

TERMS AND CONDITIONS OF TRADING

PRELIMINARY

(A) In these Conditions, the following definitions apply:

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).

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

Customer: the person or firm who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given in clause 16. **Goods:** the Goods (or any part of them) set out in the Order. **Order:** the Customer's order for the Goods.

Supplier: Harvey & Brockless Limited, a company registered in England and Wales with number 01442472 and having its registered office at 44-54 Stewarts Road, London SW8 4DF.

- (B) These Conditions apply to the Contract and all other dealings between the Supplier and the Customer 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 and may only be supplemented or amended with the written consent of the Supplier.
- (C) The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- (D) The Order shall only be deemed to be accepted when the Supplier confirms that the Order has been processed in accordance with these Conditions, at which point the Contract shall come into existence.
- (E) These Conditions shall form part of every contract of sale of Goods entered into by the Supplier and the Customer and the placing of an Order shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.
- (F) The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- (G) A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of ten Business Days from its date of issue

1 - SAMPLE, DESCRIPTION AND SPECIFICATION

- 1.1 The Contract shall not be a sale by sample even if samples have been provided.
- 1.2 No description or other particulars which are contained in promotional materials or which otherwise ideal with matters other than the general nature of the Goods shall bind the Supplier.
- 1.3 The Supplier reserves the right to amend the description of the Goods if required by any applicable statutory or regulatory requirements.
- 1.4 The Supplier shall communicate any change in the specifications for any Goods or their manufacture in accordance with the Supplier's product change notification process. The Supplier shall use reasonable endeavors to communicate any relevant change using the contact information provided to it by the Customer. The Supplier shall not be under any obligation to check or update any such contact information. The Customer shall also regularly check the Supplier's website for details of any relevant changes.
- 1.5 The product change notification process is as follows:
 - EDI platforms are updated by the Supplier's Technical Department with the relevant information and according to the change
 - Customers are contacted in writing by the Supplier's Account Managers and the new specification is sent to the Customer via email
 - The Marketing Manager updates the website with a notice informing customers about the changes.
- 1.6 Customers shall be deemed to have accepted any such changes unless, within five (5) days following notice from The Supplier, the Customer informs The Supplier that such changes are not acceptable. If Customer informs The Supplier that such changes are not acceptable, The Supplier may by notice to Customer either (a) where at all possible continue to supply the Goods in accordance with the original specifications and manufacturing procedures, or (b) propose alternative products, or (c) terminate any Contract with respect to such Goods on a date specified by The Supplier in a notice of termination. The supplier shall not be liable for any loss incurred by Customer caused by any change in the specifications for any Goods or their manufacture after Customer is deemed to have accepted any such change.
- 1.7 The Supplier shall not be liable for any deficiency related to product specifications provided by third party suppliers and reserve the right to amend this process as appropriate.
- 1.8 Orders placed are processed in accordance with this and all other relevant Supplier Terms and Conditions.

2 - PRICES

- 2.1 The price of the Goods shall be the price of the Goods in force at the date upon which the Goods are delivered. Prices quoted by the Supplier are based upon its prices in force at the date of quotation or, if none, the Supplier's price list in force when the order is accepted. Prior to delivery, the Supplier may vary prices reasonably to reflect any increase in the cost of supplying the Goods or the publication of a new price list occurring after quotation.
- 2.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 2.3 The price of the Goods is exclusive of the costs and charges of insurance of the Goods, and in the case of Goods being dispatched overseas, any applicable duties, transport, storage or other costs and charges, which shall be invoiced to the Customer.

