

TERMS AND CONDITIONS OF SALE (these "Terms and Conditions")

1. DEFINITIONS AND INTERPRETATION

In this Contract:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Business Day"	any day other than: (i) a Saturday; (ii) a Sunday; (iii) a day which is a bank holiday in England (as set out on www.gov.uk/bank-holidays for bank holidays in England); or (iv) a day when Devonshire is not open for business;
"Contract"	these Terms and Conditions and the terms of the relevant Order (except to the extent that the terms of the Order deviate from the Quotation (if any) or from the Long Term Agreement (if any), or are not otherwise agreed by Devonshire);
"Customer"	the customer of Devonshire whose details may be more particularly set out in the relevant order or long term agreement between the Parties;
"Devonshire"	Devonshire Healthcare Services Limited, a company registered in England and Wales under number 4136267 whose registered office is at 6th Floor, One London Wall, London EC2Y 5EB, UK;
"Event of Force Majeure"	has the meaning given to it in Clause 10.1;
"Export Delivery"	a delivery where the destination of the Products for the Customer under this Contract is to a location other than the UK, Republic of Ireland, the Isle of Man or the Channel Islands;
"Liability"	has the meaning given to it in Clause 7.7.1;
"Long Term Agreement"	any written agreement between the Parties governing the long term relationship concerning the supply of Products by Devonshire to the Customer, and which may be in the form of the Customer's agreement to proceed with placing an Order following Devonshire's written confirmation of the Parties' overall relationship terms, the terms of which agreement may be updated with immediate effect by Devonshire informing the Customer in writing of any variation to the same from time to time (and which terms are agreed by the Customer's conduct in proceeding with placing an Order following receipt of Devonshire's relevant written communication);
"Negligence"	has the meaning given to it in Clause 7.7.2;
"Order"	the request by the Customer to Devonshire for the provision of particular Products, which shall be in accordance with the terms of any corresponding or relevant Quotation and any corresponding or relevant Long Term Agreement;
"Party"	either Devonshire or the Customer;
"Payment"	has the meaning given to it in Clause 4.1;
"Price"	the price payable by the Customer to Devonshire for the supply by Devonshire of the Products, as stipulated or calculated in accordance with this Contract or any Long Term Agreement (or if no such price or basis is stipulated there, this shall be Devonshire's standard price for the Products current at the date the Order is accepted by Devonshire (and the Customer acknowledges that this may be an updated price since any previous order));
"Product"	any of Devonshire's products provided or to be provided by Devonshire to the Customer pursuant to this Contract, which may include pharmaceutical drugs, medical devices, medical equipment and medical supplies;
"Sanctioned Person"	any individual, entity or body (i) specifically designated under Sanctions Laws, or (ii) owned or controlled by any individual, entity or body specifically designated or listed under Sanctions Laws, or (iii) acting for or on behalf of any individual, entity or body specifically designated or listed under Sanctions Laws;
"Sanctions Laws"	any applicable law, regulation or wider measure relating to the adoption, implementation and enforcement of economic sanctions, export controls and trade embargos;
"Quotation"	the written quotation (if any) from Devonshire to the Customer detailing the Products that Devonshire is willing in principle to supply to the Customer for a particular order; and
"UK and Ireland Delivery"	a delivery where the destination of the Products for the Customer under this Contract is to a location in the UK, Republic of Ireland, the Isle of Man or the Channel Islands;

- 1.2 references to "Clauses" are to clauses of these Terms and Conditions;
- 1.3 headings are inserted for convenience only and shall not affect the interpretation or construction of this Contract;
- 1.4 words imparting the singular shall include the plural and vice versa;

- 1.5 words imparting a gender shall include the other gender and the neutral and references to "persons" shall include an individual, company, corporation, firm or partnership;
- 1.6 references to "includes" or "including" or like words or expressions shall mean without limitation;
- 1.7 any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- 1.8 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification); and
- 1.9 references to "written" or in "writing" includes in electronic form and similar means of communication.

