



AUTOMOTIVE PRODUCTS OF EXCELLENCE  
SINCE 1946

## SUPPLY AND PURCHASE AGREEMENT

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THIS AGREEMENT is dated

2016

### PARTIES

- 1 **IVOR SEARLE LIMITED** a company incorporated and registered in England and Wales with company number 01364071, whose registered office is at 2, Regal Lane, Soham, Ely, Cambridgeshire, CB7 5BA (“**Ivor Searle**”); and
- 2 **[CUSTOMER NAME AND ADDRESS]** (“**the Customer**”)

### BACKGROUND

- 1 Ivor Seale carries on the business of selling the Equipment (as defined herein below).
- 2 These Conditions set out the basis upon which Ivor Searle shall purchase the Old Core Unit (as defined herein below) or supply Equipment and/or provide Services (both as defined herein below), it being mutually agreed between the parties that Ivor Searle shall supply Equipment and/or provide Services to the Customer on the terms set out in this Agreement.
- 3 Unless otherwise stated, these Conditions, together with any subsequent Order placed by either party, made pursuant to, and more specifically referring to this Agreement; shall comprise the whole agreement between Ivor Searle and the Customer in relation to the Contract.

### AGREED TERMS

- 1 **INTERPRETATION**
  - 1.1 In these Conditions, the following definitions apply:
    - 1.1.1 **Business Day**: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
    - 1.1.2 **“Conditions”**: means these terms and conditions contained in this Agreement as amended from time to time in accordance with Condition 16.4.
    - 1.1.3 **“Contract”**: means the contract between Ivor Searle and the Customer for the purchase of the Old Core Unit or supply of Equipment and/or the provision of Services as detailed in the Order, and in accordance with these Conditions.
    - 1.1.4 **“Deliverables”**: means the deliverables to be provided in the provision of the Services as set out in the Order.

- 1.1.5 “**Delivery Location**”: has the meaning set out in Condition 6.2.
- 1.1.6 “**Equipment**”: means the equipment set out in the Order.
- 1.1.7 “**Exchange and Refund Policy**”: means those set out in the Exchange and Refund Policy as amended from time to time on Ivor Searle’s website
- 1.1.8 “**Force Majeure Event**”: has the meaning given to it in Condition 22.1.
- 1.1.9 “**Intellectual Property Rights**”: means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.1.10 “**Old Core Unit**” means any of the Customer’s old and used engines, gearboxes, turbocharges or cylinder heads (or any part of them) as set out in the Order.
- 1.1.11 “**Order**”: means either the Customer’s order for the supply of Equipment and/or Services by Ivor Searle, or Ivor Searle’s order to buy, on an exchange basis, from the Customer the Old Core Unit always in accordance with these Conditions.
- 1.1.12 “**Services**”: the services to be supplied by Ivor Searle to the Customer as set out in the Order.
- 1.1.13 “**Specification**”: means any specification for the Equipment, Services or Deliverables, or the Old Core Unit as the case may be that are agreed in writing between Ivor Searle and the Customer.
- 1.1.14 “**Term**”: means the term of this agreement, as determined in accordance with Condition 2.
- 1.2 In these Conditions, the following interpretations shall apply:
- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - (b) A reference to a party includes its personal representatives, successors or permitted assigns.
  - (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
  - (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
  - (e) A reference to writing or written includes fax and e-mail.

## 2 COMMENCEMENT AND TERM

This Agreement shall commence on the Commencement Date (as defined in Condition 3.2) and shall continue, unless terminated earlier in accordance with Condition [20].

## PART A: SUPPLY OF EQUIPMENT OR SERVICES

Where the Order relates to the supply of Equipment and/or Services, the provisions of this Part A shall apply to the Contract.

### 3 BASIS OF CONTRACT

- 3.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when Ivor Searle issues written acceptance of the Order at which point and on which date the Contract shall come into existence (the "**Commencement Date**").
- 3.3 This Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Ivor Searle which is not set out in this Agreement. The Customer confirms that it has authority to bind any business on whose behalf it uses our website to purchase the Equipment and enter into this Agreement.
- 3.4 Any samples, drawings, descriptions or advertising issued by Ivor Searle in respect of the Equipment and/or Services or contained in Ivor Searle's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 3.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.6 Any quotation given by Ivor Searle shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 3.7 All of these Conditions shall apply to the supply of both Equipment and/or Services except where application to one or the other is specified.

