

BUSINESS TERMS OF PURCHASE

1 Interpretation

1.1 In these Terms:

Buyer means Mardon plc (registered in England and Wales under number 1853428);

Contract means the contract for the sale and purchase of the Goods and/ or the supply and acquisition of the Services;

Delivery Address means the address stated on the Order;

Goods means the goods (including any instalment of the goods or any part of them) described in the Order;

Order means the Buyer's purchase order to which these Terms are annexed;

Price means the price of the Goods and/ or the charge for the Services;

Supplier means the person so described in the Order;

Services means the services (if any) described in the Order;

Specification includes any technical or other description of the Goods or Services, any quantity, weight, price or quality requirements, pre-shipment inspection requirement, loading supervision requirement or other requirement or information relating to the Goods or Services as may be stated or referred to in the Order or as otherwise agreed in Writing between the Buyer and the Supplier;

Terms means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Supplier;

Writing, and any similar expression, includes facsimile transmission and electronic mail or other forms of electronic communication.

1.2 Any reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Where the words **include(s)**, **including** or **in particular** are used in these Terms, they are deemed to have the words "without limitation" following them.

1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of purchase

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms.

2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 A binding Contract shall come into effect upon the soonest of:

- 2.3.1 the Buyer's receipt of the Supplier's Written acceptance of the Order;
- 2.3.2 the 7th day after the date of the Order; and
- 2.3.3 the Supplier beginning to perform its obligations pursuant to the Order and these Terms;

unless the Buyer has already withdrawn its offer prior to any of these events occurring.

2.4 No variation to the Order or these Terms shall be binding unless accepted in Writing by a director of the Buyer.

3 Specifications

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Supplier or agreed in Writing by the Buyer. Any changes which the Supplier proposes to make to the Order or the Specification must be agreed in writing with a director of the Buyer prior to despatch of the Goods or performance of the Services being commenced.

3.2 Any Specification supplied by the Buyer to the Supplier, or specifically produced by the Supplier for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Supplier assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

3.3 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.4 The Supplier shall comply and assist the Buyer with any quality assurance or safety programme adopted by the Buyer affecting the Goods to be purchased and shall allow the Buyer, the Buyer's customer and the authorised representatives of each access to examine and test the following to ensure they are of a standard satisfactory to the Buyer:

- 3.4.1 the Goods themselves;
- 3.4.2 the Supplier's or a third party's premises to be used during the manufacture, processing or storage of the Goods;
- 3.4.3 any buildings, plant and equipment being used therefor;
- 3.4.4 any raw and other materials being used therefor;
- 3.4.5 any process flows and working practices being adopted by the Supplier; and
- 3.4.6 any other matters affecting the production of the Goods and their storage.

Access shall be allowed for such purposes to the premises of the Supplier or any third party including during the manufacture, processing and storage of the Goods, and the Supplier shall

provide the Buyer with all facilities reasonably required at such premises for examination and testing.

3.5 If the Buyer wishes to carry out a pre-shipment inspection of the Goods, the Supplier shall not load the Goods for shipment until a duly authorised representative of the Buyer has signed off and approved the pre-shipment inspection.

3.6 If the Buyer wishes to have the loading of the Goods supervised, the Supplier shall not attempt to load the Goods onto transport unless a duly authorised representative of the Buyer is present to supervise the loading of the Goods.

3.7 If as a result of examination or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Supplier within 14 days of the Buyer's receipt of the results of the examination or testing, then without prejudice to the Buyer's right of rejection of the Goods, the Supplier shall take such steps as are necessary to ensure compliance.

3.8 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4 Price of the Goods and Services

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms of sale.

5 Terms of payment

5.1 The Supplier may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within [30] days after the end of the month of receipt by the Buyer of a proper invoice provided the invoice states the Order number and the details on the invoice are consistent with those on the Order or, if later, after acceptance of the Goods or Services in question by the Buyer.

5.3 The Buyer may set off against the Price any sums owed to the Buyer by the Supplier.

6 Delivery/ performance

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Buyer shall give the Supplier reasonable notice of the specified date.

6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

6.6 The Buyer may reject any Goods delivered which are not strictly in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect and test them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. The Buyer's right of rejection shall continue to apply in respect of Goods which are already in transit when the Buyer receives the test results for them.