2. CONTRACT

- 2.1 The terms of this Contract apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to Devonshire's supply of all Products. The placement of any Order, the giving by the Customer of any delivery instruction or the acceptance by the Customer of delivery of the Products shall constitute unqualified acceptance by the Customer of these Terms and Conditions.
- 2.2 Save as expressly provided herein, this Contract (together with any documents referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Contract and in any way relating to the subject matter of this Contract and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Contract based on any representation that is not expressly incorporated into this Contract.
- 2.3 This Contract (together with any documents referred to in it) constitutes the whole agreement and understanding of the Parties as to its subject matter and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.4 Subject to Clause 2.2, all materials and other particulars furnished by Devonshire prior to any Quotation or any Long Term Agreement, or in Devonshire's sales or marketing materials or other documents (including its catalogues, trade literature, brochures, quotations, price lists or website) or made orally by Devonshire, are given for general information purposes only and the Customer acknowledges that it is not entering into this Contract in reliance upon any such materials or other particulars (except to the extent that such materials or particulars form part of this Contract); the Products may also look different to their representation in any such materials or particulars.
 - 2.5 The Customer shall submit the Order in writing (including electronically through such medium or third party as stipulated, permitted or made available by Devonshire), unless Devonshire requires the Order to be in a particular form, in which case the Customer shall ensure that the Order is in that form.
 - 2.6 Subject to Clause 2.7, unless Devonshire indicates a contrary method of acceptance in writing, this Contract shall be legally formed and the Parties shall be legally bound on receipt by Devonshire of the Customer's Order that conforms to Clause 2.5 (including the terms of any applicable Quotation).
- 2.7 Devonshire may at any time before delivery (or collection by the Customer, if permitted by Devonshire) without Liability inform the Customer that it is cancelling or rejecting all or any part of the Order and terminating all or part of this Contract if the relevant Products are not in stock or cannot be obtained by Devonshire (or with the required shelf-life in accordance with this Contract) or need to be restricted by Devonshire (in its absolute discretion) due to a shortage of supply or an Event of Force Majeure.
- 2.8 No change to this Contract shall be binding unless it is agreed in writing by authorised representatives of both Parties.
- 2.9 In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the rest of this Contract or any Long Term Agreement, then the following order of precedence shall apply:
 - 2.9.1 any Long Term Agreement prevails over the Quotation, the Order and these Terms and Conditions; and
 - 2.9.2 the Quotation prevails over the Order and these Terms and Conditions; and
 - 2.9.3 the Order prevails over these Terms and Conditions.
- 2.10 The Customer shall ensure that the Order contains full details of the Product to be supplied, the quantity of each Product ordered, any applicable regulatory requirements relating to the Product, and the identity of the Customer. Any price or delivery requirement other than in accordance with this Contract is of no effect.
- 2.11 It is the Customer's responsibility to ensure that all information supplied by it is complete and accurate. The Customer shall ensure that the Order meets its particular requirements including for the particular place of supply or use.
 - 2.12 Any advice or recommendation given by or on behalf of Devonshire to the Customer as to storage, transport, application or use of the Products is for convenience only and unless confirmed in writing by an authorised representative of Devonshire that it is binding on Devonshire it shall be entirely at the Customer's own risk to follow any such advice or recommendation without any Liability on Devonshire. The Customer is responsible for storing, transporting, applying and using the Products in accordance with all applicable laws, regulations, byelaws and codes of practice.
- 2.13 Each Order constitutes a separate contract. There may be more than one contract between the Parties in force at the same time as this Contract.
- 2.14 Unless otherwise expressly agreed between the Parties in writing, no Contract shall be a sale by sample.

