



## TERMS AND CONDITIONS OF SALE AND SUPPLY

### THE PURCHASER'S ATTENTION IS SPECIFICALLY DRAWN TO CONDITION 7 (LIMITATION OF LIABILITY)

In these terms and conditions ("Conditions") the following words and expressions shall have the following meanings:

**the Products:** means any item of whatsoever nature or part thereof or service which is to be sold or supplied by the Supplier including any labelling and packaging as described in the order;

**the Purchaser:** means the company named in the order who buys or has agreed to buy the Products;

**the Supplier:** means Laleham Products Ltd whose registered office is at City Gates, 2-4 Southgate, Chichester, West Sussex PO19 8DJ.

#### 1 Order and Acceptance

1.1 All orders placed by the Purchaser shall be in writing specifying the names of Products, the quantity required and the preferred delivery date.

1.2 The Supplier contracts for the sale of the Products subject to these Conditions only and any other terms and conditions (including but not limited to those in the Purchaser's order or enquiries) inconsistent with these Conditions shall be of no effect.

1.3 Any modification to these Conditions will be binding only if it is evidenced in writing signed by the Supplier and the Purchaser and such evidence contains a specific reference to these Conditions being modified.

1.4 If the Supplier does agree to the Purchaser cancelling a contract or order (other than as a result of the Supplier's breach or negligence) it shall be a condition of that consent that the Purchaser will reimburse the Supplier in respect of all losses and expenses suffered by the Supplier arising out of or in connection with such cancellation.

#### 2 Estimates and Prices

2.1 Unless otherwise stated in writing, the prices estimated or quoted by the Supplier are exclusive of delivery, freight and insurance charges, VAT and other applicable taxes, duties or levies of any kind whatsoever, all of which are payable by the Purchaser in addition to the price.

2.2 The price payable is as indicated on the most recent quotation. In the event that the Supplier agrees to the Purchaser modifying the terms of any contract to which these Conditions apply, the Supplier shall be entitled to adjust the price of the Products by a reasonable amount to take account of any resultant increases in the cost of manufacturing or supplying the Products.

2.3 The Purchaser shall not be entitled to make any deduction from any payment due to the Supplier in respect of any set-off or counter claim, unless the validity and the amount of such deductions have been expressly admitted in writing by the Supplier.

2.4 The price to be paid by the Purchaser for the Products may be adjusted by the Supplier in its absolute discretion (which discretion shall not be subject to review) at any time prior to the acceptance of the Purchaser's order upon notice being given by the Supplier to the Purchaser.

### 3 Payment

3.1 The time of payment shall be of the essence of any contract to which these Conditions apply. Unless otherwise expressly stated on your invoice, payment shall be due on or before 30 days net from the date of invoice. Such payments shall be made by the Purchaser in sterling by bank transfer to such bank account as the Supplier may from time to time notify in writing to the Purchaser.

3.2 Without prejudice to any other rights the Supplier may have, failure to pay the price or part of it or other monies payable by the Purchaser pursuant to these Conditions shall entitle the Supplier, at the Supplier's sole discretion, to charge in addition to any monies due under these conditions interest on the outstanding amount at the rate per annum of 3 per cent above the base rate from time to time of the Supplier's bankers calculated on a daily basis from the date the payment became due until the date payment is made.

3.3 The Supplier may at its discretion require full or partial payment of the price prior to delivery of the Products or the provision of security for payment by the Purchaser in a form acceptable to the Supplier.

### 4 Delivery

4.1 Delivery shall take place on despatch of the Products to the Purchaser from the Supplier's premises for delivery to the Purchaser's premises set out in these Conditions, unless otherwise agreed in writing by the Supplier.

4.2 Although dates for delivery are given in good faith, these are indicative only and time of delivery shall not be of the essence. The Supplier shall use reasonable efforts to deliver orders as soon as reasonably practicable and to inform the Purchaser if there may be any delays in delivery of the Products. If the Supplier is unable to deliver any Product by the agreed delivery date the Supplier shall not be liable to the Purchaser for any delay caused as a result of the failure to deliver, provided that if the Supplier fails to deliver the Products within 120 days, the Purchaser shall have the right to terminate the contract and to receive a refund of all monies paid to the Supplier in respect of the Products to be delivered pursuant to that contract.

