



Victrex Manufacturing Limited - General Terms and Conditions of Sale (April 2015 Edition)

The following terms and conditions are incorporated by referenced into the Contract (as defined below).

1. DEFINITIONS - In these Conditions:

"Buyer" refers to the individual firm or company to whom a quotation for the sale of Products is addressed or whose purchase order for the purchase of Products is accepted by VICTREX;

"Conditions" means these standard terms and conditions of sale;

"Contract" means the particular individual contract for the supply of Products by VICTREX to the Buyer created by the issue by VICTREX to the Buyer of the Sales Order Acknowledgement pursuant to condition 3(b) below;

"Group Company" means in relation to a party, that party, each and any subsidiary or holding company from time to time and each and any subsidiary from time to time of a holding company of that party (with "holding company" and "subsidiary" defined in accordance with Section 1159 of the Companies Act 2006;

"Incoterms" means Incoterms 2010 as published by International Chamber of Commerce or such other edition in force at the date when the Contract is made;

"Products" means goods and/or materials as specified in a Sales Order Acknowledgement;

"Sales Order Acknowledgement" means the document entitled Sales Order Acknowledgement generated by VICTREX and sent by post, courier, fax or e-mail by VICTREX to the Buyer;

"Services" means any services to be provided by VICTREX to the Buyer as ancillary services in respect of the supply of the Products by VICTREX;

"Special Conditions" means such additional terms agreed from time to time in writing between VICTREX and the Buyer; and

"VICTREX" means Victrex Manufacturing Ltd (registered in England under number 2845018) whose registered office is Victrex Technology Centre, Hillhouse International, Thornton Cleveleys, Lancashire FY5 4QD.

The headings are for convenience only and shall not affect the interpretation of this document.

All references to prices, Products and Services contained in these Conditions shall be taken to mean the prices, Products and Services detailed in VICTREX's Sales Order Acknowledgement.

2. APPLICATION

(a) These Conditions shall govern and be incorporated in every Contract made by or on behalf of VICTREX with the Buyer and unless otherwise expressly agreed in writing between VICTREX and the Buyer shall prevail over any terms and conditions contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.

(b) VICTREX's quotation is not to be taken as an offer and no Contract shall take effect unless and until a Sales Order Acknowledgement has been issued by VICTREX to the Buyer.

(c) VICTREX is prepared to receive the Buyer's order by telephone, by fax or by e-mail but will have no responsibility whatsoever for any error or omission in the transmission of the Buyer's order.

(d) VICTREX shall be entitled to rely in all respects and in all circumstances on the contents of the Sales Order Acknowledgement as stating the quantity and grade of the Products and any Services to be supplied. Accordingly it shall be the Buyer's sole responsibility to check the Sales Order Acknowledgement and to notify VICTREX forthwith after the receipt of the same where the Products and any Services are not properly stated in the Sales Order Acknowledgement.

(e) The Buyer acknowledges that these Conditions shall prevail over any qualification or condition purported to be imposed by the Buyer in any previous course of dealing between the Buyer and VICTREX.

(f) The Contract shall be based solely on these Conditions and any Special Conditions.

(g) The Buyer expressly agrees that these Conditions and any Special Conditions shall take precedence over any contractual provisions offered by the Buyer. VICTREX shall not be bound by and does not agree to any contractual provisions offered by the Buyer save to the extent, if any, that VICTREX expressly agrees to the same in writing. The Buyer agrees that no actions taken by VICTREX shall be interpreted as VICTREX's acceptance of any contractual provisions offered by the Buyer.

3. ORDERS

(a) Unless otherwise agreed in writing between the parties, the Buyer shall place orders for Products in bulk with a lead time of at least 14 days and each order shall be in full unit quantities.

(b) VICTREX shall, as soon as reasonably practicable after receipt of an order, notify Buyer of whether it accepts such order and the anticipated delivery date for that order by issuing a Sales Order Acknowledgement. Each order which is so accepted shall constitute an individually binding Contract.

4. DELIVERY

(a) Time for delivery of the Products and completion of the Services is given as accurately as possible but is not guaranteed. Except where otherwise agreed in the Sales Order Acknowledgement, VICTREX shall deliver to the Buyer's premises as stated in the Buyer's order(s).

