - 7.3.3. to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 7.3.4. to refuse to accept any subsequent Delivery of the Goods which the Seller attempts to make;
  - 7.3.5. to recover from the Seller any expenditure incurred by CellMark in obtaining substitute goods from a third party; and
  - 7.3.6. to claim damages for any additional costs, loss or expenses incurred by CellMark arising from the Seller's failure to supply Goods in accordance with clause 4.1.

## **8. Intellectual Property Rights**

- 8.1.** It is the Seller's responsibility to ensure that the provision of the Goods and/or Services and the use thereof by CellMark pursuant to the Contract will not infringe any intellectual property rights of any third party.
- 8.2.** The Seller shall indemnify and keep indemnified CellMark, and its Affiliates, and their respective vendors and customers, from and against any expense or liability (including costs, fees and all damages) suffered by CellMark and its Affiliates, arising out of any claim, that the provision of the Goods and/or the Services under a Purchase Order, or the use of such Goods and/or

Services or sale of such Goods and/or Services constitutes infringement or alleged infringement of any third party's intellectual property rights.

## **9. Business Integrity**

**9.1.** The Seller is aware of and shall at all times comply (and shall procure that its representatives shall comply) with Cellmark's code of conduct, a copy of which can be found at <https://www.cellmark.com/wp-content/uploads/2023/11/CellMark-Code-of-Conduct-for-Business-Partners.pdf>

**9.2.** CellMark shall have the right, at its own expense, to audit the performance of the Seller against the requirements of CellMark's code of conduct (including, but not limited to, all areas of environmental and social responsibility) either by assessment (online, paper questionnaire, etc.) or by an onsite audit, conducted by CellMark or by its representatives.

**9.3.** The Seller shall carry out and maintain effective quality assurance and, if requested, demonstrate this to CellMark. The Seller shall adhere to a quality management system as per ISO 9000 or to a similar system of equivalent standard. CellMark (or its representatives) shall, by prior written notice, have the right to (and the Seller shall make available the facilities for CellMark to inspect and test):

9.3.1. the Seller's quality assurance system;

9.3.2. the Goods during manufacture, processing or storage;

9.3.3. the Services during or after performance,

provided always that, each party shall be liable for its own costs incurred during any such inspection and/or testing.

**9.4.** Where applicable, the Seller shall provide to CellMark an A.TR movement certificate.

**9.5.** Upon CellMark's request, the Seller shall provide CellMark with proof of or a certificate of origin specifying the origin of the Goods supplied under the Contract.

**9.6.** Insofar as the Goods provided under the Contract fall within the scope of preferential origin of such Goods, the Seller shall provide such Goods in compliance the Generalised Systems of Preferences or Developing Countries Trading Scheme, whichever is applicable.

## **10. Anti-Bribery and Anti-Corruption**

**10.1.** The Seller shall, in connection with the Contract, comply with all Applicable Laws in respect of bribery and corruption and will not offer, give or agree to give to any person, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value in order to obtain, influence, induce or reward any improper advantage, and will not take any action that could cause CellMark to violate such laws.

**10.2.** Breach of this clause shall be deemed a material breach of the Contract.

**10.3.** The Seller shall indemnify CellMark against any losses, liabilities, damages, costs and expenses incurred by CellMark as a result of any breach of this clause by the Seller (including any consequential loss or damage).

## **11. Insurance**

**11.1.** The Seller shall, at its own cost, be responsible for taking out and maintaining in force, during the term of the Contract and for six years thereafter, adequate and proper policies of insurance with reputable insurers covering the liabilities which may be incurred by the Seller, arising out of the acts or omissions of the Seller or its employees, subcontractors or agents in connection with the Contract. The Seller shall provide evidence of insurance coverage before commencing performance under the Contract.

**11.2.** The Seller shall provide CellMark with such evidence as CellMark may reasonably require of the terms of each policy of insurance together with evidence of payment of the last premium.

## **12. Price and Payment**

**12.1.** In consideration for the provision of the Goods and/or Services under this Agreement, Cellmark shall pay the price set out in the Purchase Order, or such other charges as are agreed by the parties in writing from time to time. The Seller acknowledges that Cellmark shall not be liable for any other charges incurred by the Seller in the provision of the Goods and/or Services. The charges shall be inclusive of all packaging, packing, shipping, loading, carriage, customs, insurance and delivery costs and all duties, imposts, levies or taxes other than VAT.

**12.2.** Except where otherwise agreed in writing between the parties, invoices are only to be issued for Goods Delivered and/or Services provided. Invoices shall comply with the relevant statutory invoicing requirements of the jurisdiction in which the purchasing CellMark entity is incorporated.

**12.3.** The Seller must issue a separate invoice for each Purchase Order and must include CellMark's full Purchase Order number and, if applicable, the Seller's delivery note number. Invoices must correspond with the information set out in the Purchase Order in respect of the Goods and/or Services ordered, price, quantity, and item numbers.

