



Effective as at 10 April 2019

## **1. Interpretation**

In these terms and conditions and in any contract to which these conditions apply, unless inconsistent with the context:

- a) **Claim** means any claim, demand, action or proceeding;
- b) **Contract** means the contract between Redox and the Purchaser for or in relation to the sale and purchase of goods;
- c) **goods** means any item of whatsoever nature which is sold or to be sold by Redox to the Purchaser;
- d) **Purchaser** means the person or corporation who purchases or has agreed to purchase the goods from Redox;
- e) **Redox** means Redox Inc or such other company related to Redox Inc which accepts the Purchaser's order by the issue of a Sales/Order Confirmation;
- f) **Sales/Order Confirmation** means the document so titled issued by Redox that formally accepts the order for goods from the Purchaser;
- g) **Standard Specifications** means Redox's standard specification for the goods current at the time the goods are delivered to the Purchaser. Copies of the Standard Specifications are available on request from Redox;
- h) Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa; and
- i) The headings in these terms and conditions are provided for convenience only and do not affect the interpretation thereof.

## **2. General**

- a) These terms and conditions together with the relevant Sales/Order Confirmation embodies the sole terms and conditions of the Contract between Redox and the Purchaser and supersedes all other conditions and agreements between the parties, unless expressly amended in writing by Redox.
- b) These terms and conditions shall without further notice apply to all future transactions between Redox and the Purchaser in relation to the sale and purchase of goods, whether or not these terms and conditions is delivered or executed in the course of the transaction.
- c) For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Purchaser (including without limiting the foregoing those included in any purchase order or like document from the Purchaser) shall apply to or form part of the Contract, except and to the extent otherwise agreed in writing by Redox.
- d) All purchase orders supplied by the Purchaser are subject to acceptance by Redox and no Contract between Redox and the Purchaser comes into existence until Redox issues a Sales/Order Confirmation in relation to the order.
- e) No variation or abrogation of these terms and conditions shall be effective unless it is evidenced in writing and signed by the authorized representative of both parties.
- f) If any provisions of the Purchaser's purchase order or other writings are different from or are otherwise in conflict with these terms and conditions, these terms and conditions shall govern and the terms contained in the Purchaser's purchase order or other writings are expressly rejected by Redox.

### **3. Payment**

- a) Unless otherwise agreed by the parties in writing payment shall be made within 30 days from the end of the month in which the invoice is dated.
- b) Time for payment of the price of the goods shall be of the essence of the Contract and if the Purchaser fails to pay the price when due Redox may treat the Contract as repudiated by the Purchaser or may, unless payment in full is made, suspend delivery of the goods the subject of the Contract and any goods the subject of any other Contract with the Purchaser without incurring any liability whatsoever to the Purchaser in respect thereof.
- c) In addition, without prejudice to such rights of Redox, the Purchaser shall (if so required by Redox) pay interest to Redox on the outstanding amount of the price at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is more until the price is paid in full.
- d) Notwithstanding any rights of lien to which Redox may otherwise be entitled, Redox shall have a specific lien (including a right of sale) over the goods the subject of the Contract and any goods the subject of any other contract with the Purchaser until the price of the goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the price of the goods in respect of any off-set or counter claims.
- e) Quoted prices are based upon present taxes (other than sales taxes), freight rates, United States Tariff classifications and import duties. The Purchaser shall pay any increased costs resulting from such changes or from the Purchaser's selection of means of transportation. The Purchaser shall reimburse Redox for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of goods, which Redox is required to pay.

### **4. Delivery and Claim**

- a) Any time or date named and accepted by Redox for completion, delivery, despatch, shipment or arrival of the goods or for tender of any documents is an estimate only and does not constitute a condition of the Contract or part of the description of the goods and is not of the essence of the Contract.
- b) Unless otherwise stated in writing Redox may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these conditions shall apply to each partial delivery or delivery by instalments.
- c) Redox may deliver up to 5% more or less of the amount specified for delivery, subject only to an appropriate adjustment to the price payable, in full satisfaction of Redox's obligations pursuant to the Contract.
- d) The Purchaser shall notify Redox within 7 days of delivery of any short fall in or loss or damage to goods delivered. Failure to so notify shall disentitle the Purchaser to any remedy in respect to the shortage, loss or damage.

