



**AstraZeneca UK Limited**

**General Conditions of Contract  
AZ 3-02b**

**PLANT HIRE**

**This Document Comprises 25 Pages**

**Issued on behalf of AstraZeneca UK Limited by:**

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## 1 Definitions and Interpretation

1(1) For the purposes of the Contract (as defined in this sub-clause 1(1)) the following words and expressions shall, unless the context otherwise requires, have the following meanings :

- (a) "Adjudicator" means any person or persons from time to time appointed to act as an adjudicator in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the ICE Adjudication Procedure (1997) in connection with a dispute arising under or in connection with the Contract.
- (b) "Breakdown Time" means the time in the Normal Working Week during which the Plant is not being operated because maintenance and/or repairs are awaited or being carried out.
- (c) "Construction Industry Scheme" is the scheme for the taxation of sub-contractors in the construction industry in the United Kingdom pursuant to sections 559 to 567 of the Income and Corporation Taxes Act 1988 and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743, as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any statutory re-enactment or amendment to the same that is made from time to time.
- (d) "Contract" means the legally binding agreement entered into by the Employer and the Contractor comprising the Purchase Order and the documents listed therein. In the event of a discrepancy between the documents listed in the Purchase Order the said documents shall take precedence in the order in which they are listed in the Purchase Order.
- (e) "Contractor" means the person, firm or company so named in the Purchase Order.
- (f) "Day" means a calendar day.
- (g) "Employer" means the Company so named in the Purchase Order, its successors in title and, subject to sub-clause 6(1), its assigns.
- (h) "Employer's Representative" means the person identified in the Contract who is authorised by the Employer to accept the Plant,

give directions and instructions to the Contractor or any Operator and to sign Time Record Sheets.

- (i) "Force Majeure" means acts of God such as earthquake, storm, tempest, lightning and/or flood; acts of government or state; war, civil war, riot, civil commotion and/or insurrection; fire, explosion, protestor action and/or any other prevention from or material hindrance in obtaining essential raw materials, energy or other supplies; labour dispute (other than one solely confined to the Contractor's own employees, servants, agents and/or sub-contractors); and/or any other reason or cause entirely beyond the control or influence of either party and which does not arise out of particular circumstances which are or should have been in the contemplation of the party relying upon the event of Force Majeure at the time of entering into the Contract. Shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- (j) "Group Company" means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.
- (k) "Hire Period" means the period as defined in Clause 3.
- (l) "Holding Company" and "Subsidiary" shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.
- (m) "Idle Time" means the time in the Normal Working Week during which the Plant is not being operated because its use is not required by the Employer.
- (n) "Normal Working Week" means 8 hours per day excluding Saturdays, Sundays and statutory holidays.
- (o) "Operator" means the operator of the Plant who is the employee or sub-contractor of the Contractor and who will operate the Plant where the Plant is specified in the Contract to be provided with Operator.

- (p) "Plant" means all classes of plant which the Contractor has agreed to hire to the Employer with or without Operator under or pursuant to the Contract and shall include all accessories or equipment agreed to be provided for use with the Plant.
  - (q) "Purchase Order" means the document of that name issued by the Employer to the Contractor and forming part of the Contract.
  - (r) "Site" means the site to which the Plant is to be delivered and at which it is to be utilised.
  - (s) "Spare Parts" means those parts that may be needed during the Hire Period for the maintenance and/or repair of the Plant.
  - (t) "Time Record Sheet" means the statement to be completed in accordance with Clause 4 for each Week or part of any Week of the Hire Period and which accurately records the number of hours the Plant has been operated each Day broken down into Working Time, Idle Time and Breakdown Time.
  - (u) "Week" means a calendar week commencing each Monday and ending the following Sunday.
  - (v) "Working Time" means the time during which the Plant is being operated in the Normal Working Week and in excess of the Normal Working Week in accordance with the instructions and directions of the Employer's Representative.
- 1(2) Words importing the singular also include the plural and vice versa where the context requires.
- 1(3) "Person" includes firms, companies and any other entities having legal capacity in English Law.
- 1(4) Any terms importing gender shall include any other gender.
- 1(5) Any reference to a Clause, sub-clause, part, schedule or appendix is, unless stated to the contrary, a reference to a Clause, sub-clause, part, schedule or appendix of or to this Contract.
- 1(6) The headings in these conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof or of the Contract.

## 2 General Obligations

2(1) The Contractor shall provide the Plant with or without Operator as specified in the Contract. The Contractor shall, without prejudice to the requirements of Clauses 10 and 12:

- (a) ensure that the Plant is of satisfactory quality and fit for its intended purpose;
- (b) ensure that the Plant is free from defects in design, materials and workmanship;
- (c) where the Plant is provided with Operator, ensure that it is operated with reasonable skill, care and diligence by appropriately qualified, competent and experienced personnel;
- (d) comply with the reasonable instructions of the Employer which instructions shall include, but not be limited to, any variation, addition or omission to the Contractor's obligations under the Contract;
- (e) guarantee the availability of any Spare Parts that may be required for maintaining the Plant during the Hire Period and have any Spare Parts available at the Site within the period of time stated in the Contract from the time that the need for such Spare Parts has been established or, where no such period is stated, within a period of time that is reasonable in all the circumstances; and
- (f) provide all items necessary to ensure compliance with sub-clauses 2(3) and 10(1).

2(2) To enable the Contractor to fulfil his obligations above, the Employer shall:

- (a) subject to sub-clause 9(1), allow the Contractor, his agents or his insurers to have access to the Plant at all reasonable times to inspect, test, adjust, repair or replace the same. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Employer;
- (b) where the Plant is provided with Operator, provide welfare facilities;
- (c) subject to prior agreement with the Contractor, provide suitable, safe, storage for any Spare Parts;



- (d) where the Plant is provided without Operator, ensure that it is operated with reasonable skill, care and diligence by appropriately qualified, competent and experienced personnel; and
  - (e) carry out the maintenance requirements that are set out in the Contract.
- 2(3) The Contractor shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-laws of any local or other statutory authority which may be applicable to the provision and, where relevant, the operation of the Plant by the Contractor and with such rules and regulations of public bodies and companies whose property or rights are or may be affected in any way thereby.

### **3 Hire Period**

- 3(1) The Hire Period shall commence from the time of acceptance of the Plant on the Site in accordance with Clause 7.
- 3(2) Subject to sub-clauses 3(3) and 3(4) the Hire Period shall be the fixed, or indeterminate, period as set out in the Contract.
- 3(3) The Hire Period may be reduced or extended by the Employer giving notice in writing to the Contractor. The period of notice to be given shall be as agreed and set out in the Contract. If no notice period has been specified then the Employer shall give such notice to the Contractor as is reasonable in all the circumstances and in any event, no less than 24 hours notice shall be given.
- 3(4) The Hire Period shall end either at the expiry of the Hire Period set out in the Contract, at the time specified by a notice under sub-clause 3(3), or may be terminated at any time by the operation of sub-clauses 8(6) or 21(5) or Clause 20.

### **4 Charging Basis**

- 4(1) Where the Plant is provided without Operator, the Employer shall render to the Contractor a Time Record Sheet signed by the Employer's Representative each Monday in respect of the previous Week.
- 4(2) Where the Plant is provided with Operator, the Operator shall render to the Employer a Time Record Sheet each Monday in respect of the

previous Week. The Employer's Representative shall sign the Time Record Sheet to confirm its accuracy. The signature of the Employer's Representative shall bind the Employer to accept the hours shown on the Time Record Sheet.

- 4(3) The Time Record Sheet shall accurately record the time allocation of the Plant as Working Time, Idle Time and Breakdown Time. Where the Plant is provided with Operator, the total number of hours recorded per Day shall be regarded as the Operator's chargeable hours.
- 4(4) The rates to be applied in respect of Working Time, Idle Time and Breakdown Time shall be as agreed and set out in the Contract subject to sub-clauses 4(5) and 4(6).
- 4(5) Idle Time rates shall apply subject to any minimum charge that has been agreed and set out in the Contract.
- 4(6) The rates to be applied in respect of any Operator shall be as agreed and set out in the Contract.
- 4(7) Any enhanced rate agreed for any Operator shall apply for hours recorded on the Time Record Sheets in excess of the Normal Working Week.
- 4(8) Charges for delivery to and from the Site, and for any assembly or dismantling of the Plant, shall only apply where these have been agreed and set out in the Contract.

## **5 Contractor's Conditions**

No general or printed conditions submitted with or referred to in the Contractor's tender, estimate or quotation, or referred to at any other time shall form part of the Contract unless expressly agreed to in writing by the Employer.

## **6 Assignment and Sub-Contracting**

- 6(1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Contractor.
- 6(2) The Contractor shall not assign or charge or purport to assign or charge the Contract or any part or parts thereof or any benefit or interest therein or thereunder without the prior written consent of the Employer.
- 6(3) This Contract is for the sole benefit of the parties to the Contract. Terms which make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. It is not the

intention of the parties to this Contract that any term hereof should be enforceable by anyone other than the parties to the Contract.

- 6(4) The Contractor shall not sub-contract any part of its obligations under the Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

## **7 Delivery in Good Order**

- 7(1) The Contractor shall supply to the Employer, at the time of delivery of the Plant, all relevant documentation relating to the Plant and, where applicable, evidence of the Operator's competency to operate the Plant. Such documentation will include, but not be restricted to, the current inspection report, maintenance record, maintenance requirements, safety compliance and evidence of compliance with all Government or Local Authority regulations that are applicable to the Plant. Acceptance of the Plant on the Site will not relieve the Contractor of the obligation to provide relevant documentation.
- 7(2) On delivery to the Site or, where erection is necessary, on completion of erection, the Contractor's notice of acceptance will be signed by the Employer's Representative. The Hire Period in accordance with Clause 3 will commence from the date and time of the notice of acceptance. Acceptance will not indicate that the Plant is necessarily in good working order.

## **8 Breakdown, Repairs and Adjustment**

- 8(1) When the Plant is hired without Operator any breakdown or the unsatisfactory working of any part of the Plant will be notified in writing to the Contractor as soon as reasonably practicable. Breakdown Time will apply from the time and date of notification. The time and date of notification will be determined in accordance with the notice provisions at Clause 23.
- 8(2) When the Plant is provided with Operator, the Operator shall be responsible for communicating with the Contractor, and Breakdown Time will apply from the time of the stoppage.
- 8(3) Breakdown Time will apply for any stoppage of the Plant caused by any one or more of the following:

- (a) the development of an inherent fault;
  - (b) a fault not ascertainable by reasonable examination;
  - (c) fair wear and tear;
  - (d) all stoppages for normal running repairs in accordance with the terms of the Contract; and/or
  - (e) any other reason beyond the control of the Employer.
- 8(4) Breakdown Time shall cease to apply upon written notice being given to the Employer that the Plant is available for operation and confirmation being given by the Employer's Representative that the Plant appears to be satisfactory. Such confirmation shall not relieve the Contractor of any of his obligations under the Contract.
- 8(5) The Employer shall not repair the Plant without the written authority of the Contractor save that punctures will be the responsibility of the Employer where the Plant is provided without Operator.
- 8(6) The Contractor shall be obliged to ensure that the Plant is repaired within a reasonable time following any breakdown. If the Plant is, or is likely to be, unavailable for a period exceeding 48 hours, the Contractor shall be obliged to replace the Plant with similar Plant to the satisfaction of the Employer's Representative. In the event of the Contractor being unable to replace the Plant within a reasonable time, either party shall be entitled to determine the Contract forthwith by giving written notice to the other. The Contractor shall be responsible for all transport charges incurred in removing and/or replacing the Plant.

## **9 Servicing and Inspection**

- 9(1) The Contractor shall give notice in writing to the Employer when access to the Plant is required and shall give the names and authorities of those persons who will be attending the Site.
- 9(2) Fuel, oil and grease shall be provided, and the costs met, as agreed and set out in the Contract or, if not so set out, shall be provided, and the cost met, by the Contractor.
- 9(3) Where appropriate, the cost of any re-sharpening of the Plant will be borne by the Employer provided that this has been agreed and set out in the Contract.

## **10 Site Regulations and Safety**

- 10(1) The Contractor shall have proper regard to the safety of all persons and shall comply with all applicable laws in carrying out its obligations under the Contract.
- 10(2) Without prejudice to its general obligations under sub-clause 10(1) above, the Contractor shall:
- (a) comply with the operating works rules applicable to the Site;
  - (b) comply with the Employer's safe systems of working which includes permits to work and clearance notes;
  - (c) obtain copies of the operating works rules from the Employer. Failure by the Contractor in obtaining copies of these works rules will not relieve him of the responsibilities and obligations imposed by them;
  - (d) issue a copy of the operating works rules to all Operators, servants, sub-contractors and agents prior to them entering onto the Site; and
  - (e) comply with any requirements of the Employer to require any person to attend a safety induction course.
- 10(3) The Contractor shall be responsible for the suitability and safety of the Plant. No Plant shall be provided which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of the Contractor in regard to such Plant, if in the Employer's opinion it is unsuitable, unsafe or liable to cause damage or injury, it shall not be operated or used on the Site and it shall be replaced with the minimum of delay at the Contractor's cost.
- 10(4) The Contractor shall ensure that its Operators, servants, sub-contractors and agents shall comply with all applicable rules and regulations when attending the Site and any and all other parts of the Employer's premises.
- 10(5) The Employer shall have the right at any time to require the removal of any Operator and for an immediate replacement to be provided.

## **11 Operation Risks**

- 11(1) If the ground is soft or unsuitable for the Plant to work on or travel over without timbers or equivalent the Employer shall supply and lay suitable

timbers or equivalent in a suitable position for the Plant to travel over or work on.

- 11(2) Where the Plant is provided with Operator, the Employer shall, in accordance with Clause 14, accept no liability for damage to or loss of the Plant due to soft or unsuitable ground unless the Plant traversed such ground in compliance with the instructions or directions of the Employer's Representative.

## **12 Operators**

- 12(1) Where the Plant is provided with Operator, the Contractor shall ensure that the Operator is competent in operating the Plant. The Operator shall be under the direction and control of the Employer.
- 12(2) If the Operator is absent for any reason, the Contractor undertakes to provide a replacement Operator within 1 Day of being requested so to do by the Employer.
- 12(3) Without prejudice to any of the provisions of Clause 14, the Employer shall be responsible for all claims arising in connection with the operation of the Plant by the Operator insofar as such claims are a direct result of the Operator's compliance with instructions or directions given by the Employer's Representative.
- 12(4) The Employer shall not allow any other person to operate the Plant.

## **13 Payment**

- 13(1) The Contractor shall be paid for the hire of the Plant at the rates set out in the Contract. Where no such basis is set out in the Contract the Contractor shall be remunerated on the basis of fair and reasonable hourly rates having regard to any previous course of dealings between the parties and/or rates quoted by the Contractor and other contractors periodically employed by the Employer.
- 13(2) The Contractor shall submit to the Employer at monthly intervals an invoice (in such form, if any, as may be prescribed by the Employer) showing the value of the Plant hire provided since the previous statement (or in the case of the first such monthly statement, the date of the commencement of the hire of the Plant) together with such supporting documentation as the Employer may reasonably require.

- 13(3) Within 14 days of the date of delivery of the Contractor's invoice to the Employer or the provision by the Contractor of supporting documentation requested by the Employer in accordance with sub-clause 13(2) whichever is the later, the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated. The notice requirements of this sub-clause 13(3) shall be satisfied by the Employer amending and countersigning the Contractor's invoice and delivering a copy to the Contractor.
- 13(4) Payments to the Contractor become due on the date of the Employer's notice under sub-clause 13(3) above.
- 13(5) It is agreed by the parties that the final date for payment shall be whichever is the latest of the following:
- (a) the first working day after the end of the month following the month in which the Contractor's invoice submitted under sub-clause 13(2) is dated; or
  - (b) 14 days after submission of a VAT invoice which accords with the Employer's notice under sub-clause 13(3) in circumstances where the amount for payment in the Employer's notice differs from that on the invoice submitted under sub-clause 13(2); or
  - (c) 14 days after the requirements of the Construction Industry Scheme have been complied with by the Contractor to the satisfaction of the Employer.
- 13(6) Where a payment under this Clause is to differ from the amount notified to the Contractor or the Employer is to withhold payment after the final date for payment of the sum due under the Contract, the Employer shall notify the Contractor in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding the payment or if there is more than one ground each ground and the amount attributable to it.
- 13(7) If in complying with its obligations in respect of instructions under sub-clause 2(1)(d), the Contractor reasonably considers that it will incur additional costs due to such instructions it shall immediately notify the Employer in writing. If the Employer agrees with the Contractor's opinion, it shall request the Contractor to provide a statement of the additional

costs together with such supporting documentation as the Employer shall reasonably require. The Contractor's statement shall be valued and paid in accordance with this Clause 13 provided that the Contractor will have no right to payment under this sub-clause 13(7) if the instruction was necessary due to the act, default or omission of the Contractor or any of its Operators, personnel, sub-contractors or agents.

## **14 Indemnity**

14(1) For the purposes of Clauses 14 and 15 the following expressions shall have the following meanings:

"damage" shall mean actual physical damage or loss to property and any pecuniary losses resulting therefrom;

"injury" shall mean any bodily or mental injury to persons including sickness and disease;

"Employer's Liability Insurance" shall mean insurance required pursuant to the Employer's Liability/Compulsory Insurance Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.

14(2) The Contractor shall indemnify, and keep the Employer indemnified, against all losses and claims for death or injury to persons or loss of or damage to any property whatsoever which may arise out of or in consequence of the operation of the Plant and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto subject to sub-clauses 14(3), 14(4) and 14(5).

14(3) The Contractor shall not be required to indemnify the Employer under sub-clause 14(2) where the Plant was provided without Operator and the injury or damage is a result of the operation of the Plant by an employee or sub-contractor of the Employer provided always that the injury or damage is not a result of any defect in the Plant.

14(4) The liability of the Contractor to indemnify the Employer under sub-clause 14(2) shall be reduced proportionately to the extent that the act or neglect of the Employer, his servants, his agents or other contractors not employed by the Contractor may have contributed to the said loss, injury or damage.



- 14(5) The Contractor shall not be liable for or in respect of or to indemnify the Employer against any compensation or damage for or with respect to death or injury to persons or loss of or damage to property resulting from any act or neglect or breach of statutory duty done or committed by the Employer, his agents, servants or other contractors (not being employed by the Contractor) or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.
- 14(6) The Employer shall save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in sub-clauses 14(3) and 14(5). Provided always that the Employer's liability to indemnify the Contractor under sub-clauses 14(3) and 14(5) shall be reduced proportionately to the extent that the act or neglect of the Contractor or his sub-contractors, servants or agents may have contributed to the said injury or damage.

## **15 Insurances**

- 15(1) The Contractor shall have in force and shall require any sub-contractor employed by it to have in force the following insurances at all times :
- (a) Insurance against damage loss or injury for which it is liable under sub-clause 14(2). Such insurance shall be for such amount as the Employer deems necessary, but in any event for at least £2,000,000 (two million pounds sterling) for each and every incident.
  - (b) Employer,s Liability Insurance as defined in Clause 14.
- 15(2) Subject to sub-clause 15(3), the Employer agrees not to claim and will procure that its insurers, and any Group Company and their insurers, will not claim against the Contractor in respect of loss of or damage to any property belonging to the Employer or any Group Company arising out of the execution of the Contract in excess of the amount for which the Contractor is required to have insurance in force pursuant to sub-clause 15(1).
- 15(3) Sub-clause 15(2) shall not apply to the extent that any loss or damage:

- (a) arises out of the ownership or use by or on behalf of the Contractor of any motor vehicle, water craft or aircraft: or
  - (b) results from a deliberate or reckless act or omission by the Contractor, its sub-contractors, servants or agents.
- 15(4) For the avoidance of doubt, the Plant shall not be considered to be a motor vehicle for the purposes of sub-clause 15(3).
- 15(5) Upon request, the Contractor shall provide satisfactory evidence to the Employer that the insurances required under the Contract have been effected and shall, if so required, produce the insurance policies for inspection. The terms of all such insurances shall be subject to the prior approval of the Employer (which approval shall not be unreasonably withheld). The Contractor shall, upon request, produce to the Employer receipts for the payment of current insurance premiums.
- 15(6) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force any of the insurances required under the Contract then, and in any such case, the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time, subject to sub-clause 13(6) deduct the amount so paid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 15(7) The Contractor shall comply with all conditions laid down in the insurance policies. In the event that the Contractor fails to comply with any condition imposed by the insurance policies effected pursuant to the Contract, the Contractor shall indemnify the Employer against all losses, damages and expenses arising from such failure.

## **16 Rehire**

The Plant or any part thereof shall not be re-hired, sub-let, or lent to any third party by the Employer without the written permission of the Contractor.

## **17 Contractor's Name Plates**

The Employer shall not remove, deface or cover up the Contractor's name plate or other mark on the Plant which indicates that it is the Contractor's property.

## **18 Protection of Contractor's Rights**

The Employer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant.

## **19 Information and Confidentiality**

19(1) The Contractor shall satisfy itself that any information provided by the Employer in accordance with the Contract or otherwise is accurate and sufficient and will not prejudice the performance of any of the Contractor's obligations under the Contract. The Contractor shall inform the Employer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Employer shall reconcile such inaccuracy or discrepancy (and/or provide further information/data) to the reasonable satisfaction of the Contractor. The Contractor shall not be entitled to any additional time or payment in respect of such clarification.

19(2) All information in whatsoever form relating to the Contract or to the Employer's business (whether provided under the Contract or otherwise) which comes into the Contractor's possession (the "Information") shall be regarded as secret and confidential and shall not be disclosed by the Contractor except to the extent that it becomes necessary to furnish Information to others solely for the purpose of complying with of the Contract. The Contractor shall impose the same obligations of secrecy and confidentiality upon any authorised third party to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination of the Contract, but shall not in any event apply to any part of the Information which the Contractor can show:

- (a) was already in the Contractor's possession prior to its disclosure by the Employer; or
- (b) was lawfully acquired by the Contractor at any time from a third party who holds such information free of any obligation of confidentiality; or
- (c) is or comes into the public domain otherwise than through the fault of the Contractor.

19(3) The Contractor and its agents, servants and workmen shall keep secret and shall not disclose to any third party (except sub-contractors accepting like obligations as to secrecy and then only to the extent necessary for the

performance of the sub-contract in question) any matters relating to the existence or to the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written consent of the Employer.

- 19(4) The Contractor shall not take photographs nor make films or video recordings of the Site or any section or part thereof or of any property of the Employer without the written consent of the Employer's Representative.

## **20 Termination or Insolvency**

- 20(1) If the Employer is in material and persistent breach of its obligations under the Contract and shall fail to remedy the same after receiving a 30 day notice from the Contractor specifying the breach and requiring its remedy then the Contractor shall be entitled forthwith by written notice to terminate the Contract.
- 20(2) If the Contractor commits a breach of the Contract and fails within 10 days of notice by the Employer to take such steps as reasonably satisfy the Employer to rectify such breach, the Employer may, without prejudice to any other of his rights, by written notice terminate the Contract.
- 20(3) If the Contractor becomes insolvent or makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), the Employer may, without prejudice to any other of his rights, terminate this Contract forthwith by notice to the Contractor or any person in whom this Contract may have become vested.
- 20(4) Upon any termination under sub-clauses 8(6), 21(5) or this Clause 20 or any reduction or extension of any agreed Hire Period under sub-clause 3(3), the Employer shall pay in accordance with Clause 13 any sums due and which become due to the Contractor in respect of the hire of the Plant. The Contractor shall not be entitled to any further sums in respect of loss of anticipated profit or otherwise.
- 20(5) Termination of the Contract shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination and the continuing operation of sub-

clauses 6(2), 14(2), 15(1), 19(1), 19(2), 19(3), 19(4), 20(5) and 20(6) and Clauses 22, 23, 24, and 25.

- 20(6) Following any termination of the Contract the Contractor shall immediately take all necessary steps to remove the Plant from the Site. If the Contractor fails, within a reasonable time, to remove the Plant, the Employer shall have the right to return it to the Contractor's premises during normal business hours. All costs associated with the removal of the Plant by the Employer shall be recoverable from the Contractor as a debt.

## **21 Force Majeure**

- 21(1) Neither party shall be liable for any failure to perform its duties, obligations and/or responsibilities hereunder or any failure to provide the other party with the opportunity to comply with its duties, obligations and/or responsibilities hereunder if and to the extent that such failure arises as a direct and unavoidable consequence of Force Majeure.
- 21(2) In the event that either party seeks to rely upon the relief granted by sub-clause 21(1), it shall submit to the other party written notice of the happening of the event of Force Majeure together with reasonable proof of the nature of the event and of its effect upon the performance of the party's obligations under the Contract.
- 21(3) The parties shall use all reasonable endeavours to prevent and mitigate the effects of any delay occasioned by, or other consequence of, any event of Force Majeure.
- 21(4) Should one event of Force Majeure last continuously for more than 3 months then the parties shall endeavour to agree any modifications to the Contract which may be equitable having regard to the nature of the event.
- 21(5) If the parties have failed to reach agreement as described in sub-clause 21(4) within 6 months of the commencement of the event in question, either party may at any time thereafter and provided the event still subsists, by notice to the other terminate the Contract. The provisions of Clause 20 shall apply to any such termination.

## **22 Limitation of Contractor's Liability**

The Contractor shall not be liable to the Employer by reason of any breach of the Contract for:

- 22(1) any loss of production or of any contract that may be suffered by the Employer; or
  - 22(2) any wastage, loss or contamination during its use in any plant of any process consumable which shall be deemed to include feed stocks, chemicals, biochemicals, catalysts and utilities; or
  - 22(3) any loss or damage arising from any design or information which the Employer has specifically instructed the Contractor to use;
- except to the extent that recoveries in respect thereof are obtained under insurance effected pursuant to Clause 15 (Insurance).

## **23 Notices and Communications**

- 23(1) All notices and communications to be given or made under this Contract shall be given or made in writing and delivered either by hand, by post in a pre-paid letter, or by facsimile transmission confirmed by post in a pre-paid letter, addressed to the other party.
- 23(2) Notices to be given to the Employer by the Contractor shall be addressed to the AstraZeneca UK Engineering Purchasing Manager, Alderley House, Alderley Park, Macclesfield, Cheshire SK10 4TF. Other communications shall be addressed as for notices or to such other address as is from time to time specified by the Employer for the purpose of communications.
- 23(3) Notices and communications to be given or made to the Contractor by the Employer shall be addressed as specified from time to time by the Contractor for the purpose.
- 23(3) The notices or other communications shall be deemed to be duly made or given on the day of delivery if delivered by hand, after two days for a letter or after four hours for facsimile transmission, save that if a letter is returned as being undelivered within seven days of its despatch, or a facsimile is reported as being received in incomplete or illegible form within two hours of transmission during normal office hours, that notice or communication shall not be deemed to have been made.

## 24 Dispute Resolution

- 24(1) The Employer and the Contractor shall give effect forthwith to every decision of the Adjudicator on a dispute given under sub-clause 24(2) unless and until that decision is revised by agreement of the Employer and Contractor or pursuant to this Clause 24.
- 24(2)
- (a) The Employer and the Contractor each has the right to refer a dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the “Notice of Adjudication”) to the other at any time of its intention so to do. The adjudication shall be conducted in accordance with the Institution of Civil Engineers’ Adjudication Procedure (1997) or any amendment or modification thereof being in force at the time of the said Notice.
  - (b) Unless the Adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
  - (c) The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
  - (d) The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
  - (e) The Adjudicator shall act impartially.
  - (f) The Adjudicator may take the initiative in ascertaining the facts and the law.
- 24(3) The decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.
- 24(4) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator is similarly not liable.

- 24(5) (a) All disputes arising under or in connection with the Contract other than failure to give effect to a decision of an Adjudicator shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the "Notice to Refer") to refer the dispute to arbitration.
- (b) Where an Adjudicator has given a decision under sub-clause 24(2) in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision otherwise it shall be final as well as binding.
- 24(6) (a) The arbitrator shall be a person appointed by agreement of the parties.
- (b) If the parties fail to appoint an arbitrator within one month of either party serving on the other party a notice in writing (hereinafter called the "Notice to Concur") to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.
- (c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.
- (d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this sub-clause 24(6) the said functions shall be exercised on his behalf by a vice-president for the time being of the said Institution.
- 24(7) (a) Any reference to arbitration under this Clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the Institution of Civil Engineers Arbitration Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. Such



arbitrator shall have full power to open up review and revise any decision opinion instruction direction or valuation of the Employer or the Adjudicator.

- (b) Neither party shall be limited in the arbitration to the evidence or arguments put to any adjudicator pursuant to sub-clause 24(2).
- (c) The award of the arbitrator shall be binding on all parties.
- (d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the hire of the Plant has not been completed or terminated.

## 25 Code of Conduct

25(1) Supplier recognises AstraZeneca's commitment to working only with suppliers who embrace standards of ethical behaviour that are consistent with AstraZeneca's *Code of Conduct* (<http://www.astrazeneca.com/responsibility>), as described in AstraZeneca's document *Responsible Procurement Supplier Expectation (v0.3May09)* (a part of the AstraZeneca Global Standard –Responsible Procurement).

25(2) Supplier represents and warrants and undertakes that it:

- (a) shall perform this Agreement and operate its business in compliance with all applicable laws and regulations;
- (b) has received and read AstraZeneca's *Code of Conduct* and AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*; and
- (c) shall perform this Agreement and operate its business to ethical standards consistent with those set out in AstraZeneca's *Code of Conduct* and as described in AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*, and
- (d) cause its suppliers and sub-contractors to operate their business in compliance with all applicable laws and regulations and in a manner consistent with AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*.

25(3) In the event that Supplier fails to meet or maintain such ethical standards, the Parties shall agree upon what measures should be taken by Supplier to improve Supplier's performance (the "Improvement Plan"). If the Parties are unable to agree upon an Improvement Plan or Supplier does not implement the Improvement Plan within an agreed reasonable timescale (which shall in any event not be in excess of twelve (12) calendar months) AstraZeneca shall be entitled to terminate this Agreement with immediate effect, to be relieved of any obligations and to seek compensation from Supplier.

25(4) Supplier agrees that any material breach or violation by Supplier of the above representations, warranties and undertakings shall give AstraZeneca the right to terminate this Agreement according to Article 20.

## **26 Law**

The construction validity and performance of the Contract shall be governed by the Law of England.