3. DELIVERY AND RISK

- 3.1 Subject to Clauses 2.7, 3.2, 3.21, 8.12, 9 and 10.5, in consideration for the payment of the Price and any other sums due by the Customer under this Contract, Devonshire shall supply to the Customer the Products referred to in the Order.
- 3.2 Devonshire reserves the right to delay delivery or cancel an Order if the amount owing by the Customer to Devonshire under all contracts between the Parties (including under this Contract) exceeds any credit limit for credit extended by Devonshire to the Customer from time to time or if any payment due from the Customer to Devonshire has not yet been made. Devonshire may update the credit limit with immediate effect by informing the Customer in writing from time to time.
- 3.3 Devonshire shall use its reasonable endeavours to perform its obligations within any timescales set out in this Contract, but time for performance shall not be of the essence and Devonshire shall not have any Liability for any delays or failure to accurately perform its obligations:
- 3.3.1 if it has used those endeavours; or
- 3.3.2 if caused by any failure or delay on the part of the Customer or the Customer's agents, staff, officers, employees, contractors or customers or by any breach by the Customer of this Contract or any other contract between the Parties.
- 3.4 Any timeframe for delivery in a previous contract shall not be an indication of the timeframe for delivery in this Contract. Devonshire shall inform the customer when it expects that the Products will be delivered or be ready for receipt or collection, as applicable; however, timeframes given are estimates only.
- 3.5 The Customer shall ensure that it is ready to receive or collect the Products in accordance with this Contract at the times reasonably stipulated by Devonshire. If the Customer does not collect the Products at the date and time stipulated by Devonshire as being the date and time for collection, (without prejudice to any other right or remedy available to it) Devonshire may charge the Customer for its reasonable storage fees at its then standard storage rates and for Devonshire's other reasonable relevant costs.
- 3.6 Unless otherwise agreed between the Parties, Devonshire's delivery shall take place between 8am and 4pm on a Business Day.
- 3.7 Packaging shall be in accordance with Devonshire's customary practices (suitable for anticipated transport conditions for arrival with the Customer so that the Products are not damaged or contaminated) and with leaflets and labels in English or as otherwise stipulated. The Customer shall be responsible for ensuring that it carries out re-labelling or re-packaging in accordance with all applicable laws, regulations, laws, regulations, byelaws and codes of practice. If the Customer would like to place a special request for packaging, this is subject to Devonshire's agreement and the Customer shall pay the extra cost.
- 3.8 Partial delivery or performance shall be permitted. Devonshire may deliver and provide the Products in instalments. Unless the Parties otherwise agree in writing, Devonshire may invoice the customer for each instalment.
- 3.9 Delay, default or non-delivery of any instalment by Devonshire shall not entitle the Customer to cancel or terminate, and shall not affect, the remainder of this Contract.
- 3.10 Unless otherwise agreed between the Parties (including in the Order):
- 3.10.1 for a UK and Ireland Delivery, Devonshire shall deliver the Products to the Customer's designated delivery address in the UK, Republic of Ireland, the Isle of Man or the Channel Islands; or
- 3.10.2 for an Export Delivery, Devonshire shall deliver the Products Ex-Works (Incoterms 2020) at Devonshire's normal location for despatch of the Products in the UK
- 3.11 If there is any conflict between the provisions of Incoterms 2020 and this Contract, this Contract shall prevail.
- 3.12 Where Devonshire delivers Products other than Ex Works (Incoterms 2020), Devonshire shall arrange for carriage to the point of delivery. Devonshire may charge the Customer a handling and delivery fee (in the amount stipulated to the Customer from time to time)
- 3.13 Where Devonshire delivers the Products to the Customer's (or its direct or indirect customer's or courier's) premises, Devonshire shall offload the Products at the nearest entrance to the delivery address and at ground floor level only. It is the Customer's responsibility to move or transfer the Products from that point to any other part of the delivery address or destination. The Customer shall provide or procure the provision of Devonshire's delivery vehicle with reasonable access to park and deliver, or give Devonshire sufficient notice for reasonable arrangements for making deliveries.
- 3.14 The Customer shall, or shall require its courier or other agent to, sign a delivery note and other documentation upon receipt of the Products. The signing of any such documentation shall be evidence that the Products have been delivered and in the quantities stipulated in the documentation. The Customer shall (or shall require its courier or other agent to) inspect the Products and packaging for any obvious damage (including breakages) and make a note of any obvious damage when signing.
- 3.15 All risk in the Products shall pass to the Customer upon delivery, provided that where delivery is delayed due to breach by the Customer of its obligations under this Contract risk shall pass at the date when delivery would have occurred but for that breach.
- 3.16 Unless otherwise agreed between the Parties, the Customer shall keep the Products fully insured on Devonshire's behalf with a reputable insurance company to the reasonable satisfaction of Devonshire for their full price against all risks of loss or damage from the time when the risk passes to the Customer until property passes in accordance with Clause 3.19. On request, the Customer shall produce the policy of insurance to Devonshire. If the Products are lost, damaged or destroyed, the Customer shall hold the proceeds of insurance for and to the order of Devonshire pending Payment.
- 3.17 For Export Deliveries, the Customer shall ensure that:

- 3.17.1 it is authorised and entitled to receive the Products for wholesale distribution or supply to the public;
- 3.17.2 it complies with all applicable laws, regulations and codes of practice governing the importation and use of the Products in the destination country;
- 3.17.3 it pays for any import and export duties or levies; and
- 3.17.4 it has sufficient export documentation.
- 3.18 Before delivery, Devonshire shall:
- 3.18.1 use adequate facilities for performing its activities under this Contract, including supply, storage and transportation of the Products;
- 3.18.2 observe all applicable laws, regulations, byelaws and codes of practice in respect of manufacture, sale, supply, export, storage, packaging, labelling and transportation of the Products from Devonshire to the Customer, as are applicable in Devonshire's place of supply;
- 3.18.3 obtain and pay for and at all times maintain and comply with and conform to, all necessary or desirable licences, authorisations (including manufacturing and marketing authorisations), approvals, consents, permissions and certificates of origin required for the storage, sale and supply of the Products as are applicable in Devonshire's place of supply;
- 3.18.4 keep all inventory, stocks and supplies of the Products in conditions appropriate for their storage and transport (including, where applicable, temperature controlled so as to maintain temperature conditions within acceptable limits) and to avoid breakage, adulteration, deterioration, contamination and theft; and
- 3.18.5 on or before delivery of the Products to the Customer check the Products in accordance with its regulatory requirements.
- 3.19 From delivery, the Customer shall:
- 3.19.1 use adequate facilities for receipt and use of the Products, and handle, store and transport the Products in accordance with Devonshire's (or the manufacturer's) instructions or requirements;
- 3.19.2 observe all applicable laws, regulations, byelaws and codes of practice in respect of use, sale, supply, storage and transportation of the Products, as are applicable from the place of receipt to the Customer's (and its customer's or onward recipient's) location;
- 3.19.3 comply with and conform to, all necessary or desirable licences, authorisations (including manufacturing and marketing authorisations), approvals, consents, permissions and certificates of origin required for the use, sale, supply, storage and the transportation of the Products;
- 3.19.4 keep all inventory, stocks and supplies of the Products in conditions appropriate for their storage and transport (including, where applicable, temperature controlled so as to maintain temperature conditions within acceptable limits) and to avoid breakage, adulteration, deterioration, contamination and theft;
- 3.19.5 on or before delivery of the Products to the Customer's customer or a carrier check the Products in accordance with its regulatory requirements and give them adequate advice and information as to the handling and storage of the Products; and
- 3.19.6 use all reasonable endeavours to ensure that the Products arrive safely at their intended destination.
- 3.20 The Customer shall provide all evidence to Devonshire's reasonable satisfaction that:
- 3.20.1 the Customer is complying with Clause 3.17;
- 3.20.2 the Customer and any carrier are complying with Clause 3.19;
- 3.20.3 the Customer's carrier is suitable in order to comply with Clause 3.19; and
- 3.20.4 the Products have arrived at their intended destination safely.
- 3.21 If the Customer does not provide such evidence as described in Clause 3.20 to Devonshire's reasonable satisfaction, Devonshire may exercise its option (without prejudice to its other rights and remedies available to it) withhold delivery until it is so satisfied or terminate this Contract. Notwithstanding Devonshire's decision to release the Products for delivery, the Customer shall remain solely liable for its failure to comply with Clauses 3.17 or 3.19.
- ### 4. TITLE
- 4.1 Notwithstanding delivery, title to and ownership of the Products shall not pass to the Customer until Devonshire has received in full (in cleared funds) all sums due to it in respect of:
- 4.1.1 the Products; and
- 4.1.2 all other sums which are or which become due to Devonshire from the Customer on any account; ("Payment").
- 4.2 Until Payment, the Customer shall:
- 4.2.1 hold the Products on a fiduciary basis as Devonshire's bailee;
- 4.2.2 hold the Products in good, saleable condition;
- 4.2.3 keep an up-to-date list of the location of Devonshire's property and present this to Devonshire upon request;
- 4.2.4 store the Products separately from other goods or in any way so that they remain readily identifiable as Devonshire's property; and
- 4.2.5 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products.
- 4.3 The Customer may resell the Products before Payment solely on the following conditions:
- 4.3.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;

- 4.3.2 any such sale shall be a sale of Devonshire's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale;
- 4.3.3 the Customer shall keep the proceeds of sale separate from any money or property of the Customer or third parties; and
- 4.3.4 the Customer shall still be responsible for paying to the full value of the Payment. If Devonshire requires, the Customer shall authorise and direct such third-party buyer to pay to Devonshire a like part of the sum due to the Customer in respect of the Products sold and assign to Devonshire such part of the debt owed to the Customer by the third party.
- 4.4 Devonshire may at any time until title passes under this Clause 3.19 without notice recover possession of the Products which are the property of Devonshire. Devonshire may also require the Customer at the Customer's cost, within three days of Devonshire's request, to deliver up to Devonshire or make available to Devonshire for collection from a single accessible collection point as Devonshire requires all Products which are the property of Devonshire. The Customer hereby grants to Devonshire for Devonshire and its agents, staff, officers, employees and contractors an irrevocable licence to enter for the purpose of recovering possession of the Products any premises then occupied by or in ownership/possession of the customer or the customer's customer.

The Customer shall indemnify Devonshire against all claims, losses, damages, liabilities, costs and expenses so arising in exercising its rights under this Clause 4.4.

- 4.5 Devonshire shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from Devonshire.

- 4.6 On termination or expiry of this Contract, howsoever arising, Devonshire's rights contained in this Clause 3.19 shall remain in effect.

5. WARRANTY

- 5.1 Subject to the other provisions of this Clause 5, Devonshire warrants that, as at delivery, the Products shall:

- 5.1.1 be undamaged and free from material defects;
- 5.1.2 have any minimum shelf-life stipulated by Devonshire in writing or 60 days whichever is longer;
- 5.1.3 conform to the description of the Product (by strength and pack size) in this Contract or stated by Devonshire in writing for that Product.

- 5.2 The Customer shall be responsible for ensuring that its appropriate representative checks the Products for obvious damage on delivery in accordance with Clause 3.14. Devonshire shall not have any Liability for any obvious loss or damage on delivery unless the Customer informs and provides full details to Devonshire in writing within one Business Day of discovery (which shall be deemed to be on delivery).

