

STANDARD TERMS AND CONDITIONS OF SALE – QUEST VITAMINS LIMITED

1. INTERPRETATION

1.1 Definitions:

Bespoke Goods: goods which do not form part of QVL's standard range or goods which are supplied under any brand other than "Quest".

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

Contract: the contract between QVL and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from QVL.

Delivery Location: the location set out in the Order or such other location as the parties may agreeor QVL's premises if the Goods are to be delivered on an Ex Works Incoterms basis.

Force Majeure Event: an event or circumstance beyond a party's reasonable control including (without limitation) acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on the existence of the Force Majeure Event, or companies in the same group as that party), non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on the existence of the Force Majeure Event) and interruption or failure of utility service.

Goods: the goods (or any part of them) set out in the Order including Bespoke Goods if the Order is for Bespoke Goods.

Incoterms: Incoterms 2020 (International Chamber of Commerce) or any later version of Incoterms as QVL may stipulate from time to time.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Minimum Shelf Life: 6 months from the date of delivery, unless otherwise agreed between the parties in writing.

Order: the Customer's order for the Goods, as submitted online via QVL's website, by telephone, by email, in person by the Customer's authorised representative at QVL's premises or as set out in the Customer's purchase order form, the Customer's written acceptance of QVL's quotation, or overleaf, as the case may be.

Price List: QVL's standard price list as amended by QVL from time to time.

QVL: Quest Vitamins Limited (registered in England and Wales with company number 02530437).

Specification: a specification for Bespoke Goods that is agreed in writing by the Customer and QVL including artwork, formulation and certificate of analysis (if applicable).

1.2 Interpretation:

1.2.1 A reference to:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) legislation or a legislative provision is a reference to it as amended or re-enacted and will include all subordinate legislation made under that legislation or legislative provision;
- (c) any words following the terms **including** or **include** or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms;
- (d) **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply in all circumstances when QVL and the Customer are trading with each other in the course of their respective businesses.
- 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 law, trade custom, practice or course of dealing.
- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.4 The Customer is responsible for checking online Orders for any errors before submitting the Order.
- 2.5 An offline Order will only be deemed to be accepted when QVL does any act consistent with fulfilling the Order, at which point the Contract will come into existence. An online Order will only be deemed to be accepted when QVL sends an email to the Customer accepting the Order, at which point the Contract will come into existence.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.7 Any samples, drawings, descriptive matter or advertising produced by QVL and any descriptions or illustrations contained on QVL's website or in QVL's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They will not form part of the Contract nor have any contractual force. More particularly, the provision of a sample by QVL is for information only and will in no way be taken to imply any warranty or condition as to the quality, merchantability, fitness for purpose, suitability or other properties of the Goods.
- 2.8 A quotation for Bespoke Goods given by QVL will not constitute an offer. All such quotations are subject to availability of and cost to QVL of Bespoke Goods and may be withdrawn or amended by QVL at any time and are therefore non-binding.
- 2.9 If QVL is unable to supply the Customer with the Goods ordered for any reason other than as set out in clause 2.10, QVL will inform the Customer of this and will not process the Order. If the Customer has already paid for the Goods, QVL will refund the Customer the full amount including any delivery costs charged as soon as possible.
- 2.10 In relation to offline Orders only, if the Goods ordered by the Customer are not in stock when the Customer submits its Order but further stocks of the ordered Goods are expected by QVL within a reasonable period of time, QVL will notify the Customer and keep the Customer's Order on hold and when the Goods ordered become available, QVL will supply the Goods at the price which was applicable for the Goods at the time the Customer's Order was originally placed. If QVL notifies the Customer that Goods are not in stock, the Customer may cancel its Order within 48 hours of receipt of such notice without liability.

- 2.11 The Customer's account number or postcode will be required to place an Order.