- 4.3 The Purchaser shall accept delivery of the Products at the agreed time and point of delivery in accordance with these Conditions and the Purchaser shall reimburse the Supplier for any costs or expenses (including, without limitation, any re-delivery and storage costs) incurred by the Supplier as a result of the Purchaser failing to accept delivery or failing to provide the Supplier with such instructions and/or documentation as it shall require in order to effect delivery of the Products.
- 4.4 The Purchaser agrees to inspect the Products upon delivery and inform the Supplier promptly in writing of any Products which are delivered in a damaged or defective state or of any shortfall in any delivery. Any shortfall in the quantity of Products delivered from that stated in any contract to which these Conditions apply shall not give rise to a right to claim damages for breach of contract solely as a result of such shortfall but the Purchaser shall only be obliged to pay at the contract rate for the quantity of the Products delivered.
- 4.5 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one of the instalments in accordance with the contract governing any order or any claim by the Purchaser in respect of any one or more instalment shall not entitle the Purchaser to treat any other contract with the Supplier as repudiated.
- 4.6 All Products supplied by the Supplier shall be at the Purchaser's risk immediately following delivery of the Products to the Purchaser in accordance with Condition 4.1. The Purchaser shall maintain appropriate insurance for delivered Products against all usual risks and shall procure that the Supplier's interest is noted on any relevant policy.
- 5 **Transfer of Property**
- 5.1 All Products supplied to the Purchaser or at the Purchaser's direction shall remain the sole and absolute property of the Supplier, notwithstanding delivery and installation, until:-
- 5.1.1 Payment in full for all the Products has been received in cash or cleared funds by the Supplier;
- 5.1.2 and all accounts due from the Purchaser to the Supplier have been paid in full, and until such time the Purchaser shall hold the Products to the order of the Supplier.
- 5.2 Until such time as the Supplier has been paid in full pursuant to Condition 5.1, the Purchaser shall ensure that all Products are stored separately and in such a way as to be readily identifiable as the property of the Supplier and easily removable by the Supplier. The Purchaser shall ensure that the Products are properly maintained in the condition in which they were delivered and shall make good any damage or deterioration.

5.3 In the event of non-payment (in whole or in part) by the Purchaser by the due date the Supplier shall be entitled in addition to all other rights during normal business hours to enter upon any land or premises where the Products may for the time being be and recover possession of them. The Supplier may take such measures as may be reasonably necessary to enter such land or premises and remove the Products.

5.4 Even if property in the Products may not have passed to the Purchaser, the Supplier may maintain an action for the price of the Products once payment has become due to the Supplier, provided that property shall pass to the Purchaser once full payment pursuant to Condition 5.1 has been made to the Supplier.

## 6 Warranties

6.1 All samples, illustrations, colours, drawings and diagrams in the Supplier's catalogues, trade literature and other published matter are of a generally informative nature and approximate only and are subject to change without notice and none of these shall form part of any contract or give rise to any independent or collateral liability of whatsoever nature on the part of the Supplier.

## 7 Limitation of Liability

7.1 Subject to the provisions of Condition 7.4, the liability of the Supplier in respect of any breach of the warranties given in Condition 6, or any defect in or failure of any Products supplied, or any shortage in quantity of Products, or for any loss, injury or damage attributable directly or indirectly thereto shall be limited to (at the Supplier's option):-

7.1.1 repairing defects or failures in the Products or making good the Products by replacement and delivering the repaired or replacement Products to the Purchaser (at the Supplier's expense); or

7.1.2 refunding any sums paid to the Supplier by the Purchaser for the Products, provided that the Supplier is reasonably satisfied that such defects or failure arose solely from the faulty design of the Products, defective materials or workmanship and that the Supplier shall not be liable in respect of defects to, or failure of, the Products caused by misuse or neglect of the Purchaser, accident or wear and tear.

7.2 If a Product fails, is defective or does not comply with the warranties or if there is any shortfall in delivery:-

7.2.1 the Purchaser shall notify the Supplier immediately in writing on discovery and in any case within three days of receipt of the relevant Products, setting out details of the problem, the Products affected and the order number and shall take any measures which the Supplier reasonably requests to prevent further problems or to minimise the damage; and

