

Rutpen Ltd. Conditions of Sale

All quotations are made and all orders are accepted subject to the following Terms & Conditions which form part of and govern the contract of sale.

Except where otherwise agreed in writing and signed by a Director of the Company these Terms shall override any terms or conditions stipulated incorporated or referred to by the Buyer at any time.

Each dispatch of any Goods by the Company shall constitute acceptance by the Company of the offer by the Buyer to purchase the Goods dispatched and shall be regarded as a separate contract.

Each paragraph or sub-paragraph of this condition is separate, severable and distinct. Headings and paragraph numbers are for the convenience of the reader and do not form part of these Terms.

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'The Company' means Rutpen Trading Ltd of Membury Airfield, Lambourn, Berks, RG17 2TT.
- 1.2 'Buyer' means the person, firm or body corporate with whom the Contract is made.
- 1.3 'Terms' means these Terms & Conditions of Sale.
- 1.4 'Goods' means materials or items which the Buyer agrees to buy from the Company under the Contract.
- 1.5 'Services' means work or processes which the Company agrees to supply to the Buyer under the Contract.
- 1.6 'Contract' means any agreement written electronic or verbal between the Company and the Buyer relating to the supply of Goods or Services.
- 1.7 'Conditions' means the terms and conditions of sale set out in the document and any special terms and conditions agreed in writing by the Company.
- 1.8 'Products' means the supply of Goods and/or Services.
- 1.9 'Raw Material' means the materials, be they chemical, packaging or otherwise, used to manufacture and pack product.

2. Conditions Applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Products by the Company to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Products shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.

3. Availability

3.1 All quotations are issued and orders accepted subject to the availability to the Company of raw materials plant equipment and manpower.

4. Acceptance of Order

- 4.1 All quotations are made and orders accepted subject to normal manufacturing tolerances and variations and the Buyer shall take delivery of the Products tendered notwithstanding.
- 4.2 Subject to clause 4.1 the Products supplied by the Company shall be in accordance with the specification supplied by the Company (if any) and be carried out with all reasonable care and skill but are not tested or sold as fit for any particular purpose.
- 4.3 Where methods of test or measurement used by the Company and the Buyer vary the methods used by the Company shall apply and the Buyer shall raise no objection save in relation to the fitness of packaging for re-use and accepts no liability whatever for any losses, costs or other claims caused where the Buyer refills packaging previously supplied by the Company.
- 4.4 The Company shall only be obliged to carry out tests which are specified in the contract, and reasonable tolerances shall be accepted by the Buyer who accepts delivery and shall not be entitled to reject any Goods or Services on the grounds that they are not precisely as specified.
- 4.5 Any additional testing which the Company expressly agrees to carry out for the Buyer shall be charged extra to the Buyer and shall be undertaken subject to these conditions.

5. Warranty

- 5.1 The Company warrants that the Products supplied will be manufactured and packaged and labelled in accordance with the terms of the specification supplied by the Buyer. Under this warranty the Company will either replace any Product, packaging or labelling proved not to have been manufactured, printed or affixed in accordance with the specification or at its sole option refund to the Buyer the price of the Products but shall be under no further liability. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Products, their packaging or labelling, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 5.2 Upon request the Company shall endeavour to furnish such technical advice as it has available as regards the manufacture of the Products. The Company accepts no liability whatsoever arising from such advice or assistance or for any results obtained in pursuance of it (such advice being given or such assistance being rendered without charge and without risk to the Company).
- 5.3 The Buyer shall indemnify the Company against all actions claims and demands by any third party whether arising in contract or tort or otherwise and whether arising directly or indirectly or in connection with the manufacture use or state of the Products.

