

For the avoidance of doubt, all contracts made between the Company and the Buyer are governed by these Terms and Conditions and these Terms and Conditions replace all previous Terms and Conditions.

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these conditions

Buyer: means both Buyer (UK) and Buyer (non-UK)

Buyer (UK): any person, firm or company who purchases the Goods from the Company for delivery to mainland UK

Buyer (non-UK): any person, firm or company who purchases the Goods from the Company for delivery outside the UK

Carrier: such third party(ies) as the Company shall use for the transport and delivery of the Goods

Company: Adshead Ratcliffe & Company Limited of: Derby Road, Belper, Derbyshire DE56 1WJ

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions. Contracts with Buyer(s) (Non-UK) shall be governed by Incoterms 2000 and the terms and conditions of this agreement shall be supplemental to Incoterms 2000, to the extent that there is any conflict between Incoterms 2000 and these terms and conditions, Incoterms 2000 shall prevail

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them)

Intellectual Property: means copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same

Tax deduction: a deduction of withholding for, or on account of, tax from a payment due under these terms and conditions

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.

They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1. Time for delivery shall not be of the essence and all such dates are estimates only. The Company are not responsible if there is any delay in delivery of the goods except if caused by the Company's negligence. If no dates are specified, delivery will be within a reasonable time. "**Delivery**" in this instance means when possession of the goods passes to the Carrier.

4.2. The Buyer shall be willing to take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.

4.3. If the Company is delivering the goods in instalments, each delivery is a separate contract and if the Company does not deliver any one or more of the instalments in accordance with these conditions or the Buyer makes a claim in respect of any one or more instalments the Buyer shall not be entitled to treat the Contract as a whole as ended. If for the goods (1) the Buyer requests that delivery be postponed (2) the Buyer fails to take delivery of the goods or (3) the Company does not receive adequate delivery instructions from the Buyer at the time stated for delivery then: (a) risk of damage to or loss of the goods will pass to the Buyer (including for loss or damage caused by the Company's negligence); (b) the goods will be deemed to have been delivered; (c) The Company may store the goods until actual delivery and charge the Buyer for all related costs including insurance of storage; (d) The Company may sell the goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract; and/or (e) without affecting any of the Company's other rights or remedies the Company may cancel the Contract or suspend any further deliveries of the goods to the Buyer.

4.4. If the Buyer nominates a place for delivery it is the Buyer's responsibility to make sure that suitable access equipment and manual labour is available to unload the goods. **IF IN THE REASONABLE OPINION OF THE COMPANY'S DRIVER OR CARRIER THESE ARE NOT AVAILABLE THE COMPANY MAY REFUSE TO DELIVER THE GOODS.**

4.5. Any delay in delivery shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.6. The Company's record of the quantity of any consignment of goods despatched from their place of business shall be conclusive evidence of the quantity received by the Buyer on delivery.

4.7. The Company shall have no liability for any non-delivery or shortfall in the quantity of the goods delivered unless the Buyer writes to tell the Company within 48 hours of delivery and only then, the Company may at option a) deliver such quantity or the goods to remedy the shortfall, b) issue a credit note to the Buyer against the invoice for the amount of the goods where there is non-delivery.

4.8. The Buyer must arrange inspection of the goods immediately on delivery and before the delivery receipt, if required, is signed.

4.9. Delivery to a Buyer (non-UK) shall be governed by Incoterms 2000 on a "CIF" basis, unless expressly agreed in writing and signed by a director of the Company.

5. NON-DELIVERY

5.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

5.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1. The Goods are at the risk of the Buyer from the time of delivery.

6.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1. the Goods; and

6.2.2. all other sums which are or which become due to the Company from the Buyer on any account.

- 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5. The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 6.5.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.5.3. the Buyer encumbers or in any way charges any of the Goods.
- 6.6. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
- 6.10. For the avoidance of any doubt, delivery to Buyer (non-UK) shall be governed by Incoterms 2000 on a CIF basis and risk in the goods shall pass to the Buyer once the Goods are loaded on to the nominated carrier.
- 7. PRICE**
- 7.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the most recent price list provided to the Buyer by the Company.
 - 7.2. The price for the Goods shall be exclusive of any value added tax and Tax Deduction.
 - 7.3. Orders placed with the Company for under £250.00, will be subject to an additional charge to be applied at the Company's discretion.
- 7.4. Unless otherwise agreed by the Company in writing, the price for the Goods shall include carriage, packaging and other delivery costs where delivery is to be made to a Buyer (UK).
- 7.5. The provisions of condition 7.4 do not apply to Buyer (non-UK).
- 8. PAYMENT**
- 8.1. Payment of the price for the Goods is due within 30 days after the end of the month in which the invoice is dated.
 - 8.2. Payment of the price for the Goods is due in Pounds Sterling or such other currency as agreed by the Company in writing and signed by a director of the Company.
 - 8.3. Time for payment shall be of the essence.
 - 8.4. No payment shall be deemed to have been received until the Company has received cleared funds.
 - 8.5. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
 - 8.6. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
 - 8.7. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.
 - 8.8. In the event that the payment of insurance under condition 8.7 is not enforceable, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9. QUALITY**
- 9.1. The Company warrants that on Delivery the goods will be of satisfactory quality but all other warranties, conditions or terms implied by statute or common law (apart from the conditions implied by sections 12 of Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
 - 9.2. If the Buyer claims that there is any defect in the quality or condition of the goods or they do not correspond with the warranty at 9.1, the Buyer must give written notice to the Company within 48 hours from the date of delivery or (where a defect or failure would not be apparent on an initial thorough and proper inspection) within 10 days after discovery of the defect or failure. Time shall be of the essence for this condition.
 - 9.3. If the Buyer does not give the Company written notice as referred to in Condition 9.2, the Buyer shall not be entitled to reject the goods and the Company shall have no liability for such defect or failure and the Buyer will still be liable to pay the purchase price to the Company. It is the Buyer's responsibility (at the Buyer's cost) to return any relevant goods to the Company's premises if on the request of the Company to allow the Company to inspect the goods and investigate the Buyer's claims.
 - 9.4. If the Buyer does give the Company written notice as referred to in Condition 9.2 and the Company deem the claim to be valid, the Company may choose to replace or repair the goods (or the part in question) free of charge or, refund the Buyer the price (or a proportionate part of the price) but then the Company shall have no further liability to the Buyer. It is the Buyer's responsibility to collect from the Company any goods returned under this condition if the Buyer's claim in respect of those goods proves not to be valid.
 - 9.5. Despite any of the other provisions of this Condition 9, if the Buyer (a) process, manufacture and/or incorporate any of the goods delivered to the Buyer with any other goods or (b) the Buyer sells the goods or (c) do not return the goods to the Company when it asks the Buyer to do or (d) alter the goods in any way, the Buyer shall be deemed to have accepted the goods.
- 10. LIMITATION OF LIABILITY**
- 10.1. The Company does not accept any liability to the Buyer or to others in connection with the contract for loss of profit, loss of business, depletion of goodwill, loss of opportunity, loss of data, loss of use, loss of contracts, loss of expected savings or interruption to the Buyer's business ("**Losses**"). If however, the Company are found to be liable to the Buyer or to others for any of the Losses or for breach of contract, misrepresentation, misstatement or other tortious acts or omissions, including negligence, arising under or in connection with the Contract, the Company's maximum liability shall be the price paid by the Buyer to the Company under the Contract. If it is found that to limit our liability to this amount is unfair then the Company shall only be liable to the Buyer for