(b) The Buyer shall have no right to cancel the Contract for failure of Victrex to meet any delivery or completion time stated.

(c) All Products delivered to Buyer shall be delivered CIP (Incoterms 2010) to the Buyer's named delivery point (or such other Incoterm as may be specified in the Sales Order Acknowledgement).

(d) Upon receipt of each delivery of Products sold hereunder, the Buyer shall examine such Products for any damage, defects or shortage. Victrex will have no liability for damage in transit unless the Buyer notifies VICTREX within 3 days of receipt of the Products and confirms by notification in writing within 7 days of receipt of the goods, following which the provisions of Condition 10(b) shall apply. If the Buyer fails to give either such notice of rejection, the Buyer shall be deemed to have accepted the delivery in full.

(e) Failure by the Buyer to take delivery of any one or more instalments of Products delivered in accordance with the Contract shall entitle VICTREX to terminate the Contract either in whole or part.

(f) VICTREX shall be entitled to deliver the Products by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between VICTREX and the Buyer.

5. PRICE

(a) Save as otherwise agreed in writing by VICTREX, or as indicated in the Sales Order Acknowledgement or any Special Conditions, the prices of the Products:

(i) will be those prevailing at the time of delivery;

(ii) are stated as a price per tonne, litre, metre, squared metre or kilogram (as appropriate);

(iii) shall exclude all costs associated with expedited delivery including but not limited to costs relating to freight, transportation, insurance, delivery and unloading; and

(iv) are exclusive of any sales, excise or other taxes, which VICTREX shall add at the appropriate prevailing rate.

6. RETENTION OF TITLE

(a) Risk of damage or loss of the Products shall pass to the Buyer at the time of delivery.

(b) Notwithstanding delivery and passing of the risk of loss, Products will remain the property of VICTREX until VICTREX receives payment in full (in cash or cleared funds) for the Products and any other goods or Services that VICTREX has supplied to the Buyer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums.

(c) From delivery until title to the Products passes to the Buyer, the Buyer shall insure the Products for full value. The Buyer shall hold the proceeds of any claim on the insurance policy on trust for VICTREX and shall immediately account to VICTREX for any proceeds.

(d) Until such time as the property in the Products passes to the Buyer the Buyer shall hold the Products as VICTREX's trustee and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as VICTREX property, but shall be entitled to use (or where authorised by VICTREX in writing in advance, resell) the Products in the ordinary course of its business in which case all proceeds from such resale or reuse shall be held by the Buyer in trust for the benefit of VICTREX.

(e) Until such time as title to the Products passes to the Buyer, (and provided the Products are still in separate identifiable existence and have not been resold) VICTREX shall be entitled at any time to require the Buyer to deliver up the Products to VICTREX and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer where the Products are stored and repossess the Products (all to the fullest extent permitted by law, and where the Products are stored at the premises of a third party the Buyer shall procure a right for VICTREX to enter such third party's premises to repossess the Products).

(f) The Buyer shall not be entitled to pledge, grant a security interest in, or charge by way of security for any indebtedness any of the Products which remain the property of VICTREX, and if the Buyer does so all monies owing by the Buyer to VICTREX shall (forthwith become due and payable, without prejudice to any other right or remedy of VICTREX).

(g) Notwithstanding any other provision of this Condition 6:

(i) the Buyer shall be entitled to use (or where authorised by VICTREX in writing in advance, resell) the Products in the ordinary course of business, provided that this right shall automatically cease should the Buyer become subject to any of the events listed in Condition 11(a)(ii); and

(ii) VICTREX may elect for title to the Products to pass to the Buyer at any time following delivery to the Buyer.

7. SERVICES

(a) The provisions of this Condition 7 shall only apply if VICTREX is providing Services to the Buyer.

(b) In providing Services VICTREX shall:

(i) provide Services with reasonable care and skill;

(ii) use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services; and

(iii) have the right to make any changes to the Services that are necessary to comply with any applicable law or safety requirement, or which do not materially or adversely affect the nature or quality of the Services.

