

BIOCHROM LIMITED
GENERAL TERMS AND CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

1. DEFINITIONS

In these GTCs (as defined below) and in all documents relating to this Purchase Order (as defined below) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:-

“**Buyer**” shall mean BIOCHROM LIMITED.

“**Contract**” shall mean the contract entered into by the Buyer and the Seller pursuant to these GTCs, any Special Conditions and the Purchase Order.

“**Delivery Point**” shall mean the address for delivery stated in this Purchase Order or such other address as may be notified to the Seller by the Buyer.

“**Intellectual Property Rights**” shall mean: patents, patent applications and other rights to inventions; registered and unregistered trademarks; rights in confidential information (including know how and trade secrets); copyright (including copyright in software); registered and unregistered design rights; database rights; applications, and rights to apply for, any of the things just mentioned; and all similar or equivalent rights anywhere in the world.

“**GTCs**” shall mean these general terms and conditions of purchase.

“**Loss**” shall mean all direct, indirect or consequential liability, losses, damages, expenses, costs, claims, proceedings, or demands including legal and other professional fees and expenses.

“**Purchase Order**” shall mean the purchase order, bearing an official purchase order number of the Buyer, placed by the Buyer upon these GTCs and any Special Conditions attached to, referred to in or contained in the purchase order.

“**Seller**” shall mean the person or entity to which the Purchase Order is addressed.

“**Special Conditions**” shall mean the special terms and conditions (if any) attached to, referred to in or contained in the Purchase Order.

“**Supplies**” shall mean all articles, materials, goods, work or services specified in the Purchase Order as it may be amended by the Buyer from time to time.

2. GENERAL

2.1 These GTCs, and any Special Conditions, are the only terms and conditions upon which the Buyer is prepared to deal with the Seller; and they shall govern the Contract to the entire exclusion of any terms or conditions of the Seller, and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.2 Each Purchase Order provided by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase the applicable Supplies subject to these GTCs and any applicable Special Conditions. All Purchase Orders by the Buyer to the Seller shall, where Purchase Orders for the same or similar Supplies have been placed by the Buyer with the Seller in the past, be deemed to have been accepted by the Seller unless (where the Seller has not already agreed to provide future Supplies) the Seller sends written notification to the contrary to the Buyer within five days of the date of the Purchase Order. No Purchase Order shall bind the Buyer unless and until it bears a Purchase Order number.

2.3 The Buyer may provide forecasts of its likely requirements of Supplies (“**Forecasts**”) for one or more months following the month in which the Forecast is placed. While the Buyer shall endeavour to provide accurate Forecasts (if it provides any Forecasts), it shall not be bound by any Forecasts and any Purchase Order may vary from the Forecast to which it relates. The Seller agrees to accept future Purchase Orders pursuant to Forecasts placed (whether or not changed by the Buyer).

2.4 The Buyer shall be under no responsibility to accept delivery of Supplies for which a Purchase Order has not been provided by the Buyer. Deliveries of Supplies other than in accordance with a Purchase Order may (at the Buyer’s option) be returned to the Seller at the Seller’s expense and risk.

2.5 In the event of any inconsistency between these GTCs, the other terms set out in the Purchase Order and the Special Conditions, the order of priority shall be (i) the Special Conditions, (ii) the other terms set out in the Purchase Order and (iii) these GTCs.

3. VARIATION

These GTCs apply to all the Buyer’s purchases and any variation to these GTCs shall have no effect unless expressly agreed in writing and signed by a duly authorised signatory of the Buyer. No other action on the part of the Buyer, whether by accepting the Supplies or otherwise, shall be construed as an acceptance of any other terms and conditions.

4. SPECIFICATION, DESCRIPTION, SAMPLE

Any specification supplied by the Buyer to the Seller, or produced by the Seller and provided to the Buyer for its approval, together with the copyright, design rights and any other Intellectual Property Rights in that specification, shall be the exclusive property of the Buyer. The Seller shall not use or disclose such specification or Intellectual Property Rights except for fulfilling its obligations under the Contract.

