

STANDARD TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 13.3.

1. INTERPRETATION

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

"Customer" The person, firm or company who purchases the Products from the Seller;

"Incoterms" The 2000 revision of the International Chamber of Commerce Incoterms;

"Seller" Vitaflow International Limited, 11 Century Building, Tower Street, Brunswick Business Park, Liverpool, Merseyside, L3 4BJ;

"Contract" Any contract between the Seller and the Customer for the sale and purchase of the Products, incorporating these conditions;

"Products" Any Products agreed in the Contract to be supplied to the Customer by the Seller (including any part or parts of them).

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 Customer 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 Customer'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 Seller's sales and any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a Director of the Seller. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Products by the Customer from the Seller shall be deemed to be an offer by the Customer to buy Products subject to these conditions.

2.5 Orders placed by the Customer shall be deemed to be accepted by the Seller on receipt of the order. Acceptance of delivery of the Products by the Customer shall be deemed conclusive evidence of the Customer's acceptance of these conditions.

3. DESCRIPTION

3.1 All samples, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 In relation to Customers in the United Kingdom, the Seller shall deliver the Products to the Customer's address as stated in the order unless the Seller has agreed otherwise in writing. In relation to Customers outside the United Kingdom, delivery of the Products shall be EXW (Incoterms).

4.2 Any dates specified by the Seller for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products, nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 30 days.

4.4 If for any reason the Customer fails to accept delivery of any of the Products when they are ready for delivery, or the Seller is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Products shall pass to the Customer (including for loss or damage caused by the Seller's negligence);

(b) the Products shall be deemed to have been delivered; and

(c) the Seller may store the Products until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 The Customer shall provide at its expense adequate and appropriate equipment and manual labour for loading or unloading the Products as appropriate.

4.6 If the Seller delivers to the Customer a quantity of Products of up to 10% more or less than the quantity accepted by the Seller, the Customer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata Contract rate.

4.7 The Seller may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

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

5.2 The Seller shall not be liable for any non-delivery of Products (even if caused by the Seller's negligence) unless the Customer gives written notice to the Seller of the non-delivery within 10 working days of the date when the Products would in the ordinary course of events have been received.

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

6. RISK/TITLE

6.1 The Products are at the risk of the Customer from the time of delivery.

6.2 Ownership of the Products shall not pass to the Customer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Products; and

(b) all other sums which are or which become due to the Seller from the Customer on any account.

6.3 Until ownership of the Products has passed to the Customer, the Customer shall:

(a) hold the Products on a fiduciary basis as the Seller's bailee;

(b) store the Products (at no cost to the Seller) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as the Seller's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and

(d) maintain the Products in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Customer shall produce policy of insurance to the Seller.

6.4 The Customer may resell the Products before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and

(b) any such sale shall be a sale of the Seller's property on the Customer's own behalf and the

Customer shall deal as principal when making such a sale.

6.5 Customers based in the United Kingdom shall refrain from actively seeking customers for the Products outside the United Kingdom.

6.6 The Customer's right to possession of the Products shall terminate immediately if:

(a) the Customer 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(b) the Customer 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 Seller and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

(c) the Customer encumbers or in any way charges any of the Products.

6.7 The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.

6.8 The Customer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.9 Where the Seller is unable to determine whether any Products are the Products in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Products of the kind sold by the Seller to the Customer in the order in which they were invoiced to the Customer.

6.10 On termination of the Contract, howsoever caused, the Seller's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Seller in writing, the price for the Products shall be the price set out in the Seller's price list published on the date of delivery or deemed delivery.

7.2 Unless stated otherwise, the price for the Products shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Products. For the avoidance of doubt, the Customer shall be responsible for all import and export duties incurred in relation to the Products.

7.3 The Seller shall be entitled to increase the price for the Products or its charges in relation to packaging, loading, unloading, carriage and insurance. The Seller shall give the Customer no less than 10 days written notice of such increase.

8. PAYMENT

8.1 The Seller shall be entitled to invoice the Customer for the price of the Products and for the costs referred to in condition 7.2 on or at any time after their despatch by the Seller for delivery to the Customer unless the Customer wrongfully fails to take delivery of the Products, in which case the Seller shall be entitled to invoice the Customer at any time after the Seller has tendered delivery of the Products.

8.2 Subject to condition 8.4, payment of the price for the Products is due within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Buyer.

8.3 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds.

8.4 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Customer.

8.6 In the event of any payment becoming overdue then, without prejudice to any other right or remedy available to it, the Seller may:

(a) suspend all further deliveries on any Contract or Contracts between the Seller and the Customer without notice;

(b) charge interest on the unpaid amount from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Clydesdale Bank plc trading as Yorkshire Bank accruing on a daily basis until payment is made, whether before or after any judgment;

(c) notwithstanding the terms of condition 8.2, treat at its discretion all or any outstanding amounts owed by the Customer (whether such amounts or any of them are due and payable or not) as immediately due and payable.

8.7 If the Customer's payment is returned by the Seller's bank uncollected, the Seller shall charge the Customer an administration fee of £25.

