



Biological Reagents

Terms and Conditions of Sale

1 Definitions and Interpretation

1.1 In these 'Conditions of Sale' the following terms shall have the following meaning:

BACS shall mean Bankers Automated Clearing System.

Buyer shall mean any person who places an order for Products and shall include UK and Overseas Buyers.

Catalogue shall mean the APHA interactive catalogue available on the website entitled 'Biological Reagents Catalogue'.

Conditions shall mean the terms and conditions of sale set out in the Catalogue and any special terms and conditions agreed in writing by APHA.

APHA shall mean the Animal and Plant Health Agency which is an Executive Agency of the Department for Environment, Food and Rural Affairs, based at New Haw, Addlestone, Surrey KT15 3NB, United Kingdom.

EC Buyer shall mean any buyer whose principal place of business or registered office is in a member state of the European Union other than the UK.

Incoterms shall mean the Ex Works (EXW) terms of Incoterms 1990.

Intellectual Property Right(s) and **IPR** mean patents, registered designs, registered trademarks or service marks and applications for any of the above, design rights, copyrights, database rights for the purposes of the Copyright and Rights in Databases Regulations 1997, unregistered trademarks or service marks, Know-How, trade names, technical information, domain names and any other similar rights in any jurisdiction.

Know-How means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, designs, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

Overseas Buyer shall mean any Buyer whose principal place of business or registered office is outside the UK (and for the avoidance of doubt shall include an EC Buyer unless otherwise stated).

Products shall mean products listed in the Catalogue and any products supplied to a specification agreed in writing by APHA with the Buyer.

Product Sales shall mean the APHA Product Sales Desk whose address is:

APHA Scientific Product Sales,
Animal and Plant Health Agency
New Haw, Addlestone, Surrey KT15 3NB, United Kingdom
Telephone +44 (0)1932 357641
Facsimile +44 (0)1932 357701
Email: salesdesk@apha.gsi.gov.uk

UK shall not for the purposes of these Conditions include the Channel Islands but shall include the Isle of Man and Northern Ireland.

UK Buyer shall mean any Buyer whose principal place of business or registered office is in the UK.

VAT shall mean Value Added Tax.

1.2 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders, whenever the context so admits.

1.3 All headings are for ease of reference only and shall not affect the construction of these Conditions.

2. Conditions Applicable

2.1 These Conditions shall apply to all contracts for the sale of Products by APHA to the Buyer to the exclusions of all other terms and conditions including any terms and conditions which the buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 All orders for Products shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Conditions.

2.3 Acceptance of delivery of the Products shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by APHA.

3 Orders

3.1 All orders must be sent to Product Sales and must:

3.1.1 Identify all Products using the Catalogue number and a description of the Products.

3.1.2 In the case of Products to be supplied to specification, be accompanied by the proposed specification.

3.1.3 Contain the full name and address of the Buyer for delivery (and for the invoice where this is different) including telephone, e-mail and facsimile numbers.

3.1.4 With regards to UK Buyers, where the approval of the Department for Environment, Food and Rural Affairs is required pursuant to Condition 9.5, be accompanied by the requisite approval.

3.1.5 In the case of Overseas Buyers, be accompanied with all necessary import licences and approvals or other consents (including import documents for Products classified as live and infectious) as may be required to enable the Products to be imported into the Buyer's country.

3.2 Orders shall only be met if and when Condition 3.1 is fully complied with and if they are submitted in the name of a company, firm or other corporate body. Orders from individuals cannot be accepted unless they represent one of the said bodies.

3.3 Orders may be placed through Product Sales by telephone. However orders shall not be despatched until confirmation of the telephone order has been received by APHA in writing and marked 'Confirmation of telephone order'. Order numbers must be quoted on all correspondence.

4 Prices

4.1 The price payable by the Buyer is the price prevailing at the date of despatch, in accordance with APHA's latest prices, unless a written quotation has been provided by APHA.

4.2 All prices are exclusive of VAT.

4.3 VAT shall be added to orders from UK Buyers at the rate prevailing at the date of the invoice.

4.4 Unless EC buyers provide a VAT registration number with their orders, VAT shall be added to EC orders at the rate prevailing in the UK at the date of invoice.

