

TERMS AND CONDITIONS OF TRADING

These terms and conditions of trading (the "Terms") apply to all orders of product (the "Goods") from the Customer to Cherwell Packaging Limited (the "Company"). Where the Company supplies Goods to a Customer, who then re-sells these Goods to a third party, the Customer is deemed an "Intermediary". All terms and conditions shall equally apply to an Intermediary as to a Customer, except where specifically provided.

1. Orders

- (a) All orders are subject to confirmation by the Company and are not binding on the Company until such confirmation has been given or the goods dispatched.
- (b) The goods are offered subject to availability.
- (c) All orders are subject to the minimum quantity requirements notified to the Customer from time to time by the Company.

2. Prices

- (a) Unless otherwise agreed in writing by the Company, prices (to which VAT will be added) are those on the Company's current price list relevant to the Goods on the day of despatch from the Company's depot.
- (b) Prices include delivery costs. The Company reserves the right to make an extra charge for special deliveries, outside the scope of its normal operation.

3. Payment

- (a) Unless otherwise agreed in writing by the Company, payment is due 30 days from end of the month of the date of invoice ("the due date"). Time is of the essence for payment.
- (b) If payment is not made by the due date the Company may at its discretion (without prejudice to any other rights) charge interest on any unpaid amount at the daily equivalent rate of 3% per annum above LloydsTSB Bank plc base rate.
- (c) Credit terms are discretionary and may be withdrawn by the Company at any time.

4. Delivery

- (a) Unless otherwise agreed in writing by the Company, delivery shall take place when the goods are unloaded at the Customer's agreed premises.
- (b) Customer must provide documentary verification of the quantity of goods received in cases by product or provide this in kind by an authorised signatory verifying the Company's delivery note.
- (c) The Company will endeavour to deliver the quantity of Goods ordered by the Customer. The Customer may not reject the Goods or part because of short delivery.
- (d) The Company may invoice the Customer for its reasonable additional costs (including storage) arising from any variation or delay in delivery occasioned by the Customer's instructions or default. Clause 3 shall apply to such costs.
- (e) The Company may deliver the Goods by instalments and in such cases each instalment shall constitute a separate order and any failure or defect in delivery of any one or more instalments shall not entitle the Customer to repudiate the order as a whole nor to cancel subsequent instalment(s).

5. Examinations

- (a) The Customer shall immediately upon delivery examine the Goods and shall notify the Company in writing of any apparent damage, defect or shortage within 48 hours following delivery. Any claims will be subject to the documentary verification referred to in clause 4(b).
- (b) Any other claims must be made by the Customer to the Company within 7 days of such claim becoming apparent and in any event within 1 month of delivery.

6. Sample and Description

- (a) Contracts between the parties shall not be regarded as sales by sample, even if samples have been provided.
- (b) The Goods will meet their general description as shown on the delivery note but the Company may change composition, packaging, and other such matters from time to time, including such changes made by the original manufacturer of the Goods provided.
- (c) Descriptions on the packaging of the Goods supplied shall not constitute representations or terms between the parties, and, in particular, any quantity shown on any packaging or invoice or delivery note shall be interpreted for the purpose of contracts between the parties as subject to the customary tolerances.

7. Warranty

- (a) To the fullest extent legally permissible, all conditions and warranties whether express or implied by statute, common law, trade usage or otherwise are excluded, save as set out expressly in these Terms.
- (b) The Company warrants that on delivery the Goods are reasonably free from defects in materials and workmanship. All other warranties and conditions whether express or implied by statute or otherwise in respect of defect, design, quality, workmanship or fitness for purpose of the Goods are excluded.
- (c) The Company's liability under these terms shall only arise if any claim is notified in accordance with Clause 5 above.
- (d) Subject to clause 7(c) the Company shall discharge in full any proven liability to the Customer arising under the warranties set out in Clause 6 or Clause 7(b) above or otherwise as a result of breach of the Terms in full by replacing the Goods at its discretion and the Customer shall accept such replacement in satisfaction of any claims it may have in respect of the defects.

8. Title and Risk

- (a) Goods shall be at the risk of the Customer from the time of delivery to the Customer.
- (b) Property in the Goods shall pass to the Customer when the Company receives full payment of:

- a. the price of the Goods; and
- b. all other sums owed by the Customer to the Company.

Until that date the Customer shall hold the Goods as a fiduciary for the Company and shall store and mark the Goods so that they are readily identifiable as the property of the Company and shall not mix them with any other Goods; provided however that the Customer may sell the Goods to third parties in the ordinary course of its business.