9. WARRANTIES

9.1 Subject to the provisions of sub-Conditions 9.2 and 9.3, the Seller warrants that:

(a) the Seller and/or the Products (as appropriate) shall comply with all relevant food and/or food safety legislation from time to time in force in the United Kingdom including but not exclusively the Food Safety Act 1990 and Part 1 of the Consumer Protection Act 1987; and

(b) on delivery, the Products shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 The Seller shall not be liable for any breach of the warranties contained or implied in these conditions or otherwise implied or incorporated into any Contract (the "Warranties");-

(a) to the extent that the Seller is entitled to rely on the defences provided by section 21 of the Food Safety Act 1990 and/or section 4 of the Consumer Protection Act 1987;

(b) unless the Customer has paid to the Seller all monies payable on or by the date(s) for payment;

(c) unless the Customer has inspected the Products on delivery and gives notice of the alleged non-compliance or alleged defect within 72 hours of the time the Customer discovers or ought to have discovered the defect and provides written confirmation of such notification within 10 days;

(d) unless the Customer gives the Seller an opportunity to inspect the Products;

(e) unless the Customer makes no further use of the relevant Products;

(f) if the Products have been modified, altered or otherwise tampered with in any way other than by a duly authorised representative of the Seller;

(g) if the defect arises from the Customer's misuse, willful damage, neglect, carelessness, lack of proper care, failure to follow any instructions given by the Seller (or any agent, employee, servant or third party who is acting on behalf of or performing any service for the Customer) or other commotion or disturbance of whatever nature whether affecting the Products directly or indirectly as the result of any such matter affecting the place where the Products are situated.

9.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.

9.4 If a valid Warranty claim shall arise which is properly notified to the Seller in accordance with these conditions the Seller will at its option and expense either:-

(a) take back the non-complying or defective Products and replace them as soon as reasonably

practicable or refund the appropriate part of the Contract price; or

(b) require the Customer to retain the Products and grant to the Customer an appropriate allowance against the Contract price; or

(c) take such steps as the Seller considers necessary to make the Products comply; and performance of any one of the above options shall constitute discharge of the Seller's entire liability under the Warranties.

10. RETURN OF NON-DEFECTIVE PRODUCTS

10.1 Non-defective Products may only be returned by the Customer with the prior agreement of the Seller. The Customer must notify the Seller within 72 hours of receipt of the Products that it wishes to return them.

10.2 The Customer, at the Customer's risk and expense, must return the non-defective Products to the Seller in their original condition and in their original packaging. On receipt of the Products and subject to the Seller's reasonable satisfaction that this condition 10.2 has been complied with by the Customer, the Seller shall refund the appropriate part of the Contract Price.

11. PACKAGING

11.1 If the Customer re-sells or otherwise supplies the Products to any third party:

(a) such Products must be re-sold or supplied in the packaging in which they were purchased from the Seller and with any and all identification or other product numbers and/or marks unamended and clearly shown; and

(b) the Customer must not remove, separate or detach from the Products any accompanying inserts or instruction leaflets;

unless otherwise agreed in writing by the Seller.

12. PRODUCT RECALL AND CONSUMER COMPLAINTS

12.1 In the event that at the requirement, instruction, instigation, recommendation or suggestion of any governmental body (whether local or national) examination of any of the Products is required to be undertaken to investigate the fitness for the purpose of such Products and/or the parties otherwise agree that any of the Products should be withdrawn from sale and/or recalled after sale the Seller and the Customer shall bear in equal shares all costs, charges and expenses properly and reasonably incurred by either or both of them arising out of such examination, withdrawal and/or recall but excluding any consequential loss or damage thereby incurred by either or both of them. In the event that any such examination, withdrawal or recall is carried out at the sole instigation of the Seller or the Customer the costs, charges and expenses thereof shall be borne by that party unless otherwise agreed in writing or unless and to the extent that the reason for such examination, withdrawal or recall was attributable to the act or default of the other party in which case such costs charges and expenses shall be borne by that other party.

12.2 The Customer shall maintain a proper and efficient procedure for reporting and dealing with consumer complaints but shall not settle any such complaints or otherwise compromise the position of the Seller in respect thereto without the Seller's prior written consent. Full details of all such complaints must be referred to the Seller forthwith upon notification together with the packaging and/or batch code of the relevant Products without which no complaint shall be considered.

13. LIMITATION OF LIABILITY

13.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 Nothing in these conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence, under section 2(3), Consumer Protection Act 1987, for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability or for fraud or fraudulent misrepresentation.

13.3 Subject to condition 9.3 and condition 13.2:

(a) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

(b) the Seller shall not be liable to the Customer for loss of profit, loss of business, loss of revenue, or depletion of goodwill in each case whether direct or indirect (howsoever caused) which arise out of or in connection with the Contract;

(c) the Seller shall not be liable to the Customer for any indirect losses (howsoever caused) which arise out of or in connection with the Contract.

14. ASSIGNMENT

14.1 The Seller may assign the Contract or any part of it to any person, firm or Company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

15. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller 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 60 days, the Customer shall be entitled to give notice in writing to the Seller to terminate the Contract.

16. GENERAL

16.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 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.

17. NOTICES

Any notices to be served hereunder shall be delivered by hand or sent first class post or facsimile to the relevant party at its last known address. Notice shall be deemed served on delivery if delivered by hand, on the 3rd working day after posting if posted or 24 hours after despatch by facsimile (weekends and bank holidays excepted).