

## Terms and Conditions for the Supply of Goods by D. Wise Limited

The Customer's attention is drawn in particular to the provisions of clause 10.

### 1. Interpretation

#### 1.1. Definitions:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.3.

**Contract:** the contract between D. Wise and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person who places an order with D. Wise for the purchase of goods from D. Wise.

**D. Wise:** D. Wise Limited (registered in England and Wales with company number 01657444).

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control including, but not limited to, poultry infection, disease or virus (such as, by way of example, Avian influenza or Newcastle disease virus).

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the purchase of goods from D. Wise, as set out in the Customer's purchase order form, the Customer's written acceptance of D. Wise's quotation, or otherwise, as the case may be.

**Order Confirmation:** the order confirmation issued by D. Wise confirming acceptance of an Order.

**Specification:** D. Wise's specification for the Goods or, if an alternate specification is submitted by the Customer and agreed in writing by an authorised representative of D. Wise, such alternative specification.

#### 1.2. Interpretation:

In these Conditions, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a **party** includes its personal representatives, successors or permitted assigns;
- 1.2.3. a reference to a **statute** or **statutory provision** is a reference to such statute or

provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4. any phrase introduced by the terms **including, include, in particular, by way of example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.5. a reference to **writing** or **written** includes faxes and emails.

## 2. **Basis of Contract**

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3. The Order shall only be deemed to be accepted when D. Wise issues an Order Confirmation or, if earlier, when D. Wise delivers the Goods to the Customer (or is deemed to have delivered the Goods pursuant to clause 4.7 (if applicable)), at which point the Contract shall come into existence.

2.4. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of D. Wise which is not set out in the Contract provided that nothing in this clause 2.5 shall exclude or limit D. Wise's liability for fraud or fraudulent misrepresentation.

2.6. A quotation for any goods given by D. Wise shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

## 3. **Goods**

3.1. Any samples, drawings, descriptive matter or advertising produced by D. Wise and any descriptions or illustrations contained in D. Wise's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force and, unless expressly agreed otherwise in writing by an authorised representative of D. Wise the sale of the Goods shall not be a sale by sample.

- 3.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify D. Wise against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by D. Wise in connection with any claim made against the D. Wise for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with D. Wise's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. The Customer shall not alter, remove, conceal or otherwise interfere with any marking, or other identification, or source of origin or product information placed by D. Wise on the Goods or on the labelling or packaging of the Goods.
- 3.4. D. Wise reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### 4. **Delivery and Non-Delivery**

- 4.1. D. Wise shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 4.2. Delivery is completed on D. Wise or its delivery agent making the Goods available for unloading at the Delivery Location.
- 4.3. Any dates quoted by D. Wise for delivery are approximate only, and the time of delivery is not of the essence. Late delivery of the Goods shall not entitle the Customer to reject the Goods and/or terminate the Contract.
- 4.4. The Customer shall be responsible for obtaining all necessary export and import licences which shall be obtained at the Customer's own cost and expense and within sufficient time to allow delivery of the Goods to take place in accordance with the Contract.
- 4.5. If D. Wise fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.6. D. Wise shall have no liability for any delay in delivery of, or failure to deliver, the Goods to the extent that such delay or failure is caused by:
  - 4.6.1. a Force Majeure Event; or
  - 4.6.2. the Customer's failure to provide D. Wise with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or
  - 4.6.3. the Customer's failure to comply with its obligations under the Contract.
- 4.7. If the Customer fails to take delivery of the Goods when they are ready for delivery or D. Wise is unable to deliver the Goods when they are ready for delivery due to the Customer's failure

to provide D. Wise with adequate delivery facilities or delivery instructions that are relevant to the supply of the Goods or the Customer's failure to comply with its obligations under the Contract, then:

- 4.7.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the Business Day after the proposed delivery date which D. Wise notified to the Customer for delivery of the Goods; and
  - 4.7.2. D. Wise may store the Goods until delivery takes place, and charge the Customer for storage and all related costs and expenses (including insurance); and/or
  - 4.7.3. D. Wise may sell or otherwise dispose of part or all of the Goods and (after deducting reasonable storage and selling expenses) apply the proceeds to discharge any sums owing to, or claimed by, D. Wise under the Contract and then account to the Customer for any balance.
- 4.8. The Customer shall not be entitled to reject the Goods if D. Wise delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9. D. Wise may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10. All trays, pallets, pallets and other returnable packaging used in connection with the delivery of the Goods (**Packaging**) shall remain the property of D. Wise and shall be made available for collection by or on behalf of D. Wise upon request by D. Wise. The Customer shall ensure that all Packaging is kept in good condition whilst in its possession or under its control and that liners are removed prior to the collection of any Packaging by or on behalf of D. Wise.