3. SPECIFICATION (BESPOKE GOODS)

- 3.1 If a Specification is required because the Goods ordered are Bespoke Goods, the parties will use reasonable endeavours to agree the Specification.
- 3.2 If the parties cannot agree on the Specification, without prejudice to any other rights or remedies QVL may have, QVL may cancel the Customer's Order without liability. The Customer will pay QVL on a time and materials basis fair and reasonable compensation for any work in progress on or in relation to the Goods at the time of termination and management time incurred by QVL in relation to that Order prior to the time of termination, but whilst such compensation will not include loss of profits in relation anything which QVL would have done under the Contract had this not been terminated, it is agreed that QVL will be entitled to its usual margin on all work it has carried out up to termination.

4. GOODS

- 4.1 The Goods are described on QVL's website and in QVL's catalogues, brochures and other marketing materials, as modified by any applicable Specification if the Goods are Bespoke Goods.
- 4.2 The images of the Goods on QVL's website are for illustrative purposes only. QVL cannot guarantee that any particular computer's display of the colours accurately reflects the colour of the Goods. The colour of Goods received by the Customer may vary slightly from those images.
- 4.3 The packaging of Goods may vary from that shown on images on QVL's website and in QVL's catalogues, brochures and other marketing materials.
- 4.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer will indemnify QVL against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by QVL in connection with any claim made against QVL for:
 - 4.4.1 actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with QVL's use of the Specification;
 - 4.4.2 personal injury, loss or damage to property arising from the use of the Goods unless such injury, loss or damage is solely attributable to the negligence of QVL or QVL's employees or agents.
- 4.5 Clause 4.4 will survive termination of the Contract.
- 4.6 QVL reserves the right to amend the Goods and/or their Specification if required by any applicable statutory or regulatory requirement, and QVL will notify the Customer in any such event. Notwithstanding any such change, the Customer must accept and pay for the Goods in accordance with these Conditions provided that QVL has accepted the Customer's Order before the change to the Specification takes effect.
- 4.7 Any advice or recommendations given by QVL or its employees or agents relating to the suitability of the Goods is supplied in good faith but the Customer must satisfy itself that the Goods are suitable for the intended purpose.
- 4.8 All Goods forming part of promotional lines or which are described as forming part of a "deal" must be ordered in cases of 6 as a minimum.
- 4.9 Any special promotions, deals or discounts in relation to the Goods which are offered by QVL from time to time are at QVL's discretion and may be withdrawn at any time.

5. DELIVERY

- 5.1 Subject to clause 5.2, if QVL agrees that an Incoterm will apply to an Order, that relevant stated Incoterm will apply and if there is any conflict between these Conditions and Incoterms, Incoterms will prevail to the extent required to resolve the conflict.
- 5.2 All Orders for Bespoke Goods will be delivered on an Ex Works Incoterms basis unless agreed otherwise between the parties in writing. In this case, Ex Works Incoterms will prevail to the extent required to resolve any conflict between Ex Works Incoterms and these Conditions.
- 5.3 QVL may offer free delivery in relation to Offline Orders, if this applies the details will be confirmed in the Price List. Free delivery will not apply to Orders for Bespoke Goods unless agreed otherwise between the parties in writing.
- 5.4 QVL may offer free delivery in relation to Online Orders, if this applies the details will be confirmed on QVL's website and displayed to the Customer as part of the online checkout process.
- 5.5 It is the Customer's responsibility to check that the Goods delivered by QVL match the Goods ordered before putting such Goods to use. QVL will not be responsible for any liabilities, costs, expenses, damages or losses incurred by the Customer if the Customer does not check the Goods in this way. In the event of an inconsistency between the Goods (as ordered) and the goods actually delivered (e.g. the wrong goods are delivered), the Customer will notify QVL immediately on discovery (and in any event within 2 Business Days of delivery) and QVL will contact the Customer to arrange re-delivery of the Goods as soon as reasonably practicable following notification of the inconsistency. The incorrect goods will be collected by or returned to QVL (at QVL's option) at QVL's cost and the Customer will co-operate with QVL in this respect.
- 5.6 QVL reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Customer are unsafe or inadequate for the Goods. All reasonable costs incurred by QVL in attempting to make delivery in these circumstances will be for the account of the Customer. Delivery of the Goods by QVL or QVL's agent for such delivery will in no way constitute a commitment or representation by QVL as to the suitability of the Buyer's storage or offloading facilities.
- 5.7 QVL will deliver the Goods to the Delivery Location at any time after QVL notifies the Customer that the Goods are ready in relation to Bespoke Goods. In relation to Orders for Goods which are not Bespoke Goods, QVL (or its nominated delivery agent) will make delivery as soon as possible.
- 5.8 Delivery is completed on the completion of unloading of the Goods at the Delivery Location or in the case of Orders for Bespoke Goods which are supplied on an Ex Works basis, when the Bespoke Goods are made available for collection by the Customer at the Delivery Location.
- 5.9 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. QVL will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide QVL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.10 The Customer will not be liable for the price of and QVL will refund any amount paid in respect of Goods which QVL fails to deliver. QVL will have no liability for any failure to deliver Goods to the extent that such failure is caused by a Force Majeure Event or any breach or failure by the Customer.
- 5.11 If the Customer fails to take or accept delivery of the Goods within 3 Business Days of QVL notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or QVL's failure to comply with its obligations under the Contract in respect of the Goods:
 - 5.11.1 delivery of the Goods will be deemed to have been completed at 9.00 am on the third Business Day after the day on which QVL notified the Customer that the Goods were ready; and