- (c) If, the Company notifies the Customer that:
 - a. the Customer is in default for more than 7 days in the payment of any sum due to the Company; or
 - b. it has bona fide doubts as to the solvency of the Customer; or
 - c. any of the events referred to in Clause 9(b)-(c) occurs; or
 - d. any order is terminated for any reason

then the Customer's rights to deal with Goods, property in which remains with the Company ("Cherwell's Goods") in the ordinary course of business, shall terminate and the Company shall be entitled;

- a. to repossess Cherwell's Goods and
- b. to be paid any sums which the Customer may hold as its fiduciary.

- (d) For the purposes of repossessing Cherwell's Goods or establishing that the Customer has complied with the terms of this clause, the Company shall be entitled to enter any

TERMS AND CONDITIONS OF TRADING

premises or vehicles in the occupation of the Customer or to which the Customer has access, where Cherwell's Goods may be believed to be. The Customer shall facilitate such access and repossession.

- (e) The Customer shall not pledge or allow any lien or charge to arise over Cherwell's Goods or the documents of title and shall only deal with them in the ordinary course of business.

9. Dispensers

- (a) Where Dispensers are provided free on loan by the Company to the Customer, the Customer shall agree to the terms and conditions contained within the Company's Dispenser Loan Agreement. Form ("the Form") and be a signatory to this Form.
- (b) Where Dispensers are indirectly supplied by the Company to a third party through an Intermediary, in the event of any breach of the terms and conditions set out in this Agreement by the Intermediary, the Intermediary shall:
 - a. use its best endeavors to procure the return to the Company of any dispensers supplied by the Company free on loan to the Intermediary's customers;
 - b. indemnify and keep indemnified the Company against all costs, charges, liabilities, claims and claimants incurred or arising in respect of the removal to the Company of such dispensers.

10. Termination

Without prejudice to any other rights and remedies, the Company shall be entitled to terminate any order if:

- (a) The Customer is in breach of any of the terms or purports to cancel any order between the Company and the Customer; and/or
- (b) The Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; and/or
- (c) Any step, action, application or proceeding is taken by or in respect of the Customer in relation to the whole or any part of its undertaking for:
 - a. a voluntary arrangement or composition or re-construction of its debts;
 - b. winding up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy; and/or
- (d) Any event occurs or step, action, application or proceeding is taken by or with respect to the Customer in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in sub-clauses 10(c) (a) and (b) above.

If the Company terminates any order as a result of this clause, without prejudice to its other rights, any sums outstanding in respect of that order shall be immediately payable.

11. Customer's Responsibilities

- (a) The Customer shall co-operate fully in any product hold or recall campaign organised by the Company and assist the Company in recovering affected Goods and their sale to third parties.
- (b) All information received by the Customer from the Company in respect of the Company's business shall be deemed to be confidential and the Customer shall not use or disclose such information without the Company's express authorisation unless it is publicly known (otherwise than by breach of this obligation).

12. Force Majeure

The Company shall not be liable in any way for loss, damage or expense arising directly or indirectly from any failure or delay in performing any obligation under these Terms caused by any circumstance beyond its reasonable control, which shall be deemed to include without limitation industrial disputes whether or not the Company or the Customer are directly involved.

13. Waiver

No waiver by the Company or any breach of the Customer's obligations hereunder shall constitute a waiver of any other prior or subsequent breach or obligation and the Company's rights shall not be affected by any delay, failure, forbearance or omission in enforcing any obligation of the Customer.

14. Non-assignment

The Customer may not assign, transfer or sub-contract the benefit or burden of an order or any part without the prior written consent of the Company.

15. Survival of Provisions

Any of these Terms which are intended to have effect after the date of expiration or determination of this contract shall survive such expiration or determination howsoever arising.

16. Severability

- (a) The partial or complete invalidity of any of these Terms shall not affect the validity of any others.
- (b) All remedies available to either party for breach of contract are cumulative and may be exercised concurrently or separately.

17. Proper Law

This contract shall be subject to English Law.

18. Notices

Unless otherwise agreed in writing, all notices required to be given by the Customer to the Company in respect of this contract shall not be effective unless in writing and sent to the Company at its address. Notices may also be given by fax confirmed by first class post on the date of transmission.

19. Headings

The headings to these Terms are for convenience of reference only and shall have no effect on the construction of the Terms.