

LABCOLD LIMITED

STANDARD CONDITIONS OF SALE

Labcold Limited contracts with the Customer subject to the terms and conditions set out below.

1 INTERPRETATION

1.1 In these conditions:

"the Customer"	means the company or individual non-consumer whose Order for the goods is accepted by Labcold;
"Goods"	means the Goods (including any Setting Up of the Goods or any part or parts of them) specified on the Order (as accepted by Labcold) and which Labcold is to supply (whether manufactured or modified by Labcold or in their original state of manufacture by Labcold's own supplier) in accordance with these Conditions;
"Labcold"	means Labcold Limited (registered in England and Wales under number 271055);
"Labcold's Premises"	means Cherrywood, Chineham Park, Basingstoke, RG24 8WF
"Commissioning"	means the service provided by Labcold or its agents, if requested in the Order, whereby a Labcold engineer visits the End Users' premises where the Goods have been delivered and who connects the Goods to the appropriate power supply (as provided by the Customer or End User) and runs the initial set up procedure for the Goods.
"the Conditions"	means the standard terms and conditions set out in this document together with any terms agreed in writing between the Customer and Labcold as may be specified in the Order acceptance and any additional special terms and provided for in clause 2.3 below;
"the Contract"	has the meaning set out in clause 2.1;
"Specification"	means the quantity, quality and description of the Goods as specified in the Order and agreed in writing by Labcold or in any other specification of the Goods agreed in writing between Labcold and the Customer from time to time (and includes any plans, drawings, designs, data or other information relating to the Goods);
"the Carrier"	means the Carrier which Labcold engages (in its absolute discretion) for the delivery of the Goods to the Customer if requested;
"End User"	means the customer of the Customer to whom the Customer has resold the Goods and who will use the Goods.
"End User Location Service"	means the service provided by Labcold or its agents, if requested in the Order, involving the delivery to the End Users' premises and unpacking of the Goods at the Customer or End Users premises and moving the Goods to such location in the premises as may be reasonably requested.
"Delivery Address"	means the address stated by the Customer in the Order;
"Normal Delivery Point"	means a ground floor offloading area with level unobstructed access at the Customer's premises or if agreed with Labcold the End Users premises, unless otherwise agreed by Labcold in writing.
"Date of Delivery"	means the date stated in the Order and accepted by Labcold in writing or other date as notified by Labcold in writing;
"Order"	means the Customer's purchase order;
"Price"	means the price of the Goods (as stated in the Order or Labcold's acceptance of it) plus the other costs referred to in clauses 7 and 10 below.
"Setting Up"	means the End User Location Service and if requested Commissioning.

2 BASIS OF SALE AND PURCHASE

- 2.1 The Order constitutes an offer by the Customer to purchase the Goods subject to the Conditions. The Order shall only be deemed to be accepted when Labcold issues an acceptance of the Order or it delivers the goods, or it notifies the Customer of a delivery date at which point and on which date the Contract shall come into existence (the Contract).
- 2.2 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.
- 2.3 No variation to the Order (save in respect of the price of the Goods under clause 6.3 below) or the Conditions shall be binding unless agreed in writing between Labcold and the Customer.
- 2.4 No Order shall be cancelled or altered without the prior written agreement of Labcold which may require as a condition of giving its consent that the Customer indemnify Labcold in full against all losses (including loss or profit), costs, (including the cost of labour and materials used), damages, charges and other expenses including administrative expenses incurred by it as a result of such cancellation or alteration.
- 2.5 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 Labcold which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Labcold and any descriptions or illustrations contained in Labcold's catalogues or brochures are produced for the sole purpose of giving an approximate idea of

the Goods described in them. They shall not form part of the Contract or have any contractual force.

- 2.7 Shipping specifications, weights, outline drawings and dimensions for the Goods given with price lists are approximate only.

3 WARRANTY

- 3.1 Labcold shall provide the End User with a product warranty as set out in the "Labcold Limited Warranty" document (Product Warranty) provided to the Customer or which can be viewed at Labcold's web site www.labcold.com. Labcold's entire liability and obligations to the Customer or end user in relation to any defect in the Goods (subject to clause 4.1) shall be as set out in the Product Warranty document as supplemented by the terms appearing below.
- 3.2 The above warranty is given by Labcold subject to the following conditions:
- 3.2.1 Labcold shall not be under any liability in respect of any defect in the Goods arising from any specification supplied by the Customer;
- 3.2.2 Labcold shall not be under any liability under the above warranty if the price has not been paid by the due date for payment;
- 3.2.3 the above warranty does not extend to Goods sold by Labcold, which are not manufactured or modified by it;
- 3.2.4 in the case of such unmodified Goods sold by Labcold the Customer shall only be entitled to the benefit of any warranty or guarantee that is given by their manufacturer to Labcold and which Labcold is entitled to pass onto to the Customer PROVIDED THAT any legal costs or other expenses incurred by Labcold in enforcing such warranty or guarantee on behalf of the Customer shall be payable by the Customer in any event;
- 3.2.5 any modifications undertaken by the Customer without Labcold's knowledge shall not be warranted and will have the effect of invalidating the warranty.
- 3.2.6 Labcold shall not be liable for the Goods' failure to comply with the Specification as a result of changes made to ensure the Goods comply with applicable statutory or regulatory requirements provided that such changes do not materially affect the quality or performance of the Goods.
- 3.3 Except as provided in this clause 3, Labcold shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in the Product Warranty document.
- 3.4 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.
- 3.5 The Customer is advised in accordance with the instruction manual to examine and test the Goods before use and exercise special care in cases where its use and/or storage involves danger to persons and/or property.

