

Omicron Research Limited - Terms and Conditions of Business

1 Interpretation

1.1 In these Standard Terms and Conditions: "**Omicron**" means **Omicron Research Limited**; "**Services**" means the services to be provided by **Omicron** to the **Customer**; "**Customer's Goods**" includes goods, samples, equipment, and materials or information of the **Customer** upon which or in connection with which the **Services** are carried out; "**Report**" means the **Report** to be supplied to the **Customer**.

1.2 Unless other terms and conditions are expressly accepted by **Omicron** by a specific written amendment hereto, the **Agreement** between the parties will be on the terms and conditions set out below whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the **Customer** to **Omicron**.

2 Quotations

Any quotation or estimate is given by **Omicron** on the basis that no agreement will come into existence until the **Customer** has accepted it without amendment by way of a purchase order. Any quotation or estimate is valid for a period of one calendar month only from the date of issue, provided it was not previously withdrawn or no other terms are set within the quotation or estimate.

3 Delivery

Omicron will endeavour to carry out the **Services** within the time agreed, and if no time is agreed, within a reasonable time. In no circumstances will **Omicron** be liable for loss or damage of any kind by any delay in the performance of the **Services**. **Omicron** may make delivery of the **Services** by instalments.

4 Liability and Indemnity

4.1 Except to the extent that **Omicron** can be shown to have been negligent in carrying out the **Services** or in providing information or advice to the **Customer**, **Omicron** accepts no responsibility for the use made of any information or advice arising therefrom by the **Customer** or any third party. The aggregate liability of **Omicron**, under this contract, shall be limited to the price of the **Services**, or **£500,000**, whichever is the lower. In no event shall **Omicron** be liable for loss of profits, loss of business or any indirect or consequential loss. Nothing in this **Agreement** shall exclude or limit **Omicron's** liability for death or personal injury caused by the negligence of **Omicron**, its employees or agents or for fraudulent misrepresentation.

4.2 **Omicron** hereby excludes all conditions, warranties and stipulations statutory, express or implied, which but for such exclusion would or might subsist in favour of the **Customer** except as expressly provided for in this **Agreement** or where the **Customer** is by law deemed to be a consumer.

4.3 Save insofar as **Omicron** can be shown to have been negligent under **clause 4.1**, the **Customer** shall fully indemnify **Omicron** against all financial liability (including professional costs) suffered or incurred by **Omicron** as a result of, or in connection with, any third party claim brought against **Omicron** resulting from death, injury, damage or loss occasioned by the use, operation, methods or other results of the **Services**.

5 Reports

5.1 The **Customer** will provide **Omicron** with full and accurate details of the purpose and intended use of the **Report** to be prepared hereunder. A **Report** will be provided to the **Customer** on completion of the **Services**.

5.2 Except for the purposes and intended use in **clause 5.1** the **Customer** shall not without the prior written consent of **Omicron** use, exploit, divulge or disclose to third parties the **Report** of **Omicron** results or conclusions therein or any **Omicron** proprietary material including, but not limited to, business or other systems, methodologies, testing techniques and applications, programmes, marketing or technical information, intellectual property rights, which may be communicated to or gained by the **Customer** in connection with or as a result of **Omicron** providing the **Services**.

5.3 The **Customer** shall not use **Omicron's** name in any way to imply endorsement or otherwise by **Omicron** of any process or product.

5.4 The **Customer** shall fully indemnify **Omicron** against all financial liability (including professional costs) suffered or incurred by **Omicron** arising out of or in connection with any claim alleging infringement or misuse of a third parties' confidential information, copyright material, patent registered design or design right in the event that **Omicron** were required by the customer to use the information, material, process, invention or design concerned, or the information, material, process, invention or design concerned was received by **Omicron** from the **Customer**.

5.5 Any statements (whether written or oral) as to the results of the **Services** carried out and all/any opinions in any report or letter are made in good faith and on the basis of the samples, materials, equipment and information provided to **Omicron** by the **Customer**. The **Customer** warrants, in respect of each of the samples, materials, information, and equipment provided to **Omicron** by the **Customer**, that it is correct and in good order and has not to the best of the **Customer's** knowledge been tampered with, altered, added to or substituted in any way whatsoever.

6 Actual or Contemplated Proceedings

The **Customer** must disclose to **Omicron** in writing if the **Services** are required in connection with actual or contemplated civil or criminal proceedings. A **Report** must not be used for the purpose of any actual or contemplated legal or arbitration proceedings without **Omicron's** prior written consent.

7 Health and Safety

The **Customer** will ensure that all appropriate safety measures and legislation are observed when sending any material to **Omicron** and will ensure that any hazardous material is clearly marked. Where the **Customer** knows or suspects that any substance or procedure it is providing, making available or requesting may give rise to a hazard of an unusual nature the **Customer** will make **Omicron** aware in writing of the nature of that hazard before arranging for the delivery (or collection) of the materials to **Omicron** or before exposing any **Omicron** employee, agent or subcontractor to the materials.

8 Customer's Goods

It is the **Customer's** responsibility to ensure that the **Customer's Goods** are tested or inspected and are suitable for use by **Omicron** in the performance of the **Services**. The **Customer** shall arrange at his expense and risk the delivery of the **Customer's Goods** to **Omicron**.

9 Price

Omicron reserves the right to amend the price to take account of any variations in the Service as a result of additional information or a request in writing by the **Customer**. **Omicron** will obtain the **Customer's** prior approval before performance of any additional work or variations in the **Service**. Unless expressly stated otherwise all prices are exclusive of VAT which shall be charged at the rate and in the manner prescribed by law from time to time.