3 - PAYMENT

- 3.1 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 3.2 Payment for the Goods must be received in full no later than end-of-month in which the Goods are delivered and invoiced plus 30 days (the Due Date) or before the last day of your given credit period.
- 3.3 The Customer shall pay all amounts due under the Contract in full without any deduction or with holding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier 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 the Supplier to the Customer.
- 3.4 The Supplier may sue for any sum outstanding under the Contract even if property in the Goods has not passed to the Customer.
- 3.5 If the Customer fails to make any payment by the Due Date then, without affecting any other rights which it may have, the Supplier may:
- (a) suspend any further deliveries of Goods; and/or
 - (b) deduct any outstanding sums from any sums owed by the Supplier to the Customer under contract or otherwise; and/or
 - (c) charge interest on any unpaid amount at a rate of 8% above the Bank of England base rate from time to time to run from day to day (both before and after any judgement) from the due date until payment is received; and/or
 - (d) treat the Contract as repudiated and terminated; and/or
 - (e) resell any Goods not yet delivered to the Customer; and/or
 - (f) retain any sums paid as deposit for the Goods.
- 3.6 If the Customer pays any sums under the Contract without identifying the Goods in respect of which that payment is made the Supplier may appropriate such payment to any sums owed to it under the Contract.
- 3.7 Payment for the Goods may be made by bank transfer to the Supplier's bank account nominated in writing, credit or debit card or by sterling cheque drawn on a UK bank account. If Goods are paid for by bank transfer, payment must include all bank transfer charges. Settlement by bank transfer or cheque shall not be deemed paid until the Supplier's account is credited with cleared funds. Where settlement by cheque requires representation, the Supplier may make an additional charge of £50 to cover any costs incurred as a result.
- 3.8 Special payment terms may apply in the case of any Goods to be dispatched overseas.
- 3.9 In the event that payment is not received within the stated credit terms then any agreed retrospective discount and or rebate may become void.
- 3.10 Time of payment is of the essence.

4 - DELIVERY

- 4.1 The Supplier shall deliver the Goods to the agreed location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready. Alternatively, the Customer may collect the Goods from the Supplier's premises. Special arrangements may apply in the case of any Goods to be sent overseas.

- 4.2 Delivery of the Goods shall normally be completed on the Goods' arrival at the Delivery Location or collection of the Goods by the Customer as applicable.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take or accept delivery of the Goods within two Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods, at the Customer's cost and risk, until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If the Customer has not taken or accepted delivery of the Goods within four Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Supplier will use reasonable endeavors to deliver in the agreed quantities but shall not be liable for any variation in quantity (any such variation shall be reflected in the price) or any delay in delivery whether, in each case, arising out of the Supplier's negligence or otherwise.
- 4.8 The Supplier may deliver by instalments in such quantities as it may reasonably decide: such instalments shall be separate obligations and no breach in respect of one or more of them shall entitle the Customer to cancel any subsequent instalment or repudiate the Contract as a whole.
- 4.9 The Customer may not terminate the Contract by reason of any delay in delivery and/or any short delivery.
- 4.10 No right or title in any packaging, container or transportation equipment which are used to assist in the delivering of the Goods shall pass or vest in the Customer. Any such items (such as plastic crates but not cardboard boxes) shall be returned to the Supplier within seven days of delivery in substantially the same condition as when delivered. If any such items are not returned, the Supplier may invoice the Customer for their replacement cost.
- 4.11 The Supplier reserves the right not to make deliveries for small orders of Goods.
- 4.12 Subject always to clause 12, if the Supplier accepts any cancellation, variation, or suspension of the Contract by the Customer such acceptance is subject to reimbursement to the Supplier of all costs incurred by it in connection with the Contract.

5 - EXAMINATION OF GOODS AND CLAIMS

- 5.1 Immediately on delivery the Customer shall examine the Goods.
- 5.2 The Customer shall notify the Supplier of any claims which it may have in respect of any defect or shortage relating to the Goods within 48 hours of delivery.

