

**AgPlus Diagnostics Ltd**  
**GENERAL TERMS AND CONDITIONS OF PURCHASE**

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## 1. Interpretation

In these Conditions:

- (a) "AGPLUS" means AgPlus Diagnostics Ltd whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY, UK. Registered Number 6994240 in England and Wales
- (b) "the Contractor" means the person who undertakes to supply the Articles and/or to perform the Services for AGPLUS under the Contract, and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be, and shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the prior written consent of AGPLUS;
- (c) "the Contract" means the agreement between AGPLUS and the Contractor for the supply of the required articles and/or performance of the required services; including these General Conditions of Purchase, any special conditions of contract and all specifications, plans, drawings and other documents that are relevant to the said supply and/or the said performance;
- (d) "the Articles" means all articles that the Contractor is required to supply under the Contract and, unless otherwise agreed, any required installation, commissioning and testing of such articles;
- (e) "the Services" means all services that the Contractor is required to perform under the Contract, including, unless otherwise agreed, any installation, commissioning and testing of the Articles;
- (f) "the Contract Price" means the price (exclusive of Value Added Tax) payable to the Contractor by AGPLUS under the Contract for the full and proper performance by the Contractor of its part of the Contract;
- (g) "AGPLUS Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of AGPLUS or its authorised representative;
- (h) "the Arising Results" means all inventions, patents and applications therefore, copyright (including computer software), designs, drawings, reports, information and know-how that are produced or acquired by the Contractor (and by any subcontractor) during and in the course of the performance of the Contract;
- (i) "Party" means a party to the Contract;
- (j) "the Parties" means the parties to the Contract;
- (k) "loss" includes destruction;
- (l) "month" means a calendar month;
- (m) "person" includes a corporation.

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**2. Acts by AGPLUS**

Any decision, act or other thing that AGPLUS is required or authorised to take or do under the Contract may be taken or done by any person authorised by AGPLUS, either generally or specifically, to take or do that decision, act or other thing.

**3. Service of Notice**

Any notice or other communication that AGPLUS is required to give under the Contract will be sufficiently given if sent by recorded or registered post to the last known address of the Contractor.

**4. Amendments and Variations**

No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing by AGPLUS and the Contractor and no payment will be made for any unauthorised work.

**5. Transfer and Sub-Letting**

The Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof without AGPLUS's prior written consent.

**6. Payment**

- (1) On submission of a correct invoice quoting AGPLUS's contract and/or purchase order number and confirming that the property in the Articles has passed to AGPLUS or its agent, AGPLUS shall pay the Contract Price (or, as the case may be, such part of the Contract Price as relates to the supply of the Articles) to the Contractor.
- (2) The Contractor shall, at such times and in such manner as are specified in the Contract, submit invoices to AGPLUS for the performance of the Services. All such invoices for the performance of the Services shall show the period and the part of the Services for which payment is claimed, together with any agreed rates for payment.
- (3) On submission of a correct invoice quoting AGPLUS's contract and/or purchase order number and confirming that the Services (or, as the case may be, such part of the Services as is specified in the invoice) have been performed, AGPLUS shall pay the Contract Price (or such part of the Contract Price as relates to the performance of the Services or, as the case may be, such part of the Services as is specified in the invoice) to the Contractor.
- (4) If, for the purpose of performing the Contract, the Contractor enters into a contract for the supply of goods or services to the Contractor by a third party, the Contractor shall include in that contract a term that requires the Contractor to pay for those goods or services within thirty (30) working days of the Contractor receiving a correct invoice from that third party.

**7. Packaging**

Unless otherwise specified in the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor shall be considered as non-returnable and their cost as having been included in the Contract Price.

**8. Recovery of Sums Due**

- (1) Whenever any sum of money shall be recoverable from or payable by the Contractor under the Contract, AGPLUS may deduct the said sum from any sum that is then due (or which at any time thereafter may become due) to the Contractor under the Contract or under any other contract with AGPLUS.

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- (2) Any overpayment by AGPLUS to the Contractor of any charges (and associated Value Added Tax) for the Articles and/or Services shall be a sum of money recoverable from the Contractor.