### 4 ORDERS

- 4.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Equipment on the terms of this Agreement, which Ivor Searle shall be free to accept or decline at its absolute discretion.
- 4.2 No Order shall be deemed to be accepted by Ivor Searle until it issues an Order reference number or (if earlier) Ivor Searle notifies the Customer that the Order is ready for delivery in accordance with Condition 6.
- 4.3 Each Order shall:
  - 4.3.1 be given in writing or, if given orally, shall be confirmed in writing within 2 Business Days;

- 4.3.2 specify the type, description and quantity of Equipment ordered and the Products' code numbers; and
- 4.3.3 specify the date of the Delivery and Delivery Location after placing the Order in accordance with Condition 6.

4.4 The Customer may within 2 days of placing an Order amend or cancel an Order by written notice to Ivor Searle. If the Customer amends or cancels an Order, its liability to Ivor Searle shall be limited to payment to Ivor Searle of all costs reasonably incurred by Ivor Searle in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that where the amendment or cancellation results from Ivor Searle's failure to comply with its obligations under this Agreement the Customer shall have no liability to Ivor Searle in respect of it

## **5 DESCRIPTION**

- 5.1 The Equipment and/or Services are described in Ivor Searle's brochures or catalogues as modified by the Order or any applicable Specification.
- 5.2 Ivor Searle reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 5.3 The images of the Equipment in Ivor Searle's brochures or catalogues and on Ivor Searle's website are for illustrative purposes only. Although Ivor Searle has made every effort to ensure the colours are accurately represented there may be minor variations.

## **6 DELIVERY OF EQUIPMENT AND/OR DELIVERABLES**

- 6.1 Ivor Searle shall ensure that:
  - 6.1.1 the Equipment and/or Deliverables are accompanied by a note which shows the date of the Order, all relevant Ivor Searle reference numbers, the type and quantity of the Equipment and/or Deliverables and, if the Order is being delivered or collected by instalments, the outstanding balance of Equipment and/or Deliverables remaining to be delivered or collected; and
  - 6.1.2 if Ivor Searle requires the Customer to return any packaging material to Ivor Searle, that fact shall be clearly stated on the note. The Customer shall make any such packaging materials available for collection at such times as Ivor Searle shall reasonably request. Returns of packaging materials shall be at Ivor Searle's expense.
- 6.2 Ivor Searle shall deliver or make available for collection, the Equipment and/or Deliverables at a location as set out in the Order or such other location as the parties may agree in writing.
- 6.3 Any dates quoted for delivery or making available for collection, of the Equipment and/or Deliverables are approximate only, and the time of delivery or collection is not of the essence.
- 6.4 If the Customer fails to collect or take delivery of the Equipment and/or Deliverables within 5 Business Days of Ivor Searle notifying the Customer that the Equipment and/or Deliverables are ready, then except where such failure or delay is caused by Ivor Searle's failure to comply with its obligations under the Contract in respect of the Equipment and/or Services:
  - 6.4.1 delivery of the Equipment and/or Deliverables shall be deemed to have been completed

at 9.00 am on the 6<sup>th</sup> Business Day following the day on which Ivor Searle notified the Customer that the Equipment and/or Deliverables were ready; and

- 6.4.2 Ivor Searle shall store the Equipment and/or Deliverables until delivery or collection takes place, and charge the Customer for all related costs and expenses (including insurance).
- 6.5 If 90 Business Days after Ivor Searle notified the Customer that the Equipment and/or Deliverables were ready for delivery or collection the Customer has not collected or taken delivery, Ivor Searle may resell or otherwise dispose of part or all of the Equipment and/or Deliverables and charge the Customer for any shortfall below the price of the Equipment and or Deliverables and Ivor Searle's storage costs.
- 6.6 Ivor Searle may deliver or make available for collection the Equipment and/or Deliverables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or collection or defect in an instalment shall not entitle the Customer to cancel any other instalment or refuse to take delivery of the Equipment and/or Deliverables

## **7 QUALITY OF EQUIPMENT AND/OR DELIVERABLES**

- 7.1 Ivor Searle warrants that on delivery or collection, and for a period of 12 months from the date of delivery or collection (the "**Warranty Period**"), the Equipment and or Deliverables shall:
  - 7.1.1 conform in all material respects with their description and any applicable Specification; and
  - 7.1.2 be free from material defects in design, material and workmanship;
- 7.2 Subject to Condition 7.3, if:
  - 7.2.1 the Customer gives notice in writing during the Warranty Period and within a reasonable time of discovery that some or all of the Equipment and/or Deliverables do not comply with the warranty set out in Condition 7.1; and
  - 7.2.2 Ivor Searle is given a reasonable opportunity of examining such Equipment and/or Deliverables; and
  - 7.2.3 the Customer returns such Equipment and/or Deliverables to Ivor Searle's place of business at Customer's cost,  
  
Ivor Searle shall, at its option, repair or replace the defective Equipment and/or Deliverables, or refund the price of the defective Equipment and/or Deliverables in full.
- 7.3 Ivor Searle shall not be liable for the Equipment and/or Deliverables' failure to comply with the warranty in Condition 7.1 if:
  - 7.3.1 the Customer makes any further use of such Equipment and/or Deliverables after giving a notice in accordance with Condition 7.2.1;
  - 7.3.2 the defect arises because the Customer failed to follow Ivor Searle's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment and/or Deliverables or (if there are none) good trade practice;
  - 7.3.3 the defect arises as a result of Ivor Searle following any drawing, design or Specification supplied by the Customer;

- 7.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 7.3.5 the Equipment and/or Deliverables differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 7.4 Except as provided in this Condition 7, Ivor Searle shall have no liability to the Customer in respect of the Equipment and/or Deliverables' failure to comply with the warranty set out in Condition 7.1.
- 7.5 The terms of these Conditions shall apply to any repaired or replacement Equipment and/or Deliverables supplied by Ivor Searle under Condition 7.2 for the remainder of the relevant Warranty Period.
- 7.6 Except as expressly provided in these Conditions, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated hereunder, and any condition, warranty or other term in this regard which might otherwise be implied or incorporated into these Conditions, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

## **8 TITLE AND RISK**

- 8.1 The risk in the Equipment and/or Deliverables shall pass to the Customer on completion of delivery or collection.
- 8.2 Title to the Equipment and/or Deliverables shall not pass to the Customer until Ivor Searle has received payment in full (in cash or cleared funds) for the relevant Equipment and/or Deliverables.
- 8.3 Until title to the Equipment and/or Deliverables has passed to the Customer, the Customer shall:
  - 8.3.1 store the Equipment and/or Deliverables (at no cost to Ivor Searle) separately from all other goods held by the Customer so that they remain readily identifiable as Ivor Searle's property;
  - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment and/or Deliverables;
  - 8.3.3 maintain the Equipment and/or Deliverables and any packaging materials in satisfactory condition and keep them insured against all risks for their full price on Ivor Searle's behalf from the date of delivery or collection;
  - 8.3.4 notify Ivor Searle immediately if it becomes subject to any of the events listed in Condition 20.1.2; and
  - 8.3.5 give Ivor Searle such information relating to the Equipment and/or Deliverables as Ivor Searle may require from time to time,but the Customer may resell or use the Equipment in the ordinary course of its business.
- 8.4 If before title to the Equipment and/or Deliverables passes to the Customer, the Customer becomes subject to any of the events listed in Condition 20.1.2, or Ivor Searle reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Equipment and/or Deliverables have not been resold, or irrevocably incorporated into other equipment, and without limiting any other right or remedy Ivor Searle may have, Ivor Searle may at any time require the Customer to

deliver up the Equipment and/or Deliverables and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment and/or Deliverables are stored in order to recover them.

## **9 SUPPLY OF SERVICES**

- 9.1 Ivor Searle shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 9.2 Ivor Searle shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 Ivor Searle shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 9.4 Ivor Searle warrants to the Customer that the Services will be provided using reasonable care and skill.
- 9.5 If Ivor Searle fails to perform the Services in accordance with the Specification, Ivor Searle shall, at its option, re-perform such Services or reimburse the Customer any amount previously paid in respect of such Services.

