

**SOL-GEL MATERIALS & APPLICATIONS LTD**  
**TERMS AND CONDITIONS OF SALE AND SUPPLY FOR USE**  
**IN RELATION TO RESEARCH AND DEVELOPMENT**

The Customer's attention is drawn to the exclusions and limitations of use and liability in clauses 8 and 9.

**1. INTERPRETATION**

**1.1 Definitions:**

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

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

**Customer:** the person, company or firm who purchases the Goods from the Supplier.

**Delivery Location:** has the meaning given in clause 4.2.

**Deposit:** this shall be the deposit price set out in the Quotation.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control as set out in clause 11.

**Goods:** the goods (or any part of them) set out in the Quotation provided by the Supplier to the Customer and any product to which the goods are applied or incorporated.

**Order:** the Customer's order for the Goods as set out in writing.

**Permitted Purpose:** the carrying out of research and development with the aim of investigating if the Goods are suitable for further commercialisation of the Customer's products.

**Quotation:** set out in writing by the Supplier, comprising of the price and quantity of Goods and the payment terms under which the Supplier is willing to supply.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

**Supplier:** Sol-Gel Materials & Applications Ltd (registered in England and Wales with company number 10625758).

**1.2 Interpretation**

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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

**2. BASIS OF CONTRACT**

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

2.2 The Quotation constitutes an offer by the Supplier to sell the Goods in accordance with this Contract. The Customer is responsible for ensuring that any applicable Specification submitted by the Customer is complete and accurate and understands that it shall only be binding on the Supplier to the extent referred to in the Quotation.

2.3 The Quotation shall only be deemed to be accepted when the Customer places an Order or pays the Deposit to the Supplier, and whichever occurs first shall be the point when the Contract comes into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with this Contract.

2.5 Any samples, drawings or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. This is not a sale by sample.

2.6 A Quotation may be withdrawn or varied at any time prior to it being accepted by the Customer and shall only automatically be withdrawn after a period of 30 (thirty) Business Days from its date of issue.

### 3. Goods

3.1 The Goods are as described by the Supplier from time to time, including, if applicable, in the Quotation, as modified by any applicable Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to modify its description of the Goods and to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.

### 4. DELIVERY

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Quotation and Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Quotation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the price of the Goods as set out in clause 7.1. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within 7 (seven) Business Days of the Supplier notifying the Customer that the Goods are ready for delivery or that delivery has been attempted, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready for delivery or that delivery had been attempted; and
- (b) the Supplier may store the Goods until delivery or collection takes place, and charge the Customer for all related costs and expenses (including insurance), and/or
- (c) the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods realised.

4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 5. QUALITY

5.1 The Supplier warrants that on delivery, and for a period of 14 days from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - (d) the Customer alters such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description as a result of changes made by the Supplier to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 0, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
  - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), then, without limiting any other right or remedy the Supplier may at any time:
- (a) require the Customer to deliver up all Goods in its possession that have not been used for the Permitted Purpose, or irrevocably incorporated into another product; and
  - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

**7. PRICE AND PAYMENT**

- 7.1 The price of the Goods shall be the price set out in the Quotation.
- 7.2 The payment terms for the Goods, including when payment is due, shall be the payment terms set out in the Quotation. If the time when payment is due is not detailed in the Quotation, then this shall be governed by Clause 7.6(a). In either case, the time for payment shall be of the essence of the Contract.
- 7.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.4 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.5 The Supplier may invoice the Customer for the Goods as per the payment terms set out in the Quotation or at any time after the completion of delivery.
- 7.6 The Customer shall pay each invoice submitted by the Supplier as per the payment terms set out in the Quotation, or where it is not detailed the Quotation:
- (a) within 14 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - (c) time for payment shall be of the essence of the Contract.
- 7.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% per year above the Bank of England's base rate from time to time, but at 4% per year for any period when that base rate is below 0%.
- 7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**8. LIMITATION ON USE**

- 8.1 The Goods will be used by the Customer only for the Permitted Purpose.
- 8.2 The Customer knows that the Goods have not been certified for packaging foods products.
- 8.3 Under no circumstances will the Goods be used in the treatment or diagnosis of humans or be administered to any animal that could enter the human or animal food chain, nor shall the Goods be used in the provision of a commercial service nor otherwise for the benefit of a third party without the Supplier's prior written consent.
- 8.4 The Customer shall not, and shall not attempt to, reverse engineer the Goods to discover its constituents and formulation of the Goods, in particular of any sol-gel product forming all or part of the Goods.
- 8.5 Nothing herein shall be construed as preventing the Supplier itself or through third parties from carrying out research and development similar or identical to the Permitted Purpose.
- 8.6 The Customer is not permitted to provide samples of the Goods to any third party or to permit any third party to have access to the Goods.
- 8.7 The Customer is not permitted to sell (or resell) the Goods to any third party.
- 8.8 This clause 8 shall survive termination of the Contract.

**9. LIMITATION OF LIABILITY**

- 9.1 The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price.

- 9.2 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Nothing in in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.
- 9.4 Subject to clause 9.3, the Supplier's total liability to the Customer shall not exceed the price paid for the Goods, as set out in clause 7.1.
- 9.5 Subject to clause 9.3, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 9.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of having grounds for the claim and shall expire 1 year from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.7 This clause 9 shall survive termination of the Contract.
- 10. TERMINATION**
- 10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) the Customer 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;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

**11. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

**12. GENERAL**

**12.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

**12.2 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the Goods, business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

**12.3 Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**12.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**12.7 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number sent by email to the address specified in the Order or the order confirmation.
- (b) Any notice shall be deemed to have been received
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the two Business Day after posting or at the time recorded by the delivery service; and
  - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 12.8 **Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.9 **Equitable Relief.** Each party recognises that any breach or threatened breach of this Contract may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.