4 LIMITATION OF LIABILITY

- 4.1 Nothing in these Conditions shall limit or exclude Labcold's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or fraud or fraudulent misrepresentation; or any matter in respect of which it would be unlawful for Labcold to exclude or restrict liability.
- 4.2 Subject to clause 4.1:
- 4.2.1 Labcold shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including but not limited to loss, damage or deterioration of any medicines or other items stored in the Product, loss of business, loss of commercial opportunity; and
- 4.2.2 Labcold'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 twice the price of the Goods to which the claim relates and which has been paid by the Customer to Labcold.

5 SPECIFICATIONS

- 5.1 To the extent that the Goods are to be manufactured or modified in accordance with any Specification provided by the Customer, the Customer shall indemnify Labcold against all loss, damages and costs and expenses awarded against or incurred by Labcold in connection with or paid or agreed to be paid by Labcold in settlement of any claim for infringement of any copyright, design right, trade mark, patent or other industrial or intellectual property right of any other person or company which results from Labcold's use of the Specification. This clause shall survive completion of the Contract.
- 5.2 Labcold reserve the right to make changes in the Specification to conform with any safety or other statutory requirements or with Labcold's own standard practice provided that such changes do not materially affect the quality or performance of the Goods.
- 5.3 Specifications may be altered by the Customer only with the prior written agreement of Labcold and on the basis that the Customer shall indemnify Labcold in full against loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and other expenses including administration expenses incurred by Labcold as a result of such alteration.
- 5.4 Where Goods are modified to any specification, plans, drawings, designs, data or other information supplied by the Customer such details may be retained by Labcold in its absolute discretion and, unless agreed otherwise in writing, Labcold may use and incorporate such specification, plans, drawings, designs, data or other information into its product range and may sell such product in the normal course of its business.
- 5.5 Where modifications are undertaken by Labcold (over and above the original agreement) Labcold reserves the right to make an additional charge for this which shall be payable by the Customer.
- 5.6 If the Goods have been made to the Customer specification as contemplated by clause 5.4 or has accessories or components fitted specially for the Customer then where a fault arises as a result Labcold shall be under no obligation or

liability to replace the Goods however should a fault arise in a Labcold original part then Labcold shall fix such part in accordance with Labcold's warranty set out in clause 3.

6 INTELLECTUAL PROPERTY

6.1 Labcold or its licensors retains all intellectual property rights in respect of copyright, registered and unregistered design right, trademarks and patents in Labcold's plans, drawings, designs, data or other information relating to the Goods including computer software and any such material appended to quotations or forwarded to Customers is for their personal use only. The Customer may not copy the material in whole or in part nor make it accessible to third parties or otherwise commercially exploit such material without Labcold's prior express written agreement.

7 PRICE AND PAYMENT

7.1 Labcold reserves the right to make adjustments in all prices advertised by it including price lists to cover variations in the cost of materials, labour, overheads and other charges.

7.2 The price of the Goods shall be as stated in the Order as accepted by Labcold and, unless otherwise so stated, shall be exclusive of the following taxes and costs which shall be payable by the Customer in addition to the price of the Goods.

7.2.1 any applicable Value Added Tax (which shall be payable by the Customer subject to receipt of a VAT invoice); and

7.2.2 any duties, other applicable sales tax or duty, imposts or other levies other than Value Added Tax; and

7.2.3 the costs of packaging, carriage and insurance of the Goods; and

7.2.4 any Setting Up costs, all of which taxes and costs together with the price of the Goods constitute the Price in the contract.

7.3 Labcold may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.3.1 any factor beyond Labcold's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

7.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give Labcold adequate or accurate information or instructions.

7.4 Labcold may request either a deposit or the full price for the Goods or stage payments from a Customer without an established credit line which shall be payable on receipt of the Order (as appropriate) and until such time such payment is received by Labcold, the Order will not be processed. Labcold shall issue an appropriate invoice at the time.