- 7.2.2 the Purchaser shall (if the Supplier so requests) return the Products to the Supplier or its nominated representative (and the Supplier shall pay the reasonable costs of the return transport provided that it has been given prior notice of, and agreed to, such costs, such agreement not to be unreasonably withheld or delayed).
- 7.3 Subject to Condition 7.6.1, the Purchaser acknowledges that it has not relied on and shall not rely on any oral statement or representations made by the Supplier or by its employees, agents or servants and the Purchaser acknowledges that it has only and will only rely on written data and specifications provided by the Supplier.
- 7.4 The Purchaser agrees that the Supplier shall not be liable:
- 7.4.1 for the cost of substitute goods;
- 7.4.2 for any indirect or consequential loss (other than any provided for in Condition 7.1);
- 7.4.3 for any loss of production;
- 7.4.4 for any loss of profit or goodwill suffered or incurred by the Purchaser or any third parties;
- 7.4.5 for any costs, claims, expenses, loss or damage in excess of the contract price for the Products or part thereof in respect of which a claim is made;
- 7.4.6 in respect of any alterations made to the Products other than those made by the Supplier or its subcontractors;
- 7.4.7 where the Products have been combined with, or incorporated into, other products;
- 7.4.8 for any loss or damage arising from the Purchaser's design error or the Purchaser choosing the wrong or unsuitable Product for its purposes, save where the loss or damage arises solely out of the Supplier's negligence.
- 7.5 Except as otherwise provided in these Conditions, all representations, guarantees, undertakings, conditions or warranties, express or implied, in tort or contract, statutory or otherwise in relation to the Products are hereby expressly excluded.
- 7.6 For the avoidance of doubt, nothing in these Conditions shall exclude or restrict the Supplier's liability:-
- 7.6.1 for any fraudulent misrepresentation made to the Purchaser on which the Purchaser relied in entering into any contract made under these Conditions; or
- 7.6.2 in relation to any statutory implied conditions as to title in the Products; or
- 7.6.3 to any person for death or personal injury to that person resulting from the Supplier's negligence; or

- 7.6.4 under the Consumer Protection Act 1987 (or any replacement or re-enactment of that Act) to a person who has suffered damage (as defined in that Act) caused wholly or partly by a defect in a Product or to a dependant or relative of such a person.
- 7.7 The Purchaser acknowledges that:
- 7.7.1 the price of the Products is based on the limitations of liability set out in this Condition 7;
- 7.7.2 it is neither reasonable nor practicable for the Supplier to be expected to be aware of any potential consequential losses which might arise from the supply of the Products to the Purchaser or of all the end-uses to which the Products will be put;
- 7.7.3 the Supplier would not enter into transactions of this nature without such a limitation and that in the light of the provisions of this Condition 7.7, it is fair and reasonable that the Supplier should seek to limit and restrict its liability to the Purchaser.

## 8 Indemnity

The Purchaser shall (and shall ensure that any third party to whom any Products may subsequently be supplied) comply with all instructions and recommendations of the Supplier in relation to the installation, storage, supply, maintenance and use of the Products, and, except to the extent any of these are caused by the negligence of the Supplier, the Purchaser shall keep the Supplier fully and effectually indemnified (on an after tax basis) against all costs, claims, demands, expenses and liabilities of whatsoever nature and wheresoever arising, including, without limitation, claims for consequential loss and loss of profit which may be made against the Supplier or which the Supplier may sustain, pay or incur arising out of or in connection with the Purchaser's failure so to comply and/or to ensure that any third party to whom any Products have subsequently been supplied so complies.

## 9 Default and Purchaser's Insolvency

- 9.1 In the event that:
- 9.1.1 there is any default or breach of any of the Purchaser's obligations under these Conditions, including without limitation any failure to make any payments due under any contract to which these Conditions apply;
- 9.1.2 the Purchaser shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order is presented or made against the Purchaser or if any order, resolution or petition to wind it up shall be passed or presented or a receiver, administrator, manager or administrative receiver of all or any of its assets shall be appointed, or if the Purchaser is liable to be found unable to pay its debts within the meaning of Insolvency Act 1986 section 123 or undergoes any similar or analogous process in any jurisdiction;