8. PAYMENT

(a) VICTREX may, on or after the date it sends any instalment of the Products, invoice the Buyer for those Products

(b) Buyer shall pay each invoice in full in accordance with the payment terms as set out on the invoice. Time shall be of the essence for payment of invoices by the Buyer.

(c) Notwithstanding the provisions of Conditions 8(a) and 8(b), VICTREX reserves the right (in VICTREX's absolute discretion) to require

- payment in full for the Products on or before delivery or otherwise to change any credit terms given to the Buyer from time to time.
- (d) Interest is payable on overdue amounts of invoices at the rate of 3% over Barclays Bank plc base rate from time to time, to run from the due date for payment until receipt by VICTREX of the full amount (including any accrued interest) whether before or after judgment.
- (e) VICTREX may suspend the supply of Products to the Buyer where any payment is overdue from the Buyer to VICTREX under any Contract or any contract between VICTREX (or any Group Company of VICTREX) and a Group Company of the Buyer, until all such amounts have been paid.
- (f) All sums payable in respect of an order shall be payable in full by the Buyer without deduction of any kind, whether by way of set-off, counterclaim or otherwise howsoever. The Buyer shall not be entitled to set-off an amount owing or alleged to be owing to it by VICTREX against amounts owing by it to VICTREX.
- 9. EXPORT SALES**
- (a) The Buyer acknowledges that the export of Products and any associated technology, including intellectual property as further described in Condition 12, may be subject to export control regulations in certain applicable jurisdictions (as such regulations may be amended from time to time).
- (b) Buyer agrees that as a condition of VICTREX's acceptance of any order and therefore any Contract made under these Conditions, that:
- (i) the Products and any associated technology will not be used:
- (1) for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity; or
- (2) in breach of any applicable laws, trade sanctions or trade embargoes, including without limitation, in violation of license requirements 1 C 998 under the Bureau of Industry and Security Export Administration Regulations; and
- (ii) the Products and any associated technology will not be resold if it is known or suspected that they are intended to be used for such purposes.
- (c) In the event that VICTREX is not able to obtain any requisite governmental licence, consent or permit or other authorisation in fulfilment of any order or Contract, VICTREX shall not be liable to the Buyer or any third party in respect of any bond or guarantee or for any loss, damage or other resultant financial penalty.
- (d) The sales of the Products are subject to the Incoterm (if any) stated in the Sales Order Acknowledgement. In the event of any conflict between the provisions of Incoterms and these Conditions, then the Sales Acknowledgement Order shall prevail.
- (e) It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Products shall not apply to any Contract pursuant to these Conditions.
- (f) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Products into the country of destination and for the payment of any duties on them.
- 10. WARRANTY AND LIABILITY**
- (a) VICTREX warrants that the Products will, when delivered, comply with VICTREX's standard specification applicable at the time of manufacture.
- (b) VICTREX is not liable for any defect in the Products unless the Buyer has given notice to VICTREX within the time periods provided in Condition 4(d). If the Buyer notifies VICTREX of a defect in the Products within the specified time periods, VICTREX's only obligation is, at its option, to either
- (i) replace or repair any quantity of the Products that are damaged or defective; or
- (ii) refund to the Buyer the amount paid by the Buyer for the quantity of the Products that are the subject of the claim, together with the applicable transportation costs.
- (c) VICTREX makes no representations and gives no warranties or undertakings:
- (i) as to the suitability or otherwise of the Products for use in the manufacture of products by the Buyer or any other application;
- (ii) as to the ownership, validity or subsistence of any intellectual property that may subsist in the Products or in any application or use thereof; or
- (iii) for the benefit of the Buyer or the Buyer's customers or agents.
- (d) It shall be the sole responsibility of Buyer to determine the suitability of the Products for use in the manufacture of products by Buyer or any other application and any use that Buyer may make of the Products is at Buyer's own risk.
- (e) VICTREX has not and will not participate in the design, manufacture, sale or distribution of any of the Buyer's products.
- (f) VICTREX is not liable to the Buyer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for:
- (i) any defect in the Products or Services caused by fair wear and tear, abnormal or unsuitable conditions of storage or use after delivery, or an act, omission or default of the Buyer or a third party; or
- (ii) loss of revenues, loss of contracts or loss of profits, whether direct, indirect or consequential loss, nor for any indirect or consequential loss and whether arising from negligence, breach of contract or otherwise.