### **5. Risk and Title**

- a) Except as otherwise provided herein, the goods supplied by Redox to the Purchaser shall be at the Purchaser's sole risk immediately on their delivery to the Purchaser.
- b) Property and title in the goods supplied by Redox to the Purchaser will not pass to the Purchaser until such time as the goods the subject of the Contract and all other goods supplied by Redox to the Purchaser have been paid for in full. Until that time, the Purchaser shall store the goods, including goods into which the supplied goods have been mixed, in such a manner as to show clearly that they are the property of Redox and shall upon Redox's demand deliver up such goods to Redox. In default of such delivery Redox may by its servants and agents enter the Purchaser's premises at any time without notice to repossess the goods.
- c) Until such time as the goods have been paid for in full the Purchaser is at liberty to sell the goods, including goods into which Redox's goods have been mixed, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof in trust for Redox and promptly account to Redox for those proceeds in payment of the purchase price for the goods.
- d) The Purchaser and Redox agree that the provisions of this clause apply notwithstanding any agreement between the parties under which Redox grants the Purchaser credit.
- e) As collateral security for the full payment of the purchase price of the goods, the Purchaser hereby grants a security interest in the goods, and any proceeds thereof, until such time as the goods the subject of the Contract and all other goods supplied by Redox to the Purchaser have been paid for in full. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. Redox shall have the right to file and register any documents and take any action it deems necessary to fully establish, perfect or continue the perfection of, its security interest in the goods. The Purchaser agrees not to take any action inconsistent with this clause and agrees to fully cooperate with Redox. This clause 5(e) will survive the termination or cancellation of the Contract to the extent permitted by law.

## 6. **Warranties and Exclusions of Liability**

- a) Redox warrants that the goods when delivered to the Purchaser will comply with any description for the goods contained in the relevant Sales/Order Confirmation (if any) and with the Standard Specification for the goods. Redox is not required to supply goods with any specification or characteristics that are outside any such description for the goods (if any) or the Standard Specifications.
- b) The Purchaser acknowledges, agrees, represents and warrants that:
  - i) as the use of the goods is outside the control of Redox, the Purchaser is satisfied that the goods when supplied in accordance with clause 6a) will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those goods, even if that purpose is made known to Redox at any time;
  - ii) the Purchaser has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the goods and any product that is produced from them will be without defect and suitable or fit for any purpose required for them; and
  - iii) the Purchaser has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Redox or anyone on its behalf in respect of the goods, other than those that are expressly contained in the Contract.
- c) The Purchaser releases and indemnifies Redox and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Purchaser and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Purchaser of any warranty provided by it under clause 6b).
- d) Except as expressly set out in the Contract to the full extent permitted by law:
  - i) all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the Contract or the performance of Redox's obligations under the Contract or to any goods or services supplied or to be supplied by Redox under the Contract are excluded, except for those conditions and warranties as to title in the goods; and
  - ii) without limiting the generality of the foregoing, Redox gives no condition, warranty or guarantee whatsoever as to the suitability, performance, resale of goods or fitness of the goods for their ordinary or any special use or purpose, and the description of the goods in any Contract or any other document shall not import any such condition, warranty or guarantee on the part of Redox.
- e) Notwithstanding anything to the contrary herein contained, Redox's liability in respect of any Claim arising in any way out of the Contract or its performance or from any failure to perform the Contract including (without limiting the generality of the foregoing) for breach of any condition, warranty or guarantee contained in the Contract and whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:
  - i) if the liability is due to a failure to comply with any condition, warranty or guarantee in respect of any good or service supplied by Redox under the Contract Redox's liability is limited as follows in respect of such failure:
    - (A) if the failure is in respect of goods, Redox's liability is limited to replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost of having the goods repaired, as determined by Redox in its sole discretion; and
    - (B) if the failure is in respect of services, Redox's liability is limited to the supply of the services again or payment of the cost of having the services supplied again, as determined by Redox's in its sole discretion;
  - ii) in respect of all other liability (if any), Redox's liability is limited in the aggregate to the amount of \$10,000.
- f) To the extent permitted by law, Redox will have no liability to the Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity arising out of or in connection with the Contract or its performance.

## **7. Return of Goods**

- a) Goods supplied to the Purchaser are not returnable except as provided in clause 6 above.
- b) If the goods are in accordance with clause 6a) and are otherwise in compliance with the provisions of the Contract, Redox may from time to time under exceptional circumstances choose to accept the return of the goods from the Purchaser. A cancellation fee will apply and the Purchaser will also reimburse Redox for all costs associated with the delivery and return of the goods. Goods may not be returned without Redox's permission and transportation for return will not be paid by Redox unless authorized in advance.

## **8. Indemnity**

The Purchaser shall defend, indemnify and hold Redox, its officers, directors, agents, and employees harmless from all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) or any theory of liability which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, Redox or its duly authorized employee or agent.

## **9. Sales Tax, Licenses, Duties, etc.**

Any applicable sales tax is payable by the Purchaser unless the Purchaser provides to Redox a certificate of exemption issued by the relevant statutory authority relating to the purchase/sale of the goods under these terms and conditions or the Contract. The Purchaser is solely responsible for obtaining and maintenance and effect of any necessary export or import licenses, authorisations or consent in respect of the goods and Redox shall be under no liability whatsoever in respect of goods exported or imported without any necessary licenses, authorisations or consent.

## **10. Health, Safety and Environment**

It is the Purchaser's responsibility to ensure that all applicable health, safety and environment regulations are observed and other appropriate steps taken in relation to the storage, handling, transport, disposal and the use of the goods and, where information is supplied to the Purchaser on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, sub-contractors, visitors and customers. Without prejudice to the foregoing, it is also the Purchaser's responsibility to provide safe facilities for the reception of goods into storage. The Purchaser agrees to instruct its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the goods. The Purchaser further agrees to deliver the most recent edition of goods literature, including applicable Material Safety Data Sheets, to its employees and customers and to maintain a written record of such deliveries.

## **11. Industrial Property Rights**

The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of Redox attached to or placed upon the goods.

## **12. Force Majeure**

Redox shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in completion, delivery, despatch, shipment or arrival of the goods or in the tender of any documents or the like.

If there is an event of force majeure, Redox will notify the Purchaser of the event and the likely impact on its performance under the Contract. If the event affect the capacity of Redox to complete its material obligations under the Contract in a timely manner, Redox may by notice to the Purchaser terminate the Contract without any liability whatsoever on its part arising from such termination.

For the purpose of this clause 12, "**event of force majeure**" includes any acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of Redox.

## **13. Notices**

Any notice to be given to the Purchaser shall be deemed to be given upon its being posted or sent by facsimile to the address or facsimile number of the Purchaser set out in the Contract or to the Purchaser's registered office or to the Purchaser's last known address.

## **14. Assignment**

The Purchaser may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever.

**15. Sub-contract**

Redox reserves the right to sub-contract the performance of any Contract or part thereof to any other party or person or corporation it may determine.

**16. Proper Law and Jurisdiction**

All Contracts made between Redox and the Purchaser shall be governed by and construed in accordance with the laws of California. The Purchaser agrees to submit to the non-exclusive jurisdiction of the California and courts of appeal therefrom for all purposes of or in connection with such Contracts.

**17. Cost Recovery**

Any expenses, costs or disbursements incurred by Redox in recovering any outstanding monies owing by the Purchaser including debt collection and legal costs, charges and fees shall be paid by the Purchaser.

**18. Termination**

Any purchase order or delivery may be terminated or suspended:

- a) by either party if any proceeding under bankruptcy is brought by or against the party;
- b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable; or
- c) by Redox if it has reason to doubt the ability or willingness of the Purchaser to pay for the goods.

**19. Arbitration**

- a) In the event of any dispute between the parties concerning or arising out of these terms and conditions or the Contract, the parties will submit to arbitration in California before one arbitrator under the American Arbitration Association's Commercial Arbitration Rules.
- b) A party may seek interim relief from any court having jurisdiction without waiving any remedy under these terms and conditions or the Contract.
- c) The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of these terms and conditions.
- d) A party may enter a judgment on an award in any court having jurisdiction. The prevailing party is entitled to an award of reasonable attorney fees.