5. QUALITY

5.1 The Supplies shall be of the best available design quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and any applicable description, specification, pattern or sample supplied or advised by the Buyer to the Seller.

5.2 The Buyer’s rights under these GTCs are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979 (as amended), the Supply of Goods and Services Act 1982 (as amended) or otherwise.

5.3 At any time prior to or promptly following delivery of the Supplies to the Buyer, the Buyer shall have the right to inspect and test the Supplies. If the Buyer believes that the Supplies do not conform or are unlikely to conform fully with the requirements of the Contract, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to require and witness further testing and inspection.

5.4 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Supplies and any such inspection or testing shall not diminish or otherwise affect the Seller’s obligations under the Contract.

5.5 If any of the Supplies fail to comply with the provisions set out in 5.1 and 5.2 above the Buyer shall be entitled to avail itself of any one or more remedies listed in condition 14 and all such rights and remedies shall be available on a cumulative basis.

6. THE BUYER’S PROPERTY

6.1 All Intellectual Property Rights in any document, drawing, specification, sample or other item supplied by the Buyer to the Seller shall be and remain the exclusive property of the Buyer. All Intellectual Property Rights in or resulting from any work commissioned by the Buyer or developed by the Seller to complete an order for the Buyer or used by the Seller specifically in the manufacture of goods for the Buyer or resulting from any services supplied to the Buyer shall also be and remain the exclusive property of the Buyer. The Seller hereby with full title guarantee assigns to the Buyer all right, title and interest in and to the Intellectual Property Rights mentioned in this 6.1, and shall at any time at the request of the Buyer do all such acts and execute all such documents as the Buyer may require to vest in the Buyer or its nominee all such Intellectual Property Rights.

6.2 All items supplied to or developed by the Seller under or in connection with the Contract shall be held by the Seller in safe custody at its own risk insured for their full replacement value against all risks and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer’s written instructions, nor shall such items be used otherwise than for the purposes of the Contract or as authorised by the Buyer in writing.

7. TERMINATION

7.1 The Buyer shall be entitled to cancel the Purchase Order and the Contract in respect of all or part only of the Supplies by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer’s sole liability shall be to pay the Seller the value for the work in progress relating to the supply of such Supplies, up to a maximum amount of the price for the Supplies in respect of which the Buyer has exercised the right of cancellation, less any amount obtained by the Seller for selling on such Supplies or work in progress (it being deemed for these purposes that any sales of Supplies made by the Seller to a third party shall be treated as first sold from Supplies, or work in progress, cancelled by the Buyer).

7.2 The Buyer shall be entitled at any time to terminate the Contract without liability to the Seller by giving the Seller notice of such termination having immediate effect if:-

- (i) the Seller makes a voluntary arrangement with its creditors or becomes the subject of an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- (iii) the Seller ceases or threatens to cease to carry on business; or
- (iv) the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- (v) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly; or
- (vi) there is a change in control of the Buyer or the Seller. For the purpose of this condition, “control” means the ability to direct the affairs of another whether by voting or contractual rights or otherwise, and whether directly or indirectly; or
- (vii) the Seller sells or otherwise disposes of or offers to dispose of to a third party goods which bear or embody trademarks or other Intellectual Property Rights belonging to or licensed to the Buyer; or
- (viii) the Seller is in material breach of this Contract or any other contract between the Seller and the Buyer.

8. INDEMNITY AND INSURANCE

8.1 The Seller shall indemnify and keep indemnified the Buyer, its agents, employees, officers, subsidiaries, associated companies and assigns in full against all Loss arising out of (i) any breach of the Contract by the Seller, or any negligence or other default on the part of the Seller; (ii) any actual or alleged infringements of Intellectual Property Rights arising out of the purchase, sale or use of any Supplies except to the extent that any such claim arises from strict compliance by the Seller with a specification or design supplied by the Buyer (iii) any claim made against the Buyer in respect of any Loss sustained by the Buyer’s employees or agents or by any customer or third party to the extent that such Loss was caused by, relates to or arises from the Supplies; (iv) any liability under the Consumer Protection Act 1987 in respect of the Supplies; and (v) any act or omission of the Seller, its employees, agents or subcontractors in supplying, delivering and installing the Supplies and the performance of any services which form part of the Supplies or any other services, save in so far as such Loss arises directly from the Buyer’s negligence.

