

Date: 30th April 2018



Issue 2.5

Microdex Standard Terms and Conditions for supply of design services

1. INTERPRETATION

1.1 Definitions:

Additional Fees: the amount payable by the Customer to Microdex for the Additional Services.

Additional Services: the additional services otherwise agreed in writing by the Customer and Microdex.

Basic Fees: the fixed amount payable by the Customer to Microdex for the Basic Services.

Basic Services: the services as set out in the Order and/or the Fee Proposal.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between Microdex and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person, firm, company or organisation who purchases Services from Microdex.

Customer Default: has the meaning set out in clause 5.2.

Deliverables: the deliverables set out in the Order and/or the Fee Proposal.

Fees: the charges payable by the Customer for the supply of the Services in accordance with these Conditions whether on a fixed fee or hourly fee basis or both.

Fee Proposal: a document containing the description or specification of the Services and the Deliverables to be provided by Microdex to the Customer and the anticipated cost of such Services.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the

right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: all designs, drawings, models, tooling, moulds, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services produced by Microdex.

Order: the Customer's order for Services howsoever received including orally by telephone, in person or in writing including by email,

Required Standard: all the reasonable skill, care and diligence to be expected of a suitably qualified and experienced professional undertaking the Services on works similar in scope and character to the Deliverables.

Services: the Basic Services and the Additional Services, including the Deliverables, supplied by Microdex to the Customer as set out in the Fee Proposal.

Microdex: Microdex Limited incorporated in England and Wales with company number 04184903 whose registered office is at Hunters End, Grove Road, Hindhead, Surrey GU26 6PH.

1.2 **Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it 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.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.

- 2.2 The Order will only be deemed to be accepted when Microdex issue the Customer with a Fee Proposal and such Fee Proposal is accepted by the Customer on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Microdex, and any descriptions or illustrations contained on its website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customers seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given will not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. CHANGES

- 3.1 If either of Microdex or the Customer wishes to change the scope of the Services, they agree to work together to identify and agree such changes and the impact which the proposed changes will have on:
- (a) the Services;
 - (b) the existing charges;
 - (c) the timetable of the Services; and
 - (d) any of these terms.
- 3.2 Save as set out in clause 3.3 below, unless both parties agree, there shall be no change to the Services or the existing charges.
- 3.3 Microdex may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

4. MICRODEX'S OBLIGATIONS

- 4.1 Microdex warrant that it will:
- (a) not, without the Customer's written consent, make any material change to the designs or Specification for the Deliverables after they have been settled or approved;
 - (b) supply the Services to the Customer in accordance with the Fee Proposal in all material respects.

- (c) comply with all the relevant statutes, laws, regulations and codes of practice from time to time in force.
 - (d) use all reasonable endeavours to meet any performance dates specified in the Fee Proposal, but any such dates will be estimates only and time will not be of the essence for performance of the Services.
- 4.2 Microdex warrant that it will exercise the Required Standard when performing the Services.
- 4.3 If the performance of any of Microdex's obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
 - (a) Microdex will, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on such Customer Default to relieve Microdex from the performance of any of its obligations to the extent that the Customer Default prevents or delays Microdex's performance of any of its obligations;
 - (b) Microdex will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from its failure or delay to perform any of its obligations as set out in this clause 4; and
 - (c) the Customer will reimburse Microdex on written demand for any costs or losses sustained or incurred by Microdex arising directly or indirectly from the Customer Default.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer will:
 - (a) ensure that the terms of the Order and any information the Customer provides in the Fee Proposal are complete and accurate;
 - (b) co-operate with Microdex in all matters relating to the Services;
 - (c) provide Microdex with such information and materials as Microdex may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (e) comply with any additional obligations as set out in the Fee Proposal.
- 5.2 The Customer will ensure that the Deliverables are used:
 - (a) in an appropriate manner;
 - (b) only for the purpose expressly or impliedly made known to Microdex;

- (c) in accordance with Microdex's oral or written instructions or (if there are none), good trade practice regarding the same;
- (d) in accordance with any applicable laws and regulations; and
- (e) by skilled and experienced users.

5.3 The Customer will ensure that the Deliverables are stored, commissioned, installed and maintained in accordance with all applicable laws and regulations as well as Microdex's oral or written instructions or (if there are none), good trade practice.

6. QUALITY

6.1 Microdex warrant that on delivery, the Deliverables will conform with their description and the Fee Proposal, be free from material defects in design, material and workmanship and be fit for any purpose expressly or impliedly made known by the Customer or in lieu of the same, any purpose held out by Microdex.

6.2 Microdex will not be liable for the Deliverables' failure to comply with the warranty set out in clause 6.1 if the defect arises as a result of Microdex following any drawing, design, instruction or specification supplied by the Customer; or the Deliverables differ from the Fee Proposal as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements.

6.3 Subject to clause 6.4, if:

- (a) the Customer gives notice in writing to Microdex within a reasonable time of discovery that some or all of the Deliverables do not comply with the warranty set out in clause 6.1;
- (b) Microdex is given a reasonable opportunity of examining such Deliverables; and
- (c) the Customer (if asked to do so by Microdex) returns such Deliverables to Microdex's place of business at the Customer's cost,

Microdex shall, at its option, repair or replace the defective Deliverables.

6.4 Microdex shall not be liable for the Deliverables' failure to comply with the warranty set out in clause 6.1 in any of the following events:

- (a) the Customer makes any further use of such Deliverables after giving notice in accordance with clause 6.3;
- (b) the defect arises because the Customer failed to follow Microdex's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Deliverables or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of Microdex following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs the Deliverables without the written consent of Microdex;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Deliverables differ from the Fee Proposal as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.5 Except as provided in this clause 6, Microdex shall have no liability to the Customer in respect of the Deliverables failure to comply with the warranty set out in clause 6.1.

6.6 These Conditions shall apply to any repaired or replacement Deliverables supplied by Microdex.

7. TITLE AND RISK

7.1 Except as set out in clause 7.3 below, title to the Deliverables shall pass to the Customer when Microdex receive payment in full (in cash or cleared funds) for the Services and any other services supplied to the Customer in respect of which payment has become due, in which case title to the Deliverables shall pass at the time of payment of all such sums.

7.2 Until title to the Deliverables has passed to the Customer, the Customer will store the Deliverables separately from all other materials held by the Customer so that they remain readily identifiable as Microdex's property and will maintain the Deliverables in satisfactory condition.

7.3 Unless otherwise agreed, the title and risk in any tooling, mouldings or casting used to produce the Deliverables will remain with Microdex at all times.

8. COPYRIGHT AND INTELLECTUAL PROPERTY

8.1 Unless otherwise agreed and defined in the Fee Proposal, Microdex shall own all intellectual property rights (including copyright) relating to the Deliverables Microdex produce.

8.2 Subject to clause 8.1, Microdex grant to the Customer, an irrevocable, non-exclusive, non-terminable, royalty-free licence to make full use of any Deliverables prepared by Microdex for the Customer.

- 8.3 The licence in clause 8.2 allows the Customer to use the Deliverables but not to reproduce the designs contained in the Deliverables in any form.
- 8.4 Microdex will not be liable for use of the Deliverables for any purpose other than that for which it was provided.
- 8.5 The Customer grants to Microdex, an irrevocable, non-exclusive, non-terminable, royalty-free licence to use any details of the Deliverables for the purposes of its own self-promotion and marketing including but not limited to including details of the Deliverables on its website.

9. CHARGES AND PAYMENT

- 9.1 Clause 9.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 9.3 and clause 9.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 9 shall apply in either case.
- 9.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with Microdex's hourly or daily fee rates as set out in the proposal;
 - (b) Microdex shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 9. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 9.3 Where the Services are provided for a fixed price the total price for the Services shall be the Basic Fee set out in the Fee Proposal. The Basic Fee shall be paid to Microdex in instalments as set out in the Fee Proposal.
- 9.4 Microdex reserves the right to charge the Customer a deposit before Services commence. The deposit will be deducted from the overall cost of the Services at the time of payment.
- 9.5 If the Customer cancels the contract after Services have commenced, Microdex reserves the right to retain the full deposit towards the costs labour and materials used prior to the date of cancellation. In the event that these costs exceed the deposit paid, Microdex reserve the right to charge the Customer for the difference.
- 9.6 All amounts due under the Contract shall be paid by the Customer to Microdex in full without any set-off, counterclaim, deduction or withholding (other than any deduction

or withholding of tax as required by law). Microdex shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), as set out in the Fee Proposal.

- 9.7 The Fees contained in the Fee Proposal exclude:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Microdex in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Microdex for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Microdex at cost; and
 - (b) VAT, which Microdex shall add to its invoices at the appropriate rate.
- 9.8 Microdex will submit to the Customer an invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) will specify the sum that Microdex consider will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.
- 9.9 Unless otherwise agreed, the Customer will pay each invoice submitted to the Customer in full, and in cleared funds, within 14 days of receipt.
- 9.10 If the Customer fails to pay an amount due to Microdex by the due date for payment then the Customer will pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest will accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. The Customer will pay interest together with the overdue amount.

10. ADJUSTING THE BASIC FEE

- 10.1 The Basic Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Services, provided that Microdex will not be entitled to any adjustment of the Basic Fee where delay or disruption arises from its default or negligence.
- 10.2 Microdex shall be entitled to review and where appropriate amend the fee every 12 months.
- 10.3 Microdex will notify the Customer of its intention to claim an adjustment to the Basic Fee as soon as reasonably practicable after Microdex become aware of any material delay or disruption to the Services or any fee adjustment resulting from an annual review of the Basic Fee. Such notice shall include a written estimate of the proposed adjustment to the Basic Fee.

11. ADDITIONAL SERVICES

- 11.1 Microdex will notify the Customer as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services.
- 11.2 Microdex will perform any Additional Service on receipt of a written instruction to do so by the Customer.
- 11.3 As soon as reasonably practicable after receiving an instruction to perform an Additional Service, Microdex will provide the Customer with a written estimate of the cost of the Additional Service and its effect on the completion of the Deliverables.
- 11.4 Unless the parties agree otherwise, the Additional Fee shall be a reasonable amount calculated by reference to Microdex's time charges (as amended from time to time), provided that no Additional Fee shall be payable if the requirement for an Additional Service arises from Microdex's default or negligence.
- 11.5 Any Additional Fee payable by the Customer will be included in the next invoice following performance of the Additional Service to which it relates.
- 11.6 Time for payment shall be of the essence of the Contract.
- 11.7 Microdex may, without prejudice to any other rights Microdex may have, set off any liability the Customer have to Microdex against any liability of Microdex have to the Customer.

12. SUB-CONTRACTING

Microdex may sub-contract the performance of any of the Services without the Customer's prior written consent. Microdex will be responsible for any services it sub-contracts to a third party as if Microdex had performed those services itself.

13. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1 Without affecting any other limitation in this agreement, Microdex's liability under or in connection with the Contract will be limited to the sum paid by the Customer to Microdex under the Contract for each and every claim arising out of the same originating cause or source. This limit will apply however that liability arises including a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty. Provided that this clause 13 shall not exclude or limit its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1, Microdex will under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business or sales, or any indirect or consequential loss arising under or in connection with the Contract.

13.3 Subject to clause 13.1, Microdex's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

13.4 This clause 13 shall survive termination of the Contract.

14. TERMINATION

14.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.

14.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without limiting Our other rights or remedies, Microdex may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to

pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment.

15. CONSEQUENCES OF TERMINATION

- 15.1 On termination of the Contract for any reason the Customer will immediately pay to Microdex all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Microdex shall submit an invoice, which will be payable by the Customer immediately on receipt.
- 15.2 If the Customer wants to end a contract before it is completed, the contract will end in accordance with clause 15.1 and Microdex will refund any sums paid by the Customer for Services not provided but Microdex will deduct from that refund (or, if the Customer has not made an advance payment, charge the Customer) reasonable compensation for the net costs Microdex will incur as a result of the Customer ending the Contract (including all material and labour charges (as set out in the Fee Proposal) and any other specific cancellations fees that may be set out in the Fee Proposal).
- 15.3 The Customer will return any Deliverables which have not been fully paid for.
- 15.4 The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.5 Clauses which expressly or by implication survive termination shall continue in full force and effect.

16. GENERAL

- 16.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 16.2 **Assignment and other dealings.**
- (a) Microdex may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - (b) The Customer shall not, without Microdex's prior written consent, 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.

16.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

16.4 **Entire agreement.** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.5 **Variation.** Microdex may revise these terms and conditions at any time and shall notify the Customer in any such event.

16.6 **Waiver.** 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.

16.7 **Severance.** 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.

16.8 **Notices.**

- (a) Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or sent by fax to its main fax number.
- (b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of

dispute resolution. For the purposes of this clause, "writing" shall not include email.

- 16.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 16.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 16.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.