4.5 VAT shall not be charged on exports from the UK to Overseas Buyers who are not EC Buyers.

4.6 All and any import duties, value added taxes or other charges of whatever nature leviable or chargeable on the goods on importation into the country of destination shall be paid by the Overseas Buyer.

4.7 Delivery costs are not included in the prices and shall be charged at cost.

4.8 APHA reserves the right to amend prices without prior notification.

5 Payment

5.1 Payment shall be made by the Buyer within 28 days on receipt of the invoice, in pounds sterling.

5.2 Payment may be made:

5.2.1 Payment and remittance details should be sent to:

APHA
C/O SSD Finance
PO Box 347
York
Y01 7PX

or SSD.FinanceAR@defra.gsi.gov.uk

Cheques should be crossed and made payable to: APHA. Please note your customer number and invoice number on the reverse.

In case of query or to make debit/credit card payments please call: +44 (0)1904 455395

Electronic banking information: BANK: Citibank SORT CODE: 08-33-00 ACCOUNT: 12315890
IBAN: GB63CITI08330012315890 SWIFT:CITI GB2L

All amounts are in GBP £ unless otherwise stated.

5.2.2 by BACS.

5.2.3 by Credit/Debit Card. Cards accepted are Visa, MasterCard and Maestro.

5.3 If payment is made by Cheque, it must show the UK Bank Sort Code. If payment is made by BACS, a remittance advice should be sent by the Buyer to SSD and must contain invoice or quotation number.

5.4 Goods will be despatched on receipt of payment. APHA reserves the right in respect of any order to clear payment before despatch of the Products.

6 Property

6.1 Property in each of the Products sold or agreed to be sold by APHA shall not pass to the Buyer until full payment of the invoice price of that Product has been received by APHA. Where payment and delivery is by instalment the property in the products covered by each invoice shall pass on payment of that invoice.

7 Risk

7.1 Notwithstanding that the property in the Products may not have passed to the Buyer by virtue of the provisions of Condition 6, the risk in the goods shall pass:

7.1.1 to UK Buyers on delivery of the goods.

7.1.2 to Overseas Buyers in accordance with the Incoterms.

7.2 Incoterms are hereby incorporated into these Conditions of Sale and shall apply to sales with Overseas Buyers, except to the extent they are modified by these Conditions. In the event of any conflict between these Conditions and the Incoterms, these Conditions shall prevail.

8 Insurance

8.1 The insurable risk in the Products shall pass to the UK Buyer as soon as the goods are delivered to him or to his order in the case of a UK Buyer and in the case of an Overseas Buyer as soon as the Products have been delivered to the carrier in accordance with the Incoterms and pending disposal the Buyer shall keep the Products insured in the amount of the price at which the Products are sold to the Buyer against all insurable risks. If goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of any such insurance as trustee for APHA.

9 The Products

9.1 The quantity and description of the Products shall be as set out in the Catalogue and in the documentation accompanying the Products.

9.2 The description of the Products differentiate between those Products intended for use in *in-vitro* animal diagnostics, research, manufacturing or quality control testing and those Products intended for use in veterinary *in vivo* diagnostic procedures or disease prophylaxis.

9.3 APHA warrants that the Products will at the time of delivery correspond to the description given by APHA.

9.4 All Products shall be accompanied by the relevant documentation.

9.5 Products marked with † in this Price List may not be sold for use in the UK without the prior approval of:

Veterinary Exotic Notifiable Disease Unit
Department for Environment, Food & Rural Affairs
17 Smith Square, London SW1P 3JR

or the local Divisional Veterinary Manager as indicated. The Buyer shall be responsible for obtaining such approval.

9.6 Where APHA supplies Products to specification agreed in writing by APHA with the Buyer, the Products shall conform to such specification.

9.7 Products are supplied on the basis that the Buyer is responsible for determining the suitability of the Products for the purposes for which the Buyer intends to use them. Some of the Products APHA is able to supply require proper precautions to be taken and the Buyer must ensure that any regulations relating to the storage, handling or usage of the Products are complied with.

9.8 The Products listed in the Catalogue are for laboratory use only. They are not intended for human consumption. The Buyer must take proper precautions against accidental ingestion or inhalation of any substances.

9.9 The Products are not intended for incorporation into pharmaceutical preparations and must not be used as cosmetics, agricultural or pesticidal products, food additives or household chemicals.