7.5 Subject to clause 7.4, Labcold shall be entitled to invoice the Customer on or at any time after the despatch of the Goods from Labcold's premises, and each invoice shall quote the number of the Order.

7.6 Subject to clause 7.4 and unless otherwise stated in the Order or unless such other terms are agreed by both parties in writing the Customer shall make payment of the Price in full and in cleared funds within 30 days from the date of Labcold's invoice and any failure to make payment by that date shall entitle Labcold to any of the following:

7.6.1 cancel the Contract or suspend any further deliveries to the Customer (in which event the Customer will be liable for any loss incurred by Labcold);

7.6.2 charge interest on the amount overdue at an annual rate of 4% above the HSBC Bank plc Base Rate then in force compounded monthly. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Labcold in order to justify withholding payment of any such amount in whole or in part. Labcold may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Labcold to the Customer.

7.8 Discounts are given subject to agreed payment terms being honoured. In the case of overdue accounts, discounts will be removed. All discounts are made at the absolute discretion of Labcold and may be withdrawn at any time.

8 INSOLVENCY OF CUSTOMER - TITLE AND RISK

8.1 If the Customer being an individual is adjudicated bankrupt or an interim receiver of his property is appointed or being a company goes into liquidation whether compulsory or voluntary (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes a voluntary arrangement with its creditors or an administration order is made in respect of it or an administrative receiver of it is appointed or any other analogous activity in any other jurisdiction occurs then Labcold may (without prejudice to the Conditions) suspend any further deliveries and/or terminate the Contract, and if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

8.2 The risk in the Goods shall pass to the Customer on completion of delivery.

8.3 Title to the Goods shall not pass to the Customer until Labcold has received payment in full (in cash or cleared funds) for the Goods

8.4 Until title to the Goods has passed to the Customer, the Customer shall:

8.4.1 hold the Goods on a fiduciary basis as Labcold's bailee;

8.4.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Labcold's property;

8.4.3 not remove, deface or obscure any identifying mark on or relating to the Goods;

8.4.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

8.4.5 notify Labcold immediately if it becomes subject to any of the events listed in clause 8.1; and

8.4.6 give Labcold such information relating to the Goods as Labcold may require from time to time,

8.5 but the Customer may resell or use the Goods in the ordinary course of its business but shall account to Labcold for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, or Labcold reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Labcold may have, Labcold may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Labcold, but if the Customer does so all moneys owing by the Customer to Labcold shall (without prejudice to any other right or remedy of Labcold) forthwith become due and payable.

9 DELIVERY

9.1 The Goods shall be delivered by the Carrier to the Delivery Address in the UK at the Normal Delivery Point on the Date of Delivery or within the period stated in the Order and accepted by Labcold in writing, in either case during the Customer's or End users (as appropriate) usual business hours.

9.2 Every reasonable endeavour will be made to deliver the Goods ordered on the Date of Delivery or within the period stated in the Order. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Labcold shall not be liable for any delays in delivery.

9.3 If Labcold fails to deliver the Goods at all, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Labcold shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Labcold with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or failure by the Customer to take delivery of the Goods.

9.4 If the Customer fails to take delivery of the Goods or fails to give Labcold adequate delivery instructions before the Date of Delivery, then without prejudice, to any other right or remedy available to Labcold delivery of the Goods shall be deemed to have been completed and Labcold may:

9.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

9.4.2 sell the Goods at the best price readily obtainable and account to the Customer (after deducting all reasonable storage and selling expenses) for the excess over the Price or charge the Customer for any shortfall below the Price (provided the Price has been paid by the Customer).

9.5 Save in the case of any valid product warranty claim as set out in clause 3 Goods supplied are not returnable without the prior written agreement of Labcold, which may require payment of a handling charge before accepting their return, the cost and risk of which return shall be the responsibility of the Customer.

9.6 Acceptance of the Goods:

9.6.1 on signature, by the Customer or an agent of the Customer or the End User, for the Goods upon delivery at the Delivery Address, the Goods are deemed to be accepted as correct and in good condition. Subject to 9.6.2, Labcold shall not be deemed to be in breach of the Contract or liable for any damage to the Goods reported subsequent to being signed for that would have been apparent upon visual inspection of the Goods upon delivery.

9.6.2 the Customer shall, within 3 days of the date of actual delivery of the Goods, notify Labcold in writing of any defect by reason of which the Customer alleges that the Goods delivered are not in accordance with the Order or Specification and retain the allegedly defective goods and their packaging for inspection. For the avoidance of doubt if the Customer, End User or their agent has signed for the Goods on delivery in accordance with clause 9.6.1 then the customer shall be deemed to have accepted any damage to the goods arising from the transportation of the goods.

9.7 If the Customer fails to receive the Goods within 7 days of an advice/despatch note and/or invoice sent to it by Labcold the Customer must give Labcold immediate written notice thereof.

