

PROMETHEAN PARTICLES
TERMS AND CONDITIONS OF PURCHASE

These are the Terms and Conditions of Purchase of Promethean Particles Limited, a limited company registered in England and Wales with company registration number 06427290 and its registered office is at 1-3 Genesis Park, Midland Way, Nottingham, Nottinghamshire NG7 3EF. These Terms and Conditions apply to all purchases of the Goods and/or Services supplied by the Supplier. The Supplier's attention is drawn in particular to the provisions of clause 11.

1 Definitions and Interpretation

1.1 Definitions:

Background IP means any intellectual property rights which are used in any Services, which exist prior to the start of the Services, or are created independently of the Services.

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Clause 15.3.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Customer: Promethean Particles Limited (company registration number 06427290) of 1-3 Genesis Park, Midland Way, Nottingham, Nottinghamshire NG7 3EF.

Deliverables: the deliverables set out in an Order for Services, which are produced by the Supplier for the Customer in connection with the Services.

Delivery Location: has the meaning given in Clause 4.4.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Foreground IP means intellectual property rights in Deliverables, or created, developed, modified or improved as part of any Services, or which arise as a result of the Services, but excluding any Background IP.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

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

Order: the Customer's order for the Goods or Services as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation.

Services: the services, including Deliverables, supplied by the Supplier to the Customer, as set out in an Order and described in the applicable Service Specification.

Service Specification: the description or specification for any Services agreed in writing by the parties.

Supplier: the person or Company set out in the Order which supplies the Goods and/or Services.

2 Interpretation:

- a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its personal representatives, successors and permitted assigns.
- c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- e) A reference to **writing** or **written** includes email.

3 Basis of Contract

- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that a party seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 3.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions.
- 3.3 The Order shall be deemed to be accepted on the earlier of: the Supplier issuing written acceptance of the Order; or any act by the Supplier

consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 3.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations or descriptions displayed on the Supplier's website or contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.

4 Delivery of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
 - a) correspond with their description and any applicable Goods Specification;
 - b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer;
 - c) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 4.3 The Supplier shall ensure that:
 - a) each delivery of the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - b) is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable) and any special storage instructions.
- 4.4 The Supplier shall deliver the Goods on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order; DAP (Incoterms 2020) to the Customer's premises set out in these Conditions or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and during normal business hours (or as instructed by the Customer).
- 4.5 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.6 If the Supplier fails to deliver the Goods in the quantity set out in the Order, the Supplier shall immediately following the Customer's notice of the shortfall deliver to the Customer, at the cost of the Supplier, such quantity of Goods as is necessary to make up the shortage, or at the option of the Customer, issue a credit or refund in respect of the undelivered Goods.
- 4.7 The risk and title in the Goods shall pass to the Customer on completion of delivery.

5 Quality

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
 - a) conform in all material respects with their description and the Goods Specification;
 - b) comply with all applicable laws, standards and regulations; and
 - c) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
 - a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery, and in any case, no later than 30 days following the date of delivery, that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at the Customer's option, rework or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
 - a) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, handling and use of the Goods or (if there are none) good trade practice regarding the same;
 - b) the Customer alters or reworks such Goods without the written consent of the Supplier.
- 5.4 These Conditions shall apply to any reworked or replacement Goods supplied by the Supplier.

- 5.5 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.
- 6 Supply of Services**
- 6.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 6.2 The Supplier shall meet any performance dates for the Services specified in the Service Specification.
- 6.3 In providing the Services, the Supplier shall:
- co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
 - perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - use personnel who are suitably skilled and experienced to perform tasks assigned to them;
 - ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
 - obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 6.4 The Customer reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7 Customer's Obligations**
- 7.1 The Customer shall:
- reasonably co-operate with the Supplier in all matters relating to the Services;
 - where requested by the Supplier, provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services, and comply with all applicable laws, including health and safety laws
 - provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
 - comply with any obligations as set out in the Service Specification.
- 8 Price and Payment**
- 8.1 The price of the Goods is set out in the Goods Specification or the Order.
- 8.2 The charges for Services shall be the charges set out in the Service Specification or Order, or if no charges are set out in the Service Specification or Order, shall be calculated on a time and materials basis:
- the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Service Specification;
 - the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 6.00 pm worked on Business Days.
- 8.3 The charges for the Services shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, and subject to clause 8.4 the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.4 Where agreed by the Customer in writing, the Supplier may charge the Customer for any reasonable expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses.
- 8.5 The Customer may pay for Orders by credit/debit card via the Supplier's payment services provider upon submission, or can request that the Supplier raise an invoice for the relevant Order. Any invoices will be valid for 30 days from the date of issue.
- 8.6 The price of the Goods and charges for the Services excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 8.7 Where Goods are purchased from the Supplier
- the Supplier may invoice the Customer for the Goods on or at any time after the completion and acceptance of delivery;
 - the Customer shall pay each invoice submitted by the Supplier:
- within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 8.8 Charges for the Services shall be invoiced monthly at the end of the month during which Services were provided.
- 8.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9 Intellectual Property Rights**
- 9.1 The Supplier acknowledges that the Customer may contribute its own Background IP to the Services. Any Customer Background IP will remain vested in the Customer, subject to a non-exclusive licence to the Supplier to use the Customer's Background IP for the duration and purpose of the Services.
- 9.2 The Supplier hereby assigns to the Customer (or shall procure the assignment to the Customer) with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 The Customer hereby grants to the Supplier a non-exclusive, royalty free licence to use any information in the Deliverables solely for the duration and purpose of the Services, subject to the obligation of confidentiality in clause 10.
- 9.4 The Supplier shall obtain waivers of all moral rights in the products of the Services including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.5 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.2.
- 9.6 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Customer's use of the Goods or in the products of the Services, including for the avoidance of doubt the Deliverables as contemplated under this Conditions .
- 9.7 All Customer Materials are and remain the exclusive property of the Customer.
- 10 Confidentiality**
- 10.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.3.
- 10.2 The Supplier acknowledges that the contents of any Deliverables in the form of a final report are strictly confidential. The Supplier shall not at any time during or after the Services publish any details of Services and/or any Deliverables as part of any patent application, scientific disclosure or otherwise, or disclose any such information to any third party, without the prior written consent of the Customer.
- 10.3 Each party may disclose the other party's confidential information:
- to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11 Limitation of Liability**
- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Contract limits any liability under any indemnity or liability which cannot legally be limited, including liability for:

- a) death or personal injury caused by negligence;
 b) fraud or fraudulent misrepresentation;
 c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 d) any other liability which cannot be limited or excluded by law.
- 11.3 Subject to clause 11.2, the Supplier's total liability to the Customer with respect to any Goods or Services shall not exceed 200% of the total sums paid and payable by the Customer in respect of all Goods and Services supplied by the Supplier under the Contract.
- 11.4 Subject to clause 11.2, the Customer's total liability to the Supplier under any Contract shall not exceed 100% of the total sums paid and payable by the Customer under the Contract in respect of all Goods and Services under the applicable Order.
- 11.5 Subject to clause 11.2, the following types of loss are wholly excluded:
 a) loss of profits;
 b) loss of sales or business;
 c) loss of agreements or contracts;
 d) loss of anticipated savings;
 e) loss of use or corruption of software, data or information;
 f) loss of or damage to goodwill; and
 g) indirect or consequential loss.
- 11.6 This clause 11 shall survive termination of the Contract.
- 12 Termination**
- 12.1 Without limiting its other rights or remedies, the Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if:
 a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 c) the Supplier suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 d) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any undisputed amount due under the Contract within days of the Suppliers notice of non-payment.
- 12.3 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 13 Export Restrictions**
- 13.1 The parties acknowledge that the Goods may be subject to applicable export controls. The Supplier shall comply with all applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item.
- 13.2 Where the Goods are subject to export controls to the Customer's delivery address, the Supplier agrees that it shall be the responsibility of the Supplier to arrange all necessary licenses and documentation prior to placing an order. Any Orders placed without any such licences or documentation may be rejected by the Customer.
- 14 Force Majeure**
- 14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.
- 15 General**
- 15.1 **Assignment and other dealings.**
 a) The Customer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- b) The Supplier may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.
- 15.2 Entire agreement.**
 a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 15.3 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.4 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.6 Notices.**
 a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 i. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 ii. sent by email to the address specified by the relevant party from time to time.
 b) Any notice shall be deemed to have been received:
 i. if delivered by hand, at the time the notice is left at the proper address;
 ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 iii. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.7 Third party rights.**
 a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