**9. Value Added Tax and Other Taxes**

- (1) AGPLUS shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.
- (2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- (3) The Contractor shall, if so requested by AGPLUS, furnish such information as may reasonably be required by AGPLUS as to the amount of Value Added Tax chargeable on any of the Articles and any of the Services and payable by AGPLUS to the Contractor in addition to the Contract Price. Any overpayment of any Value Added Tax by AGPLUS to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 8.
- (4) The Contractor shall be responsible for payment of all other taxes and duties chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.
- (5) The Contractor shall promptly supply to AGPLUS:
- (a) all information concerning the tax status of the Contractor that is relevant to the supply of the Articles (if any) under the Contract and the performance of the Services (if any) under the Contract; and
  - (b) all certificates of exemption of the Contractor from any taxes and duties chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.

**10. The Contractor's Personnel**

- (1) AGPLUS reserves the right to refuse to admit any person employed by the Contractor or by a subcontractor to premises occupied by or on behalf of AGPLUS, whose admission would, in the opinion of AGPLUS, be undesirable.
- (2) Upon request by AGPLUS, the Contractor shall provide to AGPLUS a list specifying:
- (a) the names and addresses of all persons who may at any time require admission in connection with the performance of the Contract to any premises occupied by or on behalf of AGPLUS; and
  - (b) the nature of the work to be performed by such persons and such other particulars as AGPLUS may require.
- (3) If the Contractor fails to comply with Clause (2) of this Condition and if AGPLUS believes that such failure is prejudicial to AGPLUS's interests, then AGPLUS may terminate the Contract at any time by written notice to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to AGPLUS.
- (4) The decision of AGPLUS as to whether any person is to be refused admission to such premises and as to whether the Contractor has failed to comply with Clause (2) of this Condition shall be final and conclusive.
- (5) The Contractor shall indemnify AGPLUS against any loss, damage or injury arising from any failure by the Contractor's employees or subcontractors to comply with any of AGPLUS's rules, regulations and procedures that are drawn to their attention.

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**11. Use of Documents and Information from AGPLUS**

- (1) The Contractor shall not disclose the Contract or any term thereof to any person other than a person employed by the Contractor in the performance of the Contract or any subcontractor, supplier or other person concerned with the performance of the Contract. Such disclosure shall be made in confidence and shall only extend as far as is necessary for the purpose of the performance of the Contract.
- (2) The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of AGPLUS otherwise than for the purpose of the performance of the Contract. Save as provided for in Clause (3) of this Condition, the Contractor shall not make any article (or part thereof) similar to the Articles for any other purpose.
- (3) Subject to any rights of third parties, nothing in this Condition shall prevent the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights in which vest in the Contractor otherwise than as a result of work carried out under the Contract.
- (4) Any samples, patterns, specifications, plans, drawings, or other documents issued by or on behalf of AGPLUS for the purpose of the performance of the Contract shall remain the property of AGPLUS. The Contractor shall return the same to AGPLUS on completion or earlier termination of the Contract.

**12. Confidentiality**

- (1) The Contractor shall treat as confidential and shall not disclose to any third party:
  - (a) all information provided by AGPLUS to the Contractor for the performance of the Contract, and
  - (b) the Arising Results,except that the Contractor may disclose the said information and the Arising Results to any person employed by the Contractor in the performance of the Contract and any subcontractor, supplier or other person concerned with the performance of the Contract. Such disclosure shall be made in confidence and shall only extend as far as is necessary for the purpose of the performance of the Contract.
- (2) The Contractor shall take all necessary precautions to ensure that all such information is treated as confidential by the Contractor's employees, agents and subcontractors.
- (3) AGPLUS shall treat as confidential all unpublished information that is produced by the Contractor outside the Contract and that is made available to AGPLUS during the performance of the Contract.
- (4) This Condition shall apply during the performance of the Contract and after the completion or earlier termination of the Contract.
- (5) This Condition shall not apply to any information that either Party can show
  - (a) was at the time of receipt in the public domain or subsequently became part of the public domain through no breach of the Contract;
  - (b) was already in the receiving Party's possession at the time of receipt and was not acquired directly or indirectly from the disclosing Party; or
  - (c) was lawfully acquired by the receiving Party from others who had full rights to disclose it to the receiving Party.

**13. Publicity**

- (1) AGPLUS shall not issue press releases or other forms of publicity concerning the supply of the Articles to AGPLUS or the performance of the Services for AGPLUS without prior

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consultation with the Contractor if the name of the Contractor is mentioned in such press releases or other forms of publicity.

