

## PURCHASE ORDER TERMS AND CONDITIONS.

### 1. DEFINITIONS AND INTERPRETATION

Supplier following negotiations ("Contract"), the terms of the Contract shall prevail.

#### 1.1 Definitions

**Agreement** means the contract between TFP and the Supplier, which is formed when the Supplier accepts provisions set out and referred to in the Purchase Order and on this page and overleaf;

**Background Information** means:

- (a) all materials, reports and all technical and other information known to either of the Parties at the date of this Agreement, together with;
- (b) all intellectual property rights, either owned by or licensed to the Parties at the date of this Agreement; and
- (c) all materials, reports and all technical and other information and intellectual property rights owned by or licensed to the Parties which is not Foreground Information;

**Business Hour** means an hour between 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday;

**Charges** or **Fees** means the charges payable by the Customer for the supply of Goods and/or Services by the Supplier;

**Commencement Date** means the date on which this Agreement takes effect;

**Completion Date** means any date specified by which Goods must be delivered and/or Services provided;

**Foreground Information** means all materials, reports and all technical and other information, results, designs, inventions and other matter capable of intellectual property protection which is created, conceived, developed, written, first reduced to practice or writing or developed in whole or in substantial part in the course of providing the Goods and/or Services;

**Goods** means the goods (or any part of them) being delivered in accordance with this Agreement;

**Parties** means the Supplier and TFP, and Party shall mean either one of them;

**Purchase Order** TFP's order to the Supplier confirming the order for Goods and/or Services indicating types, quantities, and agreed prices for such Goods and/or Services and any other relevant information;

**Services** means the provision of the services in accordance with this Agreement;

**Supplier** means the person or organisation who is to provide the Goods and/or Services; and

**TFP** means The Fertility Partnership Limited (Supplier registration number 08765580) whose registered office is situated at Institute of Reproductive Sciences, Oxford Business Park North, Oxford OX4 2HW;

#### 1.2 Interpretation

- 1.2.1 If there is an inconsistency between any terms of this Agreement and the terms of any other contract for Goods and Services executed by TFP and the

- 1.2.2 If there is an inconsistency between any of the terms of this Agreement and the Purchase Order, the provisions of this Agreement shall prevail.

### 2. DURATION AND TERMINATION

- 2.1 The Supplier shall provide the Goods and/or Services to TFP in consideration for TFP paying the Charges to the Supplier, subject to the provisions of this Agreement.

- 2.2 The provision of the Goods and/or Services shall commence on the Commencement Date and, where applicable, shall be completed by the Completion Date.

### 3. LOCATION

The Supplier shall provide and/or deliver the Goods and/or Services in such places and locations as TFP considers appropriate to the type and nature of the Goods and/or Services.

### 4. CHARGE RATES BASED ON TIME SPENT

Where Services are being provided and the Charges are calculated on the amount of time spent by the Supplier, a day shall mean a period of 7 Business Hours and this shall not include the time spent in travelling to and from the place where the Services are performed. Where the Fees are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.

### 5. CHARGES AND PAYMENT OF FEES

- 5.1 The price for the Goods:

- 5.1.1 shall be the price set out in the order for Goods, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

- 5.1.2 Shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by TFP.

- 5.2 The Charges for the Services shall be set out in the order for Services, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by TFP, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 5.3 All amounts stated are inclusive of VAT. Payments shall be made in sterling by TFP in accordance with the instructions set out in the Supplier's invoice.

- 5.4 When preparing an invoice the Supplier shall quote the relevant TFP reference numbers.

- 5.5 The Supplier shall submit an invoice for the Charges plus VAT if applicable to TFP within a reasonable time from the Commencement Date, such invoices to be issued not more than once in each month.

- 5.6 An invoice is correctly submitted if it:

- 5.6.1 is addressed in accordance with the Purchase Order;
- 5.6.2 clearly sets out the Purchase Order number;
- 5.6.3 is, where an explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- 5.6.4 if applicable, includes a valid VAT invoice.
- 5.7 TFP shall make payment to the Supplier for Goods and/or Services supplied under the terms of this Agreement 45 days following the end of the month in which a valid invoice was received.
6. **SUPPLY OF GOODS**
- 6.1 If the Supplier is supplying Goods under this Agreement, the Supplier shall ensure that:
- 6.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 6.1.2 delivery of the Goods shall be completed on the completion of unloading of the Goods to TFP at its requested destination and any rejected Goods shall be returnable at the Supplier's risk and expense; and
- 6.1.3 The Supplier shall not deliver the Goods in instalments without TFP's prior written consent.
- 6.2 Title and risk in the Goods shall pass to TFP on completion of delivery.
7. **SUPPLY OF SERVICES**
- 7.1 If the Supplier is supplying Services under this Agreement, the Supplier shall ensure that the Supplier shall:
- 7.1.1 co-operate with TFP in all matters relating to the Services, and comply with all instructions of TFP;
- 7.1.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 7.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
- 7.1.4 ensure that the Services shall conform with all descriptions, standards and specifications set out in the Specification and/or as may be agreed between the parties;
- 7.1.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 7.1.6 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

