

FERA SCIENCE LIMITED**STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES (E-Commerce)**

These Terms and Conditions shall apply to all contracts for the supply of Goods and Services by Fera to the exclusion of all other terms and conditions, including any terms and conditions which Customer may purport to apply under any purchase order or similar document.

1. DEFINITION AND INTERPRETATION

The definitions and rules of interpretation contained in Schedule 1 (Definitions and Interpretation) shall apply to this Agreement.

2. PERFORMANCE

2.1 In consideration of receipt of the Price, Fera agrees to provide the Deliverables to Customer in accordance with the terms of this Agreement.

2.2 No order for the supply of Deliverables is binding on Fera unless it has been accepted in writing.

2.3 Nothing in the Agreement implies that Fera will provide the Deliverables or other goods and/or services to the Customer exclusively.

2.4 Unless stated to the contrary in the Order:

(a) Fera will deliver Deliverables 'ex works' at its Sand Hutton facility (Incoterms 2010, for which purposes Fera shall be construed as the 'seller' and Customer as the 'buyer');

(b) Fera reserves the right to amend and change any stated delivery times as set out on the Fera web site www.fera.co.uk, which are provided as a guide, for information an estimate only and (subject to the other provisions of this Agreement) Fera will not be liable for any Claim in respect of Loss arising from delay in the delivery of the Deliverables (or part thereof). Any such delay shall not entitle Customer to terminate or rescind the Agreement in whole or in part, and time shall not be of the essence in relation to the provision of Deliverables; Where Fera exercises such right to vary any delivery timescales, Fera will provide notification to the Customer of such changes. Further confirmation of the delivery timescales may also be provided by Fera at its discretion prior to the actual delivery of the Goods and/or Services

(c) Nothing in the Agreement implies that Fera will provide the Goods and/or Services of this type for the Customer exclusively;

(d) Time shall not be of the essence in relation to the provision of the Goods and/or Services by Fera to the Customer.

2.5 Where Representatives of Customer attend Fera's premises:

(a) Customer shall remain responsible for their salaries, expenses, and other associated costs;

(b) Customer will procure that they are informed of the provisions of the Official Secrets Act and abide by its provisions;

(c) Customer will procure that they comply with all policies and procedures applicable to Fera's premises, including in respect of security, confidentiality, and health and safety;

(d) Fera may at any time at its absolute discretion refuse to allow (or continue to allow) any particular individual on its premises; and

(e) Fera shall be under no obligation to allow any individual or group of individuals to witness the Services being carried out.

3. GOODS

3.1 Where Fera has agreed to arrange for the delivery of Goods to Customer's designated location, then Fera will notify Customer of the estimated date (or dates) for delivery. Except as otherwise agreed in writing, such date(s) are an estimate only and Fera will use reasonable endeavours to arrange for such delivery to be made during a Working Day.

3.2 Where Customer is responsible for collecting Goods from Fera's designated facility, then Fera will notify Customer of the date (or dates) for collection. Except as otherwise agreed in writing, such date(s) will be during a Working Day and Customer will collect Goods during Fera's standard working hours.

3.3 Fera shall use its reasonable endeavours to comply with requests made by Customer to postpone delivery of Goods, deliver Goods on a specified date (or dates), postpone the collection date (or dates) of Goods, and/or make Goods available for collection on a specified date (or dates); but shall be under no obligation to do so.

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- 3.4 If:
- (a) Customer refuses or fails or is unable to take delivery of Goods or to arrange for the collection of Goods in accordance with clause 3.1 or 3.2 (respectively); or
 - (b) Fera is unable to deliver Goods due to the fault, inaction or negligence of Customer; or
- then Customer shall, in addition to the Price, pay all costs and expenses incurred by Fera in (a) storing the Goods; (b) arranging for the redelivery of Goods; and/or (c) further making available the Goods for collection.
- 3.5 If Customer fails to take delivery or collect the Goods (as the case may be) within ten (10) Working Days following the notified date of delivery, Fera may terminate the Agreement in accordance with clause 15.3(d).
- 3.6 If Goods are delivered in instalments, each individual delivery shall constitute a separate Agreement. Any failure by Fera to deliver or any Claim by Customer in respect of any one or more instalments shall not entitle Customer to treat this Agreement as repudiated (in whole or in part).
- 3.7 Fera reserves the right to change the batch of the Goods at any time, and Goods may be delivered which originate from multiple batches.
- 3.8 Packaging supplied by Fera, unless otherwise expressly agreed in writing, is intended only to provide adequate protection in normal conditions of transit and storage of expected duration.
- 3.9 Customer shall collect, transport, handle, store, process and use Goods in accordance with written instructions supplied by Fera.
- 3.10 Without prejudice to clause 4 (Warranties), Customer shall perform acceptance tests on Goods in accordance with the Order and standard industry practice. Unless Fera receives written notification to the contrary, Goods will be deemed as accepted ten (10) Working Days following delivery to Customer or collection by Customer (as appropriate).
- 3.11 Risk in Goods shall pass to Customer upon delivery.
- 3.12 Title to Goods shall remain with Fera until receipt of the Price in accordance with the terms of this Agreement.
- 3.13 Due to the nature of the Goods to be supplied, the Customer shall be responsible for ensuring the Goods are kept in adequate storage conditions once delivered in accordance with this clause, including but not limited to protecting the Goods against the effects of humidity and temperature.

4. **WARRANTIES**

- 4.1 Fera grants to Customer the following Warranties in respect of Services:
- (a) Services will be performed by suitably qualified and experienced personnel;
 - (b) Services will be performed exercising reasonable skill and care;
 - (c) Services will be performed in material conformance with the Order; and
 - (d) Information provided in respect of Services will be complete and accurate.
- 4.2 Fera grants to Customer the following Warranties in respect of Goods:
- (a) Goods will be delivered free from any third-party rights or interests (except as stated to the contrary in the Order);
 - (b) Goods will be provided in material compliance with the Order;
 - (c) Goods will be provided free from defects in materials and workmanship; and
 - (d) Information provided in respect of Goods will be complete and accurate.
- 4.3 Where Customer reasonably suspects that Deliverables are defective due to a breach of the Warranties, Customer will:
- (a) provide written notice of its claim to Fera within ten (10) Working Days from the date that the circumstances giving rise to its claim arose (or ought reasonably to have been apparent to Customer) specifying in sufficient detail the reason(s) giving rise to the suspected breach of Warranty;
 - (b) immediately cease use of the Deliverable(s) to which its claim relates; and
 - (c) in the case of Goods, at Fera's election, either (i) arrange for the return of such Goods to Fera's designated facility (at Customer's cost and expense); or (ii) segregate and make available the Goods for Fera's inspection at Customer's facility; and Fera will conduct its own inspection of the Deliverables within a reasonable time. Customer will perform all actions reasonably necessary to enable Fera to validate its claim for breach of Warranty.