- 5.3 Subject to Clause 5.5, Devonshire shall at its option, within a reasonable timeframe:

- 5.3.1 replace; or
- 5.3.2 repay an appropriate portion of the purchase price of; or
- 5.3.3 provide a credit note in respect of a reasonable part of;

the delivered Products which are not in conformance with the warranty set out in Clause 5.1.

- 5.4 Devonshire shall not have any Liability for providing Products to the extent caused by Devonshire's compliance with and reliance on the Customer's instructions or requirements or Devonshire's compliance with any relevant laws, regulations or guidelines.

- 5.5 Devonshire's Liability for defective or damaged Products is subject to:

- 5.5.1 the Customer informing Devonshire in writing of any claim promptly upon discovery of the defect or damage and, subject to Clause 5.2, in any event within two Business Days of discovery (which in the absence of evidence to the contrary shall be deemed to be on delivery) (other than anything that involves potential danger to health or for Products that are refrigerated or require temperature controlled storage, and other than as provided in the situation in Clause 5.2, in which case it shall be no more than one Business Day of discovery), specifying with reasonable detail the way in which it is alleged that the Products do not conform to this Contract;

- 5.5.2 the Customer allowing Devonshire to take all control over decisions in respect of dealing with the issue including with third parties;

- 5.5.3 the Customer having provided Devonshire with its name and address, quantity and full description of the Products affected, Devonshire's invoice number and such other information and documentation as Devonshire reasonably requires at the same time as the written information specified in Clause 5.5.1;

- 5.5.4 the Customer showing to Devonshire's reasonable satisfaction that the defect or damage is solely attributable to Devonshire's (or Devonshire's subcontractors' or suppliers') defective materials or workmanship and not: (a) from normal use; or (b) any acts or omissions by anyone after delivery by Devonshire (including the Customer's carrier);

- 5.5.5 the Products having not been: (a) misused or subjected to neglect, improper or inadequate care or carelessness (including subject to wrong storage conditions or open to contamination); or (b) dealt with, used or stored contrary to good trade practice or any oral or written instructions, advice or recommendation of Devonshire; or (c) adversely affected by anything done or not done after the Products had been delivered by Devonshire (including any accident or attempt at alteration, change or modification or inspection);

- 5.5.6 the Customer holding the Products safely and securely in good condition; 5.5.7 the Customer allowing and procuring for Devonshire (or Devonshire's representatives) the opportunity to have access to and inspect the Products;

- 5.5.8 the Customer having paid Devonshire in full; and

- 5.5.9 if and to the extent Devonshire requests, at Devonshire's option, within the timeframes set out in Clause 6.3, the Customer returning such Products carriage and insurance paid at the Customer's risk to Devonshire's premises or such other location stipulated by Devonshire and carefully packed to avoid damage in transit. Unless and until Devonshire inspects, repairs or receives such Products, the Customer shall hold such Products safely and securely in good condition. Any returns shall be dealt with in accordance with Clause 6.1

- 5.6 If the Parties disagree as to the compliance of any Products with the warranty in Clause 5, the Parties agree to have the relevant Products tested by an independent expert chosen by the Parties or by the Royal Pharmaceutical Society in the UK if the Parties are unable to agree the choice of expert within 10 Business Days of one Party giving notice to the other that it wishes to make a referral. The Parties agree that the decision of the expert shall be final and binding on both Parties in the absence of manifest error. The losing Party shall bear the costs of the testing as well as the expert's fees; but if neither Party's position totally prevails, the testing costs and the expert's fees shall be borne by the Parties in such proportion as may be determined by the expert.

- 5.7 The warranty contained in this Clause 5 is specifically limited to the Customer. No warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.

- 5.8 If the Customer makes an invalid claim under the warranty, Devonshire may charge the Customer for its fees and costs of examining, testing, storing and replacing the Products and dealing with the claim and removing and delivering the Products.

- 5.9 Except where expressly provided for within this Contract, Devonshire excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Products.

6. PRODUCT RECALL AND OTHER RETURNS

- 6.1 For any returns of Products whatsoever, the Customer shall:

- 6.1.1 provide all information reasonably required by Devonshire with the returned Products, including the name and address of the Customer, quantity and full description of the Products, invoice number in respect of the Products, and the reason for the return; and

- 6.1.2 ensure that from the time the Products are delivered by Devonshire in accordance with Clause 3.10 until they are received back by Devonshire, the Customer complies at all times with the provisions described in Clauses 5.5.5 and 5.5.6.