**12.4.** The payment period depends on the size of the Seller's legal entity and is determined as follows:

12.4.1. if the Seller qualifies as a small or medium-sized enterprise, the payment term shall be thirty (30) days after receipt of the relevant invoice that meets the applicable VAT requirements; and

12.4.2. if the Seller qualifies as a large company, the payment term is sixty (60) days after receipt of the relevant invoice that meets the applicable VAT requirements, unless otherwise stipulated in the Contract.

**12.5.** The Seller is responsible for informing CellMark in a timely manner as to its designation or change of designation (as the case may be) in accordance with clause 12.4

**12.6.** In the case of self-billing, the payment term shall start on the date on which the invoice is issued.

**12.7.** Payment by CellMark shall not be an indication of acceptance of conditions or prices and shall not constitute a waiver of Cellmark's rights with regard to matters including inspection and Deliveries made and/or services provided that differ from those as agreed.

**12.8.** CellMark may set-off or deduct from any monies payable by CellMark to the Seller under the Contract, any amounts which are payable by the Seller to CellMark. CellMark may withhold amounts disputed in good faith while the parties attempt to resolve the dispute, and this will not constitute a breach.

**12.9.** If a party fails to make any payment of a sum due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at a rate of 2% per annum above the base rate of the Bank of England. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause 12.9 shall not apply to payments that the defaulting party disputes in good faith.

## **Termination**

- 12.10.** Without affecting its other rights or remedies available to it, CellMark may terminate the Contract (in whole or in part):
- 12.10.1. in respect of the supply of Services, with immediate effect by giving the Seller written notice; and
  - 12.10.2. in respect of the supply of Goods, in whole or in part at any time before Delivery with immediate effect by giving written notice to the Seller, at which time the Seller shall discontinue all work on the Contract. CellMark shall pay the Seller properly evidenced, fair and reasonable costs for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss.
- 12.11.** Without limiting its other rights or remedies, CellMark may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Seller if:
- 12.11.1. the Seller commits a material breach of the terms of the Contract which cannot be remedied;
  - 12.11.2. the Seller commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
  - 12.11.3. the Seller repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
  - 12.11.4. there is a change of Control of the Seller.
- 12.12.** Without limiting its other rights or remedies, either party may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the other if:
- 12.12.1. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 12.12.2. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 12.12.3. the supply of the Goods and/ or the Services is or will be either entirely or partly impermissible due to a legal challenge.
- 12.13.** On termination of the Contract for any reason, the Seller shall:
- 12.13.1. immediately hand over to CellMark all the Documentation, including (digital) copies.
  - 12.13.2. at its own expense and regardless of the grounds for termination, forthwith dismantle and remove its plant, tools and equipment. Any waste or debris produced by the Seller must be promptly removed and disposed of appropriately by the Seller at its own expense. If the Seller does not fulfil its duties in this regard, CellMark may undertake the work itself or have it undertaken by a third party and charge the expenses incurred to the Seller if the work has still not been completed after a reasonable period of time has elapsed.
  - 12.13.3. Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

### **13. Documents, Confidentiality, Rights of Use**

- 13.1.** The Seller shall keep confidential the existence and content of the Contract and Confidential Information provided by or on behalf of CellMark to Seller in connection with the Contract. All such information shall remain CellMark's property and may be used by Seller only for the purpose of the Contract.
- 13.2.** Upon CellMark's request, the Seller shall promptly return to CellMark all such Confidential Information and the Seller shall not retain any copy thereof.
- 13.3.** The Seller may only disclose CellMark's Confidential Information to third parties provided CellMark has given its prior written consent, and the Seller shall ensure that such third parties engaged by the Seller in the execution of the Seller's duties shall undertake in writing to be bound by the same confidentiality undertaking.
- 13.4.** The Seller shall not refer to (or part of) the Purchase Order and/or the Contract in any external communication or publication without CellMark's prior written consent.
- 13.5.** The Seller shall observe the proprietary rights of CellMark in and to all Documentation and any such Documentation shall remain the property of CellMark and must be handed over and/or returned to CellMark forthwith upon its request at any point in time.
- 13.6.** The Seller shall not exploit CellMark's Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way, or use it for any purpose other than fulfilling the Contract.
- 13.7.** The Seller shall not be in breach of this clause 13 where it is required to make disclosures of CellMark's Confidential Information to the extent required by law or court order, provided the Seller notifies CellMark in advance and, where legally permitted, cooperates in any effort to obtain confidential treatment.
- 13.8.** This confidentiality requirement shall not include any information that the Seller lawfully possessed prior to CellMark's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party.
- 13.9.** The Seller shall undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorised access.
- 13.10.** The Seller shall notify Cellmark promptly in writing if the Confidential Information is lost and/or accessed by unauthorised parties.

### **14. Publicity**

- 14.1.** The Seller shall not refer to or publicly disclose its business relationship with CellMark without the prior written consent of CellMark, except as may be required by law.
- 14.2.** No references to CellMark, its Affiliates, trade names, trade marks, logos, codes, drawings or specifications will be used in any of the Seller's advertising, promotion or any publicity of any kind without CellMark's prior written consent.