- 4.4 **Remedy.** Where Fera determines that Deliverables are defective, Fera will provide to Customer the remedies in accordance with the following:
- (a) Subject to clause 4.4(b), Fera will, at its sole discretion:
 - (i) in the case of Services, re-perform the Services within thirty (30) days; and/or
 - (ii) in the case of Goods, arrange for their prompt repair or for the delivery of suitable alternative or substitute Goods free of cost and within a reasonable time.
 - (b) Fera will have no liability to Customer for breach of the Warranties or any Loss:
 - (i) to the extent that it arises from: reasonable wear and tear; misuse, negligence, recklessness or deliberate action of Customer or any third party; alterations, repairs or modifications made without Fera's written instruction; failure or refusal to comply with Fera's written instructions or recommendations (including with regards to the transport, storage, handling, processing, or use of Goods); manufacture of Goods which have complied with Customer's specification or requirements; use of the Deliverables for a purpose which has not been specified by Fera or expressly included in the Order;
 - (ii) unless Fera was notified in accordance with clause 4.3 (a); or
 - (iii) where Fera is prevented from validating the claim due to Customer's failure or refusal to comply with Fera's reasonable requests.
 - (c) The remedy provided by Fera under this clause 4.4 will be Customer's sole and exclusive remedy for claims in respect of the Warranties.
- 4.5 Fera does not guarantee suitability of materials or design of Goods made in accordance with Customer's specification, including where purpose for which such Goods are ordered is known to Fera.
- 4.6 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO WARRANTY, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AS TO THE CONDITION, QUALITY, PERFORMANCE OR FITNESS FOR PURPOSE OF THE DELIVERABLES IS ASSUMED BY FERA AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT ALL SUCH WARRANTIES, CONDITIONS, UNDERTAKINGS AND TERMS ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW
5. **CUSTOMER OBLIGATIONS**
- 5.1 Customer shall provide Fera, in a timely manner, with such Information and Customer Material as necessary for Fera to provide the Deliverables.
- 5.2 All Customer Material, materials and/or items of equipment which are to be supplied by the Customer to Fera for the purpose of the Services shall be delivered, assembled, maintained, dismantled, disposed of or destroyed and/or collected, upon either termination or expiry of the Agreement or at Fera's request at any time. Where the Customer requests the return of any Customer Material and were this is agreed with Fera then the return of the Customer Material shall be at the Customer's cost and expense.
- 5.3 Customer provides to Fera the following warranties:
- (a) that all Information provided by it or on its behalf will be complete and accurate;
 - (b) the warranties contained in clause 4.2 *mutatis mutandis* in respect of Customer Material;
 - (c) that it has obtained or will obtain all necessary licences, approvals, permits or authorisations required in relation to this Agreement;
 - (d) that Customer Material will be delivered, assembled and maintained during the term of this Agreement at Customer's own cost and expense;
 - (e) that upon termination or expiry of the Agreement (or following Fera's written request) Customer will decommission, dismantle, make safe, remove and collect Customer Material then in Fera's possession at Customer's cost and expense;
 - (f) that Customer will give Fera written notice of any known or suspected hazards that might arise from transport, handling, storage, processing or use of Customer Material; and
 - (g) that Customer will comply with all reasonable instructions of Fera and ensure that all required paperwork including but not limited to the Customer Material submission summary form is completed accurately and submitted with the Customer Material.
- 5.4 If Customer Material is found by Fera to be defective, Customer will supply satisfactory substitute material to Fera at Customer's cost and expense and within a reasonable time.

- 5.5 Risk in Customer Material shall remain with Customer at all times. Except for Customer Material, all other equipment, apparatus, material and accessories obtained by Fera and/or used for the purposes of providing the Deliverables shall remain the property of Fera.
- 5.6 Except as expressly agreed with Fera in writing, Customer shall arrange for delivery of Customer Material to Fera's Sand Hutton facilities (Incoterms 2010, for which purposes Fera shall be construed as the 'buyer' and Customer as the 'seller').
- 5.7 Customer shall bear any Taxes, (fees, charges, custom duties), fines or penalties incurred as a result of providing Customer Material to Fera. Fera reserves the right to refuse deliveries which bear unpaid Taxes, or do not have the correct licenses and/or importing documentation. will be payable by the Customer. The Customer agrees to indemnify Fera against all fees, charges, custom duties, excise duties, fines or penalties paid by it on the Customer's behalf under this clause.

6. **LIMITATION OF LIABILITY**

- 6.1 Subject to the other provisions of this clause 6 (Limitation of Liability) the maximum aggregate liability of Fera (and its Group) to Customer (and its Group) under or in connection with this Agreement, whether arising under contract or by way of indemnity, negligence (including negligent breach of contract) or other legal theory shall not exceed 100% (one hundred per cent) of the Price paid or payable in each Order from which the liability arises).
- 6.2 Subject to clause 6.5, neither Party shall be liable to the other Party for any loss of revenue; loss of business; loss of opportunity; loss of anticipated savings; loss of goodwill; loss of reputation; consequential, indirect or special Loss however arising in connection with this Agreement.
- 6.3 Nothing in this Agreement shall exclude or limit the liability of either Party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter for which it would be illegal to exclude or limit liability.
- 6.4 Customer shall indemnify Fera against all Losses suffered by Fera arising out of or in connection with Customer's breach of clauses 7 (Confidentiality), 9 (Compliance with Law), 10 (Intellectual Property Rights), or 11 (Intellectual Property Infringement).
- 6.5 Customer shall be liable to Fera for any Claim made against Fera and/or Losses suffered by Fera arising from torts committed by Customer's Representatives whilst on Fera premises.
- 6.6 Advice given by Fera or its Representatives as to:
- (a) the methods of transporting, storage, handling, processing or use of Goods;
 - (b) the suitability of using such Goods in manufacturing processes or in conjunction with any other materials; or
 - (c) recommendations, interpretation, analysis, guidance, suggestions, proposals, endorsements in connection with Services;
- are given without liability on the part of Fera.
- 6.7 If Fera's performance of its obligations under this Agreement is prevented or delayed by any act of omission of the Customer, its agents, sub-contractors or employees, Fera shall not be liable for any Claim for Loss, costs, or charges sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 6.8 The Customer shall indemnify and keep indemnified on a full and unqualified basis Fera against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage arising from damage to or loss of tangible property including but not limited to equipment or machinery caused by the Customer Material.
- 6.9 Fera hereby excludes all liability for any Claim for Loss, demands or damages of any kind whatsoever (whether such claims, loss, demands or damages were foreseeable, known or otherwise) arising out of or in connection with either:
- (a) the preparation of any technical or scientific report;
 - (b) any information, findings contained in the Report issued as a result of the Services; and
 - (c) Any use of the Results by the Customer.
- 6.10 **Insurances**
- (a) The Customer shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of the Customer's indemnities, compensation

obligations or liabilities to third parties in respect of the Goods and/or Services under the Agreement and in any event to provide cover of a minimum of £5,000,000 per claim.