10 Intellectual Property

10.1 Any Intellectual Property Rights in the Product which may be supplied to the Buyer by APHA in relation to this contract shall remain vested in APHA and, for the avoidance of doubt, such supply shall entitle the Buyer only to use such rights to the extent necessary to perform the contract and shall not constitute an assignment of such Intellectual Property to the Buyer or any other person.

10.2 The Buyer shall not resell, modify, copy, merge, disassemble, reverse engineer, transmit, reproduce, publish, licence, create derivative works from, sub-licence, transfer, distribute, assign, rent, sell or otherwise convey the Product other than as provided for in this contract without the prior written consent of APHA.

10.3 Where any specification or design has been supplied by the Buyer for manufacture by or to the order of APHA, then the Buyer warrants that the use of those specifications or designs for the manufacture, processing, assembly and/or supply of the Products shall not infringe any third party Intellectual Property Rights.

10.4 APHA and the Buyer shall inform the other promptly if it becomes aware of any infringement or potential infringement of any of the Intellectual Property Rights in the Product supplied under this contract, and both parties shall consult with each other to decide the best way to respond to such infringement.

10.5 If any warning letter or other notice of infringement is received by the Buyer, or legal action is commenced against the Buyer, alleging infringement of third party rights in the manufacture, use or sale of the Products, the Buyer shall promptly provide full details to APHA, and the parties shall discuss the best way to respond.

10.6 The Buyer shall indemnify and keep indemnified and hold APHA and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which APHA or the Crown may suffer or incur as a result of or in connection with any breach by the Buyer of this condition 10.

11 Trademarks

11.1 No trademark or name carried on any of the Products shall be erased or removed without the prior written consent of APHA.

12 Returns

12.1 Products shall not be accepted for return without the prior written approval of APHA on terms and conditions to be determined at the absolute discretion of APHA.

12.2 If the Buyer has any complaint in connection with the Products, the Buyer shall inform Product Sales of his complaint in writing within three (3) days of receipt of the Products and the Buyer shall retain such Products for inspection by APHA.

12.3 Without prejudice to the other provisions of these Conditions, APHA may in its absolute discretion give consideration to any complaint made by the Buyer and may arrange for the Products to be replaced or for suitable allowances to be made. Any such replacements or allowances shall be made purely as a gesture of goodwill, and shall in no way be construed as an acceptance of liability by APHA.

12.4 Products returned without the prior written approval of APHA may at APHA's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies APHA may have.

13 Warnings – Live and Infectious Products

13.1 The Buyer is warned that many of the Products are infectious.

13.2 Accordingly the Buyer shall ensure that:

13.2.1 The necessary technical skills are available to determine the appropriateness of the Products for the proposed application.

13.2.2 All necessary precautions are taken when handling live infectious Products.

13.2.3 Full operator safety precautions are observed when handling Products which may be infectious to humans.

13.2.4 Operators are fully informed as to the nature of the Products which they are handling.

13.2.5 Instructions in the Catalogue and any product documentation for storage, use and safe disposal of the Products are carried out.

14 Liability

14.1 All terms, conditions and warranties (whether oral or written, express or implied by statute or common law or otherwise) whether by APHA or its servants or agents or otherwise (other than express warranties set out in these Conditions) relating to the quality and/or fitness for purpose of the Products or any of the Products are excluded.

14.2 In any event, and notwithstanding anything contained in these Conditions, but subject to the provisions of the Unfair Contract Terms Act, APHA shall not be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for:

14.2.1 any increased costs or expenses, and/or

14.2.2 any loss of profit, business, contracts, revenues, or anticipated savings, and/or

14.2.3 for any special indirect or consequential damage of any nature whatsoever.

14.3 In any event, and notwithstanding anything contained in these Conditions, but subject to the provisions of UCTA, APHA's liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, arising by reason of or in connection with this contract shall be limited to the invoice price of the Product.

14.4 Without prejudice to the generality of Conditions 14.2 and 14.3, and subject to the provisions of UCTA, APHA shall not be liable in contract, tort (including negligence) or otherwise howsoever for any loss or damage of any kind whatsoever arising from:

14.4.1 the use of the Products by the Buyer; and/or

14.4.2 the inaccuracy of results obtained from the Products; and/or

14.4.3 the failure of the Buyer to observe the warnings contained in Condition 13.

14.5 The Buyer shall indemnify APHA against all actions, proceedings, claims, or demands in any way connected with the contract brought or threatened against the Buyer by a third party except to the extent that APHA is liable to the Buyer under these Conditions.

14.6 Each of the foregoing Conditions 14.1 to 14.5 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said Conditions is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding completion of the contract to which these Conditions relate.

15 Delivery

15.1 Whereas every effort shall be made to meet any time, date or period named for delivery, any such time, date or period is an estimate only and APHA shall not be liable for any damage or loss of any nature whatsoever (including loss or damage in transit) whether arising directly or indirectly out of delay in delivery unless such delay is substantial and can be proved to result from the negligence of APHA and such late despatch or delivery will not entitle the Buyer to rescind the contract.

15.2 APHA reserves the right to make delivery of goods by instalments and to tender a separate invoice for each instalment setting out the invoice price for each instalment. Payment for any such instalment must be made in accordance with Condition 5 and any delay in the delivery of any instalment shall not entitle the Buyer to refuse to accept delivery of further instalments.

16 Lost in Transit

16.1 APHA shall not be liable for any loss or damage whatever of Products in transit, unless it can be proved to result from the negligence of APHA.

17 Import Documents

17.1 The Overseas Buyer shall be responsible for obtaining and maintaining in force all necessary import licences and approvals or other consents (including import documents for Products classified as live and infectious Products) as may be required to enable the Products to be imported into the Buyer's country.

18 Storage

18.1 Where despatch of goods is delayed at the Buyer's request or by reason of the Buyer's failure to give proper instructions as to delivery, APHA shall be entitled to arrange storage either at its own works or elsewhere and all charges or storage and insurance shall be paid by the Buyer.

19 Cancellation by Buyer

19.1 When a contract has been made between APHA and the Buyer, the Buyer shall not be entitled to cancel the contract except with the prior written consent of APHA and on terms which will indemnify APHA against all loss or damage whether direct or indirect.

20 Cancellation by APHA

20.1 APHA may cancel this contract at any time before the payment for the Products has been received by APHA by giving written notice.

20.2 Where delivery is by instalment and separate invoices are being sent in respect of each instalment, APHA may cancel this contract at any time before payment for the final delivery of Products has been received by APHA.

21 Notices

21.1 Any notices given under or pursuant to these Conditions shall be in writing and sent by hand or by first-class post or registered post or by recorded delivery or transmitted by facsimile if so sent or transmitted to APHA at the address of Product Sales, or such other address as APHA may from time to time notify to the Buyer, and to the Buyer at its registered office or principal place of business, shall be deemed effectively given on the day when in the ordinary course of the Means of transmission it would first be received by the addressee in normal business hours.

21.2 A party shall not attempt to prevent or delay the service on it of a notice under these Conditions.

22 Force Majeure

22.1 Neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from any industrial dispute, Act of God, war, civil commotion, legislation, inability to obtain supplies, raw materials, equipment or transportation, inability to obtain any necessary import or export licences or other consents or approvals of any governmental authority, outbreak of animal disease or any other cause or circumstance whatsoever beyond its control.

22.2 Such delay or failure shall not constitute a breach of contract and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for more than six (6) months nothing in this Condition 22.2 shall be taken to limit or prevent the exercise by APHA of its rights of cancellation under Condition 20.

23 Sub-Contracting

23.1 APHA may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.

24 Waiver

24.1 No waiver or forbearance by APHA (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

25 Severance

25.1 Any provision in these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.

26 Governing Law

26.1 These Conditions shall be governed by and construed in accordance with English law.

27 Dispute Resolution

27.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly.

27.2 If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure.

27.3 The performance of obligations under the Contract shall not cease or be delayed by the application of an ADR procedure.

27.4 If the matter has not been resolved by an ADR procedure within one month of the initiation of such procedure, or if the Buyer refuses to participate in an ADR procedure, condition 28 will apply.

28 Jurisdiction

28.1 All disputes arising out of this contract shall be subject to the exclusive jurisdiction of the English courts. This Condition is for the sole benefit of APHA and shall not be construed so as to limit the right of APHA to take proceedings against the Buyer in any court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

29 Rights of Third Parties

29.1 For the purpose of the Contracts (Rights of Third Parties) Act 1999, this Contract 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.