## 5. **Quality**

- 5.1. D. Wise warrants that during the period commencing on delivery of the Goods and ending on the indicated use-by-date of the Goods the Goods shall:
- 5.1.1. conform in all material respects with the Specification;
  - 5.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 5.1.3. be fit for any purpose expressly held out by D. Wise.
- 5.2. Subject to clause 5.4, if:
- 5.2.1. the Customer gives notice in writing to D. Wise within:
    - (a) 2 Business Days of delivery, in the case of a defect that is apparent on

normal visual inspection (including any defect which is as a result of damage in transit); and

(b) in the case of a latent defect, within 2 Business Days of the latent defect having become apparent or should have been apparent,

that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

5.2.2. D. Wise is given a reasonable opportunity of examining such Goods (and any products incorporating any of the Goods);

5.2.3. the Customer (if requested to do so by D. Wise) providing (within 3 Business Days of any such request) such information and documentation evidencing the storage and/or use of the Goods since delivery of the Goods (including, without limitation, temperature, warehouse and manufacturing records); and

5.2.4. the Customer (if asked to do so by D. Wise) promptly returns such Goods (or where the Goods have been incorporated into other products, samples of such products in such volumes requested by D. Wise) to D. Wise's place of business at D. Wise's cost,

D. Wise shall, at its option replace the defective Goods (or the defective part of the Goods) or refund the price of the defective Goods (or the defective part of the Goods) in full.

5.3. If the Customer has not given notice of any defects in the Goods within the relevant time periods set out in clause 5.2, it shall be deemed to have accepted the Goods.

5.4. D. Wise shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.4.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.4.2. the defect arises because the Customer failed to follow D. Wise's oral or written instructions as to the storage and/or use of the Goods or (if there are none) good trade practice regarding the same;

5.4.3. the defect arises as a result of D. Wise following any specification supplied by the Customer;

5.4.4. the Customer alters such Goods without the written consent of D. Wise;

5.4.5. the defect arises as a result of the Customer's wilful damage, negligence, or abnormal storage or working conditions; or

5.4.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.5. Except as provided in this clause 5, and subject always to clause 10.2, D. Wise shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7. These Conditions shall apply to any replacement Goods supplied by D. Wise.
- 5.8. Any Goods that have been replaced by D. Wise shall belong to D. Wise.

**6. Recall/Withdrawal of Goods**

The Customer acknowledges and accepts that D. Wise does not have insurance in place to cover any liabilities of D. Wise that may arise as a result of or in connection with the process of recalling or withdrawing any of the Goods or any product incorporating any of the Goods and that the prices quoted by D. Wise for the Goods reflect the fact that (i) no such insurance is in place; and (ii) in accordance with clause 10.3, D. Wise shall not be liable to the Customer for any costs, losses or expenses suffered or incurred by the Customer as a result of or in connection with the process of recalling or withdrawing any Goods or any product incorporating any of the Goods.

**7. Title and Risk**

- 7.1. The risk in the Goods shall pass to the Customer on completion of Delivery or, if applicable deemed delivery in accordance with clause 4.7.
- 7.2. Title to the Goods shall not pass to the Customer until the earlier of:
  - 7.2.1. D. Wise receives payment in full (in cash or cleared funds) for the Goods and any other goods that D. Wise has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - 7.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3. Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1. hold the Goods on a fiduciary basis as D. Wise's bailee;
  - 7.3.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as D. Wise's property and in accordance with any written or oral instructions by D. Wise;
  - 7.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks

- for their full price from the date of delivery;
- 7.3.5. notify D. Wise immediately if it becomes subject to any of the events listed in clause 9.1.3 or 9.1.4; and
- 7.3.6. give D. Wise such information relating to the Goods as D. Wise may require from time to time.
- 7.4. Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before D. Wise receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1. it does so as principal and not as D. Wise's agent; and
- 7.4.2. title to the Goods shall pass from D. Wise to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1.3 or 9.1.4, or D. Wise reasonably believes that any such event is about to happen and informs the Customer accordingly in writing, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy D. Wise may have, D. Wise may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 8. **Price and Payment**

- 8.1. The price of the Goods shall be:
- 8.1.1. if a price list has been agreed by a director of D. Wise in writing with the Customer, determined in accordance with such price list or such other amount set out in the Order Confirmation;
- 8.1.2. if a price list has not been agreed by a director of D. Wise in writing with the Customer, the price set out in the Order Confirmation.
- 8.2. D. Wise may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1. any factor beyond D. Wise's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 8.2.3. any delay caused by any instructions of the Customer or failure of the Customer to

give D. Wise adequate or accurate information or instructions.

