



## **CALADEN LIMITED**

### **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS**

#### **1. Interpretation**

1.1 **Definitions.** In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Caladen</b>	Caladen Ltd (registered in England and Wales with company number 07622883) whose registered office is at Trent Lock Warehouse, Trent Lock , Long Eaton, Nottingham, NG10 2FY.
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.
<b>Costs</b>	all costs, (including but not limited to any legal fees (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Caladen (either directly or by a third party) including disbursements, VAT and other expenses;
<b>Contract</b>	the contract between Caladen and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.
<b>Delivery Location</b>	the location set out in the Order or such other location as the parties may agree in writing or such other location as may be advised by Caladen prior to delivery.
<b>Force Majeure Event</b>	has the meaning given in clause 13.
<b>Goods</b>	the goods (or any part of them) set out in the Order.
<b>Order</b>	the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form, the Purchaser's written acceptance of Caladen's quotation, or overleaf, as the case may be.

<b>Purchaser</b>	the person or firm who purchases the Goods from Caladen.
<b>Specification</b>	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and Caladen.
<b>Unpaid Amount</b>	any sum due to Caladen under the Contract which has not been paid by the Purchaser to Caladen by the date on which payment is due in accordance with clause 9.
<b>Warranty</b>	The warranty provided by Caladen as set out in clause 7.2.

1.2 **Construction.** In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

**2. Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Purchaser are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Caladen issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Purchaser may only cancel an Order which has been accepted by Caladen with the prior written consent of Caladen and on the terms that the Purchaser shall indemnify Caladen in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Caladen as a result of cancellation.
- 2.5 The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation,

assurance or warranty made or given by or on behalf of Caladen which is not set out in the Contract.

- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Caladen and any descriptions or illustrations contained in Caladen's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods given by Caladen shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.8 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Caladen shall be subject to correction without any liability on the part of Caladen.

### **3. Goods**

- 3.1 The Goods are described in Caladen's catalogue as modified by the Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Purchaser, the Purchaser shall indemnify Caladen against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Caladen in connection with any claim made against Caladen for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Caladen's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Caladen reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### **4. Testing**

- 4.1 The Purchaser may at the time of placing an Order, request in writing a surface inspection or inspection with tests of the Goods. Any such inspection or testing is to be carried out at Caladen's premises or other such location as determined solely by Caladen prior to the Goods leaving Caladen's premises.
- 4.2 The Purchaser shall specify the nature of tests to be carried out and the inspection will be limited to these tests.
- 4.3 Caladen shall be entitled to charge for such an inspection. All charges and expenses for any testing and inspection required by the Purchaser must be quoted for and agreed by Caladen prior to the Purchaser placing an Order. Caladen shall be under no obligation to carry out any testing or inspection where the same has not been agreed prior to Order.

### **5. Packaging**

- 5.1 The packaging of Goods shall be entirely at the discretion of Caladen and Caladen shall have the right to pack all Goods in such manner and in such quantities as Caladen thinks fit. Caladen shall not be obliged to comply with any packaging requests or instructions from the Purchaser unless agreed by Caladen and the Purchaser in writing.

5.2 If Caladen requires the Purchaser to return any packaging materials to Caladen shall notify the Purchaser of this requirement. The Purchaser shall make any such packaging materials available for collection at such times as Caladen shall reasonably request. Returns of packaging materials shall be at Caladen's expense.

**6. Delivery**

6.1 Caladen shall deliver the Goods to Delivery Location at any time after Caladen notifies the Purchaser that the Goods are ready.

6.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

6.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Caladen shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Purchaser's failure to provide Caladen with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.4 If Caladen fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Caladen shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide Caladen with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.5 If the Purchaser fails to accept delivery of the Goods within three Business Days of Caladen notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Caladen's failure to comply with its obligations under the Contract:

6.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Caladen notified the Purchaser that the Goods were ready; and

6.5.2 Caladen shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).

6.6 Caladen shall be entitled to charge the Purchaser at Caladen's standard rate and any other expenses incurred by Caladen:

6.6.1 for any delay in unloading the Goods;

6.6.2 for each repeat delivery where Caladen or Caladen's carrier leaves the Delivery Location and subsequently returns to the Delivery Location with the Goods; and

6.6.3 as a result of the Purchaser's inability or unwillingness to accept delivery of the Deliverables.