- 6.2 In the event of recall of any Product due to hidden defects and/or severe adverse reaction, the Customer shall provide all reasonable assistance to Devonshire in accordance with Devonshire's reasonable requirements and, subject always to Clause 6.3, Devonshire shall reimburse the Customer for the quantities of the Product recalled in accordance with Clause 5 together with the Customer's other reasonable costs and losses in sending the Products back unless the recall is necessitated by the act or omission of the Customer or any third party. This is subject to the Customer handing over full control and management of the Product recall to Devonshire and complying with Devonshire's reasonable requirements.

- 6.3 If Devonshire takes a return of a Product, the Customer shall return it to Devonshire:

- 6.3.1 by the corresponding time on the next Business Day after delivery, if the return is a Product that is a refrigerated line or requires temperature-controlled storage, or has been provided in the circumstances described in Clause 5.2; or
- 6.3.2 by the corresponding time that is two Business Days after delivery, if the return is in any other situation (including if the return is under Clauses 5.3 and 5.5 (other than in the situation as set out in Clause 6.3.1)).

- 6.4 The Customer shall have no right to return a Product, and Devonshire does not accept a return of a Product, except in the circumstances of:

- 6.4.1 a Product warranty in accordance with Clause 5.5.9; or
- 6.4.2 a Product recall in accordance with Clause 6.2.

7. LIABILITY

- 7.1 This Clause 6.3 prevails over all other Clauses and sets forth the entire Liability of Devonshire, and the sole and exclusive remedies of the Customer, in respect of:

- 7.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Contract or of any goods or services in connection with this Contract; or
- 7.1.2 otherwise in relation to this Contract or entering into this Contract.

- 7.2 Devonshire does not exclude or limit its Liability for:

- 7.2.1 its fraud; or
- 7.2.2 death or personal injury caused by its Negligence; or
- 7.2.3 any breach of the non-excludable obligations implied by law as to having title to supply goods; or
- 7.2.4 any other Liability which cannot be excluded or limited by applicable law. 7.

- 3 Subject to Clause 7.2, Devonshire does not accept and hereby excludes any Liability for Negligence other than any Liability arising pursuant to the terms of this Contract.

- 7.4 Subject to the Clause 7.2, Devonshire shall not have any Liability in respect of any:

- 7.4.1 indirect or consequential losses, damages, costs or expenses;
- 7.4.2 loss of actual or anticipated profits;
- 7.4.3 loss of contracts;
- 7.4.4 loss of use of money;
- 7.4.5 loss of anticipated savings;
- 7.4.6 loss of revenue;

- 7.4.7 loss of goodwill;
 - 7.4.8 loss of reputation;
 - 7.4.9 ex gratia payments;
 - 7.4.10 loss of business;
 - 7.4.11 loss of operation time;
 - 7.4.12 loss of opportunity; or
 - 7.4.13 loss of, damage to or corruption of, data;
- whether or not such losses were reasonably foreseeable or Devonshire or its agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 7.4.2 to 7.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

7.5 Subject to Clause 7.2, the total aggregate Liability of Devonshire shall be limited to the greater of: (a) £100,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Customer to Devonshire under this Contract, for the affected Products and all Products delivered with the affected Products.

7.6 The limitation of Liability under Clause 7.5 has effect in relation both to any Liability expressly provided for under this Contract and to any Liability arising by reason of the invalidity or unenforceability of any term of this Contract.

7.7 In this Contract:

7.7.1 "**Liability**" means liability in or for breach of contract (including liability under any indemnity), tort (whether deliberate or not), Negligence, breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract, including liability expressly provided for under this Contract or arising by reason of the invalidity or unenforceability of any term of this Contract (and for the purposes of this definition, all references to "this Contract" shall be deemed to include any collateral contract, but each Order shall constitute a separate "Contract"); and

7.7.2 "**Negligence**" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

8. PRICE

8.1 The Customer shall pay to Devonshire the Price and other sums due under this Contract and by the times required.

8.2 Unless otherwise stipulated in any Quotation or any Long-Term Agreement (or otherwise agreed between the Parties in writing):

8.2.1 Devonshire may issue an invoice to the Customer for the Price (or the relevant part) and other sums due in connection with the Price on or prior to delivery of the Products; and delivery

8.2.2 the Customer shall pay Devonshire in full prior to delivery of the Products.

8.3 Where Devonshire requires payment in advance of delivery of the Products, delivery of the Products is conditional on Devonshire first receiving the advanced payment in cleared funds in full.

8.4 Where Devonshire agrees in writing to extend credit to the Customer (which Devonshire may change by informing the Customer in writing with immediate effect from time to time), then unless otherwise agreed in writing between the Parties and subject to any credit limit that Devonshire has for the Customer (as updated by Devonshire informing the Customer in writing with immediate effect from time to time), the Customer shall pay Devonshire within 30 days of the date of invoice.

8.5 The Price and any other sums due under this Contract are exclusive of any value added tax or other sales, import and export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of the Price and other sums due.