9.8 If the Customer fails to notify Labcold in accordance with clause 9.5 and 9.6.2 above (or either of them) then, the Goods shall be conclusively presumed to be in all respects in accordance with the Order or Specification and accordingly, the Customer shall be deemed to have accepted the delivery of the Goods and Labcold shall have no liability to the Customer with respect to that delivery.

10 SETTING UP

10.1 With respect to Orders which include delivery and Setting Up by Labcold the following supplementary conditions will apply:

10.1.1 laying of foundations, clearing of site, structural alterations, drilling of walls and floors and all other builders and joiners work in preparing or making good the site and also the running and fixing of service connections for gas, electricity, water, drainage and steam shall be the responsibility of the Customer or End User as appropriate which must be carried out prior to delivery of the Goods to the site and must comply with any reasonable requirements provided by Labcold to the Customer and or End User;

- 10.1.2 unless otherwise specifically stated in the Order all expenses relating to all skilled and unskilled labour in connection with the Setting Up including any post Setting Up attendances and work shall be an additional charge to the Price and shall be payable by the Customer;
- 10.1.3 the Customer shall provide or shall ensure that he end Users shall provide water, drainage, light, power and suitable handling equipment for Setting Up purposes (including all materials, equipment and instruments required for any preliminary working or tests of the Goods) unless otherwise advised by Labcold in writing;
- 10.1.4 all Goods after delivery by Labcold are at the Customer's risk and must be paid for notwithstanding the destruction thereof or any damage thereto however caused whilst such goods are on the Customer's or End User's premises whether prior to or after Setting Up.
- 10.1.5 the health and safety of Labcold's personnel whilst at the Customer's or End User's premises shall be the responsibility of the Customer and the Customer shall ensure that its Premises and any equipment supplied are safe and suitable.
- 10.1.6 If Labcold is requested by the Customer to provide Setting Up services at the End User's premises then, if agreed, it shall do so as agent for the Customer.

11 GOODS FOR EXPORT (delivery outside of the UK)

- 11.1 In the case of Goods for Export the following supplementary conditions will apply and references in the Conditions to the Customer and the Customer's premises shall where the context so requires include reference to its forwarding agents and their premises in the United Kingdom.
- 11.1.1 Delivery of the Goods shall be ex works (incoterms 2010) Labcold's Premises;
- 11.1.2 The Customer shall be responsible for arranging for testing and inspection of the Goods at Labcold's Premises (if the Customer requires testing and inspection) before delivery by the Carrier to its forwarding agents in the United Kingdom ("the delivery"). After the delivery the Customer is deemed to have accepted the Goods and Labcold shall have no liability for any claim in respect of any defect in the Goods which would have been apparent from inspection and shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 11.1.3 Labcold shall not be responsible for any loss or damage to the Goods whilst in transit.
- 11.1.4 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods in the country of destination and for the payment of any duties thereon.
- 11.1.5 Payment of the Price shall be made by cash in advance or irrevocable letter of credit opened by the Customer in favour of Labcold and confirmed by a bank in England acceptable to Labcold actual payment being made by such bank to Labcold 60 days after receipt by it from Labcold of proof of the shipping. Payment on account terms may also be accepted where agreed by both parties in writing.
- 11.2 The Customer undertakes not to offer the Goods for resale in the United Kingdom or in any other country notified by Labcold to the Customer at or before the time the Order is placed, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.
- 11.3 If it is agreed that Labcold shall deliver the goods to the end destination outside of the UK or a port in the country of the end destination such delivery will be on the basis of CIF (incoterms 2010) (or such other incoterm as specified by Labcold at the time of order or set out in the order acknowledgement) and the provisions of clauses 11.1.2 to 11.1.5 shall apply save that any damage to the goods in transit shall be governed by the CIF delivery terms.

12 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of third party suppliers or subcontractors, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

13 NOTICE

Any Notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the Notice. In writing shall include fax or e-mail.

14 GENERAL

- 14.1 Validity
- 14.1.1 If any of the Conditions is adjudged by any Court of competent jurisdiction to be void or unenforceable but would be valid if part of the wording thereof was deleted then the said Condition shall apply within the jurisdiction of that Court with such modifications as may be necessary to make it valid and effective.
- 14.1.2 Notwithstanding Clause 14.1 above the Contract shall continue in full force and effect subject to any such modification in accordance with clause 14.1 above.
- 14.2 Assignment and subcontracting.
- 14.2.1 Labcold may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Labcold.
- 14.3 Severance.
- 14.3.1 If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.3.2 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.
- 14.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 14.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

15 LAW

This Contract shall be governed by and construed in all respects in accordance with the laws of England and the parties hereto submit to the jurisdiction of the English Courts.