

BUSINESS TERMS OF SALE

1 Interpretation

1.1 In these Terms:

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

Buyer means the person whose Written order for the Goods is accepted by the Supplier;

Goods means the goods (including any instalment of the goods) which the Supplier is to supply in accordance with these Terms;

Contract means the contract for the sale and purchase of the Goods;

Confirmation of Order means a valid confirmation of order in Writing issued by the Supplier to the Buyer;

Incoterms means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

Terms means the standard terms of sale 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 A 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 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Supplier shall sell and the Buyer shall purchase the Goods in accordance with the Buyer's order as set out in the Confirmation of Order, subject to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such order is made or purported to be made by the Buyer.

2.2 The Supplier will normally not issue a Confirmation of Order unless it has been able to obtain credit risk insurance in its favour against the Buyer in respect of the relevant order in a form which is satisfactory to the Supplier. If such credit risk insurance should be subsequently withdrawn or the extent of the cover be reduced for any reason, the Supplier may cancel the Contract altogether or reduce the quantity of the Goods to be delivered (and the Supplier shall be entitled in its discretion to select which items originally forming part of the Goods are to be removed from the order) to such amount as it deems appropriate, in either case without liability for any losses or liabilities the Buyer may suffer or incur as a consequence of such cancellation or reduction in quantity to be delivered.

2.3 No variation to these Terms shall be binding unless agreed in Writing by a director of the Supplier.

2.4 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a director of the Supplier in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.5 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents as to the storage or use of the Goods which is not confirmed in Writing by a director of the Supplier is followed or acted upon entirely at the Buyer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed in a Confirmation of Order.

3.2 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order submitted by the Buyer as set out in the Confirmation of Order, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Confirmation of Order.

3.4 No order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in Writing of a director of the Supplier and on terms that the Buyer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

4 Price of the Goods

4.1 The price of the Goods shall be as stated in the Confirmation of Order, or as otherwise confirmed in Writing by the Supplier.

4.2 The Supplier reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the reasonable control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or Goods or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions.

4.3 Liability for transport costs shall be as stated in the Confirmation of Order or as otherwise confirmed in Writing by the Supplier.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Supplier.

4.5 The price is inclusive of the cost of pallets and containers where applicable.

5 Terms of payment

5.1 The Supplier may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer's customer or either of them wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Buyer for the price at any time after the Supplier has notified the Buyer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.

5.2 Subject to any special credit terms agreed in Writing between the Buyer and the Supplier, payment of the price of the Goods shall be due from the Buyer without deduction or set-off on presentation of the Supplier's invoice, and the Supplier shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may:

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2 if the Buyer is paying the price of the Goods by instalments, require immediate payment of all outstanding instalments;

5.3.3 if any cheque tendered in payment by the Buyer shall subsequently be dishonoured, charge the Buyer any fee levied by the Supplier's bankers for the handling of such dishonoured cheque which fee shall be immediately due and payable; and

5.3.4 charge the Buyer interest under the Late Payment of Commercial Debts (Interest) Act 1998 in respect of the price of the Goods and any amounts payable under this clause 5.3 and claim reasonable debt recovery costs.

5.4 Without prejudice to the Supplier's other rights and remedies at law, the Buyer shall keep the Supplier fully indemnified against any costs and expenses (including legal and other professional fees and expenses) the Supplier incurs or pays in connection with the Buyer's failure to pay invoices when they are due including in connection with the issue of legal proceedings for recovery of debts and interest shall accrue on such amounts on a daily basis at the same rate as is payable under clause 5.3.4.

6 Delivery

6.1 Delivery of the Goods shall be made by the Buyer or the Buyer's customer collecting the Goods at the Supplier's premises or from some other place of collection agreed by the

Supplier, at any time after the Supplier has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place. Where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Supplier shall be under no obligation under section 32(2) Sale of Goods Act 1979.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by the Supplier in bulk, the Supplier reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered. If in fact there is more than a 10% difference between the quantity delivered and the quantity ordered, the Supplier shall issue a fresh Confirmation of Order incorporating a price adjustment to reflect the quantity actually delivered.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Buyer's fault, and the Supplier is accordingly liable to the Buyer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods and if requested by the Supplier, the Buyer shall supply the Supplier with proof of purchase of such similar goods including proof of price

6.6 If the Buyer or the Buyer's customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier reserves the right:

6.6.1 to store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage; or

6.6.2 provided the Goods have been held in storage for at least 90 days, to sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract; or

6.6.3 in the case of Goods likely to perish, deteriorate or alter in any way and thereby cause loss or damage to third parties or be held to contravene relevant laws, to destroy the Goods and charge the Buyer for the costs of doing so.