- (b) The Customer shall at the request of Fera produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

7. CONFIDENTIALITY

7.1 Each Party shall in respect of any Confidential Information received by it under this Agreement:

- (a) only use such Confidential Information for the purposes of this Agreement;
- (b) treat such Confidential Information as confidential and not at any time for any reason disclose or permit it to be disclosed to any person other than in accordance with the terms of this Agreement;
- (c) disclose such Confidential Information only to those of its Representatives who need to know such Confidential Information and who are under a duty of confidentiality to the receiving Party at least as stringent as the obligations contained in this clause 7 (Confidentiality); and procure that such Representatives are informed of the confidential nature of the Confidential information; and
- (d) protect such Confidential Information with at least the degree of care that it applies to its own Confidential Information (and in any event with no less than a reasonable standard of care).

7.2 The provisions of clause 7.1 shall not apply to Information which, in respect of the receiving Party:

- (a) is at the time of receipt (or which subsequently becomes) available to the public other than through a breach of this Agreement;
- (b) is lawfully disclosed to that Party by a third party without restriction on its use or disclosure;
- (c) is independently developed by that Party;
- (d) is in the possession of or known by that Party prior to its receipt from the disclosing Party; or
- (e) is disclosed to the extent necessary to comply with the Law, provided that the Party making such disclosure shall give the other Party written notice not less than 2 (two) Working Days in advance of such disclosure (unless such notice would itself be contrary to Law).

7.3 Each Party agrees that damages would not be an adequate remedy for any breach of this clause 7 (Confidentiality). Without prejudice to any other remedies the remedies of injunction, specific performance and other equitable relief shall be available in connection with any actual or threatened breach of this clause 7 (Confidentiality) and no proof of special damages shall be necessary.

8. PRICE AND PAYMENT

8.1 The Price for delivery of the Goods and/or Services will be stated on each Order.

8.2 Except as expressly agreed by Fera in writing and stated on each Order, payments under this Agreement shall be made in British pounds sterling. All Bank charges or levies incurred by Fera arising from receipt of payments from overseas shall be payable by Customer on an indemnity basis in addition to the Price.

8.3 Except where Fera agrees to receive payment by credit card (or other like method), invoices will be submitted by Fera in accordance with the Order or (where the Order does not detail invoice dates) on completion of delivery. Payment of each invoice will be due no later than thirty (30) days from the date of invoice. Payment will be deemed to have been made only when cleared and good value funds appear in Fera's nominated bank account.

8.4 Where Fera has approved or accepted payments by credit card (or other like method) then the Customer agrees to:

- (a) Fera appointing an independent third party ("Credit Card Payment Provider") to automatically receive information entered onto the Fera website www.Fera.co.uk for the purpose of processing for Fera of payments and/or refunds of the Price by a credit card;
- (b) That the Credit Card Payment Provider will manage the processing, collection, handling and transmission of credit card payments and other related information including but not limited to personal data (in accordance with the privacy notice as set out at <https://online.worldpay.com/terms/privacy>) in order for Fera to receive payments; and
- (c) That Fera shall not liable to the Customer for any and all Claims in respect of Loss arising from the processing, collection, handling and transmission of personal data and credit card related information by the Credit Card Provider.

8.5 Tax.

- (a) Prices payable in connection with this Agreement are expressed exclusive of VAT which shall be charged to Customer at the prevailing rate and Customer agrees to pay such VAT in addition to the Price.
- (b) In respect of any deduction or withholding required by Law, Customer shall pay to Fera such additional sums as required such that Fera receives a net amount in its bank account equal to the Price (after deducting therefrom all withholdings or similar taxes). The Parties shall use their commercially reasonable efforts to minimise such withholding or similar tax obligation. In the event there is no applicable double taxation agreement, or if an applicable double taxation agreement only serves to reduce such withholding or similar tax, then Customer shall pay such withholding or similar tax to the appropriate government authority.

8.6 If the payment of any sum due in accordance with this Agreement is subject to a dispute, then:

- (a) the Parties will resolve such dispute in accordance with clause 18 (Dispute Resolution);
- (b) Customer shall pay the undisputed amount(s) of such sum(s) in accordance with this clause 8 (Payment);
- (c) Customer shall provide to Fera its reason(s) for disputing the payment of such sum(s) together with supporting Information as reasonably requested by Fera without undue delay, and in any event at least five (5) Working Days prior to the due date for payment; and
- (d) Fera shall be entitled to withhold the delivery of further Deliverables until the dispute is resolved.

8.7 Payment of any sum by Customer shall be deemed as acceptance of the Deliverables to which such payment(s) apply.

8.8 Without prejudice to Fera's other rights and remedies under this Agreement, any undisputed sums outstanding for payment after the due date shall bear compounded interest at the rate of five hundred (500) basis points over the prevailing base rate of the Bank of England, calculated from the original due date for payment until the date that such sum(s) are received in full by Fera. The Parties agree that such interest is a 'substantial remedy' for the purposes of section 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

8.9 Time shall be of the essence in relation to payments by Customer to Fera under this Agreement.

8.10 Any refunds associated with the Price shall be subject to provisions and process as set out in Schedule 2 (Services).

9. **COMPLIANCE WITH LAW**

9.1 General.

- (a) Each Party in performing its obligations under this Agreement will comply with applicable Laws and neither Party shall expect or demand that the other Party performs any act or omission that would (in that Party's reasonable opinion) cause it to infringe any Law.
- (b) Each Party shall remain primarily responsible for the compliance by its Representatives and subcontractors with applicable Laws.

9.2 Modern Slavery. Notwithstanding the generality of clause 9.1(a), each Party shall perform its obligations under this Agreement in compliance with (and shall ensure that its Representatives and sub-contractors comply with) the Modern Slavery Act 2015. The Customer agrees to notify Fera and confirm the same promptly in writing immediately upon discovering any breach or potential breach of this clause 15 or any actual or suspected slavery or human trafficking in its supply chains

9.3 Bribery and corruption. Each Party warrants to the other that it shall not, and that its Representatives shall not, induce, do or agree to do any other act, failure to act or thing in connection with this Agreement that contravenes any Law relating to anti-bribery and corruption or anti-money laundering, including: (i) the Ethical Legislation; and (ii) in the case of a Public Official, any Law applicable to the Public Official in their capacity as such.

- (a) Each Party shall maintain policies applicable to its Representatives that are designed to prevent them from contravening the Ethical Legislation, including the maintenance of a gifts and hospitality policy requiring such persons to not accept, agree, authorise, give, offer, promise, request or undertake any Inducement (or to agree to do any of the same).
- (b) Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person relating to this Agreement or its subject matter.

9.4 Data Protection.

- (a) Each Party will comply with the requirements of the Data Protection Legislation in performance of this Agreement.
 - (b) The handling, processing and storage of personal data under this Agreement by Fera will be managed in accordance with the privacy notice as published on www.fera.co.uk.
- 9.5 Each Party will notify the other in writing promptly upon discovering any actual, potential or suspected breach of this clause 9 (Compliance with Law).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Except as expressly stated to the contrary, nothing in this Agreement shall purport or effect to transfer ownership of Intellectual Property Rights between the Parties.