8.6 The Customer shall pay Devonshire by any payment method reasonably stipulated by Devonshire. No payments shall be permitted by cash.

8.7 Where Devonshire requires for payment by letter of credit, the Customer shall conform to such requirements for the letter of credit as are stipulated by Devonshire, including Devonshire's receipt of the letter of credit on or before Devonshire's despatch of the Product. Unless Devonshire specifies in writing to the contrary, the letter of credit shall be confirmed, irrevocable and without recourse, providing for payment at sight, allowing partial deliveries and collections, and issued and confirmed by first class banks to Devonshire's satisfaction. The costs for the letter of credit shall be payable by the Customer. If the Customer fails to provide the required letter of credit, Devonshire may exercise the rights in Clause 8.12.

8.8 Unless otherwise stipulated in this Contract or agreed in writing between the Parties, payment shall be in the currency in force in England from time to time.

8.9 Payment shall be deemed made when Devonshire has received cleared funds in full.

8.10 If the Customer receives any communication purporting to be from Devonshire, explaining where the Customer should make payment, the Customer shall be responsible, before making payment, for taking all reasonable steps to verify with its usual contacts at Devonshire that the account payment instruction is genuinely Devonshire's account.

8.11 Payment of all sums due to Devonshire under this Contract shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.

8.12 If the Customer is late in paying any part of any monies due to Devonshire under this Contract or any other contract between the Parties, Devonshire may (without prejudice to any other right or remedy available to it whether under this Contract or by any statute, regulation or bye-law) do any or all of the following:

8.12.1 charge interest and claim other costs on the amount due but unpaid as permitted under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and

8.12.2 sell or otherwise dispose of any Products which are the subject of any Order, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and

8.12.3 suspend the performance of this Contract and any other contract between the Parties until Devonshire has been paid in full.

9. TERM AND TERMINATION

9.1 This Contract shall commence when it becomes legally binding in accordance with Clause 2.6 and, unless terminated earlier by either Party exercising any right of cancellation or termination as set out in this Contract, shall continue in force until the later of:

9.1.1 the Customer having paid in full for all sums due under this Contract; and

9.1.2 Devonshire having delivered all the Products to the Customer.

9.2 Either Party may terminate this Contract immediately by notice in writing to the other Party if:

9.2.1 the other Party is in persistent breach of any of its obligations under this Contract or any other contract between the Parties; or

9.2.2 the other Party is in material breach of any of its obligations under this Contract or any other contract between the Parties which is incapable of remedy; or

9.2.3 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Contract or any other contract between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or

9.2.4 the other Party becomes a Sanctioned Person; or

9.2.5 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or takes any similar or analogous step or action in consequence of debt in any jurisdiction; or

9.2.6 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

9.2.7 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.

9.3 In any event, Devonshire may terminate this Contract if the Customer is at least seven days late in paying any sum due under this Contract or any other contract between the Parties.

9.4 Termination or expiry of this Contract shall be without prejudice to any accrued rights or remedies of either Party.

9.5 Termination or expiry of this Contract will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

9.6 Upon termination or expiry of this Contract for any reason:

9.6.1 Devonshire shall cease to perform this Contract; and

9.6.2 all outstanding sums shall become immediately payable, whether invoiced or not.

10. FORCE MAJEURE

10.1 Save for obligations in respect of payment of the Price, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Contract which is caused by any circumstances beyond its reasonable control including any act of God, actions or omissions of third parties not in the same group as the Party seeking to rely on this Clause 10 (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, seizure or forfeiture, breaking off of diplomatic relations or similar actions, national emergencies, actual or threatened or suspected terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, unusual traffic volumes, unusual travel restrictions, epidemic, pandemic (including COVID-19), fire, explosion, storm, flood, drought, adverse weather conditions (including cold, heat, wind, rain, snow, ice or fog), loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, mechanical breakdown, third party software, collapse of building structures, failure of machinery (other than used by the relevant Party) or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.

10.2 Each Party agrees to inform the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

10.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.

10.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

10.5 If there is an Event of Force Majeure which continues without a break for more than one month, either Party may terminate this Contract immediately by notice to the other, in which event neither Party shall have any Liability by reason of such termination.

10.6 Each Party shall use its reasonable endeavours to assist and co-operate with the other Party to mitigate the effects of an Event of Force Majeure, but neither Party shall be required to take steps that it would be unreasonable to expect it to take.

10.7 If Devonshire has contracted to provide identical or similar products to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, Devonshire may decide at its absolute discretion which contracts it will perform and to what extent.

11. NOTICES

11.1 Any notice required or authorised to be given under this Contract shall be in writing and shall be served by personal delivery or by letter sent by a generally commercially recognised international express courier or by email to the relevant Party at its address or email address stated in this Contract or at such other address or email address as is notified by the relevant Party to the other Party for this purpose from time to time or at the address of the relevant Party last known to the other Party.