- 5.11.2 QVL will store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.12 If 10 Business Days after the day on which QVL notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, QVL may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.13 QVL may deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment will constitute a separate contract. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
- 5.14 If the parties agree in writing or if QVL otherwise agrees at its discretion to deliver Goods to addresses outside of the United Kingdom. However, there are restrictions on some Goods for certain international delivery destinations and it is the Customer's responsibility to ascertain information about the existence and applicability of such restrictions. If the Customer order Goods for delivery outside of the United Kingdom, that order may be subject to import duties and taxes which are applied when the delivery reaches that destination. QVL has no control over these charges and cannot predict their amount. The Customer will be responsible for payment of any such import duties and taxes. The Customer must comply with all applicable laws and regulations of the country for which the Goods are destined. QVL will not be liable or responsible if the Customer breaks any such law.
- 5.15 The Goods must be stored in a cool, dry place and the Customer will clearly notify its customers to whom it resells the Goods of this requirement.
- 5.16 If the Customer wishes to change a pre-agreed delivery date or time the Customer must give QVL 48 hours' notice. The Customer will be required to pay QVL's costs in connection with such a request including storage and re-delivery costs.
- 6. QUALITY**
- 6.1 QVL warrants that on delivery the Goods will:
- 6.1.1 have at least the Minimum Shelf Life;
- 6.1.2 comply with any applicable food safety laws in the United Kingdom; and
- 6.1.3 conform in all material respects with their description and any applicable Specification.
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Customer gives notice in writing to QVL within 5 Business Days of delivery (provided that notice is given to QVL within 48 hours' of discovery) (and within 48 hours' of delivery if the alleged defect is apparent on visual inspection) that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- 6.2.2 QVL is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Customer (if asked to do so by QVL) returns such Goods to QVL's place of business at the Customer's cost,
- 6.2.4 QVL will replace Goods it agrees are defective, or refund the price of the defective Goods in full.
- 6.3 QVL will not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 if:
- 6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
- 6.3.2 the defect arises because the Customer failed to follow QVL's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice regarding the same;
- 6.3.3 the defect arises as a result of QVL following any formula, recipe or specification supplied by the Customer;
- 6.3.4 the Customer alters such Goods without the written consent of QVL;
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, QVL will have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 These Conditions will apply to any replacement Goods supplied by QVL.
- 7. INTELLECTUAL PROPERTY**
- The Customer will not receive rights in any Intellectual Property Rights in the Goods by virtue of the Contract save for a non-exclusive, non-transferable, royalty-free licence to use the Goods for the purposes of its business.
- 8. TITLE AND RISK**
- 8.1 The risk in the Goods will pass to the Customer on completion of delivery.
- 8.2 Title to the Goods will not pass to the Customer until the earlier of:
- 8.2.1 QVL receiving payment in full (in cash or cleared funds) for the Goods and any other goods that QVL has supplied to the Customer in respect of which payment has become due, in which case title to the Goods will pass at the time of payment of all such sums; and
- 8.2.2 the Customer reselling the Goods, in which case title to the Goods will pass to the Customer at the time specified in clause 8.4.
- 8.3 Until title to the Goods has passed to the Customer, the Customer will:
- 8.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as QVL's property;
- 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.4 notify QVL immediately if it becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4; and
- 8.3.5 give QVL such information as QVL may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.
- 8.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before QVL receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 8.4.1 it does so as principal and not as QVL's agent; and
- 8.4.2 title to the Goods will pass from QVL to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5 At any time before title to the Goods passes to the Customer, QVL may:
- 8.5.1 by notice in writing, terminate the Customer's right under clause 8.4 to resell the Goods or use them in the ordinary course of its business; and
- 8.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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.