6.7 On delivery of the Goods, the Buyer shall sign one copy of the Supplier's delivery note by way of acknowledgement of receipt and return that copy immediately to the Supplier or its agent.

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Supplier may at any time require the Buyer to deliver up the Goods to the Supplier and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Supplier shall be entitled to notify any coldstore where the Goods are being held from time to time of this right of entry and the Supplier's right of property in the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Buyer does so all moneys owing by the Buyer to the Supplier shall (without limiting any other right or remedy of the Supplier) forthwith become due and payable.

8 Warranties and liability

8.1 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.

8.3 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to the Supplier:

8.3.1 in the case of fresh or chilled produce, within 3 hours of delivery or attempted delivery;

8.3.2 in the case of all other Goods, within 3 days of the date of delivery or attempted delivery unless the defect was not apparent on reasonable inspection, in which case within a reasonable time after discovery of the defect;

otherwise the Supplier shall have no liability for such defects.

8.4 The Buyer must allow the Supplier reasonable opportunity to inspect the Goods which the Buyer claims are defective by arranging at the Supplier's request either for the return of the Goods to the Supplier or for them to be available for inspection in situ by the Supplier and its representatives. If requested by the Supplier, the Buyer shall also arrange for the Goods to be forwarded to a third party for inspection.

In any event if the Goods have been processed, defrosted, resold, moved or otherwise dealt with by the Buyer or its agents, the Supplier shall no longer have any liability for any defect in the quality or condition of the Goods.

8.5 Notwithstanding clause 8.3, after the expiry of 7 days from delivery or attempted delivery (or 12 hours only in the case of fresh or chilled produce), the Buyer shall not be entitled to reject the Goods, the Supplier shall have no liability for such defect and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods is notified to the Supplier in accordance with these Terms, the Supplier may replace the Goods in question with equivalent product free of charge or, at the Supplier's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Buyer.

8.7 Where the Supplier has replaced the Goods or refunded the price, at the Supplier's direction the Buyer shall forthwith arrange at its own cost either for the return of the defective Goods to the Supplier or their destruction. The Supplier's obligations under this clause shall apply equally to any products resulting from the conversion of the original Goods or incorporating any part or element of the original Goods and to any products resold by the Buyer. The Buyer shall certify to the Supplier in Writing that it has complied with the requirements of this clause and provide the Supplier with such evidence of compliance as the Supplier may reasonably require.

8.8 Except in respect of death or personal injury caused by the Supplier's negligence, or liability for defective products under the Consumer Protection Act 1987, the Supplier shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit, loss of business or depletion of goodwill or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or

otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.9 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

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

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

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

8.9.4 import or export regulations or embargoes;

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

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

8.9.7 power failure or breakdown in machinery.

9 Product recalls

9.1 The Supplier may notify the Buyer from time to time 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 received before or after the Goods have been delivered to the Buyer. Likewise the Buyer shall immediately notify the Supplier if the Buyer itself receives any such results.

9.2 In either of the cases described in clause 9.1, the Buyer must allow the Supplier reasonable opportunity to inspect any Goods which the Supplier considers may be affected by the results, if necessary, by arranging for the return of the Goods to the Supplier. If requested by the Supplier, the Buyer shall also arrange for the Goods to be forwarded to a third party for inspection.

9.3 If a governmental body (whether local or national) recommends or requires it and/ or if the Supplier in its opinion considers it necessary on food safety grounds or other reasonable grounds, the Supplier may require the Goods are withdrawn from sale and/ or, where practicable, recalled after sale.

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

10 Insolvency of Buyer

10.1 This clause 10 applies if:

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

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

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

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

10.2 If this clause 10 applies then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 Export terms

11.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

11.2 Where the Goods are supplied for export, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Supplier) apply notwithstanding any other provision of these Terms.

11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

11.4 The Supplier shall be under no obligation to give notice under section 32(3) Sale of Goods Act 1979.

11.5 The Buyer shall be responsible for arranging for inspection of the Goods before shipment if it so requires. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11.6 Payment terms shall be as set out in the Confirmation of Order.

11.7 The Supplier cannot be held responsible for any losses and costs the Buyer may suffer or incur arising from the Buyer's loss of shipping documents including without limitation the cost of obtaining replacement documents and any losses and costs the Buyer may suffer or incur due to the shipper refusing to release the Goods without the production of valid shipping documents.

12 General

12.1 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 pursuant to this provision to the party giving the notice.

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

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

12.4 If a director of the Supplier and an authorised representative of the Buyer 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, 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.

12.5 The Contract and these Terms shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.