6.7 If 10 Business Days after the day on which Caladen notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted delivery of them, Caladen may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

- 6.8 The Purchaser shall not be entitled to reject the Goods if Caladen delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Purchaser that the wrong quantity of Goods was delivered.
- 6.9 Caladen may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

**7. Quality**

- 7.1 Where Caladen is not the manufacturer of the Goods, Caladen shall use reasonable endeavours to transfer to the Purchaser the benefit of any warranty or guarantee given to Caladen.
- 7.2 In respect of Goods manufactured by Caladen, Caladen warrants that the Goods shall:
- 7.2.1 conform in all material respects with the Specification on delivery; and
  - 7.2.2 be free from material defects in design, material and workmanship on delivery and for a period of three months from the date of delivery.

7.3 Subject to clause 7.4, if:

- 7.3.1 the Purchaser gives notice in writing to Caladen within a reasonable time of discovery that some or all of the Goods do not comply with the Warranty;
- 7.3.2 Caladen is given a reasonable opportunity of examining such Goods; and
- 7.3.3 the Purchaser (if asked to do so by Caladen) returns such Goods to Caladen's place of business at the Purchaser's risk and cost,

Caladen shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 7.4 Caladen shall not be liable for Goods' failure to comply with the Warranty in any of the following events:
- 7.4.1 the Purchaser makes any further use of such Goods after giving notice in accordance with clause 7.3;
  - 7.4.2 the defect arises because the Purchaser failed to follow Caladen's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 7.4.3 the defect arises as a result of Caladen following any drawing, design or Specification supplied by the Purchaser;
  - 7.4.4 the Purchaser alters or repairs such Goods without the written consent of Caladen;
  - 7.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

- 7.4.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.5 Except as provided in this clause 7, Caladen shall have no liability to the Purchaser in respect of the Goods' failure to comply with the Warranty.
- 7.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 These Conditions shall apply to any repaired or replacement Goods supplied by Caladen.

**8. Title and risk**

- 8.1 The risk in the Goods shall pass to the Purchaser on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Purchaser until the earlier of:
  - 8.2.1 Caladen receives payment in full (in cash or cleared funds) for the Goods and any other goods that Caladen has supplied to the Purchaser in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - 8.2.2 the Purchaser resells the Goods, in which case title to the Goods shall pass to the Purchaser at the time specified in clause 8.4.
- 8.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall:
  - 8.3.1 store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as Caladen's property;
  - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 8.3.4 notify Caladen immediately if it becomes subject to any of the events listed in clause 12.2; and
  - 8.3.5 give Caladen such information relating to the Goods as Caladen may require from time to time.
- 8.4 Subject to clause 8.5, the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before Caladen receives payment for the Goods. However, if the Purchaser resells the Goods before that time:
  - 8.4.1 it does so as principal and not as Caladen's agent; and
  - 8.4.2 title to the Goods shall pass from Caladen to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- 8.5 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 12.2, then, without limiting any other right or remedy Caladen may have:
  - 8.5.1 the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 8.5.2 Caladen may at any time:

- 8.5.2.1 require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 8.5.2.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

**9. Price and payment**

- 9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Caladen's published price list in force as at the date of delivery.
- 9.2 Caladen may, by giving notice to the Purchaser at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 9.2.1 any factor beyond Caladen's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 9.2.2 any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 9.2.3 any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Caladen adequate or accurate information or instructions.
- 9.3 The price of the Goods is exclusive of the costs and charges of testing, inspection, insurance and transport of the Goods, which shall be invoiced to the Purchaser.
- 9.4 The price of the Goods is inclusive of the costs and charges of Caladen's standard packaging, Where Caladen agrees to package the Goods in a manner requested by the Purchaser and such packaging is in addition to that normally used by Caladen then Caladen shall be entitled to charge and invoice the Purchaser for the associated costs.
- 9.5 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) or other applicable sales tax or duty. The Purchaser shall pay to Caladen such additional amounts in respect of VAT or other applicable sales tax or duty as are chargeable on the supply of the Goods.
- 9.6 Caladen may invoice the Purchaser for the Goods on or at any time after despatch of the Goods.
- 9.7 The Purchaser shall pay the invoice in full and in cleared funds within 45 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Caladen. Time of payment is of the essence.
- 9.8 If the Purchaser fails to make any payment due to Caladen under the Contract by the due date for payment:
  - 9.8.1 Caladen shall be entitled to:
    - 9.8.1.1 cancel or suspend any further deliveries of Goods to the Purchaser under any order.
    - 9.8.1.2 appropriate any payment made by the Purchaser to such of the Goods (or good and/or services supplied under any other order) as the Seller may think fit.

- 9.8.1.3 by notice to the Purchaser unilaterally vary the Purchaser's credit available and/or payment terms for future Contracts.
- 9.8.2 then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.
- 9.9 The Purchaser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Caladen may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by Caladen to the Purchaser.
- 9.10 Payment of any Unpaid Amount.
- 9.10.1 The Purchaser shall indemnify the Seller for all reasonable Costs that are reasonably incurred by the Seller (either directly or indirectly or by a third party) in seeking or securing payment of any Unpaid Amount or otherwise pursuing any claim for damages for breach of this Contract.
- 9.10.2 This indemnity shall apply whether or not the Purchaser has been negligent or at fault.
- 9.10.3 Nothing in this clause 9.10 shall restrict or limit the Purchaser's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 9.10.4 For the avoidance of doubt, the limitations set out in clause 10, do not apply to the indemnity in this clause 9.10.
- 9.11 Without prejudice to the provisions of this clause 9, if, in the Seller's sole opinion, the Purchaser's credit-worthiness deteriorates before delivery of the Goods, the Seller may require:
- 9.11.1 payment in full or in part of the price of the goods and any other charges prior to delivery, or
- 9.11.2 the provision of security for payment by the Purchaser in such form as is in acceptable to the Seller.

## **10. Export Terms and Licences**

- 10.1 The Purchaser is responsible for obtaining all necessary export licences and complying with all legislation and regulations governing the admission of the Goods into the country of destination and for the payment of all custom duties, port duties and charges.

## **11. Limitation of liability**

- 11.1 Nothing in these Conditions shall limit or exclude Caladen's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

- 11.1.4 defective products under the Consumer Protection Act 1987; or
  - 11.1.5 any matter in respect of which it would be unlawful for Caladen to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 Caladen shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 11.2.2 Caladen's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 11.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This clause 11 shall survive termination of the Contract.

## **12. Termination and suspension**

- 12.1 If the Purchaser becomes subject to any of the events listed in clause 12.2, Caladen may terminate the Contract with immediate effect by giving written notice to the Purchaser.
- 12.2 For the purposes of clause 12.1, the relevant events are:
- 12.2.1 the Purchaser commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
  - 12.2.2 the Purchaser repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 12.2.3 the Purchaser fails to pay any sum due under the Contract, including any interest accrued, in full cleared funds in accordance with clause 9.
  - 12.2.4 the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - 12.2.5 the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or

- enters into any compromise or arrangement with its creditors other than (where the Purchaser is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
- 12.2.6 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
  - 12.2.7 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser;
  - 12.2.8 (being a company) the holder of a qualifying floating charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
  - 12.2.9 a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;
  - 12.2.10 (being an individual) the Purchaser is the subject of a bankruptcy petition or order;
  - 12.2.11 a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 12.2.12 any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.4 to clause 12.2.11 (inclusive);
  - 12.2.13 the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 12.2.14 the Purchaser's financial position deteriorates to such an extent that in Caladen's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - 12.2.15 (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 12.3 Without limiting its other rights or remedies, Caladen may suspend provision of the Goods under the Contract or any other contract between the Purchaser and Caladen if the Purchaser becomes subject to any of the events listed in clause 12.2, or Caladen reasonably believes that the Purchaser is about to become subject to any of them.
- 12.4 On termination of the Contract for any reason the Purchaser shall immediately pay to Caladen all of Caladen's outstanding unpaid invoices and interest, and in respect of any other sums payable by the Purchaser but for which no invoice has been

submitted, Caladen may submit an invoice which shall be payable immediately on receipt.

- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### **13. Force majeure**

- 13.1 A **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- 13.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2 epidemic or pandemic;
- 13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.4 nuclear, chemical or biological contamination or sonic boom;
- 13.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 13.1.6 collapse of buildings, fire, explosion or accident;
- 13.1.7 any labour or trade dispute, strikes, industrial action or lockouts;
- 13.1.8 non-performance by suppliers or subcontractors; and
- 13.1.9 interruption or failure of utility service.

- 13.2 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

### **14. General**

- 14.1 **Assignment and other dealings.**

- 14.1.1 Caladen may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 The Purchaser may not assign, transfer, mortgage, charge, subcontract, 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 Caladen.

- 14.2 **Notices.**

- 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be

delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

- 14.2.2 A notice or other communication shall be deemed to have been received:
- 14.2.2.1 if delivered personally, when left at the address referred to in clause 14.2.1;
  - 14.2.2.2 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;
  - 14.2.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**14.3 Severance.**

- 14.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.
- 14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Caladen.
- 14.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).