10.2 Background IPR

- (a) Fera grants to Customer a royalty-free, worldwide, non-exclusive (with a right to sub-licence only with the prior written consent of Fera), temporary (for the duration of this Agreement) licence to use such of its Background IPR strictly as required by Customer in order to exercise its rights under and receive the benefit of, this Agreement; but specifically excluding any right to commercially exploit such Background IPR.
 - (b) Customer grants to Fera a royalty-free, fully paid-up, irrevocable, perpetual, worldwide, non-exclusive licence (with a right to sub-licence) licence to copy, use, modify, develop and maintain such of its Background IPR as Fera reasonably requires for the purpose of exercising its rights under this Agreement and delivering the Deliverables.
 - (c) Where Background IPR identified in accordance with clauses 10.2(a) or (b) contains the Intellectual Property Rights of a third party, then the Party controlling such Background IPR shall procure that the third party grants a licence as required by clause 10.2(a) or (b) (as applicable) or (where the third party is itself a licensor of such Intellectual Property Rights), it shall grant an authorised sub-licence in respect thereof.
 - (d) Ownership or title to any Background IPR including any modifications and/or improvements that are made to the Background IPR as a result of this Agreement shall not be affected by these Terms and Conditions.
- 10.3 Customer shall not infringe the Intellectual Property Rights of any third party in performance of this Agreement and shall, during and after the Term, indemnify and keep indemnified and hold Fera harmless from and against all Claims in respect of Loss arising from Customer's breach of this clause 10 (Intellectual Property Rights), except to the extent that such Claim results from the breach of any sub-licence of Intellectual Property Rights by Fera.
- 10.4 Fera shall not infringe the Intellectual Property Rights of any third party in performance of this Agreement and shall, during and after the term, indemnify and keep indemnified and hold Customer harmless from and against all Claims in respect of Loss arising from Fera's breach of this clause 10 (Intellectual Property Rights) except to the extent that such Claim results from:
- (a) the inclusion of any materials provided by Customer which infringe the Intellectual Property Rights of a third party;
 - (b) the use by Customer of Intellectual Property Rights in a manner other than in accordance with the written instructions of Fera;
 - (c) the unauthorised modification of Intellectual Property Rights after delivery by Fera to Customer;
 - (d) the use by Fera of Intellectual Property Right(s) licenced by Customer to Fera for performance of this Agreement; and/or
 - (e) the breach of any sub-licence of Intellectual Property Rights by Customer.

10.5 Foreground IPR

- (a) Foreground IPR shall vest unconditionally and with full title guarantee in Fera. Customer shall procure that its Representatives do not assert any moral rights in such Foreground IPR (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988).
- (b) Fera shall grant to Customer a personal, non-exclusive, global, royalty-free, fully paid-up licence to use, copy, develop or modify the Foreground IPR to the extent necessary in the direct field of application for which the Deliverables were carried out.
- (c) Without prejudice to clause 10.5(a), Foreground IPR in any Report shall vest in Customer. Fera hereby assigns to Customer, with full title guarantee, all Intellectual Property Rights which may subsist in any Report prepared in accordance with this Agreement, except that Customer will have no right to use or reproduce any Fera Marks without the prior written approval of Fera.

11. INTELLECTUAL PROPERTY INFRINGEMENT

11.1 General. Each Party shall notify the other in writing of any Claim brought against it for infringement or alleged infringement of any Intellectual Property Right in any materials supplied and or/ licenced by it to the other Party,

11.2 Claims against Customer.

- (a) Customer shall at its own expense conduct all negotiations and any litigation arising in connection with any Third-Party IP Claim made against Customer in connection with this Agreement. Customer shall provide regular notices to Fera of all material issues that arise during the conduct of such litigation and notification.
- (b) Fera shall at the request of Customer afford to Customer all reasonable assistance for the purpose of contesting any Third-Party IP Claim.
- (c) Fera shall not make any admission which may be prejudicial to the defence of settlement of any Third-Party IP Claim.

11.3 Claims against Fera.

- (a) Fera shall at its own expense conduct all negotiations and any litigation arising in connection with any Third-Party IP Claim made against Fera in connection with this Agreement. Fera shall provide regular notices to Customer of all material issues that arise during the conduct of such litigation and notification.
- (b) Customer shall at the request of Fera afford to Fera all reasonable assistance for the purpose of contesting any Third-Party IP Claim.
- (c) Customer shall not make any admission which may be prejudicial to the defence of settlement of any Third-Party IP Claim.

11.4 Continued performance. If any Third-Party IP Claim is made or in the reasonable opinion of Fera is likely to be made against Fera that will prevent or delay delivery of the Services, Fera shall notify Customer and shall (at its sole discretion):

- (a) modify the Deliverables to provide so as to avoid infringement or alleged infringement;
- (b) substitute alternative Deliverables of substantially equivalent performance and functionality, so as to avoid the infringement or alleged infringement;
- (c) procure a licence to use the Intellectual Property Right(s) and supply Deliverables which are the subject of the alleged infringement; and/or
- (d) terminate the Agreement.

12. EXCUSABLE DELAY

12.1 Neither Party shall be in breach of this Agreement or liable to the other for any delay, non-performance or Loss arising from a Force Majeure Event.

12.2 Where a Force Majeure Event occurs, the Party seeking to rely on that event to excuse its delay or non-performance shall:

- (a) promptly give written notice to the other Party of the details of any Force Majeure Event, including an estimate of its duration, the extent to which its delivery of this Agreement is likely to be affected and any mitigating action(s) being taken;
- (b) take reasonable steps to minimise the effects of the Force Majeure Event and resume full delivery of this Agreement as soon as reasonably possible;
- (c) facilitate efforts that the other Party makes to obtain alternative goods or services; and
- (d) use reasonable endeavours to continue to deliver or resume delivery of this Agreement for the duration of that Force Majeure Event.

12.3 Following cessation of the Force Majeure Event, the Party relying on the Force Majeure Event shall provide written notice to the other Party confirming the cessation of the Force Majeure Event; and resume performance of its obligations under this Agreement as soon as reasonably possible.

12.4 Fera will not be in breach of this Agreement, or liable for any Loss sustained or incurred by Customer due to delay or non-performance of its obligations to the extent that such delay or non-performance was caused directly or indirectly by any act or omission of Customer, its Representatives or sub-contractors.