9. PRICE AND PAYMENT

- 9.1 Subject to clause 9.3, for offline Orders, the price of the Goods will be the price set out in the Price List.
- 9.2 For online Orders, the prices of the Goods will be as quoted on QVL's website at the time the Customer submits its Order.
- 9.3 For Orders for Bespoke Goods, the price will be agreed between the parties in writing.
- 9.4 QVL sells a large number of Goods through its website. It is always possible that, despite QVL's reasonable efforts, some of the Goods on QVL's website may be incorrectly priced. If QVL discovers an error in the price of the Goods the Customer has ordered QVL will contact the Customer to inform the Customer of this error and QVL will give the Customer the option of continuing to purchase the Goods at the correct price or cancelling the Order. QVL will not process the Customer's Order until it has the Customer's instructions. If QVL is unable to contact the Customer using the contact details provided during the order process, QVL will treat the Order as cancelled and notify the Customer. If QVL mistakenly accepts and processes the Customer's Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by the Customer as a mispricing, QVL may cancel supply of the Goods and refund the Customer any sums paid.
- 9.5 In relation to offline Orders, QVL may, 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:
- 9.5.1 any factor beyond QVL's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.5.2 any request by the Customer to change the delivery date(s)/times, quantities or types of Goods ordered, or the Specification; or
- 9.5.3 any delay caused by any instructions of the Customer or failure of the Customer to give QVL adequate or accurate information or instructions.
- 9.6 The price of the Goods excludes:
- 9.6.1 amounts in respect of value added tax (VAT), which the Customer will additionally be liable to pay to QVL at the prevailing rate, subject to the receipt of a valid VAT invoice;
- 9.6.2 all applicable consular charges, stamp duties, export or import duties, purchase tax or similar fiscal demands (UK or otherwise), bank charges and interest charges; and
- 9.6.3 where QVL has accepted responsibility for delivery of the Goods and subject to clause 5.1, the costs and charges of packaging, insurance and transport of the Goods, which will be invoiced to the Customer (unless otherwise agreed between the parties in writing). In the case of online Orders, the charges referred to in this clause 9.6.3 will be as advised to the Customer during the check-out process, before the Customer confirms its Order.
- 9.7 For offline Orders, QVL may invoice the Customer for the Goods on or at any time after the completion of delivery pursuant to clause 5.8. The Customer will pay each invoice submitted by QVL in accordance with the payment terms agreed between the parties in writing or in accordance with any credit terms offered by QVL at its discretion to the Customer (any such credit terms may be changed or withdrawn by QVL at any time). If payment terms have not been agreed in writing or there are no credit terms in place, the Customer will pay each invoice submitted by QVL within 30 days of the date of the invoice. All payments must be in full and in cleared funds to a bank account nominated in writing by QVL.
- 9.8 Online Orders must be paid for online at the time the Order is submitted. The accepted methods of payment are set out on QVL's website.
- 9.9 Time for payment will be of the essence of the Contract.
- 9.10 If the Customer fails to make a payment due to QVL under the Contract by the due date, then, without limiting QVL's remedies under clause 11, the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.11 All amounts due under the Contract will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.12 No early settlement discount will apply unless stated on QVL's invoice or on the Price List.
- 10. LIMITATION OF LIABILITY**
- 10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 10.2.1 death or personal injury caused by negligence;
- 10.2.2 fraud or fraudulent misrepresentation;
- 10.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 10.2.4 defective products under the Consumer Protection Act 1987.
- 10.3 Subject to clause 10.2, QVL's total liability to the Customer will not exceed the price of the Goods.
- 10.4 Subject to clause 10.2, the following types of loss are wholly excluded:
- 10.4.1 loss of profits;
- 10.4.2 loss of sales or business;
- 10.4.3 loss of agreements or contracts;
- 10.4.4 loss of anticipated savings;
- 10.4.5 loss of use or corruption of software, data or information;
- 10.4.6 loss of or damage to goodwill; and
- 10.4.7 indirect or consequential loss.
- 10.5 This clause 10 will survive termination of the Contract.
- 11. TERMINATION**