### **15. Data Protection**

- 15.1.** Both parties agree to comply with applicable privacy laws in respect of personal data processed pursuant to the Contract. If, and to the extent that a party processes personal data on behalf of the other, the parties shall in good faith discuss and agree upon a separate data processing agreement.

## **16. Fraud Awareness**

**16.1.** CellMark is not responsible for any losses suffered by the Seller due to any third party fraud carried out through electronic communication means. If the Seller notices any discrepancy in CellMark's account details or any suspicious or unusual instructions, all details should be checked and agreed directly with a member of CellMark's accounting through their verified phone number or other suitable independent second verified communication channel, e.g. a known contact method established and verified before (i.e. never using the details listed in the email requesting payment and/or providing payment instructions).

**16.2.** The Seller warrants that it has adequate information security measures in place and that these are being used to actively avoid fraud attempts, including but not limited to:

16.2.1. technical protection to identify the true counterpart in digital communication and to protect CellMark against potential fraudsters (e.g. using protection against phishing & spoofing e-mails and having secure processes in place); and

16.2.2. the Seller ensuring all important information is confirmed in additional suitable independent communication channels where identity can be properly verified e.g. a known contact method established and verified before (i.e. never using the details listed in the email requesting payment and/or providing payment instructions).

**16.3.** For any changed payment or delivery terms, single channel information confirmation (e.g. just an email) is an insufficient fraud protection process. Two suitable independent and verified communication channels must always be used in this respect. If in any doubt whatsoever, the Seller shall not perform a financial transaction or take any further actions until the Seller has verified such transactions through CellMark's accounting team and/or the Seller's contact at CellMark through their verified phone number.

## **17. General**

### **17.1. No Partnership**

Nothing in these Terms shall create, or be deemed to create, a partnership between the parties.

### **17.2. Entire Agreement**

17.2.1. The Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Contract and supersedes any prior agreements, representations, understandings or arrangements between the parties (oral or written) in relation to such subject matter. Each party acknowledges that:

17.2.1.1. upon entering into the Contract, it does not rely, and has not relied upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a party to the Contract or not) except those expressly set out in the Contract; and

17.2.1.2. the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for damages for breach of contract under the Contract.

17.2.2. Nothing in this clause 17.2 shall limit or exclude any liability for fraud.

### **17.3. Assignment and Subcontracting**

17.3.1. The Seller shall not assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under the Contract, without the prior written consent of CellMark.

17.3.2. CellMark may at any time assign, transfer, charge, or deal in any other manner with all or any of its rights or obligations under the Contract to any Affiliate.

17.3.3. The Seller shall supply all Goods and perform all Services only through its regular, full-time employees and may not subcontract any element of the supply obligation without the prior written consent of CellMark. Where CellMark authorises the use of subcontractors by the Seller, the Seller shall remain directly responsible to CellMark for the acts or omissions of each subcontractor as if such acts and omissions were its own.

### **17.4. Survival**

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

### **17.5. Invalidity**

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision or part of a provision of the Contract shall be deemed not to be a part of the Contract and it shall not affect the enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any jurisdiction. In this case, the parties will endeavor to negotiate a new valid clause that is as close as possible to the invalid clause within the scope of the Contract.

### **17.6. Variation**

No purported variation of the Contract shall be effective unless it has been recorded in writing and signed by or on behalf of each of the parties.

### **17.7. Releases and waivers**

17.7.1. Either party may, in whole or in part, release, compound, compromise, waive, or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by the other party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

17.7.2. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

17.7.3. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.

### **17.8. Third Party Rights**

17.8.1. Except as provided elsewhere in these Terms, a person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract.

### **17.9. Notices**

17.9.1. Any notice to a party under the Contract shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post or prepaid recorded delivery to the address of the party as set out on the first page of this Agreement or as otherwise notified in writing from time to time or by email to [insert email address].

17.9.2. A notice shall be deemed to be served:

17.9.2.1. at the time of delivery if delivered personally;

- 17.9.2.2. 48 hours after posting; or
- 17.9.2.3. if sent by email, at the time of transmission.

17.9.3. A party shall not attempt to prevent or delay the service of a notice connected with the Contract.

#### **17.10. Law and Jurisdiction**

- 17.10.1. The Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. The United Nations Convention for International Sale of Goods will not apply to the Contract.
- 17.10.2. Any dispute arising out of or in connection with the Contract, whether arising in contract, tort, equity, for breach of statutory duty or otherwise, shall be resolved in accordance with the Rules of the International Court of Arbitration of the International Chamber of Commerce, provided always that:
  - 17.10.2.1. the seat and place of any such arbitration will be the location of the relevant Cellmark contracting entity;
  - 17.10.2.2. the language of the arbitration will be English; and
  - 17.10.2.3. there will be one arbitrator selected and appointed by the parties to the Contract.
- 17.10.3. Clause 17.10 does not limit the right of any party at any time to seek interim measures of protection in any appropriate courts provided always that by preserving their rights in this manner, the party shall not be seen to be waiving or limiting their consent to arbitration.