## **10 CUSTOMER'S OBLIGATIONS**

- 10.1 The Customer shall:
  - 10.1.1 ensure that the terms of the Order and the Specification are complete and accurate;
  - 10.1.2 co-operate with Ivor Searle in all matters relating to the provision of Equipment and/or Services;
  - 10.1.3 provide Ivor Searle, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Ivor Searle to provide the Equipment and/or Services;
  - 10.1.4 provide Ivor Searle with such information and materials as Ivor Searle may reasonably require to supply the Equipment and/or Services, and ensure that such information is accurate in all material respects;
  - 10.1.5 within two months of delivery or collection of the Equipment, provide any Old Core Unit specified in the Order as required in exchange for the Equipment on a new for old basis and in accordance with the Exchange and Refund Policy;
  - 10.1.6 prepare the Customer's premises for the supply of the Equipment and/or Services by Ivor Searle; and
  - 10.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Equipment and/or Services before the date on which the Equipment is to be received and/or the Services are to start.
- 10.2 If Ivor Searle's performance of any of its obligations in respect of the Equipment and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (the "**Customer Default**") then:
  - 10.2.1 Ivor Searle shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to

rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Ivor Searle's performance of any of its obligations;

- 10.2.2 Ivor Searle shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Ivor Searle's failure or delay to perform any of its obligations; and
- 10.2.3 the Customer shall reimburse Ivor Searle on written demand for any costs or losses sustained or incurred by Ivor Searle arising directly or indirectly from the Customer Default
- 10.3 The Customer shall keep and maintain and insure (where applicable) the Equipment together with any packaging material in the same condition as delivered by Ivor Searle to the Customer's premises and shall not dispose of or use the Equipment and the packaging materials other than in accordance with Ivor Searle's written instructions or authorisation.
- 10.4 The Customer shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Equipment, the use of any equipment or materials supplied by the Customer and the use of the Customer's own equipment in relation to the Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment], in all cases before the date on which the Services are to start.

## 11 PRICE AND PAYMENT

- 11.1 The price for Equipment and/or Services shall be the prices set out in the Order or, if no price is quoted, the price set out in Ivor Searle's published price list as at the date of delivery.
- 11.2 Where specified in the Order, the Customer shall pay a deposit. The deposit shall be returned to the Customer on receipt by Ivor Searle of any Old Core Unit to be provided to Ivor Searle pursuant to Condition 10.1.5. The deposit may not be set off or deducted against any invoices issued by Ivor Searle. The full amount of the deposit shall only be returned where, in Ivor Searle's reasonable opinion, the Old Core Unit provided pursuant to Condition 10.1.5 is in good working condition. If such Old Core Unit is not in good working condition, Ivor Searle shall make such deduction from the deposit as it sees fit in accordance with the Exchange and Refund Policy.
- 11.3 Ivor Searle reserves the right to:
  - 11.3.1 increase the price of the Equipment and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment and/or the Services to Ivor Searle that is due to:
    - 11.3.1.1 any factor beyond the control of Ivor Searle (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 11.3.1.2 any request by the Customer to change the delivery date(s), quantities or types of Equipment and/or Services ordered, or the Specification; or
    - 11.3.1.3 any delay caused by any instructions of the Customer in respect of the Equipment and/or Services or failure of the Customer to give Ivor Searle adequate or accurate information or instructions in respect of the Equipment and/or Services.
- 11.4 Ivor Searle shall invoice the Customer and Customer shall pay such invoices as



specified in the Order.

- 11.5 Without limiting any other right or remedy of Ivor Searle, if the Customer fails to make any payment due to Ivor Searle under the Contract by the due date for payment (“**Due Date**”), Ivor Searle shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Lloyds TSB Bank Plc base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and to charge late payment compensation on each outstanding debt pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.6 All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (the “**VAT**”).
- 11.7 The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. Ivor Searle may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Ivor Searle to the Customer.

## **PART B: PURCHASE OF EQUIPMENT**

Where the Order relates to the purchase of the Old Core Unit by Ivor Searle from the Customer on an exchange basis, the provisions of this Part B shall apply to the Contract.

### **12 QUALITY AND DEFECTS**

- 12.1 The Old Core Unit shall conform in all respects set out in the Exchange and Refund Policy and with the Order and Specification.
- 12.2 Ivor Searle's rights under these Conditions are in addition to the statutory conditions implied in favour of Ivor Searle by the Sale of Goods Act 1979.
- 12.3 Ivor Searle shall on receipt of the Old Core Unit, promptly inspect or test the Equipment to verify compliance with the Specification.
- 12.4 If the results of any inspection or testing cause Ivor Searle to be of the opinion that the Old Core Unit does not conform or is unlikely to conform with the Exchange and Refund Policy or the Order or to any Specification, Ivor Searle shall inform the Customer and the Customer shall immediately take such action as is necessary to ensure conformity and if unable to do so within 7 days of receiving such notice, Ivor Searle shall be entitled to terminate the Contract and the Customer shall refund any amount or deposit previously paid or by way of a credit note in respect of the Old Core Unit.

### **13 DELIVERY**

- 13.1 The Customer shall comply with the Exchange and Refund Policy prior to delivery of the Old Core Unit to or collection by Ivor Searle.
- 13.2 The Old Core Unit shall be delivered to Ivor Searle's place of business or collected from such other place as is agreed by Ivor Searle in writing.
- 13.3 The date for delivery or collection shall be specified in the Order.
- 13.4 Time for delivery or collection shall be of the essence.
- 13.5 If the Old Core Unit is not delivered or available for collection on the agreed date then, without prejudice to any other rights which it may have, Ivor Searle reserves the right to:

- 13.5.1 cancel the Contract in whole or in part;
- 13.5.2 refuse to collect or accept any subsequent delivery of the Old Core Unit which the Customer attempts to make;
- 13.5.3 recover from the Customer any expenditure reasonably incurred by Ivor Searle in obtaining the Old Core Unit in substitution from another supplier; and
- 13.5.4 claim damages for any additional costs, loss or expenses incurred by Ivor Searle which are in any way attributable to the Customer's failure to deliver the Old Core Unit on the agreed date.
- 13.6 If the Customer requires Ivor Searle to return any packaging material to the Customer that fact must be clearly stated on any delivery note delivered to Ivor Searle and any such packaging material shall only be returned to the Customer at the cost of the Customer.
- 13.7 Where Ivor Searle agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Customer to deliver any one instalment shall entitle Ivor Searle at its option to treat the whole Contract as repudiated.
- 13.8 If the Old Core Unit is delivered to Ivor Searle in excess of the quantities ordered Ivor Searle shall not be bound to pay for the excess and any excess shall be and shall remain at the Customer's risk and shall be returnable at the Customer's expense.

#### **14 RISK/PROPERTY**

- 14.1 The Old Core Unit shall remain at the risk of the Customer until delivery to Ivor Searle is complete when ownership of the Old Core Unit shall pass to Ivor Searle.

#### **15 PRICE AND PAYMENT**

- 15.1 The price or deposit amount of the Old Core Unit shall be determined by Ivor Searle in accordance with the type of unit and their price list for the Old Core Unit and shall be stated in the Order or Ivor Searle's invoice.
- 15.2 No variation in the price nor extra charges shall be accepted by Ivor Searle.
- 15.3 Without prejudice to any other right or remedy, Ivor Searle reserves the right to set off any amount owing at any time from the Customer to Ivor Searle against any amount or deposit payable by Ivor Searle to the Customer in respect of the Old Core Unit under the Contract.
- 15.4 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, the Customer shall not be entitled to suspend deliveries of the Old Core Unit to Ivor Searle or refuse collection of the Old Core Unit by Ivor Searle from the Customer's premises as a result of any sums being outstanding.

### **PART C: GENERAL TERMS**

The provisions of this Part C shall apply to both Part A and Part B of the Contract.

#### **16 APPLICATION OF TERMS**

- 16.1 For the avoidance of doubt, subject to any variation under Condition 16.4, these Conditions are the only conditions upon which Ivor Searle is prepared to deal with the Customer and they shall govern the Contract to the exclusion of all other terms or

conditions that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

16.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

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

16.4 Any variation to these Conditions, including the introduction of any additional terms and conditions to the Contract; shall have no effect unless expressly agreed in writing and signed by Ivor Searle.

## 17 **CONFIDENTIALITY**

17.1 Each party (the "**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

17.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition 17 shall survive termination of the Contract.

## 18 **INTELLECTUAL PROPERTY RIGHTS**

18.1 All Intellectual Property Rights in or arising out of or in connection with Ivor Searle's supply of Equipment, Deliverables or Services shall always be owned by Ivor Searle.

18.2 Except to the extent that a licence may be necessary to enable the Customer to make reasonable use of the Deliverables and the Services, nothing shall have the effect of assigning, transferring, licensing, or creating any other interest in favour of the Customer whether by way of legal or commercial security or other right, to use or exploit, the Intellectual Property Rights of Ivor Searle.

18.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights incorporated into the Deliverables or otherwise required to receive the benefit of the Equipment and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on Ivor Searle obtaining a written licence from the relevant licensor on such terms as will entitle Ivor Searle to license such rights to the Customer.

18.4 The Customer shall keep and maintain all materials, equipment, tools, documents, copyright, design rights or any other forms of intellectual property rights and other property of Ivor Searle (the "**Ivor Searle's Materials**") at the Customer's premises in safe custody at its own risk, maintain Ivor Searle's Materials in good condition until returned to Ivor Searle, and not dispose of or use Ivor Searle's Materials other than in accordance with Ivor Searle's written instructions or authorisation.

## 19 **LIMITATION OF LIABILITY**

- 19.1 Nothing in these Conditions shall limit or exclude Ivor Searle's liability for:
- 19.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 19.1.2 fraud or fraudulent misrepresentation; or
- 19.1.3 any other liability which may not be excluded or limited under applicable law.
- 19.2 Subject to Condition 19.1:
- 19.2.1 Ivor Searle shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, contract, misrepresentation or otherwise for, for any loss of profit, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising under or in connection with the Contract ; and
- 19.2.2 Ivor Searle's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer or for a Contract under Part B of these Conditions, the amount received by the Customer, in respect of the relevant Order
- 19.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 19.4 This Condition 19 shall survive termination of the Contract.

## **20 TERMINATION**

- 20.1 Without limiting its other rights or remedies, each party may terminate a Contract made under these Conditions with immediate effect by giving written notice to the other party if:
- 20.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach; or
- 20.1.2 the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction.

## **21 CONSEQUENCES OF TERMINATION**

- 21.1 On termination of the Contract for any reason:
- 21.1.1 the Customer shall immediately pay to Ivor Searle all of Ivor Searle's outstanding unpaid invoices and interest and, in respect of Equipment and/or Services supplied but for which no invoice has yet been submitted, Ivor Searle shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- 21.1.2 the Customer shall return any Equipment and/or any Deliverables which have not been fully paid for. If the Customer fails to do so, then Ivor Searle may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 21.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 21.1.4 Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## **22 FORCE MAJEURE:**

- 22.1 For the purposes of this Contract, "**Force Majeure Event**" means an event or circumstances beyond the reasonable control of Ivor Searle including, without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Ivor Searle's subcontractors.
- 22.2 Ivor Searle shall not be liable to the Customer as a result of any delay or failure to perform any of its obligations under this Contract as a result of a Force Majeure Event.
- 22.3 If the Force Majeure Event prevents Ivor Searle from providing any of the Services and/or Equipment for more than 4 weeks, Ivor Searle shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## **23 ASSIGNMENT AND SUBCONTRACTING:**

- 23.1 Ivor Searle may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 23.2 The Customer shall not, without the prior written consent of Ivor Searle, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **24 NOTICES:**

- 24.1 Any notice required to be given under these Conditions or in connection with the matters contemplated by them shall, except where otherwise specifically provided, be in writing personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address, or sent by first class post, in which case it shall be deemed to have been given two Business Days after the date of posting, or sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report.
- 24.2 This Condition 24 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "**writing**" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

## **25 WAIVER AND CUMULATIVE REMEDIES:**

- 25.1.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a

party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

25.1.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

**26 SEVERANCE:**

26.1.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

26.1.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**27 NO PARTNERSHIP OR AGENCY:**

27.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**28 THIRD PARTIES:**

28.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

**29 VARIATIONS:**

Except as set out in this Agreement, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Ivor Searle.

**30. FURHER ASSURANCE:**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and performs such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

**31. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**32. GOVERNING LAW AND JURISDICTION:**

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF**, this Agreement has been executed by the duly authorised representatives of the parties:

On behalf of **Ivor Searle Limited**

On behalf of ***[insert Customer name]***

Signed:

.....

Signed:

.....

Print Name:

Print Name: