



Schedule 10 – Sale of Goods Terms and Conditions

This Schedule 10 was published on 3 April 2023.

1 APPLICATION OF THIS SCHEDULE 10

- 1.1 This Schedule applies to and form part of the Agreement between DNAP and the Merchant. This Schedule supersedes any previously issued terms and conditions of purchase of Goods.
- 1.2 Each Order by the Merchant to DNAP shall be an offer to purchase the Goods subject to the contract including this Schedule.
- 1.3 If DNAP is unable to accept an Order, it shall notify the Merchant in writing as soon as reasonably practicable.
- 1.4 The offer constituted by an Order shall remain in effect and capable of being accepted by DNAP for **3 (three) Business Days** from the date on which the Merchant submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 1.5 DNAP may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
- 1.5.1 DNAP's written acceptance of the Order; or
- 1.5.2 DNAP dispatching the Goods or notifying the Merchant that they are available for collection (as the case may be).
- 1.6 Rejection by DNAP of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Merchant.
- 1.7 DNAP may issue quotations to the Merchant from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Merchant.
- 1.8 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Agreement.

2 PRICE

- 2.1 The price for the Goods shall be as set out in the Merchant Application Form or in Order or, where no such provision is set out, shall be as advised by DNAP from time to time before the date the Order is placed (the **Price**).
- 2.2 The Prices are exclusive of:
- 2.2.1 packaging, delivery, insurance, shipping carriage, and all other related charges or taxes or describe relevant elements of the goods which are not included in the standard price which shall be charged in addition at DNAP's standard rates, and
- 2.2.2 VAT.
- 2.3 The Merchant shall pay any applicable VAT to DNAP on receipt of a valid VAT invoice.
- 2.4 DNAP may increase the Prices at any time by giving the Merchant **not less than 15 Business Days'** notice in writing.
- 2.5 Notwithstanding clause 2.4, DNAP may increase the Prices with immediate effect by written notice to the Merchant where there is an increase in the direct cost to DNAP of supplying the relevant Goods which exceeds 10% and which is due to any factor beyond the control of DNAP.

3 PAYMENT

- 3.1 DNAP shall invoice the Merchant for the Goods, partially or in full, at any time following acceptance of the Order.
- 3.2 Unless otherwise agreed in the Order, the Merchant shall pay all invoices:
- 3.2.1 in full without deduction or set-off, in cleared funds **within ten Business Days** of the date of each invoice; and



- 3.2.2 to the bank account nominated by DNAP.
- 3.3 The Price shall be paid into the DNAP's bank account by way of direct debit unless otherwise notified by DNAP to the Merchant in writing in accordance with the Agreement.
- 3.4 The Merchant shall not without the prior written agreement of DNAP cancel any direct debit which has been established for payment of any amounts in connection with the Agreement.
- 3.5 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 3.5.1 DNAP may, without limiting its other rights, charge interest on such sums at **8% a year above the base rate of the Bank of England** from time to time in force, and
- 3.5.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4 CREDIT LIMIT

DNAP may set and vary credit limits from time to time and withhold all further supplies if the Merchant exceeds such credit limit.

5 DELIVERY

- 5.1 The Goods shall be delivered by DNAP, or its nominated carrier, to the Location specified in the Merchant Application Form or Order.
- 5.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by DNAP or its nominated carrier (as the case may be).
- 5.3 DNAP may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Merchant to cancel any other instalment.
- 5.4 The Merchant shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 5.5 Delivery of the Goods shall be accompanied by a delivery note stating:
- 5.5.1 the date of the Order;
- 5.5.2 the product numbers, type and quantity of the Goods in the consignment; and
- 5.5.3 any special handling instructions.
- 5.6 Time of delivery is not of the essence. DNAP shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.
- 5.7 DNAP shall not be liable for any delay in or failure of delivery caused by:
- 5.7.1 the Merchant's failure to make the Location available;
- 5.7.2 the Merchant's failure to prepare the Location;
- 5.7.3 the Merchant's failure to provide DNAP with adequate instructions for delivery and installation;
- 5.7.4 Force Majeure.
- 5.8 If the Merchant fails to accept delivery of the Goods DNAP shall store and insure the Goods pending delivery, and the Merchant shall pay all storage and insurance charges at DNAP's then-applicable rates.
- 5.9 If **10 Business Days** following the due date for delivery of the Goods, the Merchant has not taken delivery of or collected them, DNAP may resell or otherwise dispose of the Goods without any obligation or liability to the Merchant, except as provided for in clauses 5.9.1 and 5.9.2. DNAP shall:
- 5.9.1 deduct all storage charges at DNAP's then-applicable rates and reasonable costs of resale; and
- 5.9.2 account to the Merchant for any excess of the resale price over, or invoice the Merchant for any shortfall of the resale price below, the Price paid by the Merchant for the Goods.



6 RISK

Risk in the Goods shall pass to the Merchant on delivery.

7 TITLE

- 7.1 Title to the Goods shall pass to the Merchant once DNAP has received payment in full and cleared funds for the Goods.
- 7.2 Until title to the Goods has passed to the Merchant, the Merchant shall:
- 7.2.1 hold the Goods as bailee for DNAP;
 - 7.2.2 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 7.2.3 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting DNAP's interest on the policy;
 - 7.2.4 ensure that the Goods are clearly identifiable as belonging to DNAP;
 - 7.2.5 not remove or alter any mark on or packaging of the Goods;
 - 7.2.6 inform DNAP immediately if it becomes subject to any of the events or circumstances set out in clauses 19.5.1, 19.5.2, 19.5.6, 19.5.9, 19.5.12, 19.5.14, 19.5.21 of Schedule 2; and
 - 7.2.7 on reasonable notice permit DNAP to inspect the Goods during the Merchant's normal business hours and provide DNAP with such information concerning the Goods as DNAP may request from time to time.
- 7.3 Notwithstanding clause 7.2, the Merchant may at DNAPs express written consent, use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 19.5.1, 19.5.2, 19.5.6, 19.5.9, 19.5.12, 19.5.14, 19.5.21 of Schedule 2 has occurred or is likely to occur.
- 7.4 If the Merchant resells the Goods in accordance with clause 7.3, title to the Goods shall pass to the Merchant immediately prior to the resale.
- 7.5 If, at any time before title to the Goods has passed to the Merchant, the Merchant informs DNAP, or DNAP reasonably believes, that the Merchant has or is likely to become subject to any of the events specified in clauses 19.5.1, 19.5.2, 19.5.6, 19.5.9, 19.5.12, 19.5.14, 19.5.21 of Schedule 2, DNAP may:
- 7.5.1 require the Merchant at the Merchant's expense to re-deliver the Goods to DNAP; and
 - 7.5.2 if the Merchant fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8 DEAD ON ARRIVAL AND WARRANTY

- 8.1 **Dead on Arrival cover.** Subject to the limitations set forth in this clause 8, Goods purchased by the Merchant shall be subject to a Dead On Arrival (DOA) period of **ninety (90) days**, ("DOA Period") which shall commence upon the date that the Goods are delivered to DNAP's nominated carrier. For purposes of this Contract, Goods shall be considered DOA if the operating system software in the Goods fails to initialize when the Goods are connected to an appropriate power source and switched on.
- 8.2 **Dead on Arrival claims.** If any Goods are determined to be DOA during the DOA Period, then such Goods may be returned to DNAP at DNAP's expense, unless DNAP demonstrates that such Goods do not qualify for the DOA policy under clause 8.1 above, in which case the Merchant shall bear the cost of returning such Goods to DNAP. Upon receipt of any such Goods during the DOA Period, DNAP shall, at its expense, (i) in DNAP's sole discretion, repair or replace such Goods, and (ii) return such Goods or replacement Goods to the manufacturer. DNAP's obligations hereunder shall arise only if DNAP's examination of the Goods in question discloses to DNAP's satisfaction that the Goods were DOA, and were not subject to: any improper storage, installation or testing; any attempt to maintain, repair or modify the Goods; any abuse, misuse or neglect of the Goods (including any use in conjunction with any product, equipment, device or software not supplied or approved in advance by DNAP); any accident, fire or other hazard. The repair or replaced Goods shall be covered only for the remainder of the DOA Period for the original Goods.



- 8.3 DNAP warrants that Payment Terminals shall, for a period of twelve months from delivery (the **Basic Warranty Period**):
- 8.3.1 conform in all material respects to the Order and the Specification;
 - 8.3.2 be free from material defects in design, material and workmanship.
- 8.4 **Extended Warranty Period.** The Merchant may at the same time as placing an order for Goods also purchase extended warranty cover with the Payment Terminals, if such option is offered by DNAP. The length of the warranty cover purchased shall be referred to as the Extended Warranty Period. The Extended Warranty Period shall commence on the date of expiry of the Basic Warranty Period. The Extended Warranty period shall not exceed 9 months. Basic Warranty Period and Extended Warranty Period shall together mean **Warranty Period**.
- 8.5 The Merchant warrants that it has provided DNAP in writing with all relevant, full and accurate information as to the Merchant's business and needs.
- 8.6 As the Merchant's sole and exclusive remedy, DNAP shall, at its option, repair, replace, of the Goods that do not comply with clause 8.3, provided that the Merchant:
- 8.6.1 serves a written notice on DNAP:
 - (a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
 - (b) in the case of latent defects, within one month from the date on which the Merchant became aware (or should reasonably have become aware) of the defect;
 - 8.6.2 provides DNAP with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
 - 8.6.3 gives DNAP a reasonable opportunity to examine the defective Goods; and
 - 8.6.4 returns the defective Goods to DNAP at DNAP's expense.
- 8.7 The provisions of this Schedule 10, including the warranties set out in clause 8.3, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 8.8 To the extent that the Goods are replaced following the instruction of the Merchant and in DNAP's reasonable opinion there is no breach of the warranties set out in clause 8.3 in respect of such Goods and/or such Goods are defective due to any reason set out in clause 8.3 then, the Merchant shall, on demand by DNAP, be required to pay the replacement value (calculated by DNAP) of relevant Goods.
- 8.9 If Goods are replaced by DNAP the Merchant acknowledges and agrees that the replacement Goods may not be new and may be older than the Goods which they replace. However, such replacement Goods shall be of the same or greater specification as the Goods they replace.
- 8.10 DNAP shall not be liable for any failure of the Goods to comply with clause 8.3:
- 8.10.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - 8.10.2 to the extent caused by the Merchant's failure to comply with DNAP's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
 - 8.10.3 to the extent caused by DNAP following any specification, instruction or requirement of or given by the Merchant in relation to the Goods;
 - 8.10.4 where the Merchant modifies any Goods without DNAP's prior written consent or, having received such consent, not in accordance with DNAP's instructions; or
 - 8.10.5 where the Merchant uses any of the Goods after notifying DNAP that they do not comply with clause 8.3.
- 8.11 Except as set out in this clause 8:
- 8.11.1 DNAP gives no warranties and makes no representations in relation to the Goods; and



8.11.2 shall have no liability for their failure to comply with the warranty in clause 8.3

and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

8.12 **Repairs.** The Merchant may request DNAP to repair the Goods. The repair services shall be subject to a separate charge as set out in Merchant Application Form.

9 INDEMNITY

9.1 The Merchant shall indemnify DNAP from and against any losses, damages, liability, costs (including legal fees) and expenses which DNAP may suffer or incur directly or indirectly from the Merchant's breach of any of its obligations under this Schedule 10.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 DNAP shall indemnify the Merchant from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Goods infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that DNAP shall have no such liability if the Merchant:

10.1.1 does not notify DNAP in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;

10.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of DNAP;

10.1.3 does not let DNAP at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

10.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;

10.1.5 does not, at DNAP's request, provide DNAP with all reasonable assistance in relation to the IPR Claim (at the Merchant's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Merchant;

10.1.6 uses the Goods in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.

10.2 If any IPR Claim is made or is reasonably likely to be made, DNAP may at its option:

10.2.1 procure for the Merchant the right to continue using and possessing the relevant Goods; or

10.2.2 modify or replace the infringing part of the Goods so as to avoid the infringement or alleged infringement, provided the Goods remain in material conformance to their Specification.

10.3 DNAP's obligations under clause 10.1 shall not apply to Goods modified or used by the Merchant other than in accordance with the Contract or DNAP's instructions. The Merchant shall indemnify DNAP against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by DNAP in connection with any claim arising from such modification or use.

11 TIME

Unless stated otherwise, time is of the essence of any date or period specified in this Schedule in relation to the Merchant's obligations only.