- (g) The entire liability of VICTREX under or in connection with the Contract, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, is limited to an amount equal to two times the total of the charges payable by the Buyer under the Contract.
- (h) Except as set out in these Conditions, all conditions, warranties and representations, express or implied by:
- (i) statute;
- (ii) common law; or
- (iii) otherwise, in relation to:
- (1) the Products; or
- (2) any intellectual property that may subsist in the Products or in any use or application thereof,
- are excluded to the fullest extent permitted by law.
- (i) Nothing in these Conditions shall exclude or limit a party's liability for fraud, for death or personal injury caused by its negligence, or for any other matter, if and to the extent that under English Law, liability for it cannot be excluded, restricted or limited in the context of this Agreement. The invalidity, illegality or unenforceability of any part of these Conditions does not affect or impair the continuation in force of the remainder of these Conditions.
- 11. TERMINATION**
- (a) Either party shall be entitled to terminate the Contract by giving written notice to the other if:
- (i) the other party commits a material breach of any of the terms and conditions of the Contract and in the case of a material breach capable of remedy, fails to do so within thirty (30) days of written notice being received specifying the material breach and requiring its remedy; and/or
- (ii) if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other party) or becomes insolvent or bankrupt or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business or if the financial position of the other party deteriorates to such an extent that in the reasonable opinion of the performing party the capability of the other party adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- (b) The termination or expiry of the Contract, however arising, will be without prejudice to the rights and remedies of VICTREX accrued prior to termination. The Conditions that expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination or expiry of the Contract.
- 12. INTELLECTUAL PROPERTY**
- (a) All intellectual property rights (including but not limited to patents, trade marks, service marks, rights in designs, copyrights, database rights (whether or not any of these is registered and including applications for registration of the foregoing) and all rights and forms of protection of a similar nature or which have equivalent or similar effect to any of the foregoing which may subsist anywhere in the world) in or to the Products which vest in VICTREX shall remain vested in VICTREX. The Buyer acknowledges that these Conditions or any Contract do not operate to vest in the Buyer any right, title or interest in or to any such rights. The Buyer shall not at any time assert any rights in the goodwill attaching to any of VICTREX's trademarks or other intellectual property, and all such rights shall vest in and ensure exclusively for the benefit of VICTREX. If the Buyer challenges the validity of VICTREX's rights in or to, or the validity of any of VICTREX's trademarks (or any applications or registrations thereof) or any other intellectual property of VICTREX, then VICTREX shall be entitled to terminate the Contract immediately.
- (b) The Buyer shall not cause or allow to be analysed and/or reverse engineered any Products, or any samples provided by VICTREX, to determine the chemical composition, formulation or measure the properties of such Products or samples, unless with the prior written consent of VICTREX, which may be given or withheld in the sole and absolute discretion of VICTREX.
- 13. CONFIDENTIALITY**
- (a) Each party agrees that all information received from the other party under the Contract, including the nature of the Products and/or Services to be provided by VICTREX and the existence of any Contract shall be maintained in confidence and not disclosed to others, except as such disclosure may be required by applicable law or court order and the receiving party agrees not to use such information for any purpose other than the fulfilment of a Contract without the prior written consent of the other party. The obligations of confidentiality shall survive termination or expiry of the Contract.
- (b) Each party shall use reasonable care to protect the confidentiality of information received from the other party but in all events no lesser standard of care to protect the confidentiality of information received from the other party than it uses to protect its own confidential information, and shall limit disclosure of such information to those of its personnel and consultants and those of VICTREX's Group Companies who have an actual need to know and have a written obligation to protect the confidentiality of such information.
- 14. ANTI-BRIBERY**
- (a) Each party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in any jurisdiction applicable to the parties and the supply of the Products and/or Services ("**Applicable Bribery Law**"). No party shall place the other in breach of any Applicable Bribery Law.