10 Payment

10.1 The price will become payable upon the performance of the **Services** and/or delivery of the goods and payment will be made by the **Customer** in pounds sterling within 28 days of the date of the **Omicron** invoice. **Omicron** will be entitled to payment for all instalments of services part supplied to the customer whether under a blanket order or otherwise.

10.2 Interest at an annual rate of 5% above Midland Bank plc Base Rate from time to time will accrue and be calculated on a daily basis on overdue accounts from the date of invoice until payment. Notwithstanding any **Agreement** term allowing the **Customer** credit, payment shall become due and payable to **Omicron** immediately upon the termination of the **Agreement**.

10.3 Where the **Customer** defaults under any **Agreement** with **Omicron** in payment on the due date of any sum due to **Omicron**, **Omicron** without liability may postpone any delivery or may cancel the **Agreement** or any other **Agreement** between the **Seller** and the **Customer** but without prejudice to any right or remedy which the **Seller** may have against the **Customer** in respect of such default.

11 Intellectual Property

Unless otherwise agreed in writing, the ownership of **Reports** and any copyright, patents, registered designs, design information, conceptual solutions or analysis or any other right arising from **Omicron** providing the **Services** other than third party rights ("**the rights**") shall remain vested in **Omicron**, and the **Customer** shall be granted a non-exclusive non-transferable licence to use the right solely in accordance with these terms and conditions.

12 Confidentiality

Both parties will take reasonable measures to keep confidential for a period of five calendar years from the acceptance date of the supply any information provided (oral or written) or disclosed by or on behalf of the other. There is no obligation on either party to observe confidentiality on any information which at the time of disclosure is (or subsequently becomes) published or generally available to the public (other than as a breach of the receiving party's obligation under this clause), or any information which at the time of disclosure was already in the possession of the receiving party (other than under an obligation to the disclosing party), or subsequently legally comes into their possession from another source.

13 Cancellation

Cancellation of any order, by the **Customer**, is not permitted after an order acknowledgment has been issued without prior agreement by **Omicron**. If the **Customer** cancels, extends or delays (or purports to cancel) the **Agreement** or part thereof, or fails to accept supply of the **Services** at the time agreed or if no time is agreed within a reasonable time, then the **Customer** will be liable (without prejudice to any other rights of **Omicron**) to indemnify against any resulting loss, damage or expense incurred by **Omicron** in connection with the supply or non-supply of the **Services** including the cost of any services, material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.

14 Termination

14.1 **Omicron** may terminate this **Agreement** forthwith by notice in writing if the **Customer** is in breach of this **Agreement** and shall have failed to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach such request indicating that failure to remedy the breach may result in termination of this **Agreement**.

14.2 The **Agreement** will terminate immediately on notice in writing if in respect of one party an order is made or a resolution is passed for its winding up, an order is made for the appointment of an administrator to manage the affairs, business and property of one party or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt.

14.3 The termination of this **Agreement** will be without prejudice to the rights and duties of either party accrued prior to termination. The clauses in this **Agreement** which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination. The Price in respect of any **Services** (or part thereof) supplied prior to termination shall remain payable regardless of the reason for termination.

15 Force Majeure

If **Omicron** is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the **Services** or if the supply of the **Services** is prevented or hindered by reason of any cause beyond **Omicron's** reasonable control (which shall include governmental action, war, riot, civil commotion, fire, flood, epidemic, labour disputes, restraints or delays affecting shipping or carriers, currency restrictions and act of God) **Omicron** may cancel the **Agreement** by notice in writing to the **Customer** so far as it relates to the **Services** not then supplied or work not then done and such cancellation shall not give rise to any claims by the **Customer** provided that the **Customer** shall remain liable to pay for the **Services** delivered prior to the date of such cancellation.

16 Data Protection

16.1 Where **Omicron** acts as a data controller in the processing of personal data in performing the **Services**, it will comply with the provisions of the **Data Protection Act 1998 ("DPA")**. Where **Omicron** acts as a data processor, **Omicron** will take such security measures as are required to process personal data equivalent to those imposed on the **Customer** by the **Seventh Principle of the DPA**.

16.2 **Omicron** may use the information provided by the **Customer** to contact appropriate persons within the **Customer's** organisation about goods and services offered by **Omicron**. If at any time the **Customer** no longer wishes to receive this information it shall contact **Omicron** and the relevant contact details will be suppressed for the purpose of receiving this information.

16.3 To obtain a copy of the personal information held by **Omicron**, the person whose details **Omicron** holds may write to the **Data Protection Officer of Omicron ("DPO")** and, upon payment of a fee, **Omicron** will provide a copy of the personal information held. If it is believed the information is incorrect or incomplete, the relevant person should advise the **DPO** in writing.

17 General

17.1 **Omicron** will be entitled to sub-contract any part of the **Services** to be provided hereunder.

17.2 On completion of the **Services** or termination of this **Agreement**, **Omicron** will, with the agreement of the **Customer**, either store or destroy all samples, material, information, equipment. Such storage shall be subject to terms and conditions to be agreed including any charges therefor.

17.3 **Omicron** reserves the right to announce publicly that it is providing services to the **Customer** with the prior written agreement of the **Customer**.

17.4 Failure by **Omicron** to enforce any of the **Agreement** terms will not be construed as a waiver of any of its rights hereunder.

17.5 The **Customer** will have no right of set off, statutory or otherwise.

17.6 The **Agreement** will be subject to English Law and the parties submit themselves to the exclusive jurisdiction of the English courts.