- 8.3. The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to D. Wise at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 8.4. D. Wise may invoice the Customer for the Goods on or at any time after the completion of the delivery or deemed delivery of the Goods.
- 8.5. Unless stated otherwise by D. Wise in the Order Confirmation or otherwise agreed by D. Wise in writing, the Customer shall pay the invoice in full and in cleared funds within 10 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by D. Wise. Time for payment is of the essence.
- 8.6. If the Customer fails to make any payment due to D. Wise under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 1% for each calendar month or part during which payment is overdue. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by D. Wise.
- 8.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). D. Wise may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by D. Wise to the Customer.

## 9. **Termination**

- 9.1. Without limiting its other rights or remedies, D. Wise may terminate this Contract with immediate effect by giving written notice to the Customer if:
  - 9.1.1. the Customer fails to pay any amount due under the Contract on the due date for payment;
  - 9.1.2. the Customer commits a material breach of any other term of the Contract;
  - 9.1.3. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.1.4. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or



- 9.1.5. the Customer's financial position deteriorates to such an extent that in D. Wise's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2. Without limiting its other rights or remedies, D. Wise may suspend provision of the Goods under the Contract or any other contract between the Customer and D. Wise if the Customer becomes subject to any of the events listed in clause 9.1.3 to 9.1.5, or D. Wise reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3. On termination of the Contract for any reason the Customer shall immediately pay to D. Wise all of D. Wise's outstanding unpaid invoices and interest.
- 9.4. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 9.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
10. **Limitation of Liability**
- 10.1. This clause sets out the entire financial liability of D. Wise (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 10.1.1. any breach of the Contract;
- 10.1.2. any use made or resale of the Goods or of any product incorporating the Goods;  
and
- 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2. Nothing in these Conditions shall limit or exclude D. Wise's liability for:
- 10.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.2.2. fraud or fraudulent misrepresentation;
- 10.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.2.4. defective products under the Consumer Protection Act 1987; or
- 10.2.5. any matter in respect of which it would be unlawful for D. Wise to exclude or restrict liability.
- 10.3. Subject to clause 10.2, D. Wise shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- 10.3.1 loss of profit;
  - 10.3.2 loss of revenue;
  - 10.3.3 costs or expenses or losses or liabilities suffered or incurred as a result of or in connection with the process of recalling or withdrawing any Goods or any product incorporating any of the Goods ;
  - 10.3.4 loss of goodwill;
  - 10.3.5 loss of business;
  - 10.3.6 loss of business opportunity;
  - 10.3.7 loss of anticipated saving; or
  - 10.3.8 special, indirect or consequential loss,
- arising under or in connection with the Contract.

10.4. Subject always to clause 10.2, clause 10.3, clause 4.5, clause 4.6 and clause 5.5, D. Wise's total liability to the Customer arising under or in connection with the Contract, whether in contract, tort (including negligence), restitution, breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed a sum equal to the greater of:

- 10.4.1 the price of the Goods; and
- 10.4.2 the insurance cover effected by D. Wise and actually available to meet the claim in question.

10.5 This clause 10 shall survive termination of the Contract.

#### 11. **Customer Indemnity**

The Customer shall indemnify and hold D. Wise harmless against any costs, claims, liabilities, losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses), damages expenses or fines made against or incurred or paid by D. Wise in relation to or in connection with:

- 11.1 the Goods or the use of the goods arising wholly or partly from the negligence, breach of the contract or other breach of duty of the Customer or its employees, agents, consultants or sub-contractors; or
- 11.2 any unfounded or untrue allegation made by the Customer (or any of its agents, employees or officers) that any goods supplied by D. Wise were defective.

This clause 11 shall survive termination of the Contract.

#### 12. **Force Majeure**

12.1 D. Wise shall not be liable for any failure or delay in performing any of its obligations under

this Contract if such delay or failure result from a Force Majeure Event.

- 12.2 If the period of delay or non-performance continues for 20 Business Days, the Customer may terminate this Contract by giving 1 week's written notice to D. Wise.

13. **General**

13.1. **Assignment and other dealings.**

13.1.1. D. Wise may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of D. Wise.

13.2. **Confidentiality.**

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, recipes, production methods or initiatives which are of a confidential nature and have been disclosed by D. Wise to the Customer, its employees, agents or subcontractors, and any other confidential information concerning D. Wise's business or its products or its services which the Customer or any of its employees, agents or subcontractors may obtain. The Customer shall ensure that such employees, agents and subcontractors comply with the obligations of the Customer in this clause 13.2 as if they were the Customer and are subject to obligations of confidentiality corresponding to those which bind the Customer. This clause 13.2 shall survive termination of the Contract.

- 13.3. **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 13.4. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

13.4.1. waive that or any other right or remedy; nor

13.4.2. prevent or restrict the further exercise of that or any other right or remedy.

- 13.5. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.6. **Notices.**

- 13.6.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
- 13.6.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.6.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.7. **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.8. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.9. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.