- (b) Each party shall maintain in place throughout the term of this Contract its own adequate policies and procedures to ensure compliance by it and its personnel with the Applicable Bribery Law, and will enforce those policies and procedures as necessary to avoid any breach by it or its personnel of Applicable Bribery Law. Each party shall promptly answer reasonable enquiries from the other party relating to those policies and procedures.
- (c) The Buyer shall promptly report to VICTREX any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of this Contract.
- (d) Breach of this Condition 14 shall be deemed a material breach and not capable of remedy.

15. FORCE MAJEURE

If VICTREX is prevented, hindered or delayed from or in supplying Products by an event or circumstance beyond its control (including, without limitation, strikes, lockouts and other industrial disputes, accidents, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, reductions in or unavailability of power at manufacturing plant, breakdown of plant or machinery, or shortage or unavailability of raw materials from normal sources or routes of supply or delay by the Buyer in the performance of any of its obligations under the Contract (each of the foregoing being a "Force Majeure Event")) VICTREX may, at its option and without any liability for any loss or damage suffered by Buyer:

- (a) suspend deliveries while the Force Majeure Event (or its effects) continues (or continue); or
- (b) terminate any Contract so affected with immediate effect by written notice to the Buyer.

16. REMEDIES AND WAIVERS

No delay or omission by either party in exercising any right, power or remedy provided by law or under these Conditions shall:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in these conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- (a) The Buyer agrees that the controls, benefits, rights and licences granted to VICTREX under the Contract are also granted to each member of VICTREX's Group and that any loss suffered by VICTREX or a member of VICTREX's Group as a result of any action or omission under the Contract shall be deemed to be a loss of VICTREX and recoverable from the Buyer under the Contract (subject to the agreed exclusions and limits on liability).
- (b) Other than as set out in Condition 17(a) above, a person who is not a party to the Contract will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms

18. NO PARTNERSHIP

Nothing in these Conditions and no action taken by the parties pursuant to these Conditions and any Contract made under them shall constitute a partnership, association, joint venture or other co-operative entity between the parties.

19. GOVERNING LAW

These Conditions and any Contract made under them are governed by, and shall be construed in accordance with, English law. All disputes are to be settled by arbitration in London (in English) under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules.

20. NO HUMAN IMPLANTATION.

The Buyer will not use, or cause to be used, any Products for any application intended for (i) human implantation, (ii) permanent oral and/or dental contact

or (iii) blood or tissue contact for 24 hours or more. VICTREX may immediately terminate the Contract or suspend further shipments of Products to the Buyer, in the event that the Buyer has breached this Condition or if VICTREX reasonably believes that the Buyer intends to or has breached this Condition

21. INDEMNITY

The Buyer agrees to indemnify, hold harmless, and defend VICTREX, any Group Company of VICTREX, and each of its or their respective officers, directors, agents, employees, representatives, successors, and assigns (collectively, "Indemnified Parties") from and against any and all claims, demands, damages, fines, penalties, losses, causes of action, liabilities, and judgments (collectively, "Claims") of every kind (including all expenses of litigation, court costs, and reasonable legal fees), for damage to any property or injury to or death of any person (including, but not limited to, employees of the Buyer) resulting from, arising out of, or in any way connected with the acts or omissions to act, of the Buyer, its officers, agents, employees, representatives, and contractors (collectively, the "Buyer Parties"), including to the extent any such Claims are based in part upon the joint or concurrent negligence or strict liability of Indemnified Parties, or whether any such Claims are by way of tort or contract or otherwise. The Buyer will not be required to indemnify Indemnified Parties for any Claims determined by final judgment of a court to have been caused by the wilful misconduct or gross negligence of Indemnified Parties. The Buyer shall also indemnify, hold harmless, and defend Indemnified Parties from and against any and all Claims resulting from, arising out of, or in any way connected with, any breach of the Agreement by any of the Buyer Parties, including breaches of any representation or warranty made hereunder, or the failure of any of the Buyer Parties to comply with any third party requirements or with any laws including, but not limited to, fines, penalties, and monetary sanctions imposed by any governmental entity, or political subdivision or agency thereof, associated with any such failure.