

**11/2022 EDITION – UK**

Bard Limited

Becton Dickinson Infusion Therapy UK

Becton, Dickinson U.K. Limited

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**1. Definitions**

In these Conditions:

“**BD**” means the legal entity within the BD group of companies that is named on the Order.“**Conditions**” means the terms and conditions set out below.“**Contract**” means a contract between BD and the Supplier for the sale and purchase of Goods and/or Services as set out in an Order and subject to these Conditions.“**Goods**” means goods (or any part of them) supplied by the Supplier to BD under an Order.“**Law**” means all applicable laws (as amended), regulations and orders, irrespective of jurisdiction.“**Order**” means a purchase order for Goods and/or Services which refers to, or is sent to the Supplier together with, these Conditions.“**Services**” means services (or any part of them) supplied by the Supplier to BD under an Order, which shall include any services which the Supplier needs to perform in relation to Goods to ensure compliance with the applicable Contract.“**Supplier**” means the legal person from whom BD purchases Goods and/or Services.**2. Basis of Contract**

2.1 These Conditions shall apply to and be incorporated into all Orders for the purchase of Goods and/or Services by BD from the Supplier, except any such purchase that is covered by a signed written agreement between the parties which has been individually agreed on (in which case these Conditions shall apply subsidiarily and complementary). The Supplier acknowledges and accepts that these Conditions shall supersede all other terms and conditions, including any which the Supplier may purport to apply under any quotation, order acknowledgement, invoice or similar document or which could be implied by trade custom, practice, or course of dealing.

2.2 An Order for Goods and/or Services constitutes an offer by BD to purchase such Goods and/or Services subject to these Conditions. The Order shall be deemed to be accepted by the Supplier upon the Supplier acknowledging or accepting the order or doing any act consistent with fulfilling the Order (whichever is earlier); at which point the Contract shall come into existence.

2.3 Any changes made to an Order must be in writing and signed by an authorized representative of BD (“Change Notice”). Supplier shall immediately notify BD if the Change Notice will impact Supplier’s cost, time of delivery or time of performance. If so, the parties will equitably adjust costs and schedules, in writing. One hundred and eighty (180) days’ notice and BD’s written approval is required prior to any changes in any specification for the Goods or Services contained or referred to in or sent with the Order, including but not limited to any technical descriptions, drawings and samples (“Specifications”), performance, manufacturing or materials for Goods and/or Services supplied by Supplier (“Product Changes”). Such Product Changes include but are not limited to relocation of manufacturing site; change in ownership of Supplier; new, additional, modified tooling or other equipment; modified manufacturing processes; material changes; or other design and/or Specifications’ modifications. End of Life (EOL) notification shall be submitted at a minimum of one hundred eighty (180) days prior written notice. If Supplier desires or is required pursuant to the Law to make any such Product Changes, Supplier shall submit the Product Change request prior to implementation online through the BD Supplier Change Request Portal at: <https://bdsr.aravo.com/aems/supplierservice.do>.

**3. Goods and Services**

3.1 The Supplier warrants and shall ensure that all Goods (and their packaging) and Services conform with any applicable Specification and are provided in accordance with Law and BD’s instructions. All Services shall be performed by suitably qualified and experienced personnel, in a prompt, diligent, safe and professional manner, and to a high standard of skill and care. The Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of BD’s premises or to any BD equipment or systems.

3.2 Subject to Clause 3.1, the Supplier warrants and shall ensure that Goods (and their packaging) are: (a) equal in all respects to any samples or patterns provided or given by either party; (b) of merchantable quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by BD expressly or by implication; and (c) free from defects in design, material and workmanship, and remain so for a minimum of 24 months after delivery.

3.3 BD shall be entitled to inspect the manufacturing premises and test Goods during manufacture, processing and storage, which the Supplier shall facilitate at its own expense. Before dispatching Goods, the Supplier shall carefully inspect and test Goods for compliance with the Order and the Specification. If following any inspection or test BD informs the Supplier that it considers that the premises, processes or Goods will not or may not comply with the Clauses 3.1 and 3.2, the Supplier shall take all necessary steps to ensure compliance.

3.4 The Supplier shall: (a) provide all relevant product safety information in such form as is required by BD or by Law; and (b) 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.

**4. Delivery and Performance**

4.1 The Supplier shall ensure that: (a) all Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and (b) each delivery is accompanied by a delivery note which shows all relevant information.

4.2 The Supplier shall deliver Goods and perform Services at the time(s) and location(s) specified in the Order, or as otherwise specified by BD. The time stipulated for delivery or performance of the Order shall be of the essence. If Supplier’s deliveries of the Goods or performance of Services will fail to meet the schedule in the Order, BD may require Supplier to expedite shipments of the Goods or expedited performance of the Services and Supplier will pay for the difference between the cost of any expedited transportation rates of the Goods or expedited performance of Services being used and the original shipping method or performance specified in this Order. Any request for expedited shipping or performance shall not act as a waiver of any other remedies available to BD pursuant to the Order or at law.

4.3 Title and risk in Goods shall pass to BD on completion of delivery of such Goods, but without prejudice to any right of rejection available to BD.

4.4 BD may require the Supplier to suspend performance of the Contract if at any time BD’s business or a relevant part of it is interrupted or restricted by events, circumstances or causes beyond BD’s reasonable control.

4.5 Whereas signature by BD of the packing slip shall be accepted as proof of delivery, it shall not amount to an acceptance by BD of the Goods. All Goods may be subject to incoming inspection by BD. Acceptance of the Goods shall not be conclusive of compliance with Clauses 3 and 4 and shall in no way affect or diminish the warranties provided by Supplier hereunder.

**5. Remedies**

5.1 If Goods or Services are not delivered or performed in accordance with Clauses 3 and 4, then without limiting any of its other rights or remedies available under statute or at law, BD shall have the right to any one or more of the following remedies, whether or not it has accepted such Goods or Services: (a) to terminate the Contract as set forth herein; (b) to reject Goods (in whole or in part) and return them to the Supplier at the Supplier’s own risk and expense; (c) to require the Supplier to repair or replace rejected Goods or re-perform non-compliant Services within a specified time, or to provide a full refund of the price of rejected Goods or non-compliant Services (if paid); (d) to suspend, cancel, or refuse to accept, any subsequent delivery of Goods or performance of Services; or (e) to claim damages.

5.2 These Conditions shall apply to any repaired or replacement Goods or re-performed Services provided by the Supplier.

**6. Price and Payment**

6.1 The price of Goods and/or Services shall be as set out in the Order. Such price is fixed, and exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of Goods and all of Supplier’s expenses in relation to the performance of the Contract except as expressly stated otherwise in the Order. No extra charges or expenses shall be payable unless agreed in writing and signed by BD. No interest shall be due on late payments except as required by Law.

6.2 The Supplier may invoice BD for Goods or Services at any time after the completion of delivery or performance under the applicable Contract, or as otherwise provided in the Order. BD may reject an invoice that does not contain the Order number or any other information required by BD, by Law, or if the

Supplier is unable to provide signed proof of delivery.

6.3 BD shall pay correctly rendered invoices within 60 days of receipt of the invoice, or such other period as is stated in the Order, at the address specified in the Order. Payment shall be made to the bank account nominated in writing by the Supplier.

6.4 BD may at any time set off any liability of the Supplier to BD against any liability of BD to the Supplier, whether under the same Contract or otherwise.

6.5 Payment shall not be deemed acceptance of satisfactory performance of the Order and shall not prejudice BD’s rights in respect of any breach of the Contract.

**7. BD Materials, Confidential Information and Data Protection**

7.1 All materials, equipment and tools, drawings, Specifications, and data supplied by or on behalf of BD or its affiliates to the Supplier (**BD Materials**) are and shall remain the exclusive property of BD. The Supplier shall keep BD Materials in safe custody and not use them other than in accordance with BD’s written instructions or authorisation. BD may withhold payment until BD Materials are returned.

7.2 All intellectual property rights developed by the Supplier or otherwise arising in connection with the performance of the Contract, including all modifications, improvements or innovations relating to BD Materials, shall vest in BD and Supplier agrees hereby to assign irrevocably, exclusively and free of charge, to BD any and all intellectual property rights, it may have in these modifications, improvements or innovations without any restriction. Without prejudice to the foregoing, the Supplier grants BD an irrevocable, royalty-free licence to use any intellectual property rights of the Supplier in any Goods or Services or related work products in order to use such Goods or Services in the contemplated manner. The Supplier shall on request sign any documents necessary to give effect to this Clause 7.2.

7.3 The Supplier shall keep in strict confidence all BD Materials and all other information of a confidential or proprietary nature relating to BD or any of its affiliates. The Supplier shall only disclose such materials or information: (a) to those of its employees, agents and subcontractors who need to know them for the purpose of performing the Contract, and then subject to compliance with the obligations of confidentiality set out in this Clause; or (b) as required by Law, any governmental or regulatory authority or by a court of competent jurisdiction, and then only after giving BD prior written notice of such disclosure where legally permissible.

7.4 The Supplier may not use any logos or trade marks of BD or refer to BD or its products or services in any publicity without BD’s prior written permission.

7.5 The parties agree that they will comply with applicable data protection law when carrying out the contractual relationship between the parties. In particular, the parties may exchange contact details and other personal data of their employees, agents, directors, representatives and other individuals acting on their behalf in order to enable the receiving party to contact the sharing party, to fulfil its obligations under the Order and to otherwise perform the Order.

**8. Indemnity, Liability and Insurance**

8.1 The Supplier shall keep BD indemnified without limit against all liabilities, costs, expenses, damages and losses (whether direct or indirect) suffered or incurred by BD as a result of or in connection with: (a) any defect or deficiency in the Goods or Services, or any breach by Supplier of its obligations under a Contract or any statutory duty, or any act or omission of Supplier’s employees, agents or subcontractors in relation to Goods or Services; and (b) any claim made against BD for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the supply or use of Goods or Services.

8.2 Subject to Clause 8.3, BD shall not be liable under or in connection with a Contract or its termination for any loss of profits, business or revenue, or for any indirect or consequential loss or damage.

8.3 Nothing in a Contract or these Conditions shall restrict or exclude either party’s liability for death or personal injury, nor in case of gross negligence, fraud, or any other liability which may not be lawfully excluded or limited.

8.4 During the term of a Contract and for a period of at least three years thereafter, the Supplier shall maintain in force, with a reputable insurance company, adequate professional indemnity insurance, product liability insurance and public liability insurance (otherwise may be known as third party risk) to cover all liabilities that may arise under or in connection with the Contract, and any other insurance required by Law. At BD’s request the Supplier shall produce evidence of such insurance and shall procure that its insurers add BD as a co-insured or additionally insured party under such insurance and waive any claims of subrogation against BD in connection with any coverage offered by such insurance.

**9. Termination**

9.1 BD may terminate a Contract in whole or in part at any time by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. BD shall pay the Supplier fair and reasonable compensation for any work in progress on Goods or Services at the time of termination, but such compensation shall not include any charge for interest, or any Goods or materials which Supplier is reasonably able to divert to other orders or customers, or loss of anticipated profits or revenue or any consequential loss and shall in no event exceed the cancelled commitment value of the Order.

9.2 Either party may terminate a Contract with immediate effect and without liability by giving written notice if the other party: (a) commits a material or repeated breach of any term of the Contract or a related Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so; or (b) is or becomes insolvent, bankrupt, dissolved or wound up, or makes any arrangement with its creditors or has a receiver, administrative receiver, liquidator or provisional liquidator appointed over all or any part of its assets, or takes or suffers any similar action in any jurisdiction.

9.3 Termination of a Contract shall not affect rights and remedies of the parties that have accrued as at termination. Clauses 7 and 8, and any other Clauses which by implication survive termination of the Contract, shall continue after termination in full force and effect.

**10. Trade, Regulatory and Ethical Compliance**

10.1 The Supplier represents and warrants that it complies, and will at all times comply, fully with: (a) all Law governing trans-border sales, re-sales, shipments and transfers of goods or services, including U.S. and other applicable export control and anti-boycott laws; (b) all Law relating to the Goods and Services, including without limitation any obligation on the Supplier to ensure that all regulatory and legal requirements are met such as Regulation No 1907/2006 of the European Parliament and the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH”); the Restriction of the Use of Certain Hazardous Substances (“RoHS”) in Electrical and Electronic Equipment (EEE) Directive (2011/65/EU); and the US Dodd Frank Act Conflict Minerals Rule (“Conflict Minerals”); and as applicable (c) the Medical Devices Directive (MDD) Directive 1993/42/EEC, the Medical Devices Regulation (EU 2017/745) (“MDR”), the Medical Devices for In Vitro Diagnostics Directive (IVDD) 98/79/EC and the Medical Devices Regulation (EU) 2017/746 on in vitro diagnostic medical devices (“IVDR”).

10.2 The Supplier warrants and undertakes that it and its employees, agents and sub-contractors: (a) will comply with all Law relating to anti-bribery and corruption, including the United States Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010; (b) will not, in connection with or performance of any Contract, make or promise to make any improper payment; and (c) will cooperate in full with any investigation by BD into any breach or suspected breach of this Clause 10.2. BD may withhold payments under any Contract and/or suspend or terminate any Contract upon learning information giving it a factual basis to conclude that a breach of this Clause 10.2 has been committed.

10.3 The Supplier agrees to provide promptly any information or documents required by BD to support its compliance with Law, including without limitation transparency disclosure laws such as the French Bertrand Act and the U.S. Physician Payment Sunshine Act, and the Regulations mentioned in Clause 10.1, as well as applicable industry codes. The Supplier shall inform BD, on request, of the presence and percentage (%) of any substance on the BD Materials of Concern List (“BD MOC”) contained in the Goods.

10.4 The Supplier has read and agrees to comply with the BD Expectations for Suppliers publication as posted at <https://www.bd.com/en-eu/company/trading-partners/bd-suppliers/sustainable-procurement-and-expectations-for-suppliers>.

**11. Force Majeure**

If and to the extent that the performance by a party (an “Affected Party”) of any of its obligations under this Contract is delayed by acts of God, acts of war, acts of terrorism, or pandemic, freight embargoes or

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other unforeseen catastrophic events of a similar nature, despite Affected Party's commercially reasonable efforts to prevent delay until after the completion of its obligations or mitigate the effects of the Force Majeure Event, and without the fault or negligence of the Affected Party, (each, a "Force Majeure Event"), and such delay could not have been prevented by reasonable precautions by the Affected Party, neither party shall be liable for damages as a result of a delay in delivery due to the Force Majeure Event and the Affected Party shall be excused for such delay in performance for as long as such Force Majeure Event continues, so long as the Affected Party shall continue to use commercially reasonable efforts to immediately recommence performance. As a condition precedent to becoming an Affected Party, Supplier shall notify BD of the occurrence and impact of the Force Majeure Event, including the existence of such event caused by any of its subcontractors, within three (3) days of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event and provide a good faith estimate of the likely impact on the Goods and/or Services. Should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, BD may cancel this Contract without any liability. If Supplier does not take reasonable steps to mitigate the Force Majeure Event, BD shall be entitled to recoup the difference in Goods and/or Services' costs paid by BD that are needed to replace those of Supplier during the term of the Force Majeure Event. The occurrence of a Force Majeure Event does not affect Supplier's obligation to implement any disaster recovery or business continuity plan and does not give rise to any damages or additional compensation from BD.

**12. Miscellaneous Provisions**

12.1 These Conditions, the Order and any document referred to in the Order constitute the whole agreement between the parties relating to the subject matter of the Order and supersede and extinguish any prior agreements or arrangements relating to such subject matter.

12.2 Nothing in these Conditions shall constitute or be deemed to constitute a partnership between the parties, nor, except as expressly provided, shall it constitute or be deemed to constitute any party as the agent of any other party for any purpose. The Supplier shall have no right or authority to, and shall not, enter into any contract, make any representation, give any warranty, incur any liability, or assume any obligation, on behalf of BD.

12.3 The Supplier may not assign, sub-contract or in any way dispose of its rights or obligations under the Contract without the prior written consent of BD. BD 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.

12.4 Any term of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision hereof.

12.5 A waiver of any right or remedy 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 shall constitute a waiver of that or any other right or remedy.

12.6 In these Conditions any phrase introduced by the terms **including** or **includes** or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

12.7 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract or these Conditions.

12.8 These Conditions and all Contracts shall be governed by and construed in accordance with English law and are subject to the non-exclusive jurisdiction of the English courts.

12.8 **For BD Pharmaceutical System Business Unit Only.** The Supplier shall ensure that the Goods comply with the Specifications mentioned in the Order and are manufactured in accordance with quality management system as per any applicable regulations and any quality agreement and/or quality requirements agreed between the parties, as applicable. In particular, the Supplier shall (i) ensure that all parts of the quality management system shall be adequately resourced by qualified personnel having the appropriate level of education and training to fulfil Supplier's above obligation and (ii) notify BD in case of any change to the Specifications prior to its implementation. The Supplier shall apply the last version of the quality requirements and/or quality agreement (as applicable) including the Specifications, as agreed between the parties at the time of each batch production launch.

Supplier Signature:

Date: