

CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 "Seller" means Uniplate Limited. (or where appropriate its subsidiary) whose registered office is 16-20 Gerard, Lichfield Road Industrial Estate, Tamworth, Staffordshire B79 7UW
- 1.2 "Buyer" means any person, firm or company placing an order with the Seller.
- 1.3 "Goods" means all goods included in the Buyer's order which are to be subject to and as appropriate designed and manufactured for the Buyer by the Seller.
- 1.4 "Contract" means the contract between the Seller and the Buyer for the manufacture, supply and where appropriate design of the Goods for the Buyer.

2. FORMATION OF CONTRACT

- 2.1 The Contract shall be formed by the Seller's acceptance (however made or communicated) of the Buyer's order and shall be subject to these Conditions.
- 2.2 These Conditions are the sole terms and conditions of any sale by the Seller to the Buyer. Terms and conditions on the Buyer's acceptance of the Goods indicates unqualified acceptance of these Conditions.
- 2.3 The terms of the Contract shall not be varied unless the Seller expressly makes or accepts any variation in writing.
- 2.4 The Contract may only be cancelled by the Buyer with the Seller's written consent and upon cancellation the Seller shall be entitled to invoice the Buyer for all work carried out to date by the Seller under Contract including any cost and expenses incidental to that work.

3. QUOTATIONS AND SAMPLES

- 3.1 The prices, quantities and delivery time stated by the Seller are not binding on the seller. They are commercial estimates only which the Seller will make all reasonable efforts to achieve.
- 3.2 Any samples given by the Seller correspond with the Goods as far as is reasonably possible given the nature of the Goods but this is not a sale by sample and the samples are not to be treated as forming part of the Contract.

4. ORDERS

Orders are accepted by the Seller subject to availability of products and raw materials from suppliers required to fulfil an order.

5. DELIVERY

- 5.1 Goods shall be delivered by a method of transport the Seller thinks suitable to the address requested by the Buyer.
- 5.2 The Seller shall use reasonable efforts to meet delivery dates, but delivery is subject to performance by the Seller's own suppliers and haulage contractors and the Seller shall not be liable to the Buyer for any loss or damage. Whether direct, indirect or consequential if it is delayed in whole or in part in delivering the goods.
- 5.3 If the Buyer refuses or fails to take delivery of the Goods within the Buyer's normal working hours on the date of delivery the Seller may store the Goods at the Buyer's risk and the Buyer shall in addition to the price payable under Clause 7 pay all costs and expenses of such storage and any additional costs of carriage incurred or if the Buyer fails to take delivery after 14 days following the date of delivery the Seller may rescind the Contract and sell the Goods to a third party.
- 5.4 The Buyer must inspect all Goods immediately on delivery. If any Goods are damaged or lost the Buyer must immediately endorse the delivery note accordingly and submit a detailed written claim to the Seller within three days of delivery of the Goods. The Buyer's signature on the delivery note without any such endorsement shall release the Seller from any liability in respect of damage or loss in transit or short delivery.
- 5.5 The Seller may deliver in instalments if it wishes.

6. RISK

- 6.1 Except as otherwise provided in these Conditions of Sale, the risk of loss or damage to the Goods passes to the Buyer upon delivery.
- 6.2 The Buyer shall insure the Goods (with the name of the Seller noted on the policy until title passes pursuant to Clause 9 or until the Seller retakes possession of them) from the time that risk passes and shall produce the policy to the Seller for inspection on request. If the Buyer fails to insure the goods the Seller may do so and recover the cost from the Buyer.

7. PRICE

- 7.1 The price payable for the Goods shall be as stated in the Seller's price list unless otherwise stipulated in writing by the Seller.
- 7.2 The price is exclusive of any storage and additional costs incurred under Clause 5.3. Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods all of which shall be added to the price for the Buyer's account.
- 7.3 The Seller may at any time increase the price payable for the Goods by an amount equal to the increase in the Seller's cost in carrying out its obligations under the Contract (including but not limited to an increase in raw material, labour or energy costs) and a proportionate increase in price required to preserve the Seller's profit margin. Where delivery is by instalments the Seller shall be entitled to increase the price as stated in this clause in respect of any Goods undelivered at that time.

8. PAYMENT

- 8.1 Where the Buyer does not immediately pay for the goods in full then:
 - 8.1.1 the Buyer shall in the case of a credit account pay for the Goods in pounds sterling within 30 days of the date of invoice, or
 - 8.1.2 the Buyer shall in the case of a cash account pay for the Goods in full in pounds sterling within 7 days of the date of invoice.
- 8.2 If payment is late then the Seller may, without prejudice to its other rights, charge interest at a daily rate equivalent to 4% per annum above the base rate of National Westminster Bank plc from time to time in force on the balance outstanding until payment is made in full.
- 8.3 The Buyer shall not be entitled to set off or withhold any credit claimed or payments due to the Seller under this or any other Contract.
- 8.4 Where appropriate the Seller will issue credit notes to the Buyer which shall be offset only against such invoices as the Seller specifies. Cash refunds against credit notes will be given at the Seller's discretion.

9. RETENTION OF TITLE

- 9.1 The Seller retains title to and owns all Goods until it has received payment in full for all sums due under this and all other Contracts. All payments received from the Buyer shall be appropriate to such of the Seller's invoices as the Seller may decide absolute discretion.
- 9.2 Subject to Clause 9.3 the Goods shall be stored separately from any goods belonging to the Buyer or any third party and shall be kept clearly marked as being the Seller's property until all Goods have been fully paid for.
- 9.3 Until title to Goods passes to the Buyer, the Buyer shall be entitled to sell or use Goods in the ordinary course of its business but shall account to the Seller for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds separate from any property of the Buyer or third parties and in the same case of tangible proceeds, property stored and insured.
- 9.4 The Buyer shall not assign, lease, charge or grant rights to third parties over the Goods in any way until they have been paid for by the Buyer.
- 9.5 Where Goods to which title has not yet passed to the Buyer are inextricably mixed with the goods of other persons title to such mixed goods shall vest in the Seller and those persons jointly. Title shall be held as trustees for sale and the proceeds of sale shall be applied first in meeting the expenses of any sale, secondly in satisfying the full invoice price for the Goods owing to the Seller and any third parties pro rata to the sums owed to those persons with the balance (if any) being passed to the Buyer.
- 9.6 If the Buyer does not pay the Seller in full when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against him or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur the Seller shall have the right without prejudice to any other remedies:
 - 9.6.1 to enter without prior notice any premises where Goods owned by it may be and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under this or any other contract;
 - 9.6.2 to require Buyer not to resell or part with possession of any goods owned by the Seller until the Buyer has paid in full sums owed to the Seller under this or any other contract, and
 - 9.6.3 to withhold delivery of any undelivered Goods. Unless the Seller expressly elects otherwise, any contract between it and the Buyer for the supply of Goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this clause.
- 9.7 The Buyer hereby irrevocably licences the Seller to enter any premises occupied by the Buyer where the Seller reasonably believes Goods owned by it are stored at any time to inspect and/or remove such Goods.

10. INTELLECTUAL PROPERTY

- 10.1 The composition of the Goods and the method if their manufacture is a trade secret owned by the Seller. All rights are reserved to the Seller.
- 10.2 Where the Seller has manufactured Goods in advance of the Buyer's order in expectation of a continued course of dealing the Buyer licences the Seller to dispose of such Goods (but not to manufacture more) notwithstanding that they may include the Buyer's trademarks, copyright and get-up.

11. WARRANTY

- 11.1 The Seller warrants that the Goods will be of merchantable quality at the time of delivery and the Seller shall at its option refund the purchase price or replace free of charge any Goods which are defective provided:
 - 11.1.1 the Buyer makes a full inspection of the Goods immediately upon delivery,
 - 11.1.2 the Buyer notifies the Seller forthwith of any defects which it discovers or within a reasonable time after discovery of any defect where that defect was not apparent on reasonable inspection and,
 - 11.1.3 the Goods are either made available to the Seller for inspection or returned to the Seller at the Buyer's own expense as the Seller may request
- 11.2 Subject to Clause 12 the Seller's liability to the Buyer for any breach of warranty shall not exceed the price paid for the Goods in respect of which any claim is made.
- 11.3 Except as provided for in these Conditions there are no warranties which would otherwise be implied by statute or under the common law are hereby excluded.

12. LIABILITY

- 12.1 The Seller shall under no circumstances be liable for and the Buyer shall effect and maintain appropriate insurance in respect of any indirect, special or consequential loss (including loss of anticipated profit or third party claims) howsoever arising either from breach of any of the Seller's obligations under the Contract or from the supply of or intended use of Goods, even if the Seller has been advised of the possibility of such potential loss, except that (only in the case of contracts which are not international supply contracts as defined in Section 26 of the Unfair Contract Terms Act 1977) the Seller shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Seller and nothing in these Conditions of Sale shall have the effect of excluding or limiting any liability of the Seller under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product or to a dependant or relative of such person.
- 12.2 The Buyer shall indemnify the Seller in respect of any claims and proceedings brought against the Seller and any costs, charges and expenses incurred by the Seller in connection with such claims and proceedings to the extent that the Seller has limited or excluded its liability in respect of such claims and proceedings under Clauses 5.2, 11 and 13.

13. REGULATIONS AND LABELLING

- 13.1 The Buyer shall be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any necessary import or export licence, custom clearance, exchange control consent or other authorisations and permits whatsoever and the Buyer shall ensure that the Goods are at all times labelled in such a way as to ensure the safety which a person is entitled to expect from the Goods.
- 13.2 The Seller accepts no responsibility for the content or design of the Buyer's labels or literature where these are provided other than by the Seller. Where the Seller is involved in creating the design or text of such items, it does so as agents of the Buyer.

14. VARIATIONS FROM SPECIFICATION

- 14.1 By their nature chemical products, protective coating and paints vary from precise specification depending on the chemicals and formulation used. The Seller therefore does not warrant precise compliance with technical or data sheets and labels describing them which are not warranted or represented. The Seller warrants that the Goods will be within the tolerances specified by the Seller.
- 14.2 The Seller reserves the right to use alternative materials, chemicals or formulations in preparing the Goods without notice to the Buyer but so that the Goods shall not be rendered unfit for the purpose as communicated to the Seller. Minor changes in the colour, appearance or performance in the Goods as a result shall not be actionable by the Buyer.
- 14.3 Goods supplied by the Seller as "Trial Products" at the request of the Buyer are provided for test purposes only and the Buyer shall be solely responsible for any loss or damage arising from or related to them.

15. DIVISIBILITY

- 15.1 The Seller reserves the right to make delivery by instalments and render a separate invoice in respect of each such instalment;
- 15.2 If the Seller exercises its right to make delivery in instalments in accordance with sub-paragraph (15.1) above, then any delay in delivering or failure to deliver any further instalment or instalments shall not entitle the Buyer to reject the Contract or the delivery of any other instalment or to withhold payment in respect of any instalment previously delivered.

16. FORCE MAJEURE

The Seller shall not be liable to the Buyer for any loss or damage caused to or suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Seller including, but without limitation, fire, labour dispute, flood, act of God, or any circumstances affecting the provision of any of the Goods or part thereof by the Seller's usual source of supply.

17. WAIVER

The failure of the Seller to insist upon the strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such term or condition and shall in no way affect the Seller's right to enforce such provision as a later date.

18. SEVERABILITY

In any of the terms and conditions of the Contract are found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such term or condition shall not affect any other term or condition and all terms and conditions not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

19. GOVERNING LAW

The construction, validity and performance of the Contract is governed by English law and by entering into the Contract the parties submit to the jurisdiction of the English courts.