the matter described in this Condition for up to the amount of insurance cover that the Company has from time to time.

- 10.2. Nothing in these Conditions excludes the Company's liability to the Buyer for fraudulent misrepresentation or for death or personal injury resulting from the Company's negligence.
- 10.3. Except in respect of any loss or damage caused by the Company's negligence, the Buyer undertakes to indemnify the Company against any loss, costs, claims, damages, expenses, fees or other sums it may incur relating to the Buyer's breach of the Contract.

11. TERMINATION

- 11.1. The Company can end the Contract or suspend any further deliveries of the goods immediately if one of the events at Condition 6.6 applies, or on not less than three months written notice to the Buyer.
- 11.2. The Buyer can end the Contract by giving not less than six months' written notice to the Company.
- 11.3. On the ending of the Contract the Buyer and any connected or associated company (including any subsidiary, holding or other group company) must immediately pay the Company all monies which the Buyer owes under the Contract and on any account of whatever nature. The Company may also exercise its rights under Condition 6.8.

12. TAX

If a Buyer (non-UK) is required to make a Tax Deduction by law, the payment due from that Buyer shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 20 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. INTELLECTUAL PROPERTY

- 14.1. All Intellectual Property Rights in the Goods will remain vested in the Buyer or its relevant licensors and to the extent that any rights in the Goods vest in the Buyer by operation of law, the Buyer hereby assigns such rights to the Company. The Buyer will notify the Company promptly upon becoming aware of any unauthorised use of the Goods.
- 14.2. The Buyer acknowledges and agrees that it shall not acquire or claim any title to any of Company's (or Company's licensors') Intellectual Property Rights by virtue of the rights granted to the Buyer under this Agreement or through its use of the Company's (or Company's licensors') Intellectual Property Rights and further agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the Company's or its licensors' ownership of such Intellectual Property Rights.
- 14.3. The Buyer agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on the Goods.

15. GENERAL

- 15.1. Any notice required or permitted to be given by either party to the other under these conditions 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 and may be delivered personally or by fax, first class recorded delivery post or first class air mail letter. A notice shall be deemed to have been served (if personally delivered) at the time of delivery or (if sent by first class recorded delivery post) 48 hours after posting or (if sent by first class air mail letter) 96 hours after posting or (if sent by fax) at the time of transmission.
- 15.2. The Buyer cannot assign, transfer, charge or deal in any other manner with the Contract or any of the Buyer's rights under it, nor purport to do any of the same, nor subcontract any or all of the Buyer's obligations under the Contract without having obtained the Company's prior written consent.

- 15.3. The Company shall be entitled to assign its rights under the Contract and sub contract any or all of its obligations under the Contract to any third party.
- 15.4. When the Company is a member of a group of companies, the Company may perform any of its obligations or exercise any of its rights under the Contract by the Company or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the Company's act or omission.
- 15.5. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from the Act.
- 15.6. No waiver by the Company of any breach by the Buyer of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.7. No failure by the Company to exercise nor delay in exercising any right or remedy under the Contract shall constitute a waiver of that right or remedy.
- 15.8. Except in respect of any undisputed credit or payment due and owing by the Company to the Buyer, the Buyer shall pay all amounts due under the Contract in full without any deducting or withholding any money other than as required by law and the Buyer shall not be entitled to assert any credit, set off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 15.9. If any of these conditions is, or at any stage in the future becomes invalid, illegal or cannot be enforced in law, it will not affect the other terms which will stay in force.
- 15.10. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. COMMUNICATIONS

- 16.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
 - 16.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - 16.1.2. (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer
- 16.2. Communications shall be deemed to have been received:
 - 16.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 16.2.2. if delivered by hand, on the day of delivery; or
 - 16.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day
 - 16.2.4. if sent by e-mail on a working day, 24 hours after transmission, otherwise on the next working day.
- 16.3. Communications addressed to the Company shall be marked for the attention of a director.