- 11.1 Without limiting its other rights or remedies, QVL may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 11.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- 11.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 11.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 11.2 Without limiting its other rights or remedies, QVL may suspend provision of the Goods under the Contract or any other contract between the Customer and QVL if the Customer becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4, or QVL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, QVL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 11.4 On termination of the Contract for any reason the Customer will immediately pay to QVL all of QVL's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, QVL will submit an invoice, which will be payable by the Customer immediately on receipt.
- 11.5 Termination or expiry of the Contract, however arising, will not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract will remain in full force and effect.
- 12. DATA PROTECTION**
- Each party will, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). Each party will ensure that it has all necessary consents and notices in place to enable the lawful transfer of personal data to the other for the purposes of each party fulfilling its obligations under the Contract. Neither party will use or disclose personal data provided to it by the other in connection with the Contract other than for the purpose of fulfilling the Contract.
- 13. GENERAL**
- 13.1 Dispute resolution.**
- 13.1.1 An Expert is a person appointed in accordance with this clause 13.1 to resolve any disagreement between the parties relating to whether the Goods comply with the warranty at clause 6.1. Where under the Contract a party wishes to refer a matter to an Expert, the parties will first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment. If the parties are unable to agree on an Expert or the terms of the Expert's appointment within 7 days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Centre for Effective Dispute Resolution (CEDR) to appoint a suitable and appropriate Expert with the required expertise. The Expert is required to prepare a written decision including reasons and give notice of the decision to the parties within a maximum of 3 months of the matter being referred to the Expert. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required, then either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause 13.1 will apply to the new Expert as if they were the first Expert appointed. Each party will with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make submissions to the Expert. The Expert will act as an expert and not as an arbitrator. The Expert will determine the matters referred to the Expert under the Contract. The Expert's written decision on the matters referred to the Expert will be final and binding on the parties in the absence of manifest error or fraud. All matters concerning the process and result of the determination by the Expert will be kept confidential among the parties and the Expert. Each party will act reasonably and co-operate to give effect to the provisions of this clause 13.1 and otherwise do nothing to hinder or prevent the Expert from reaching their determination. The Expert and CEDR will have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.
- 13.1.2 If any other dispute arises in connection with the Contract or these Conditions, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party the dispute, referring the dispute to mediation. If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.
- 13.1.3 For the avoidance of doubt, clause 13.1 will not prevent QVL from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.
- 13.2 **Force Majeure.** QVL will not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations will be extended accordingly.
- 13.3 **Assignment and other dealings.** QVL may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of QVL.
- 13.4 **Confidentiality.** Each party undertakes that it will not disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by this clause 13.4. Each party may disclose the other party's confidential information (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party will use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract. Each party will ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.4.
- 13.5 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.6 **Variation.** No variation of this Contract will be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not waive that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
- 13.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13.8 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.9 **Notices.** Any formal notice given to a party under or in connection with the Contract will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any such formal notice will be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address and if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. This clause 13.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.11 **Conflict.** In the event of any conflict between any distribution agreement entered into between the parties and the Contract, the distribution agreement will take precedence to the extent required to resolve the conflict.
- 13.12 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the law of England and Wales.
- 13.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.