- (2) Unless otherwise agreed in writing with AGPLUS, the Contractor, shall not issue (and shall be responsible for ensuring that the Contractor's employees, agents and subcontractors do not issue) any press releases or other forms of publicity concerning the supply of the Articles to AGPLUS or the performance of the Services for AGPLUS.

**14. Progress Reports**

- (1) The Contractor shall provide to AGPLUS any progress reports required under the Contract at such times and in such forms as are specified in the Contract or as may otherwise be agreed by the Contractor and AGPLUS.
- (2) The submission and acceptance of such progress reports shall not prejudice the rights of AGPLUS under any other terms of the Contract.

**15. Arising Results**

- (1) Subject to any rights that are owned by the Contractor as a result of any work performed outside the Contract and subject to the rights of any third party, the Arising Results shall be the property of AGPLUS and AGPLUS may use (and authorise others to use) the Arising Results for any purpose. The Contractor hereby assigns the future copyright in the Arising Results (or any part thereof) to the AGPLUS.
- (2) The Contractor shall, as may be reasonably necessary, assist the AGPLUS to obtain any patent or other registered protection in respect of the Arising Results and shall ensure that its employees agents and subcontractors do all such acts (including the prompt signature of relevant documents) as shall be required for such purpose.
- (3) AGPLUS may publish any of the Arising Results with due acknowledgement of the work performed by the Contractor in the supply of the Articles and/or the performance of the Services.
- (4) The Contractor shall not reproduce or disseminate the Arising Results to any third party for any purpose other than the performance of the Contract without the prior written consent of AGPLUS.
- (5) The Contractor shall only use the Arising Results for the purpose of the performance of the Contract and shall not use the Arising Results for any other purpose without the prior written consent of AGPLUS.
- (6) The Contractor hereby waives all moral rights in respect of the Arising Results and shall obtain a waiver of such moral rights from any subcontractor engaged in the performance of the Contract.

**16. AGPLUS Property**

- (1) All AGPLUS Property shall remain the property of AGPLUS and shall only be used in the performance of the Contract and for no other purpose whatsoever unless otherwise agreed in writing with AGPLUS.
- (2) All AGPLUS Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies AGPLUS to the contrary within the period of fourteen (14) days (or such other period of time as may be specified in the Contract) from the date of receipt of the AGPLUS Property by the Contractor.
- (3) The Contractor undertakes to return all AGPLUS Property to AGPLUS on completion or earlier termination of the Contract and shall be responsible for all loss thereof or damage thereto (excluding fair wear and tear) from whatever cause to the full amount of such loss or damage.

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**17. Loss or Damage to any Property of AGPLUS**

Without prejudice to Condition 16 and any terms in the Contract concerning loss of, or damage to, the Articles, the Contractor shall, unless otherwise provided for in the Contract, make good or, at the option of AGPLUS, pay compensation for, all loss of, or damage to, any property of AGPLUS that is:

- (a) caused by the Contractor or the Contractor's employees, agents or subcontractors, and
- (b) arises from the presence of the Contractor or the Contractor's employees, agents or subcontractors in connection with the performance of the Contract on any site occupied by or on behalf of AGPLUS, except that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by the Contractor's negligence or default or the negligence or default of the Contractor's employees, agents, or subcontractors.

