

Innovis Limited (“the Company”)

CONDITIONS OF SUPPLY

1. Definitions

In these Conditions:

“**Act of Insolvency**” means any one or more of the following namely a notice is issued to convene a meeting for the purpose of passing a resolution to wind up a company or a partnership or such a resolution is passed; a resolution is passed by its directors to seek a winding up or an administration order against a company; a resolution is passed seeking a winding up or an administration order against a partnership; a petition for a winding up or an administration order is presented against a company or against a partnership or such an order is made; a petition for a bankruptcy order is presented or such an order is made; a proposal for a voluntary arrangement or an application for an interim order is made under the Insolvency Act 1986; a party takes any action (including starting negotiations) with a view to readjustment, rescheduling or deferral of any part of his/its indebtedness; a party proposes or makes any general assignment, composition or arrangement with or for the benefit of all or some of his/its creditors; a party suspends or threatens to suspend making payments to all or some of his/its creditors; a party becomes subject to any type of voluntary arrangement; a receiver (administrative or otherwise) is appointed over all or part of a party’s assets; any action is taken outside the United Kingdom which is similar or analogous to any of the foregoing or the other party has reasonable grounds for believing that any of the foregoing is imminent;

“**Business Day**” means any day (other than Saturday) on which clearing banks are open for normal banking business in sterling in the City of London;

“**Catalogue**” means the Innovis 2006 catalogue which includes the Semen Order Form;

“**Contract**” means the contract made between the Company and the Customer for supply of Semen which is subject to these Conditions;

“**Customer**” means the party with whom the Company contracts;

“**Semen**” means such number of straws/pellets of frozen ram semen supplied by the Company to provide the number of doses set out overleaf on the basis that each straw/pellet typically contains one/two doses respectively.

2. Basis of contract

2.1 Where Semen is quoted for supply from stock it is quoted subject to being unsold when the Customer’s order is accepted.

2.2 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms or conditions whether put forward by or on behalf of the Customer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful).

2.3 The Company shall only accept orders made on the Semen Order Form printed in the Company’s Catalogue. All orders must be sent to the Company by post or fax using the Semen Order Form and accompanied by payment in full save where clause 7.7 applies. In the case of orders sent by fax payment must be made by credit card. The Company shall not accept orders received by telephone, email or any other medium.

2.4 The placing by the Customer of any order shall constitute an offer by the Customer. No contract shall come into existence unless the Company accepts the Customer’s order.

2.5 No alteration to these Conditions shall be effective unless expressly agreed to in writing by a director of the Company.

3. Information supplied

3.1 The Customer shall be responsible to the Company for ensuring the accuracy and sufficiency of its order.

3.2 Unless otherwise agreed by the Company in writing all Semen shall be sold in straws/pellets. All orders will only be accepted by the Company for an even number of doses. The Company cannot and does not guarantee that each straw/pellet contains one/two doses respectively.

4. Delivery

4.1 Any time quoted by the Company for delivery of all or any Semen is an estimate only and time shall not be of the essence. The Company shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom.

4.2 The Company reserves the right to deliver all or any Semen in advance of the proposed insemination date as stated on the Semen Order Form.

4.3 Unless otherwise agreed the Company shall use its reasonable endeavours to instruct a third party courier to deliver Semen to the Consignee AI Centre stated overleaf as soon as practicable following acceptance of the order by the Company so that Semen should be received by the Consignee AI Centre on a Business Day on or before the proposed date of insemination stated overleaf.

4.4 The person, firm or company transporting and delivering Semen shall be the agent of the Customer for all purposes. For the avoidance of doubt, the veterinary surgeon responsible for the insemination of the Customer's ewes with Semen shall also be the Customer's agent.

4.5 The Company does not warrant or represent that Semen will be supplied in response to any order but will use its reasonable efforts to do so. Semen may be withdrawn from sale at any time without prior notice being given to the Customer and in such circumstances the Company shall return any amounts paid to the Customer in respect of the order.

4.6 The Company reserves the right to deliver by instalments and each delivery shall constitute a separate contract to which these Conditions shall apply. Failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

4.7 If the Customer fails to take delivery of Semen or fails to give the Company adequate delivery instructions the Company may (without prejudice to its other rights and remedies).

4.7.1 store Semen (on its own premises) and charge the Customer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or

4.7.2 sell Semen at any time and after deducting all costs and expenses account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the Contract price and such costs and expenses.

4.8

4.8.1 Notification of non-delivery, short delivery (measured by the number of straws/pellets) or damage in transit (measured only where Semen cannot be used) must be made in writing to the Company within three Business Days of the receipt of Semen and, in the case of damage in transit, such notice must be accompanied with evidence of such damage;

4.8.2 The Company shall at its option either make good the whole or part of the price (and where relevant, as a deduction from any part of the price remaining unpaid) or replace any such non-delivery or short delivery notified as aforesaid and save as provided in this Condition 4.8.2 shall not be liable for any such non-delivery or short delivery nor for any loss, financial or otherwise resulting directly or indirectly therefrom.

4.9 The Customer agrees at its risk to return all shipping flasks to the Company within 10 Business Days following insemination. If the Customer fails to do so or if the shipping flasks are not returned in a condition that is satisfactory to the Company, the Company reserves the right to charge the Customer for the replacement cost of such shipping flasks.

5. Description

5.1 The Company reserves the right without notice to the Customer to make reasonable alterations to the description of Semen in the Catalogue and to supply Semen so altered in performance of the Contract.

5.2 Where the Company is storing Semen on behalf of suppliers for sale in the Catalogue, the Company shall, as agent of such suppliers, use its reasonable endeavours to ensure that the information supplied to it by such suppliers is accurate but the Company shall have no liability whatsoever for any inaccuracies save where such inaccuracies result solely from the Company's negligence.

6. Cancellation

Following acceptance by the Company of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of the

Company and upon terms that the Customer shall indemnify the Company in full against all loss (including without limitation loss of profit) damages, costs expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation.

7. Price

7.1 Subject to clause 7.2 below all prices are set out in the Catalogue.

7.2 Where the Company supplies Semen that is described or referred to in the Catalogue (except for the price) or where the Semen is not described or referred to (including price), the Customer confirms that before sending the Semen Order Form to the Company he has agreed the price with the owner in respect of such semen and that he has satisfied himself as to the pedigree and technical information of each ram. In such circumstances the Customer confirms that he has agreed the terms of purchase with the relevant owner and shall be solely responsible for paying the owner. In all other circumstances payment shall be made to the Company.

7.3 Each batch of Semen from each ram shall be subject to a handling charge of £17.50 plus VAT and the Company reserves the right to make freight charges. The Company reserves the right to make a further handling charge where Semen is not used and the Customer requests that it returned to the Company for storage.

7.4 Where the Company has been requested to supply Semen to the Customer which is the property of that Customer there shall be no payment for the semen except for handling and freight charges set out in clause 7.3 .

7.5 Unless otherwise expressly stated in writing, all prices are exclusive of VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.

7.6 Except where clause 7.7 applies the Customer shall make payment in full when the Semen Order Form is sent to the Company notwithstanding that delivery may not have taken place.

7.7 Where a Customer has an account with the Company, the Company shall invoice the Customer for the Semen. Invoices will be payable 28 days following the date of invoice (the "Due Date"). Without prejudice to any rights the Company may have it may charge interest on a daily basis (both before and after judgment) on the amount unpaid at the rate of 5% above the base rate of HSBC Bank plc from time to time from the Due Date until the invoice is paid in full.

8. Risk and title

8.1 Risk in Semen shall pass to the Customer immediately the Company accepts a Semen Order Form and the Customer shall at such time be responsible for insuring the Semen.

8.2 Notwithstanding delivery and the passing of risk, property in and title to Semen shall remain in the Company until the Company has received payment of the full price of (a) all Semen the subject of the Contract and (b) all other Semen supplied by the Company to the Customer under any other contract whatsoever.

8.3 Until property in and title to Semen passes to the Customer

8.3.1 the Company shall keep Semen properly stored and protected;

8.3.2 the Company shall be entitled at any time forthwith to revoke the Customer's power to deal with Semen; and it shall automatically cease if the Customer shall commit or be subject to any Act of Insolvency; and

8.3.3 the Customer shall not make any modification to Semen or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to Semen.

8.4 Upon termination of the Customer's power to deal with Semen, the Customer shall place Semen at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer for the purpose of removing Semen.

8.5 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

9. Termination and suspension

Without prejudice to any rights and remedies available to it, the Company shall be entitled, forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract

with the Customer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to the Company shall become immediately due and payable) if:-

9.1 any sum owing to the Company from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event the Company shall have a general lien for any such sum on all and any property of the Customer in its possession);

9.2 the Customer shall commit or be subject to any Act of Insolvency;

9.3 the Customer shall commit any breach of any contract (including without limitation the Contract) with the Company. In the event of a suspension of performance the Company shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

10. Limitation of liability

10.1 The Company shall be under no liability in respect of

10.1.1 the accuracy of the pedigree or technical information of Semen. This information has been supplied to the Company by the relevant suppliers of ram semen set out in the Catalogue and whilst the Company, acting as agent of the relevant suppliers, has made reasonable efforts to ensure such information is accurate, the Company cannot and does not guarantee that such information is correct. The Customer acknowledges and agrees that the relevant suppliers are entirely responsible for the accuracy of the information provided by them and it is the responsibility of the Customer to satisfy itself as to the pedigree and technical information concerning each ram prior to completing and sending the Semen Order Form to the Company;

10.1.2 the actual or supposed value of the genetic merit of Semen in store at one of the Company's centres or in transit to or from one of its centres;

10.1.3 any defect in Semen arising from the acts of the Customer or its agents including without limitation wilful damage, negligence, lack of proper care of storage, failure to follow the Company's instructions (whether oral or in writing), misuse of Semen without the Company's approval;

Provided that nothing in this Condition shall operate so as:-

10.1.4 to exclude the Company's non-excludable liability in respect of death or personal injury caused by the negligence of the Company its servants or agents;

10.1.5 to affect the statutory rights of the Customer where Semen is sold to a Customer dealing as a consumer within the meaning of Unfair Contract Terms Act; or

10.1.6 to exclude the application of Section 12 of the Sale of Goods Act 1979;

10.1.7 to exclude liability for fraudulent misrepresentation.

10.2 The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than £100,000.

10.3 The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss of profits and/or loss of production or any indirect or consequential (including economic) loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.

10.4 The Company shall not be liable to the Customer for loss of any kind which the Customer may suffer as a result of Semen supplied by the relevant suppliers referred to in clause 10.1.1. which does not accord with the description in the Catalogue (or with information provided orally by such relevant suppliers) or otherwise unless and then only to the extent that such loss has been caused by the negligence or misrepresentation of the Company its servants or agents.

11. Use of Semen

The Customer shall only be entitled to use Semen for the artificial insemination of ewes and for no other purpose whatsoever.

12. General

12.1 It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Customer.

12.2 Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

12.3 The rights and remedies of the Customer in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company to the Customer nor by any failure of or delay by the Company in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Company shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

12.4 The Contract is personal to the Customer. The Customer shall not assign, transfer or charge its rights and responsibilities under this Contract or any of them without the prior written consent of the Company.

12.5 The provisions of the Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

12.6 The headings in these Conditions are for convenience only and do not affect the interpretation of the Contract.

12.7 The Conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between the Company and the Customer and the Customer shall not act nor purport to act as agent for the Company but solely as an independent contractor.

12.8 All notices under this Contract shall be in writing and may be served by post or facsimile transmission addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 2 days after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

12.9 The Contract shall be governed in accordance with the laws of England and Wales.

Any dispute arising under this Contract shall be subject to the exclusive jurisdiction of the English courts and the parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

13. Third Party Rights

For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any provision of these Conditions.

TELEPHONE ORDERS WILL NOT BE ACCEPTED IN ANY CIRCUMSTANCES