11.2 Any notice so delivered personally shall be deemed served at the time of delivery and any notice so given by commercial courier shall be deemed to have been served two Business Days after the same shall have been despatched, and in proving such service it shall be sufficient to prove that the letter was properly addressed, and despatched and delivered. Any notice so given by email shall be deemed to have been served at 10am local time of the recipient on the next Business Day following despatch and in proving such service, it shall be sufficient to prove that the email was despatched in a legible and complete form to the correct email address without any error message, provided that a confirmation copy of the transmission is despatched within four Business Days to the recipient by one of the other methods of delivery of notice set out above. Failure to send a confirmation copy shall invalidate the service of notice by email.

12. USE OF INFORMATION

12.1 Devonshire may use data collected about the Customer and the Customer's representatives for:

- 12.1.1 credit checks, credit searches, credit scoring, credit insurance and securitisation, and Devonshire may provide or exchange that information with third parties (including bankers and financiers) for that purpose;
- 12.1.2 administering the Customer's account and Orders;
- 12.1.3 customer, product, market and statistical analysis and research; and
- 12.1.4 sending details of further products and services that Devonshire or its associated people or organisations are involved with.

12.2 Devonshire may also supply any such information to any of Devonshire's suppliers or businesses that Devonshire is involved with. This is to help to ensure sufficient stock levels and appropriate customer service and products.

13. COMPLIANCE

13.1 The Parties shall not, and shall procure that their respective directors, employees, agents, representatives, contractors or sub-contractors shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, regulations and codes in any jurisdiction, including but not limited to the Bribery Act 2010 and, where applicable, the Foreign Corrupt Practices Act 1977.

13.2 Each Party shall procure that its directors and employees shall at all relevant times

- 13.2.1 comply with the provisions of the Modern Slavery Act 2015; and
- 13.2.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

13.3 The Parties acknowledge the existence of Sanctions Laws. Each Party shall ensure that it complies with all applicable Sanctions Laws to which it is subject, including those of any jurisdiction where it is incorporated or has premises or conducts business.

13.4 Neither Party shall take any action or make any omission where this would, or would in the reasonable opinion of the Party subject to Sanctions Laws, cause a Party to breach Sanctions Laws.

13.5 The Customer shall carry out appropriate due diligence with regards to any third party to whom the Products are to be sold, supplied, exported, or transferred by the Customer. The Customer shall not sell, supply, export or transfer Products to any third party if the Customer knows or has reason to suspect that this will, either directly or indirectly, involve any Sanctioned Person or will otherwise be in breach of Sanctions Laws.

14. ASSIGNMENT

14.1 Subject to Clause 14.2, neither Party shall or shall purport to assign, transfer, novate, sub-license, charge or otherwise encumber, create any trust over or deal in any manner with this Contract or any of its rights, liabilities or obligations under this Contract to any person or entity (whether orally, in writing, by operation of law or otherwise) without the prior written consent of the other Party.

14.2 Devonshire shall, in its sole discretion, have the right to perform its obligations under this Contract either itself, through an affiliate or one or more third party sub-contractors provided that in each case Devonshire will remain at all times responsible to the Customer for the performance of Devonshire's obligations under this Contract and the Customer will have no contractual relationship with any such affiliate or third-party sub-contractor of Devonshire's.

14.3 This Contract shall be binding upon and take effect for the benefit of the Parties and their successors and permitted assigns.

15. GENERAL

15.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Contract or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Contract or at law.

15.2 If any Clause or other provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.

15.3 The relationship of the Parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Contract, nothing in this Contract shall constitute the Parties as partners, joint ventures or co-owners, or constitute either Party as the agent, employee or representative of the other Party, or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other Party, and neither Party shall hold itself out as having authority to do the same.

15.4 A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

15.5 The Customer is responsible for complying with any applicable government export control laws and regulations.

15.6 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or its formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

15.7 If both Parties are domiciled in the European Union or the United Kingdom, then subject to Clause 15.8, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims).

15.8 If both Parties are domiciled in the European Union or the United Kingdom, but as a consequence of any change in national or international law, judgments of the courts of England shall not be automatically enforceable in the jurisdiction in which the Customer is located, or such a change in law is planned or reasonably foreseeable, Devonshire shall have the right to commence and pursue arbitration proceedings against the Customer under the LCIA Rules to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its formation (including non-contractual disputes or claims). The LCIA Rules are deemed to be incorporated by reference into this Clause 15.8. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

15.9 If one or more of the Parties is domiciled outside of the European Union and the United Kingdom, any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims) shall be exclusively referred to and finally resolved by arbitration under the LCIA Rules. Those Rules are deemed to be incorporated by reference into this Clause 15.9. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

15.10 All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

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