**18. Liability**

- (1) The Contractor shall not be liable for any loss, damage or delay suffered by AGPLUS to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of AGPLUS.
- (2) Subject to Clause (1) of this Condition, the Contractor shall indemnify AGPLUS and its employees and agents against:
  - (a) any loss of, or damage to, any physical property of AGPLUS or of its employees or agents and any physical injury (including injury resulting in death) sustained by the employees or agents of AGPLUS as a result of any negligent act or omission of the Contractor's employees, agents or subcontractors during the performance of the Contract;
  - (b) any claim, demand, or liability made against or incurred by AGPLUS or any of AGPLUS's employees or agents in respect of any loss of, or damage to, any property of the Contractor's employees, agents or subcontractors or injury (including injury resulting in death) sustained by the Contractor's employees, agents or subcontractors as a result of any negligent act or omission of the Contractor's employees, agents or subcontractors during the performance of the Contract; and
  - (c) any claim, demand or liability made against or incurred by AGPLUS or any of AGPLUS's employees or agents in respect of any loss, damage or injury (including injury resulting in death) sustained by any other third party as a result of any negligent act or omission (or any other breach of professional duty of care) of the Contractor's employees, agents or subcontractors during the performance of the Contract.
- (3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance covering all liabilities of the Contractor under the Contract in the sum of at least five hundred thousand pounds (or such larger sum as may be specified in the Contract) in respect of any one incident and unlimited in the total number of incidents. The Contractor shall, on request by AGPLUS, produce the relevant policy or policies of insurance, together with a receipt or other evidence of payment of the latest premium due under each such policy.
- (4) The Contractor shall reimburse AGPLUS for all reasonable payments or additional payments by AGPLUS to third parties which have become necessary as a direct consequence of delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by AGPLUS in writing, provided always that AGPLUS shall take all reasonable steps to minimise the need to make such payments and shall not claim for any payments arising as a result of AGPLUS's failure to take such reasonable steps.
- (5) Nothing in the Contract shall impose any liability on any employees or agents of AGPLUS in their personal capacities.

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**19. Indemnities against Infringement of Intellectual Property**

- (1) The Contractor shall indemnify AGPLUS against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any copyright, patent, registered design or other intellectual property right used by or on behalf of the Contractor for the purpose of performance of the Contract, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of AGPLUS.
- (2) AGPLUS shall indemnify the Contractor against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason or any infringement or alleged infringement of any copyright, patent, registered design or other intellectual property right used at the request of AGPLUS by the Contractor in the performance of the Contract.

**20. Break**

AGPLUS shall, in addition to its rights under any other terms of the Contract, have the right to terminate the Contract at any time by giving the Contractor written notice to expire at the end of the period of notice specified for the purpose of this Condition in the Contract or, if no such period is specified, at the end of one (1) month. Such termination shall be without prejudice to the rights of the Parties accrued prior to the date of termination. In the event of such termination:

- (a) AGPLUS shall indemnify the Contractor against commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of such termination; and
- (b) AGPLUS shall not be liable to make any payment under this Condition which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed such total sum as would have been payable under the Contract if the Articles and/or the Services had been delivered and/or performed in accordance with the terms of the Contract.

**21. Termination for Breach**

Either Party shall have the right to terminate the Contract by written notice to the other Party if the other Party is in breach of any of the terms of the Contract and such breach shall not have been remedied to the satisfaction of the aggrieved Party within a period of thirty (30) days of written notification of such breach. Such termination shall be without prejudice to the rights of the Parties accrued prior to the date of termination.

**22. Termination for Insolvency**

AGPLUS may, without compensation to the Contractor, terminate the Contract at any time by written notice to the Contractor if the Contractor:

- (a) being an individual (or, where the Contractor is a firm, any partner in that firm), (i) becomes bankrupt, or (ii) has a receiving order or administration order made against him, or (iii) makes any composition or arrangement with or for the benefit of his creditors, or (iv) makes any conveyance or assignment for the benefit of his creditors or purports to do so, or (v) any application is made against him under any bankruptcy act for sequestration of his estate, or
- (b) being a company, (i) is the subject of a proposal for a voluntary arrangement, or (ii) has a petition for an administration order or a petition for a winding up order brought against it, or (iii) passes a resolution for a winding up order, or (iv) makes any composition, arrangement, conveyance or assignment for the benefit of its creditors or purports to do so, or (v) has a receiver or any other person appointed in respect of its undertaking or of all or any of its property,

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provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to AGPLUS.

**23. Termination for Corrupt Gifts and Payments of Commission**

- (1) The Contractor shall not:
  - (a) offer or give or agree to give to any person employed by or on behalf of AGPLUS any gift or consideration of any kind as an inducement or reward for doing or not doing any act in relation to the obtaining or execution of the Contract or any other contract with AGPLUS or for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with AGPLUS; or
  - (b) enter into the Contract or any other contract with AGPLUS in connection with which commission (other than such commissions or bonuses as are payable by the Contractor to the Contractor's own employees under the terms of their contracts of employment) has been paid by the Contractor or on the Contractor's behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to AGPLUS.
- (2) In the event of any breach of this Condition by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the Contractor's knowledge), AGPLUS shall have the rights to terminate the Contract at any time by written notice to the Contractor and to recover from the Contractor the amount of any loss resulting from such termination and/or to recover from the Contractor the amount or value of any such gift, consideration or commission. Upon such termination, AGPLUS shall be free of any obligation to accept or pay for the Articles and/or the Services.
- (3) In any dispute, difference or question arising in respect of: this Condition, the decision of AGPLUS shall be final and conclusive.