13. CHANGE MANAGEMENT

- 13.1 External change. Where a Change in Law has the effect of: (a) materially increasing the cost to Fera of providing the Deliverables; (b) introducing a material delay in delivery of Deliverables; or (c) requiring Fera to render substantially different performance of this Agreement or any transaction(s) contemplated thereby; then Fera will issue to Customer a change notice in accordance with clause 13.3.
- 13.2 Customer change. If Customer wishes to alter or vary the Deliverables or Order during performance of the Agreement, it shall provide written notification to Fera and follow the process as set out in Schedule 2 (Services) for the cancelling and/or amending any Order.
- 13.3 Fera Change. Fera at its sole discretion may issue a change notice that will specify in reasonable detail: the nature of the change; (b) a description of what amendments (if any) are required to the Order or other terms and conditions of the Agreement to enable Fera to deliver the Deliverables; and (c) any increase in the Price due to such change(s).
- 13.4 Within a reasonable period (and in any event within ten (10) Working Days) from receipt of notice under clause 13.3, Customer will on written notice to Fera either:
- (a) accept the proposed change(s), whereupon the Parties will either a) execute a variation to the Order, (whereupon the revised price will become the Price), b) cancel the Order; or
 - (b) reject the proposed changes, whereupon either Party may elect to terminate this Agreement (or part thereof) on written notice to the other Party in accordance with clause 15 (Termination).
- 13.5 Where Fera (acting reasonably) believes that Customer requires materially different performance than that agreed under this Agreement, it will notify Customer of the same and Customer will comply with its obligations under clause 13.2
- 13.6 For the avoidance of doubt: (a) no change or purported change to this Agreement shall be effective unless executed as a variation in accordance with clause 17.2; and (b) the provisions of this clause 13 (Change Management) are without prejudice to the provisions of clause 12 (Excusable Delay).

14. CUSTOMER DELAY

- 14.1 Without prejudice to its other rights and remedies, Fera may at its sole option, terminate, suspend, or withhold performance under this Agreement:
- (a) where Customer has failed to make payment by the due date of undisputed sums invoiced by Fera in accordance with clause 8 (Price and Payment);
 - (b) The Customer fails to provide the Customer Material in the timeframes as agreed with Fera;
 - (c) until receipt of either satisfactory credit reference and/or due diligence/background references or checks in respect of Customer;
 - (d) where the supply of Deliverables would exceed any credit limit which Fera may, in its discretion, have granted to Customer; and/or
 - (e) Customer is otherwise in breach of any of the terms of this Agreement.
- 14.2 Customer agrees to not do or omit to do anything (whether directly or indirectly) that has the purpose, effect or likely effect of a Delay Event. Where Customer is in breach of this clause 14.2 then (in addition to its other rights and remedies under this Agreement) Fera shall not be liable for any connected delays or issues with the Deliverables, and Customer shall be liable for any Losses incurred by Fera in connection with the Delay Event.
- 14.3 Customer agrees to be liable for any costs related to loss of profits, loss of goodwill, and loss of opportunity arising either directly or indirectly of an amount equal to 50% of the Order Price as a result of a Delay Event

15. TERMINATION

- 15.1 The Agreement may be terminated by Fera for convenience on giving one (1) months written notice.
- 15.2 Fera may terminate this Agreement immediately on written notice to Customer if:
- (a) Fera (acting reasonably) determines that a conflict of interests exists or may develop between Fera and Customer;
 - (b) any undisputed sum of charges exceeding £5,000 (five thousand pounds) remains unpaid for more than thirty (30) days after the due date for payment in accordance with clause 10 (Price and Payment) and following written demand from Fera;
- 15.3 Either Party may terminate the Agreement immediately by written notice to the other where:
- (a) the other Party experiences an Insolvency Event;

- (b) the other Party commits a breach of the Agreement which (if capable of remedy) has not been remedied by the Party in default within thirty (30) days from delivery of written notice in respect of such breach;
- (c) the other Party is impacted by a Force Majeure Event that has prevailed for more than 60 (sixty) Working Days; or
- (d) that other Party commits a material breach of the Agreement. Without prejudice to the generality of the foregoing, a breach of clauses 7 (Confidentiality), 9 (Compliance with Law), 10 (Intellectual Property Rights) and/or 11 (Intellectual Property Infringement) shall be considered a material breach for the purposes of this Agreement.

15.4 Brexit Change

- (a) If a Brexit Change occurs, a party may upon serving notice to the other party request a change in accordance with clause 13 (Change Management). Such notice shall specify the details of the change (including any costs and the impact on the delivery of Goods and/or Services). The parties shall then agree within ten (10) Working Days to discuss the change and endeavour to agree amendments to maintain the Price and/or the Order. If the parties are unable to agree within twenty (20) Working Days either party may terminate this Agreement on thirty (30) days' notice.

16. EFFECTS OF TERMINATION

- 16.1 Termination of the Agreement shall not affect any obligation or liability of either Party which has accrued prior to the date of termination.
- 16.2 Any sums invoiced for payment before the effective date of termination or expiry will become immediately due and payable.
- 16.3 Except for clauses, 3 (Goods), 4 (Warranties), 5 (Customer Obligations) 6 (Limitation of Liability), 7 (Confidentiality), 8 (Price and Payment), 9 (Compliance with Law), 10 (Intellectual Property Rights), 11 (Intellectual Property Infringement) 16 (Effect of Termination), 17 (General), 18 (Dispute Resolution) and 19 (Law and Jurisdiction) and except in respect of any other accrued rights, neither Party shall be under any further obligation to the other.
- 16.4 Fera may, during the term of the Agreement and upon termination, set off against any debt owed by Customer to Fera, or the amount of Loss that Fera has assessed as resulting from termination, any sums otherwise due to Customer.
- 16.5 Each Party will upon request return or destroy (and certify such destruction) the Confidential Information of the other Party in its possession, save to the extent that it is required to retain a copy of such Confidential Information in accordance with its audit requirements or by Law. Neither Party will be considered in breach of this clause 16.5 where Confidential Information remains its computer archive and backup facilities following reasonable efforts to delete such Confidential Information.

17. GENERAL

17.1 Assignment and Sub-Contracting

- (a) Customer shall not assign or sub-contract this Agreement or any part of it without the prior written consent of Fera. Any attempted or purported assignment in contravention of this clause 17.1 shall be void.
- (b) Fera may at any time, on reasonable notice in writing to Customer, transfer or assign all or any rights and/or obligations under this Agreement to a third party within its Group.
- (c) Fera shall be free to subcontract the whole or any part of the Deliverables.

17.2 Waiver and variation

- (a) No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised Representative of each Party.
- (b) A waiver of any right or remedy under this Agreement or by operation of Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (c) A failure or delay to exercise any right or remedy provided under this Agreement or by operation of Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- (d) No single or partial exercise of any right or remedy provided under this agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- (e) The Customer acknowledges that it has entered into this Agreement in reliance on its own due diligence, has made enquiries to satisfy itself as to the accuracy and adequacy of the information provided by Fera and has had the opportunity to raise all relevant questions with Fera prior to

entering into this Agreement by placing an Order. No statement in any publication issued by Fera constitutes a term of the Agreement, nor a representation in reliance upon which the Agreement has been entered into.

17.3 Legal Relationship

- (a) Nothing in the Agreement shall create a partnership or joint venture between the Parties or have the effect of making any Representative of Customer an employee or servant of Fera or of making any Representative of Fera an employee or servant of Customer.
- (b) Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- (c) Where Customer consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.

17.4 Severability. If a provision of this Agreement is found to be unenforceable by a court that provision shall be deemed to be amended to the minimum extent necessary to make it enforceable. The unenforceability of a provision of this Agreement shall not affect its continuance in force or any of its other provisions.

17.5 Notices

- (a) Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party at its registered address. Provided the relevant notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted (or four (4) hours after sending in the case of electronic mail) provided this was sent on a Working Day, or sooner where the other Party acknowledges receipt of such letters (or electronic mail).
- (b) Either Party may change its address for service on written notification to the other Party.

17.6 Third Party Rights. A person who is not a party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

17.7 Non-Solicitation

- (a) For the term of this Agreement and 12 (twelve) months after neither Party shall approach any Representative of the other with a view to engaging that person as an agent, contractor or employee either in its own right or on behalf of a third party.
- (b) Nothing in this Agreement shall limit the right of either Party to employ any person who has approached it in response to any public advertisement.

17.8 Entire Agreement.

- (a) This Agreement represents the entire understanding and constitute the whole agreement between the Parties in relation to its subject matter.
- (b) The Parties agree that there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between them except as specifically set forth herein and neither Party has relied on any other Information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.
- (c) Nothing in this clause 17.8 shall seek or purport to relieve either Party for liability in respect of fraud or fraudulent misrepresentation.

17.9 Publicity.

- (a) Neither Party shall make any press announcement or publicise this Agreement without the prior written consent of the other Party, save that Fera shall be entitled to refer to Customer as its customer in its general marketing, publicity and case study materials.
- (b) The Results of the Services may be published by the Customer, but the Customer will not make any reference to Fera without obtaining prior approval in writing of Fera, which approval shall not be unreasonably withheld or delayed.
- (c) The Results may also not be used in advertising or promoting any product or service for commercial exploitation by the Customer except with the prior approval of Fera and will subject to Fera policies as to advertising to promote commercial exploitation.

17.10 Counterparts. This Agreement may be executed in counterparts each of which when executed and delivered is an original, but such counterparts shall be deemed to constitute one and the same instrument. The Parties agree that signatures exchanged by electronic means are effective for the purposes hereunder to the same extent as original signatures.

18. DISPUTE RESOLUTION

- 18.1 In respect of any dispute arising out of or in connection with this Agreement, either Party may initiate this clause 18 (Dispute Resolution) by issuing a 'notice of dispute' to the other Party, setting out the dispute together with its suggested action(s) to resolve it.
- 18.2 Following receipt of a notice of dispute, the senior executives of each Party will negotiate in good faith to resolve the dispute. Where no resolution is possible within ten (10) Working Days, the Parties will refer the dispute to their respective managing director. If the Parties' managing directors cannot resolve the dispute within a further ten (10) Working Days, the dispute may, by agreement between the Parties be referred to mediation in accordance with clause 18.3.
- 18.3 The procedure for any such mediation shall be as follows:
- (a) A neutral person (the "**Mediator**") shall be chosen by agreement between the Parties, or (where the Parties cannot agree on the Mediator), either Party may within 10 Working Days from the notice of mediation, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a mediator (who shall then be the Mediator).
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him to agree a timetable for the exchange of Information and the procedure to be adopted for the mediation. Either Party may at any stage seek from CEDR guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, that agreement shall be set out in writing and shall be binding upon them.
 - (e) Failing agreement, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a 'without prejudice' basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of both Parties.
- 18.4 For a period of sixty (60) calendar days from the date of the appointment of the Mediator (or such other period as the Parties agree) neither Party may commence proceedings in relation to the matters referred to the Mediator.

19. LAW AND JURISDICTION

- 19.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection to it shall be construed in accordance with the law of England and Wales.
- 19.2 The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England.
- 19.3 Each Party expressly waives any claim that it may have on the grounds of inconvenient forum.

SCHEDULE ONE (DEFINITIONS AND INTERPRETATION)**1. DEFINITIONS**

In these Terms and Conditions, the following words shall have the following meanings:

"Affiliate"	shall mean any company or any other corporate entity which, directly or indirectly, controls, is controlled by, or is under common control where "control" shall mean the ownership of more than 50 % of the share capital or of the voting rights of the company or entity concerned. Affiliate shall not be construed as a third party in the purpose of this Agreement;
"Agreement"	means the agreement between Fera and the Customer incorporating these Terms and Conditions including any relevant Purchase Order and any schedules, appendices and annexes thereto for each Order placed;
"Background IPR"	means in respect of a Party, any Intellectual Property Rights, excluding Foreground IPR, owned or controlled by that Party arising or developed (a) before commencement of the Agreement, or (b) during the Agreement but independently of the provision of the Deliverables;
"Brexit Change"	means any change resulting directly or indirectly from the United Kingdom (regardless of which countries comprise the UK at such date) ceasing to be a either member state of the European Union, a member of the European Economic Area and/or member of the EU customs union, and which change results in, any jurisdiction, and Change of Law and/or the imposition of, or any change to (or new application of existing) taxes, customs, duties, tariffs, levies, charges or fees, licences or consents or any restriction to trade (not involving a tax or duty) for any reason whatsoever;
"Change in Law"	means, subsequent to the Effective Date, either: (a) a change in any Law, or (b) the imposition of any mandatory restriction, condition or measure (regardless of originating authority or intended effect) including the requirement to obtain any consents, licences, permits, or other approvals;
"Claim"	means any action, assertion of right, claim, demand or request;
"Client Data"	means any personal data which is transmitted by or on behalf of Customer to, or is otherwise processed by, Fera under this Agreement or which is generated under this Agreement;
"Confidential Information"	means in respect of a Party (a) all Information in respect of that Party's business including customer data, financial information, trade secrets, the existence of and contents of this Agreement and other Information of commercial value; (b) all Information of any nature whatsoever which includes, Information which relates to the business, affairs, properties, assets, trading practices, goods/services, developments, Intellectual Property rights, know-how, personnel, customers and suppliers of that Party; and (c) any Information which has either been designated as confidential by that Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);
"Customer"	means the person or persons to whom the Agreement is issued and has placed the Order;
"Customer Material"	means any good, sample, material, chemical compound, biological material or other like substance to be provided by Customer to Fera under this Agreement which Fera shall undertake analysis and compound screening experiments as part of the Test;
"Data Protection Legislation"	means the Data Protection Act 1998, from the 25th of May 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable Laws relating to the processing of personal data;