6. Liability

- 6.1 If the Company shall be in breach of the said Warranty its liability shall be limited to replacing the Products (as the case may be) at the Company's risk and expense or, at its option, refunding the price paid by the Buyer or (if an abatement of the price is agreed with the Buyer), refunding to the Buyer an appropriate part of the price paid.
- 6.2 If the Company does so repair or supply satisfactory substitute Products or effect repayment under the above condition, the Buyer shall be bound to accept such repaired or substituted Products or refund and the Company shall be under no further liability in respect of any loss or damage of whatever nature arising in relation to those Products.
- 6.3 Nothing contained in these Conditions shall limit or restrict the Company's liability for death or personal injury caused as a result of the Company's negligence, nor does the Company limit or restrict its liability for fraudulent misrepresentation under the Misrepresentation Act 1967.
- 6.4 The Company accepts no liability whatever for any losses, costs or other claims caused where the Buyer uses its own containers or caused as a result of the Buyer's failure to use the Company's containers or other packaging for any purpose other than the safe transit and storage of the Products.
- 6.5 Where the Company delivers the Products to the Buyer, the Company will ensure that all packaging in the form of pallets, crates, drums, boxes, carboys etc are suitable to protect the Products from damage during delivery to the Buyer. The Company can accept no liability for any loss or damage caused where such packaging is used for the further transportation of the Products or other unconnected Goods and the Buyer must satisfy himself that the Products are safely packaged for such transportation.
- 6.6 The Company makes no claim as to the fitness of packaging for re-use and accepts no liability whatever for any losses, costs or other claims caused where the Buyer refills packaging previously supplied by the Company.
- 6.7 Where the Company supplies Products and containers/packaging to the Buyer "ex works", the point of delivery will be the delivery vehicle's side at the point of loading.
- 6.8 Where the Company delivers Products and containers/packaging to the Buyer's address, the point of delivery will be the delivery vehicle side at the Buyer's address and the Company accepts no liability whatever for any losses, costs or other claims in connection with the transfer of the Products and containers/packaging from the vehicle side.
- 6.9 Where the Buyer receives Products via a bulk or semi-bulk delivery system, it is the Buyer's responsibility to ensure that all operating instructions and health and safety procedures are followed at the point of delivery and the Company accepts no responsibility for any claims, losses, costs or damage caused at and from the point of transfer to the Buyer's installation.
- 6.10 Where the Buyer collects the Products from the Company, although the Company may inspect any collection vehicle used by the Buyer, the Company shall not be responsible for any losses caused or claims made to the Buyer as a result of the lack of suitability or appropriateness of the vehicle or vehicle driver in any respect whatsoever. The Buyer is fully responsible for ensuring that such vehicle and driver comply fully with all current legislation and shall hold the Company harmless against any claim or legal action caused by the Buyer's failure to meet such legislation.
- 6.11 Except where the Company has specifically confirmed in writing to the Buyer that the Products are suitable to be mixed with any other goods, the Company accepts no liability for admixture of the Products with any other goods and it shall be the Buyer's sole and entire responsibility to ensure that the Products concerned and the containers to be used are entirely suitable for such admixture and/or for transfer of such.

7. Price and Terms of Payment

- 7.1 Subject to clauses 7.6 and 7.7 the Price shall be the Company's quoted price. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice.
- 7.2 Unless credit terms have been expressly agreed by us payment for Products shall be made in full on or before delivery. We may alter, suspend or revoke credit terms without any customer at any time.
- 7.3 Where credit is allowed unless otherwise expressly agreed with the Customer payment for the Products shall be made net (no settlement discount being allowed) on or before the 30th day of the month following the month in which our invoice relating thereto is issued (for payments made by electronic funds transfer) or the 20th such day (for any other mode of payment including cheque). The invoice shall be issued by the Company on the date of despatch of the Products.
- 7.4 If full payment is not received by the date of delivery or (where credit has been agreed) by the due date for payment;
- 7.4.1 Interest shall be payable by the Buyer from the date by which payment should have been made on the unpaid amount on a daily basis at the statutory rate specified in the late Payment of Commercial Debts (Interest) Act (irrespective of whether such Act applies to the debt or not).
- 7.4.2 The Company may deliver the Products by separate instalments. The Company may raise a separate invoice and require payment for each instalment. Any failure or refusal by the Buyer to take delivery or to pay for any one or more of the said instalments shall entitle the Company (at the sole option of the Company), without notice to suspend further deliveries of the Products pending payment by the Buyer and to treat this Contract as repudiated by the Buyer.
- 7.4.3 The Company shall have the right to suspend any further deliveries under the particular contract or any other contract or accepted order until payment is made in full and in addition shall have the right to cancel the particular contract in relation to such further deliveries and any other contract with the Buyer or accepted order and no time or indulgence granted by the Company to the Buyer shall prejudice any right or remedy which the Company may have in any manner whatsoever.
- 7.5 No deduction shall be made by the Buyer in respect of any set-off or counter-claim whatsoever arising.
- 7.6 There shall be added to the invoice price any value added tax and other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Products or performance of the services (whether initially charged on or payable by the Company or the Buyer).
- 7.7 Where the costs of materials applicable to the Contract increase during the lifetime of a contract the Company shall have the right to pass on these increased costs to the Buyer.