6.7 If the Goods are supplied in bulk and only part of them does not strictly comply with the Contract, the Buyer shall nevertheless be entitled to reject, at its option, either that part which does not comply or all of the Goods even if the failure to comply is so slight that it would otherwise be considered unreasonable under the Sale and Supply of Goods Act 1994 for the Buyer to reject any of the Goods and the provisions of that Act shall be construed accordingly.

6.8 The Supplier shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

6.9 The Buyer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

7 Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8 Warranties and liability

8.1 The Supplier warrants to the Buyer that on delivery and throughout their shelf-life and for a reasonable period thereafter the Goods:

- 8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier;
 - 8.1.2 will be free from defects and/ or damage caused by inadequate storage or otherwise;
 - 8.1.3 will correspond with any relevant Specification or sample; and
 - 8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2 The Supplier warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- 8.3.1 to require the Supplier to supply replacement Goods or Services in accordance with the Contract within 7 days; or
 - 8.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Supplier to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- 8.4 The Supplier shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 8.4.1 breach of any warranty given by the Supplier in relation to the Goods or the Services:
 - 8.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
 - 8.4.3 any liability under the Consumer Protection Act 1987 and/ or the Food Safety Act 1990 (and regulations issued pursuant to such legislation) in respect of the Goods or equivalent foreign laws where applicable;
 - 8.4.4 any complaints made by the Buyer's customers arising from a withdrawal of the Goods from sale or a product recall affecting them which takes place pursuant to clause 9 and in such case the indemnity shall extend to any losses and expenses incurred by the Buyer arising out of such withdrawal and/ or recall including the costs of examination, loss of profit, loss of business, carriage and disposal costs and any consequential loss or damage incurred;
 - 8.4.5 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, and delivering the Goods; and
 - 8.4.6 any act or omission of any of the Supplier's personnel in connection with the performance of the Services.

8.5 It shall be a condition of the Contract that the Supplier maintains a policy or policies of insurance to cover any of the liabilities mentioned in clause 8.4, including product liability and public liability, in such sums as may be reasonably required by the Buyer from time to time and on request by the Buyer produces such policy or policies and evidence of payment of the premiums therefor.

8.6 Neither the Supplier nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

8.6.1 Act of God, explosion, flood, tempest, fire or accident;

8.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.6.4 import or export regulations or embargoes;

8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Supplier or the Buyer or of a third party);

8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.6.7 power failure or breakdown in machinery.

Where this clause 8.6 applies, the Buyer at its option may notify the Supplier in Writing that the Contract is to be treated as cancelled.

9 Product recalls

9.1 The Supplier shall notify the Buyer immediately of any adverse results arising out of any scientific or quality tests or checks carried out from time to time on products of the same or substantially similar specification to the Goods and which are discovered before or after the Goods have been delivered to the Buyer.

9.2 If a governmental body (whether local or national) recommends or requires it and/ or if the Buyer in its opinion considers it necessary on food safety grounds or other reasonable grounds, having been given the opportunity by the Supplier to examine the Goods which are under the Supplier's control, the Goods may be withdrawn from sale and/ or recalled after sale.

9.3 The Supplier shall cooperate fully with the Buyer during any product withdrawal or product recall processes which are required pursuant to clause 9.2.

10 Termination

10.1 The Buyer may cancel the Order in respect of all or part only of the Goods and/ or the Services by giving notice to the Supplier at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Supplier the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation.

10.2 The Buyer may terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:

10.2.1 the Supplier makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Supplier (within the meaning of the Insolvency Act 1986); or

10.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

10.2.3 the Supplier ceases, or threatens to cease, to carry on business; or

10.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

11 General

11.1 The Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

11.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

11.3 No waiver by the Buyer of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

11.5 If a director of the Buyer and an authorised representative of the Supplier are for any reason unable, within 30 days of it being referred to them, to resolve a dispute arising under or in connection with the Contract or the sale of the Goods or the Services, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator. The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings.

11.6 The Contract shall be governed by the laws of England, and the Supplier agrees to submit to the non-exclusive jurisdiction of the English courts.