"Delay Event"	means an action or event instigated by Customer (other than a Force Majeure Event), that has the effect of suspending or delaying Fera's ability to deliver Deliverables, or extending the period previously agreed for the provision of Deliverables by Fera;
"Deliverables"	means either (a) the Goods and/or Services collectively, or (b) individually the Goods or Services (as the context requires);
"Ethical Legislation"	means the Criminal Finances Act 2017, Bribery Act 2010, Companies Act 2006, Fraud Act 2006, Proceeds of Crime Act 2002 the Theft Act 1968; and the ' <i>OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions</i> ' and the commentaries issued thereto from time to time;
"Fera"	means Fera Science Limited of Sand Hutton, York, YO41 1LZ (a company incorporated in England and Wales under number 9413107) whose registered office is situated at 30 Berners Street, London W1T 3LR;
"Fera Marks"	means the proprietary identifying marks of Fera including branding, logos, trademarks and service marks;
"Force Majeure Event"	means an event which is beyond the reasonable control of a Party and which that Party could not anticipate and mitigate by contingency planning, insurance or other prudent business means, but excludes (a): industrial action affecting that Party only and not its industry generally; (b) failure of any subcontractor (save where that subcontractor itself is affected an event which is beyond its reasonable control and which it could not anticipate and mitigate by contingency planning, insurance or any other prudent business means); or (c) (in respect of Fera) the breakdown of machinery or delay in delivery by Fera's suppliers;
"Foreground IPR"	means any Intellectual Property Rights obtained, found, produced, devised, developed, or made during or generated in the course of the carrying out the Services and/or providing the Goods;
"Goods"	means the goods to be supplied by Fera under this Agreement as detailed in the Order, together with supporting documentation, and manuals;
"Group"	means in relation to a company, that company, any holding company or subsidiary from time to time of that company and any subsidiary from time to time of a holding company of that company (where "holding company" and "subsidiary" have the meanings given to them by section 1159 of the Companies Act 2006);
"Inducement"	means: (a) any advantage, benefit, consideration, gift or payment of any kind, which is (or is agreed to be) or could act as an inducement or reward, for any form of improper conduct by any person in connection with their business, employment, official, public or business role, duties or functions; (b) anything that would amount to an offence of bribery or corruption under law; or (c) any facilitation payment;
"Information"	means information recorded in any form;
"Insolvency Event"	means a Party experiencing or suffering one or more of the following events: (a) that Party entering into liquidation or receivership; (b) that Party enters into compulsory or voluntary liquidation with or for the benefit of its creditors; (c) that Party (being a company) enters into compulsory or voluntary liquidation of amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency); (d) that Party has a receiver or manager appointed of the whole or substantially the whole of its undertakings; (e) if any distress or execution is threatened or levied upon any property of the that Party; (f) that Party undergoes a change of control (within the meaning of s. 1124 of the Corporation Tax Act 2010); (g) that Party is unable or is deemed unable to pay its debts as they fall due; and/or any substantially equivalent or analogous event to the foregoing that apply to that Party in its jurisdiction of incorporation or (in the case of a partnership) occurs to any individual partner;
"Intellectual Property Right"	means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and unregistered trademarks, rights in confidential

	information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country;
"Law"	means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directive applicable to the performance of this Agreement;
"Loss"	means any loss, cost, charge, damages or expense of any kind including interest, expenses fines, legal and other professional expenses and disbursements;
"Order"	means a request for a Test for the delivery of the Services made by the Customer via the website www.fera.co.uk ;
"Party"	means (as the context requires) either Fera or Customer; and "Parties" means both Fera and Customer;
"Price"	means the sum(s) payable by Customer to Fera as stated on the website www.fera.co.uk for the Supply of Goods and/or Services and confirmed in each Order;
"Public Official"	means any person holding an administrative, judicial or legislative position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (where 'public international organisation' has the meaning given to it by section 6 of the Bribery Act 2010) or a political organisation or party, or a candidate for any such office;
"Purchase Order"	means the purchase order containing details relating to the supply of Goods and/or Services under the Agreement;
"Report"	means the final version of Fera's written account of the results of the Services, including findings, conclusions, observations, summary analysis, raw data, etc, provided to Customer as the Deliverable;
"Results"	means the results obtained from the Services, including but not limited to data which may be provided to the Customer as the Deliverable;
"Representative"	means, in respect of a Party, an agent, contractor, director, employees officer, professional advisor, representative, servant or member of staff;
"Services"	means the performance of the Test for which the Customer has placed an Order, from the website www.fera.co.uk , and this shall also be deemed to include any incidental supply of Goods made in relation to or as part of the Services;
"Tax"	includes any fee, charge, customs duty, excise duty, fine, penalty, levy, stamp duty, tariff, withholding tax or other like tax incurred as a result of providing the Deliverables under this Agreement;
"Terms and Conditions"	means these Fera Standard Terms and Conditions for the Supply of Goods and Services (E-Commerce);
"Test"	means the individual element of Services being requested by the Customer by choosing and selecting and item from the website (www.fera.co.uk) which when selected and payment of the Price is made will result in an Order being created;
"Third-Party IP Claim"	means any Claim arising from a third party for infringement or alleged infringement of that third party's Intellectual Property Rights arising from the performance of a Party's obligations under this Agreement;
"Warranties"	means the warranties provided by Fera to Customer in accordance with clause 4 (Warranties);
"Working Day"	means any day other than Saturday, Sunday and bank holidays in England; and

“VAT” means UK value added tax.

2 INTERPRETATIONS

- 2.1. References to clauses, schedules, annexes or appendices are to clauses, schedules, annexes or appendices of this Agreement. All schedules, annexes, and appendices shall form part of a single Agreement.
- 2.2. References to Customer shall, where appropriate, be references to each individual person constituting the Customer.
- 2.3. References to Customer or Fera shall, where appropriate, be references to any lawful successor, assignee or transferee.
- 2.4. References to a person or third party shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency (whether or not having a separate legal personality).
- 2.5. Unless the context requires otherwise, references to the singular shall include references to the plural and *vice versa*.
- 2.6. References to ‘written notice’ shall mean a notice prepared and served in accordance with clause 17.5 (Notices).
- 2.7. The word ‘including’, ‘include’, or similar expression shall be construed as illustrative and interpreted as meaning ‘including without limitation’.
- 2.8. Headings in this Agreement are for ease of reference only and shall not affect the interpretation of any provision.
- 2.9. References to any Law shall be construed as references to all subordinate legislation made under that Law (where ‘subordinate legislation’ has the meaning given to it by section 21 of the Interpretation Act 1978) and to all such laws as amended, consolidated, re-enacted or replaced, or as their application is modified by other laws, whether before or after the date of this Agreement.
- 2.10. The terms ‘controller’, ‘data subject’, ‘personal data’, ‘personal data breach’, ‘process’ (with ‘processed’ to be construed accordingly) and ‘processor’ shall have the same meanings as in the Data Protection Legislation.

SCHEDULE TWO (SERVICES)

1. SCOPE OF SERVICES

- 1.1 Fera will provide the following Services for each Test as ordered via the website www.fera.co.uk.

2. TEST ORDERING PROCESS

- 2.1 The Customer may at any time during the Term request the performance of Services by Fera in accordance with the procedure and process as set out on the website www.fera.co.uk.
- 2.2 The Customer will complete an Order by selecting the individual Tests from the website www.fera.co.uk, arrange for payment of the Price and submit the Order to Fera.
- 2.3 Pursuant to clause 2.4, Fera will provide an acknowledgement of the Order being received and the timescales for delivery as further set out on the website www.fera.co.uk.
- 2.4 Pursuant to clause 2.4 If after issue of the Order acknowledgement Fera is unable to accept an Order for any reason, then Fera shall at its own discretion contact the Customer within two (2) Working Days of the Order being placed to confirm that the Order cannot be accepted and/or
- (a) agree a revised delivery date for completion of the Services, or
 - (b) cancel the Order and provide a refund where applicable in accordance with paragraph 6.
- 2.5 Any and all Orders which are accepted and confirmed as being received by Fera will become incorporated into and subject to the terms of this Agreement.
- 2.6 Fera shall have no obligation to deliver any Services unless ordered in accordance with this Agreement and pursuant to a fully executed Order being accepted by Fera in accordance with the paragraph 2.3 and 2.4 above.