- 9.1.3 the Purchaser's ability to carry out its obligations under these Conditions is prevented or hindered or substantially interfered with for any reason (whether or not within the control of the Purchaser);
- 9.1.4 there is a material change in the control or ownership of the Purchaser,
- 9.2 then, (without prejudice to any other remedies the Supplier might have) outstanding unpaid invoices rendered by the Supplier in respect of the Products shall become immediately payable by the Purchaser and (except where the Supplier exercises its rights under Conditions 9.2.1, 9.2.2 or 9.2.3) invoices in respect of Products ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice, and the Supplier shall be entitled to take any or all of the following steps at its discretion:-
- 9.2.1 refuse to make delivery of any further consignment of any Products agreed to be supplied, including cancelling any outstanding delivery or stopping any Products in transit;
- 9.2.2 cancel or suspend any contract to which these Conditions apply (either in whole or part) by notice in writing to the Purchaser;
- 9.2.3 sell or otherwise dispose of any Products which are the subject of any order by the Purchaser and apply the proceeds of sale to the overdue payment.
- 9.3 In the event any contract to which these Conditions apply is terminated by the Supplier under Condition 9.1 or cancelled by the Purchaser (other than as a result of the Supplier's breach or negligence), the Purchaser shall indemnify the Supplier against all losses arising out of such cancellation or termination. Such losses shall be deemed to include loss of profits, the cost of work in progress, labour costs and the cost of any materials or components purchased by the Supplier for use in manufacturing the Products for the Purchaser which were not so used and which the Supplier will be unable to use in future in the production or manufacture of any other products.
- 9.4 Termination of any contract to which these Conditions apply shall be without prejudice to any rights accrued in favour of either party prior to the date of such termination.
- 10 **Assignment**
- The Purchaser may not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit of such contract to any person.
- 11 **Force Majeure**
- 11.1 If the Supplier is prevented from fulfilling any order or contract within a reasonable time by force majeure, it will notify the Purchaser of the delay. The Supplier shall be under no liability to the Purchaser and shall be entitled to extend the time or times for delivery or otherwise performing such contract for so long as such cause of prevention or delay shall continue.

11.2 If the event of force majeure continues for a period of more than 6 months, both the Purchaser and the Supplier shall have the right on giving notice to the other to terminate any contract to which these Conditions apply.

11.3 For the purpose of these Conditions "force majeure" shall be deemed to be any cause affecting the performance of these Conditions arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Supplier.

## 12 Severability

Except in so far as the context otherwise requires, each provision in these conditions shall be construed as independent of every other provision, and if any provision hereof is or becomes partially or totally invalid or unenforceable then the validity and enforceability of the remaining provisions shall not be affected.

## 13 Entire Agreement

These Conditions constitute the whole agreement and understanding between the parties and supersede all prior discussions and agreements (whether oral or written) between the parties and/or their agents or advisers.

## 14 Waiver

A failure by either party to exercise or enforce any right conferred upon it by these Conditions shall not be deemed to be a waiver of such right or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

## 15 Notices

15.1 Any notice to be given under these Conditions shall be given by delivering the same personally or by sending the same by special delivery or by facsimile transmission to the address as set out on page 1 of these Conditions (in the case of the Purchaser) or the relevant order (in the case of the Supplier) or to such other address as may be notified by the other for this purpose to the party seeking to give such notice.

15.2 Any notice given pursuant to Condition 15.1 shall be deemed to have been received when sent by special delivery 24 hours from the date of posting and shall be deemed when sent by facsimile transmission to be received at the time of transmission provided that the party giving the notice proves that the registered envelope containing the notice was correctly addressed or proves the date, time and correct number of the facsimile transmission.

16                    **Confidentiality**

The Purchaser shall at all times use its best endeavours to keep any confidential information relating to the Products or to the Supplier's business confidential, whether such information is disclosed to it by the Supplier or whether it comes to the Purchaser's knowledge by other means and whether or not it is expressly stated to be confidential or marked as such, and not to disclose it to any other person and shall not use any such confidential information for any purpose other than the performance of its obligations under these Conditions provided that this restriction shall not extend to any confidential information which:

16.1                  the Purchaser is required to disclose to any governmental or other authority or regulatory body;

16.2                  is at the date of the contract to which these Conditions apply, or becomes thereafter, public knowledge through no fault of the Purchaser; or

16.3                  can be shown by the Purchaser, to the reasonable satisfaction of the Supplier, to have been known to the Purchaser prior to its being disclosed to the Purchaser by the Supplier.

17                    **Other Provisions**

Nothing in these Conditions shall be taken to constitute a partnership or the relationship of employer and employee between the parties to these conditions.

18                    **Law**

Any contract to which these Conditions apply (and these Conditions) shall be governed by and construed in accordance with the laws of England and the Supplier and the Purchaser submit to the non-exclusive jurisdiction of the Courts of England.