- 7.1.7 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- 7.1.8 observe all health and safety rules and regulations and any other security requirements that apply at any of TFP's premises;
- 7.1.9 hold all materials, equipment and tools, drawings, specifications and data supplied by TFP to the Supplier in safe custody at its own risk; and
- 7.1.10 Not do or omit to do anything which may cause TFP to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

## 8. **SUPPLY OF GOODS AND SERVICES**

- 8.1 The following clauses shall apply if the Supplier is supplying Goods and/or Services under this Agreement:
- 8.1.1 during the performance and/or delivery of the Goods and/or Services the parties shall co-operate with each other;
- 8.1.2 TFP shall provide any information and documentation that each Party may reasonably require in order for the Supplier to provide the Goods and/or Services;
- 8.1.3 TFP shall make available to the Supplier such facilities as the Supplier reasonably requires during Business Hours; and
- 8.1.4 TFP shall ensure that TFP's staff and agents co-operate with and assist the Supplier during Business Hours.

## 9. **CONFIDENTIALITY**

- 9.1 Each Party (**Receiving Party**) shall keep the confidential information of the other Party (**Supplying Party**) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the confidential information of the Supplying Party for performing the Receiving Party's obligations under this Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause, and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 9.2 The obligations of clause 9.1 shall not apply to any information which:
- 9.2.1 was known or in the possession of the Receiving Party before the Supplying Party provided it to the Receiving Party;
- 9.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 9.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- 9.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; and/or

9.2.5 is required to be disclosed by order of a court of competent jurisdiction.

## 10. INTELLECTUAL PROPERTY

10.1 All Background Information used in connection with the provision of the Goods and/or Services shall remain the property of the Party who provides it.

10.2 The Supplier shall disclose to TFP all Foreground Information it generates in providing the Goods and/or Services.

10.3 All Foreground Information generated by the Supplier in providing the Goods and/or Services shall be the property of TFP. If TFP requires, and at TFP's expense, the Supplier shall sign such documents which are necessary for TFP to obtain or maintain ownership of any Foreground Information generated by the Supplier.

10.4 Foreground Information generated by the Supplier and which is not created in providing the Goods and/or Services shall belong to the Supplier.

## 11. WARRANTIES, LIABILITY AND INDEMNITIES

11.1 The Supplier warrants that it shall use reasonable care and skill in performing and/or providing the Goods and/or Services to the standard generally accepted within the industry, sector or profession in which the Supplier operates for the type of Goods and/or Services provided by the Supplier.

11.2 If the Supplier performs/provides the Goods and/or Services (or any part of the Goods or Services) negligently or materially in breach of this Agreement, then, if requested by TFP, the Supplier shall re-perform the relevant part of the Services and/or re-provide the Goods subject to clauses 11.3 - 11.5 below. TFP's request must be made within six months of the Completion Date or the date the Supplier completed delivery of the Goods.

11.3 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:

11.3.1 death or personal injury caused by negligence;

11.3.2 fraud or fraudulent misrepresentation;

11.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); and

11.3.4 Breach of section 2 of the Consumer Protection Act 1987.

11.4 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty nor otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause 11.4 shall not apply to clause 11.5.

11.5 The Supplier shall indemnify and hold harmless TFP from and against all Claims and Losses arising from loss, damage, liability, injury to TFP, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to TFP by the Supplier, its employees or consultants, or supplied to the TFP by the Supplier within or without the scope of this Agreement. **Claims** shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and **Losses** shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

## GENERAL PROVISIONS

## 12. FORCE MAJEURE

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

## 13. AMENDMENTS

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

## 14. ASSIGNMENT

Neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.

## 15. ENTIRE AGREEMENT

This Agreement and the Purchase Order constitute the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

## 16. NOTICES

Any notice or other communication to be given under this Agreement shall be in writing and shall be sent by first class mail only to the recipient's registered office (if a company) or its principal place of business (in any other case). Notices will be deemed to have been received three working days after posting.

## 17. LAW AND JURISDICTION

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## 18. THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.