8.2 The Seller shall effect and maintain insurance with a substantial and reputable insurance company to cover its liabilities under the Contract or under statute for at least £2 million in respect of any one occurrence, the number of occurrences being unlimited. The Seller will, on request, produce evidence of any relevant policies to meet these obligations.

9. PRICE

9.1 The price of the Supplies shall be as stated in the Purchase Order and shall be exclusive of any applicable value added tax (which shall only be payable by the Buyer on receipt of a valid VAT Invoice); and

9.2 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

10. PAYMENT

10.1 The Seller shall invoice the Buyer at the address on the front of the Purchase Order after delivery of the Supplies and each invoice and packing list shall quote the Purchase Order number, item number(s) and line item number(s). The Buyer reserves the right to reject any invoice that does not meet these requirements.

10.2 The Buyer shall pay each correctly submitted, valid and accurate invoice for the Supplies on a Nett Monthly basis (i.e. invoices dated in any one month are due for payment by the last day of the month following), or on such other terms as may be agreed between the parties.

10.3 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

11. DELIVERY / ACCEPTANCE/ PERFORMANCE

11.1 Delivery shall be made by the Seller as set out in the Purchase Order or otherwise made known to the Seller. The Buyer accepts no responsibility for Supplies delivered outside specified times.

11.2 An advice/delivery note quoting the Seller’s name and the Purchase Order (and Seller’s stock number) and any other information specified by the Buyer must accompany each delivery or consignment of Supplies and must be displayed prominently on each delivery or consignment. Where the Special Conditions requires a Certificate of Analysis, manufacturer’s batch number or other manufacturing records, for traceability, these shall be attached to the advice/delivery note.

11.3 Unless otherwise agreed by the Buyer in writing, the Buyer shall not be obliged to return any packaging or packaging materials. If the Supplies are to be delivered/performed in installments the Contract shall, unless otherwise agreed by the Buyer in writing, be treated as a single Contract and not severable.

11.4 Without prejudice to any liability the Seller may have, the Seller must report immediately to the Buyer the occurrence of any event either within or beyond its control which is likely to affect delivery or performance of the Supplies.

11.5 Time is of the essence as to the delivery/ performance of the Supplies.

12. TITLE

On proper delivery to (including offloading at) the delivery address risk and title in the Supplies shall pass to the Buyer, without prejudice to any right of rejection.

13. FORCE MAJEURE

The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Supplies ordered if it is prevented from or delayed or hindered in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer, including, without limitation, acts of God, governmental actions, terrorism or the threat of terrorism, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14. REMEDIES

Any remedy available to the Buyer is cumulative and is not in lieu of any other remedy. Without prejudice to any other right or remedy which the Buyer may have, if any Supplies are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, or if any Purchase Order is only partially fulfilled by the agreed date for fulfilment of it, the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Supplies have been accepted by the Buyer:

- 14.1 to accept the Supplies;
- 14.2 to rescind the Contract or to cancel that Purchase Order in respect of those Supplies that have not been delivered on time;
- 14.3 to reject the Supplies (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that the price for the Supplies shall be apportioned accordingly, and a full refund for the Supplies so returned shall be paid forthwith by the Seller;
- 14.4 at the Buyer’s option to give the Seller the opportunity at the Seller’s expense either to remedy any defect in the Supplies or to supply replacement Supplies and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a time limit specified by the Buyer;
- 14.5 to refuse to accept any further deliveries of the Supplies, without any liability being owed to the Seller;
- 14.6 to carry out at the Seller’s expense any work necessary to make the Supplies comply with the Contract;
- 14.7 to claim such damages as may have been sustained in consequence of the Seller’s breaches of the Contract; and
- 14.8 to attend the Seller’s premises to inspect and/or uplift goods and materials relating to the Contract.