**24. Waiver**

The failure of either Party at any time to enforce any term of the Contract shall in no way affect its right thereafter to require complete performance by the other Party, nor shall the waiver of any breach of any term be taken or held to be a waiver of any subsequent breach of any such term or be a waiver of the term itself.

**25. Severability**

If any term, condition, clause or other provision of the Contract that is not of a fundamental nature in the operation of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract shall not be affected thereby.

**26. Special Conditions**

In the event of any conflict or inconsistency between these General Conditions and any special conditions contained in the, such special conditions shall prevail.

**27. Compliance with Statutes and Regulations**

- (1) The Contractor shall be responsible for ensuring that all operations and activities carried out by the Contractor pursuant to the Contract comply at all times with all relevant laws and statutes.
- (2) The Contractor shall take all reasonable steps to ensure that all operations and activities carried out pursuant to the Contract by the Contractor's employees, agents and subcontractors comply at all times with all relevant laws and statutes.



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**28. Arbitration**

- (1) Either Party may, after fourteen (14) days written notice to the other Party, refer any dispute, difference or question between the Parties with respect to any matter arising out of or relating to the Contract (except where the decision of AGPLUS is expressed to be final and conclusive in the Contract) to a single arbitrator to be agreed by the Parties for that purpose, or, in the absence of such agreement, to be appointed at the request of either Party by the President of the London Chamber of Commerce.
- (2) Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1996 as amended or any statutory modification or re-enactment thereof.

**29. Law**

The Contract shall in all respects be construed as a contract made in England, subject to the laws of England and to the exclusive jurisdiction of the courts of England.

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**AGPLUS ADDITIONAL CONDITIONS FOR PURCHASE OF GOODS**

**1. Specifications and Quality Assurance**

- (1) The Contractor shall ensure that:
  - (a) the Articles are of the qualities and sorts described in and equal in all respects to the samples, patterns, specifications, plans, drawings or other documents, individually or collectively, which form part of the Contract; and
  - (b) except insofar as may otherwise be indicated by any sample, pattern, specification, plan, drawing or other document:
    - (i) the Articles are strictly in accordance with the latest relevant British Standards, or equivalent, that are published before the date of the Contract; or
    - (ii) if no such Standards exist, the Articles are otherwise to the satisfaction of AGPLUS.
- (2) The Contractor shall, if so requested by AGPLUS, furnish details of the Contractor's quality management system and produce evidence, if appropriate, of certification to BS5750/EN29000/ISO9000 or equivalent.

**2. Inspection**

- (1) AGPLUS may, at any reasonable time, inspect any or all of the Articles (or arrange for the inspection thereof):
  - (a) at the Contractor's premises while they are in the course of production;
  - (b) at the Contractor's premises on completion of their production;
  - (c) after delivery by the Contractor to AGPLUS; and/or
  - (d) as otherwise provided in the Contract.
- (2) When AGPLUS wishes to exercise its right of inspection under this Condition, the Contractor shall, at the Contractor's own expense, provide:
  - (a) full and free access to the Contractor's premises as and when required for such inspection;
  - (b) all such accommodation and facilities in connection with such inspection as AGPLUS may reasonably require; and
  - (c) all appliances, materials and labour required for such inspection.

**3. Delivery**

- (1) The Contractor shall deliver the Articles to AGPLUS at its premises at Colworth Park, Sharbrook Beds, England (or, where specified in the Contract, to any other place, or to the agent of AGPLUS or its authorised representative) at the time or times and at the place or places and in the manner specified in the Contract or in orders issued under the Contract. Delivery of the Articles shall occur on their going into the possession of AGPLUS or its agent.
- (2) The time of delivery of the Articles shall be of the essence of the Contract. If the Contractor fails to deliver the Articles within the time specified for such delivery in the Contract, AGPLUS shall, without prejudice to any other rights and remedies of AGPLUS, have the right (at its option) to be released from any obligation to accept and pay for the Articles, or to cancel delivery of any of the Articles.

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- (3) When delivering the Articles in accordance with this Condition, the Contractor shall;
  - (a) ensure that the Articles are properly packed and secured as may be specified in the Contract; and
  - (b) comply with any additional instructions that from time to time AGPLUS may give with regard to the transportation of the Articles, provided that any extra cost necessarily incurred in complying with such instructions shall be paid by AGPLUS as an addition to the Contract Price
- (4) Unless otherwise specified in the Contract, the property in the Articles shall pass from the Contractor to AGPLUS upon delivery of the Articles in accordance with Clause (1) of this Condition.
- (5) If AGPLUS has rejected any one or more of the Articles under Condition 8 after delivery thereof to AGPLUS by the Contractor and AGPLUS has notified the Contractor of such rejection, that one or more of the Articles shall be considered as not having been delivered under the Contract and the property in that one or more of the Articles shall revert to the Contractor.

**4. Delay in Delivery**

- (1) If any of the Articles is not delivered within the time or times specified in the Contract or in any order issued under the Contract, AGPLUS may, without prejudice to any other rights and remedies of AGPLUS, terminate the Contract by notice to the Contractor either in respect of any of the Articles which has not been delivered in accordance with the Contract at the time of such termination, or in respect of all of the Articles.
- (2) Where AGPLUS has terminated the Contract under Clause (1) of this Condition, AGPLUS may, without prejudice to any other rights and remedies of AGPLUS:
  - (a) replace any or all of the Articles in relation to which the Contract has been so terminated by purchasing or manufacturing other items of the same or similar description, or by allocating other items of the same or similar description in the possession or control of AGPLUS to the purposes for which those of the Articles so replaced are required; and
  - (b) recover from the Contractor the amount by which the aggregate of the cost of purchasing and of manufacturing such other items and of the value of such allocated items exceeds the amount which would have been payable to the Contractor in respect of those of the Articles so replaced if they had been delivered in accordance with the Contract.

**5. Loss of or Damage to the Articles**

- (1) The Contractor shall be responsible for the Articles and any materials, equipment, fittings or other things acquired or allocated by the Contractor for incorporation therein until delivery of the Articles has been made in accordance with Condition 3 and shall make good any loss of or damage to the Articles or any such materials, equipment, fittings or other things however caused that may occur before such delivery.
- (2) Clause (1) of this Condition shall apply even though:
  - (a) any or all of the Articles may have been inspected in accordance with the Contract; and/or
  - (b) the property in any or all of the Articles may, in accordance with the terms of the Contract, have passed from the Contractor to AGPLUS or its agent before delivery thereof.

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- (3) Unless otherwise specified in the Contract, the Contractor shall not be responsible for the Articles after delivery thereof, except that, if any one or more of the Articles is rejected by AGPLUS under Condition 8 after delivery thereof by the Contractor to AGPLUS, the Contractor shall become responsible in all respects for such rejected one or more of the Articles upon:
- (a) the Contractor removing the same in accordance with Clause (3) of Condition 8;
  - (b) AGPLUS returning the same to the Contractor in accordance with Clause (4) of Condition 8; or
  - (c) if the Contractor fails to remove the same as aforesaid, or if AGPLUS does not return the same as aforesaid, the expiry of the period of eight (8) working days after the date on which AGPLUS has notified the Contractor of such rejection.

#### **6. Acceptance**

Acceptance of any of the Articles shall take place when:

- (a) AGPLUS confirms acceptance of the same in accordance with the procedures specified in the Contract; or
- (b) if no such procedures are specified, AGPLUS shall, without prejudice to any other rights and remedies of AGPLUS, be deemed to have accepted the same as soon as any of the following events occurs:
  - (i) AGPLUS takes the same into use;
  - (ii) AGPLUS fails to exercise its right of rejection of the same under Condition 8 within any period specified for that purpose in the Contract; or
  - (iii) where no period for exercising the said right of rejection is specified in the Contract, a reasonable time has elapsed since delivery of the same was made in accordance with Condition 3.

#### **7. Acceptance Marks**

If so required in the terms of the Contract, the Contractor shall, at the Contractor's own expense:

- (a) mark (or permit AGPLUS to mark) the Articles and/or any materials, components or parts thereof with acceptance marks specified by AGPLUS; or
- (b) if it is not possible to apply such marks to the Articles and/or any materials, components or parts thereof, pack the same in suitable packages or cases and apply acceptance marks specified by AGPLUS to such packages or cases.

#### **8. Rejection**

- (1) AGPLUS may reject any of the Articles that on inspection in accordance with Condition 2 is found not to conform to the requirements of the Contract.
- (2) AGPLUS may reject the whole of any consignment of the Articles if inspection in accordance with Condition 2 shows that:
  - (a) such proportion of the Articles as the Contract may specify for the purposes of this Condition, or
  - (b) any sample taken indiscriminately from that consignment, does not conform to the requirements of the Contract.
- (3) If, under Clause (1) or (2) of this Condition, AGPLUS rejects any of the Articles or any consignment of the Articles after the delivery thereof by the Contractor to AGPLUS, the Contractor shall, at the Contractor's own expense, remove from AGPLUS each and every rejected one of the Articles or such rejected consignment of the Articles:
  - (a) within such period of time as may be specified in the Contract; or

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- (b) if no such period of time is specified in the Contract, within the period of eight (8) working days after the date on which AGPLUS has notified the Contractor of such rejection.
- (4) In the event that:
- (a) AGPLUS rejects under Clause (1) or (2) of this Condition any of the Articles or any consignment of the Articles after the delivery thereof by the Contractor to AGPLUS, and
- (b) the Contractor fails to remove from AGPLUS each and every rejected one of the Articles or such rejected consignment of the Articles in accordance with Clause (3) of this Condition,
- AGPLUS may return to the Contractor, at the Contractor's risk, each and every rejected one of the Articles or such rejected consignment of the Articles. The Contractor shall pay the cost of packing and transportation thereof from AGPLUS to the Contractor.
- (5) If, under Clause (1) or (2) of this Condition, AGPLUS rejects any of the Articles or any consignment of the Articles, the Contractor shall, at the Contractor's own expense, deliver to AGPLUS (as the case may be) one of the Articles or a consignment of the Articles that conforms with the requirements of the Contract as a replacement for each rejected one of the Articles or such rejected consignment of the Articles. The Contractor shall deliver each such replacement within the period of time specified in the contract for delivery of all of the Articles to AGPLUS or within such other period of time as may be agreed.
- (6) If, under Clause (1) or (2) of this Condition, AGPLUS rejects any of the Articles or any consignment of the Articles, the Contractor shall, if AGPLUS so requires, mark each and every rejected one of the Articles or such rejected consignment of the Articles in a manner satisfactory to AGPLUS that identifies the same as having been rejected by AGPLUS

**AGPLUS ADDITIONAL CONDITIONS FOR PURCHASE OF SERVICES**

**1. Performance**

- (1) The Contractor shall perform the Services in accordance with the Contract to the satisfaction of AGPLUS or its authorised representative. AGPLUS shall have the power to inspect and examine the performance of the Services at any reasonable time, provided that AGPLUS shall have given the Contractor reasonable notice of such inspection and examination. The Contractor shall provide all such facilities as AGPLUS may reasonably require for such inspection and examination.
- (2) If AGPLUS finds that any part of the performance of the Services is inadequate or in any way differing from the Contract, other than as a result of default or negligence on the part of AGPLUS, the Contractor shall, at the Contractor's own expense, re-schedule and perform the Services correctly within such reasonable time as may be specified by AGPLUS.
- (3) AGPLUS may suspend the performance of the Services or any part thereof by written notice to the Contractor at any time. If the performance of the Services or any part thereof is suspended by AGPLUS for any reason other than default or negligence on the part of the Contractor, or if the performance of the Services or any part thereof is delayed by any act of AGPLUS, AGPLUS shall pay the Contractor for any loss incurred by the Contractor as a direct result of such suspension or delay, provided always that the total of the payments made to the Contractor under the Contract shall not exceed the Contract Price.

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- (4) The Contractor shall be allowed a reasonable extension of time for completion of the performance of the Services if the performance of the Services or any part thereof:
- (a) is suspended by AGPLUS for any reason other than default or negligence on the part of the Contractor;
  - (b) is delayed by any act of AGPLUS; or
  - (c) is delayed by any industrial dispute or any other cause that the Contractor could not have prevented and for which the Contractor was not responsible.