3. CUSTOMER SPECIFIC OBLIGATIONS

- 3.1 Pursuant to clause 5.1 the Customer will provide Fera with such information and Customer Materials required to perform Fera's obligations under this Agreement in a timely manner and on a free issue basis.
- 3.2 Pursuant to clause 5.3 the Customer shall ensure that:
- (a) All risks in any Customer Materials shall remain at all times with Customer;
 - (b) The Customer shall provide an estimated date of delivery of the Customer Material when the Order is placed.
 - (c) Delivery of all Customer Material shall be made to Fera's designated facility on a Working Day and during Fera's normal business hours, unless otherwise agreed by Fera prior to the Customer Material being delivered;
 - (d) Customer will provide written instructions of any specific requirements related to the transfer and storage of Customer Material including (but not limited to) environmental temperature and humidity;
 - (e) Customer will ensure that all Customer Material are packaged to provide adequate protection during transit;
 - (f) Customer will provide with written notice of any known or suspected hazards related to the Customer Material.
 - (g) Customer shall retain responsibility for ensuring that all importing documentation and packaging for delivery of Customer Material is completed correctly and that packaging is adequate to ensure correct delivery to Fera; and
 - (h) Customer shall ensure that all documentation including but not limited to the sample submission form required by Fera for all Customer Material is provided to Fera and is included within the packaging and suitably protected from damage or contamination from the Customer Material.

3.3 Fera reserves the right not to accept any deliveries of Customer Material which carry a Tax. The Customer shall pay all the costs for Fera returning Customer Material. If Fera does accept the delivery of any Customer Material, then any additional custom charges and/or Tax associated with that delivery shall be met by the Customer and Fera shall invoice the Customer separately to the payment of Services.

4. **FERA SPECIFIC OBLIGATIONS**

4.1 In addition to and subject to paragraph 2 on receipt of an Order for a Test and payment of the Price and receipt of Customer Material, Fera will provide the following.

- (a) Fera will supply the consumables, personnel, laboratory resources and equipment required to conduct the Test;
- (b) Except as otherwise stated and agreed with Fera, Fera will conduct a Test in accordance with its established methodologies and procedures;
- (c) Pursuant to paragraph 3.2, Fera will store the Customer Materials in accordance with Fera processes and policies;
- (d) Fera will use its reasonable endeavours to provide the Results and Report to the Customer within the delivery times as confirmed by Fera; and
- (e) Fera will perform routine inspection on the Customer Material received and will promptly notify Customer in the event that Customer Material are either defective/damaged or otherwise unsuitable for the purposes of performing Services whereas.

4.2 If the Customer Materials are found by Fera to be defective, Fera will at it's sole discretion either:

- (a) accept the delivery of such defective Customer Materials and return such defective Customer Materials to the Customer; and
- (b) reject the delivery of Customer Materials in full.

The Customer shall upon notification of the above provide and supply satisfactory substitute Customer Materials at its own cost and expense also ensuring such substituted Customer Material is also free from any Tax, (fees, charges, custom duties, excise duties), fines or penalties relating to the export/import licenses, permits or requirements and shall be supplied to a reasonable timeframe as requested by Fera. Fera and the Customer shall also agree a revised timeframe for the delivery of the Services.

4.3 Fera is under no obligation to allow Representatives or sub-contractors of the Customer to witness the Test and/or Services being carried out.

5. **STORAGE& DISPOSAL OF CUSTOMER MATERIAL**

5.1 Fera shall where able to do so following the completion of a Test, store and hold Customer Material for a duration Fera considers necessary in order to enable Fera to deliver the Report and Results to the Customer.

5.2 Fera shall upon completion of the Services hold and store the Customer Material for a minimum period of five (5) Working Days or such other duration as Fera considers necessary. After such time and at Fera sole discretion, Fera shall either:

- (a) destroy and dispose of the Customer Material; or
- (b) where able to do so, return the Customer Material to the Customer at the Customer cost and expense.

6. **CANCELLING A TEST/ORDER**

6.1 The Customer shall have the right to cancel an Order and all cancellations requests should be sent by email to either

- (a) foodsafety@fera.co.uk for any Orders connected to food safety or food related Customer material
- (b) crophealth@fera.co.uk for any Orders connected with crop health or crop related Customer Material

Upon receipt of such request as listed above the following paragraphs will apply to the Order.

- 6.2 If the Customer cancels an Order before 14 days then subject to at all time Fera not receiving the Customer Material and commencing the delivery of the Services, then
- (a) the payment of the Price for the Order if due shall be cancelled;
 - (b) any payment of the Price for the Order if already made in advance shall be refunded;
 - (c) Any Customer Material received after receipt of the cancellation request has been received by Fera, then Fera will either at Fera sole discretion be a) returned (at the Customer costs and expense) or b) disposed.
- 6.3 If the Customer cancels an Order before 14 days of placing an Order and the Customer Material has been received and Fera has commenced delivery of the Services, then:
- (a) No refund of the Price will be made to the Customer;
 - (b) Any Customer Material received at Fera sole discretion either a) be returned (at the Customer costs and expense) or b) disposed.
- 6.4 If the Customer cancels an Order after 14 days of placing an Order and the Customer Material has been received, then:
- (a) No refund of the Price will be made to the Customer;
 - (b) Any Customer Material received with either at Fera sole discretion either a) be returned (at the Customer costs and expense) or b) disposed.
- 6.5 If the Customer cancels an Order after 14 days but the Customer Material has not been received, then:
- (a) the payment of the Price for the Order if due shall be cancelled; and
 - (b) any payment of the Price for the Order if already made in advance shall be refunded in full.
- 6.6 Fera reserves the right and at its sole discretion to cancel an Order at any time if the Customer in Fera sole opinion either:
- (a) Fails to provide satisfactory credit references;
 - (b) Further due diligence/background checks undertaken by Fera on the Customer are unsatisfactory; and
 - (c) By accepting the Order either Party is or could be considered to be in breach of Law.

As a result of the above and for the avoidance of any doubt the Customer shall not be entitled to a refund of the Price and no refund will be made.

7. **AMENDING A TEST/ORDER**

- 7.1 The Customer may only request an amendment to an Order for a Test within fourteen (14) days of placing the Order. Amendment requests should be sent by email to
- (a) foodsafety@fera.co.uk for any Orders connected to food safety or food related Customer material; and
 - (b) crophealth@fera.co.uk for any Orders connected with crop health or crop related Customer Material.
- 7.2 If the Customer Material has been received, then the Customer shall not be able to amend an Order.
- 7.3 If the Customer Material has not been received and the Customer wishes to amend the Order, Fera will at its discretion cancel the existing Order and add the new Order to the Customer's basket. The Customer shall then log into their www.Fera.co.uk account, review their basket and place the Order.