15. ASSIGNMENT AND SUBCONTRACTING

The Seller shall not without the Buyer’s prior written consent (which may be given, withheld or conditioned in the Buyer’s absolute discretion) assign or transfer any or all of its rights and obligations under the Contract or sub-contract the production or supply of any Supplies to be performed or delivered under the Contract; and where this occurs, with or without consent, the Seller shall retain liability for such production or supply as if the Seller had produced or supplied the Supplies. The Buyer shall be entitled to assign, transfer or sub-contract any of its rights or obligations under the Contract. The Contract will remain in force for the benefit of, and will bind, the permitted assignee of the Seller or the Buyer.

16. DATA PROTECTION

In providing the Supplies, the Seller may process (albeit incidentally) on behalf of the Buyer personal data in respect of which the Buyer is the data controller. In processing any such personal data, the Seller shall comply with all applicable data protection and privacy laws and regulations including, without limitation, the provisions of the Data Protection Act 1998 (the “**DPA**”) and not by any act or omission cause the Buyer to breach any such laws or regulations. Where, in connection with the Contract, the Seller processes personal data on the Buyer’s behalf it shall: (a) implement appropriate technical and organisational measures to protect the personal data against accidental or unlawful processing; (b) provide the Buyer with full co-operation and assistance in allowing data subjects to have access to that data and/or to ensure that the data is deleted or corrected if they are incorrect; and (c) not process the data other than as instructed by the Buyer. For the purposes of this clause, “processing”, “personal data”, “data controller” and “data subject” are as defined in the DPA.

17. MISCELLANEOUS

17.1 No failure or delay by the Buyer in enforcing the terms of the Contract shall be considered a waiver by the Buyer of its right so to do, and no waiver by the Buyer of any breach of the Contract by the Seller shall be considered a waiver of any subsequent breach of the same or any other provision.

17.2 If any provision of the Contract is held by a court of competent jurisdiction to

be illegal, void or voidable, or unenforceable, it shall, to the extent of such illegality, voidness, voidability or unenforceability, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.3 Subject to 8.1 above (which shall be enforceable by any of the persons or entities indemnified thereunder), the parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17.4 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to the other at its registered office or principal place of business or such other address as may at the relevant time be notified under this provision to the party giving the notice. Any such notice shall be deemed to have been duly given if delivered personally or sent by prepaid first class post (airmail if to an address outside the United Kingdom) or fax to the party concerned at the address just referred to. In the absence of evidence of earlier receipt, any such notice shall be deemed to have been given: (a) if left personally, when left at such address; (b) if sent by pre-paid first-class post, two days after posting; (c) if sent by air mail, six days after posting; (d) if sent by fax, when clearly and legibly received in full.

17.5 Each party acknowledges that it may have access to confidential information relating to the business or affairs of the other party (“**Confidential Information**”). Subject to the usual common law exclusions, each party specifically agrees that it will keep confidential, and will not use for any purpose other than the performance of the Contract, and will not without the prior written consent of the other disclose, directly or indirectly, to any third party, any Confidential Information of or obtained from the other party. Without limiting the scope of Confidential Information, information produced by the Seller in making, providing all performing any Supplies shall be regarded as Confidential Information of the Buyer and shall be treated by the Seller accordingly.

17.6 The Seller shall not use the Buyer’s name for the purpose of advertisement or publicity without the Buyer’s prior written consent.

17.7 If a dispute or difference arises out of the Contract, without prejudice to any rights either party may have (including but not limited to the right to obtain injunctive relief and any right of the Buyer if it reasonably believes that the Seller has repudiated the Contract or is in material breach), either party may request that the parties attempt to settle it first by negotiation. If the parties have not settled such dispute within 21 days of the commencement of negotiations the parties will attempt to settle it by referring the matter to their respective general manager (or other relevant senior manager as may be agreed by the parties) who will attempt to resolve such dispute.

18. LAW

This Contract and Purchase Order shall be governed by the laws of England and, subject to 17.7 above, the English Courts will have exclusive jurisdiction in respect of any dispute or claim arising out of or in connection with the Contract or the Purchase Order. However, a judgement obtained in the English Courts may be enforced in any court.