8. Risk

- 8.1 Where the Products are the property of the Company the risk in the Products shall remain with the Company until delivery by the Company or collection of the Products by the Buyer or payment for the Products by the Buyer, whichever is the earlier, at which time the risk in the Goods shall be transferred to the Buyer.
 - 8.2 Where the Products are not the property of the Company the risk in the Products shall remain with the owner of the Products at all times.
 - 8.3 Where the Products are not the property of the Company the risk in the Products shall remain with the owner of the Products at all times.
- ## 9. Insurance
- 9.1 The Buyer is totally responsible at all times for arranging their own insurance to the value and against the risks of their choice for all products stored, handled or held by the Company.
 - 9.2 Except where specifically agreed in writing the Company will not insure Goods or accept any risk in Goods held on behalf of other parties.
 - 9.3 Where the Company agrees to arrange insurance cover on behalf of the Buyer this cover is limited to the amount and against the risks agreed in writing by the Company.
- ## 10. Reservation of Title
- 10.1 Ownership of Products (including packaging) delivered under this contract shall remain with the Company until payment in full has been made to the Company for all monies owing in respect of all Products supplied to the Buyer by the Company whether under this or any other Contract or account.
 - 10.2 Where compounded Products contain Buyer supplied items, the Buyer supplied items remain the property of the Company until the compounded Products are paid for in full.
 - 10.3 If any payment is overdue, whether under this or any other contract between the Company and the Buyer, or the Buyer enters or threatens to enter any insolvency arrangement or procedure (including, but not limited to administration, administrative receivership or liquidation), the Company may, without prejudice to any of its other rights or privileges, recover or recall any or all of the Products which the Company retains title to by virtue of these Terms and may whether by itself or by agents duly appointed enter upon the Buyer's premises for that purpose.
 - 10.4 Notwithstanding that title to the Products has not passed to the Buyer, the Company shall be entitled to maintain an action for the price of the Products supplied to the Buyer by the Company whether under this or any other Contract or account.
 - 10.5 Until the time of full payment the Buyer is entitled to use the Products in the normal course of its business or to sell the Products to third parties in the normal course of its business. The Company shall have the right to trace the proceeds of the sale according to the principles in *Hallett's Estate* (1880) 13 CH D 698.
 - 10.6 The Buyer's right to use the Products or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Buyer and shall automatically terminate with or without such notice on the appointment of any receiver or liquidator of the Buyer.

11. Raw materials

- 11.1 Where formulations supplied by Buyer specify the raw materials to be used and any raw material is specific to the formulation(s) and used for no other client, the Company agrees to purchase any Raw Material required to fulfil order requirements placed upon them by the Company in the most economically viable quantity according to quantity of raw material required and expected frequency of order.
- 11.2 The Buyer agrees that, in the event of the Company purchasing raw materials specifically for the Buyer, and said raw materials not being used within 6 months, the Company may at their discretion invoice the Buyer for those raw materials, at cost price, and that the Buyer shall pay the amount invoiced within the normal payment period.

12. Ex-Stock Goods

- 12.1 Ex-stock Goods are offered subject to the same not having been sold elsewhere.

13. Assignment

13.1 The Contract is between the Company and the Buyer as principals and is not assignable.

14. Termination

- 14.1 The Company shall be entitled forthwith to terminate any Contract between it and the Buyer by written notice if the Buyer fails to pay any invoice in accordance with these conditions, where the control of the Buyer changes during the period of the Contract or where the Buyer commits any continuing or material breach of these Conditions or makes any composition with its creditors or suffers any distress or execution to be levied upon its assets or is wound up either compulsorily or voluntarily goes into administration or suffers a receiver of any of its assets to be appointed or otherwise ceases or threatens to cease to carry on business.

15. Force Majeure

- 15.1 The Company shall have the right to cancel or delay performance of the services or deliveries of the Products if it is prevented from or hindered in or delayed in manufacturing or delivering the Products or any part thereof through any circumstances beyond its reasonable control, including but not limited to war, riot, government requisitions of any kind, suspension or loss of means of transport, strikes, lock outs, labour disputes, fire, explosion, flood, accident, failure of any third party to supply the Company, breakdown of machinery or anything directly or indirectly interfering with the raw materials or the manufacture, supply, shipment, arrival or delivery of the Products.
- 15.2 During any such period of cancellation, the Buyer shall have the right to purchase elsewhere at his own risk and cost such quantities of the Products as may be necessary.

16. Cancellation of Orders

16.1 Where the Buyer cancels an order which has been accepted by the Company, the Company shall be entitled to charge to the Buyer the entire amount of the relevant invoice (without any obligation to prove damages), plus any additional expenses that may be incurred by the Company as a result of the cancellation, such as transportation, storage or destruction costs in relation to the Products ordered.

17. Delivery and Completion Dates

- 17.1 The delivery or performance dates specified in the contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance.
- 17.2 The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is not substantial or if the delay or failure is due to act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere) hostilities, breakdowns, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.
- 17.3 No delay shall entitle the Buyer to reject any delivery or services or any further instalment or part of the order or any other order from the Buyer or to repudiate the contract or the order.

18. Information Supplied by the Buyer

- 18.1 The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Buyer to the Company, whether written, electronic or verbal, is in all respects complete, accurate and entirely suitable for the Buyer's requirements.
- 18.2 Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any Products or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Buyer's designs, drawings, standards or specification.

19. Confidentiality: Patents etc.

- 19.1 Any drawings specifications or other technical information supplied to the Buyer by the Company in connection with the contract are provided on the express understanding that the Buyer will not give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Buyer will not use them in any way except in connection with the Products provided hereunder. The copyright in all documents provided by the Company will remain vested in the Company.

19.2 The Buyer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance or use by the Company with the Buyer's specific requirements, designs or specifications.

20. Indemnities

- 20.1 The Buyer shall indemnify the Company and keep the Company fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Company may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of:
 - 20.1.1 any claim or allegation that any of the Products infringes any intellectual property rights of any third party;
 - 20.1.2 any claim that the Products do not comply with local laws and regulations relating to their sale and use in the Territory;
 - 20.1.3 the manner in which the Buyer markets and sells the Products;
 - 20.1.4 any breach or alleged breach of any applicable laws or regulations relating to the storage, marketing or sale by the Buyer of the Products; and which are not due to the Company's negligence, recklessness or willful misconduct or any breach of its obligations under this Agreement

21. Loss or damage in transit

- 21.1 All Goods must be examined by the Buyer at the time of delivery and signed for. Any loss or damage must be confirmed in writing by the Buyer to the carrier at the time of delivery and a copy given to the carrier.
- 21.2 Damage or shortage must be confirmed in writing by the Buyer to the Company within three working days of delivery. All Goods claimed as faulty or damaged (including packaging) must be retained for inspection by the carrier and the Company.

21.3 The Company shall not be liable for any loss, loss of profit, damage or expense whatsoever arising either directly or indirectly out of any loss or damage to any Goods in transit.

22. Sub-Contracting

22.1 The Company reserves the right to sub-contract the whole or any part of the contract.

23. Applicable law

23.1 The contract shall in all respects be governed by and construed in accordance with English law and the Buyer hereby submits to the exclusive jurisdiction of the English Courts.

23.2 The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

23.3 Any dispute (other than a dispute involving the non payment by the Buyer of money claimed by the Company to be due to the Company) arising out of or in connection with this contract shall be referred to arbitration in London in accordance with the rules of arbitration and the by-laws of the British Chemical and Dyestuffs Traders Association for the time being in force. Such reference shall be deemed to be under the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

23.4 The Buyer agrees that a dispute involving the non payment by the Buyer of money claimed by the Company to be due to the Company shall not be referred to arbitration.

24. Use of Buyer's Materials

- 24.1 The supply of Products involving the use of Buyer's goods or materials are undertaken by the Company on the express understanding that the Company cannot be responsible for any imperfection, distortion, faults or defects which exist, appears or develops which is caused by or contributed by the Buyer's goods or materials however arising even if resulting from any fault, negligence or mistake of the Company.
- 24.2 The Company gives no guarantee or warranty of any kind on the Buyers goods or materials or other services but subject to the availability of capacity and facilities, it will endeavour to correct any such distortions, faults or defects or carry out other requisite remedial work or services at the Buyer's expense and risk.

25. Third Parties

25.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 these Conditions are not intended to, and do not, give any person who is not a party to it any right to enforce any of its provisions.

26. Notices

26.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, or if by first class post 48 hours after posting and if by facsimile transmission when despatched.