6 - RISK AND TITLE

- 6.1 Risk in the Goods shall pass to the Customer on delivery
- 6.2 Title to and ownership of the Goods delivered under the Contract shall pass to the Customer on receipt by the Supplier in full of:
- (a) the price of those Goods; and
 - (b) all other sums due to the Supplier from the Customer under the Contract; and
 - (c) all sums which are or to become due to the Supplier from the Customer on any account or contract whatsoever.
- 6.3 Until title to and ownership of the Goods passes to the Customer, the Customer shall:
- (a) hold such Goods (Supplier's Goods) (or the proceeds of sale thereof) as a fiduciary for the Supplier (in which full title to such Goods shall remain);
 - (b) store and mark the Supplier's Goods in such a way that they are readily identifiable as the Supplier's property and shall not mix them with other Goods;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Supplier's Goods;
 - (d) not pledge or allow any lien, charge or other interest to arise over the Supplier's Goods or their documents of title;
 - (e) maintain the Supplier's Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier, and, on request, shall promptly produce the policy of insurance to the Supplier;
 - (f) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and
 - (g) give the Supplier such information relating to the Supplier's Goods as the Supplier may require from time to time.
- 6.4 The Customer may resell the Supplier's Goods 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 be a sale of the Supplier's property by the Customer and the Customer shall deal as principal when making such a sale.
- 6.5 If:
- (a) The Supplier notifies the Customer that:
 - (i) the Customer is in default for more than seven days in the payment of any sum due to the Supplier; or
 - (ii) it has bona fide doubts as to the solvency of the Customer; or
 - (b) any of the events referred to in clause 9.2 occurs: or
 - (c) the Contract is terminated for any reason,
Then the Customer's rights to possession of, and to deal with the Supplier's Goods in the ordinary course of business shall immediately terminate and the Supplier shall be entitled:
 - (a) to repossess the Supplier's Goods; and
 - (b) to be paid any sums which the Customer may hold as it's fiduciary.
- 6.6 For the purpose of repossessing Supplier's Goods under clause 6.5, the Supplier may enter any premises or vehicles where it believes such Goods to be which are in the occupation of the Customer or to which the Customer has access. The Customer shall take all necessary steps to facilitate repossession of the Supplier's Goods and pending such repossession, the Customer shall continue to store maintain and insure the Supplier's Goods in accordance with clause 6.3.

- 6.7 The Supplier shall be entitled to recover payment for the Supplier's Goods notwithstanding that ownership of any of the Supplier's Goods has not passed from the Supplier to the Customer.
- 6.8 Where the Supplier is unable to determine whether any Goods are the Goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.

7 - WARRANTY AND LIMITATION OF LIABILITY

- 7.1 The Supplier warrants that on delivery the Goods are reasonably free from defects in materials and are of reasonable quality. The Supplier will discharge in full any liability under the warranty by replacing the relevant Goods.
- 7.2 Subject to clause 7.4 below, no liability of the Supplier to the Customer whether under the Contract or otherwise in connection with the supply shall arise unless the claim is notified in accordance with clause 5 and no liability which does so arise shall:
- (a) exceed the value of the Goods in respect of which the claim is made; or
 - (b) extend to any loss of profit or of goodwill or any which is indirect, consequential or economic or which, whether or not in practice it arises as a direct and natural result of a breach of the Contract, was not at the time the Contract was made a reasonable foreseeable result of such a breach.
- 7.3 Subject to clause 7.4 below and save as is expressly set out in the Contract, all warranties or conditions of the Supplier, whether express or implied by statute or otherwise, are excluded and in no circumstances shall the Supplier be liable for any loss or damage arising out of or relating to the Goods in any way whatsoever, whether direct or indirect (including loss of profit and goodwill) and whether arising through negligence, misrepresentation, breach of any statutory duty, or any condition, warranty or other term (express or implied) or any contract or otherwise.
- 7.4 Nothing in the Contract shall limit the Supplier's liability in respect of any claim for death or personal injury caused by the negligence of the Supplier, or any other liability which may not be limited or excluded at law.
- 7.5 The parties agree that these restrictions are reasonable in light of their relationship and available of insurance against such risks.

8 - CUSTOMER'S RESPONSIBILITIES AND CONDUCT OF CLAIMS

- 8.1 The Customer is responsible for transporting, storing and using the Goods in accordance with instructions supplied by the Supplier who shall not be responsible for any loss or claim arising from any failure to comply with such instructions.
- 8.2 The Customer shall co-operate fully in any product recall campaign organised by the Supplier and give all reasonable assistance requested by the Supplier in recovering the Goods which are subject of such a campaign and preventing their sale to third parties.
- 8.3 If the Customer becomes aware that any third party has made or appears to make any claim in respect of the Goods (including, without limitation, as to defects in them or rights infringed by them) it shall immediately inform the Supplier and shall afford to the Supplier all assistance (including, without limitation, permitting the Supplier to have conduct of any proceedings) which the Supplier may require to enforce its rights and defend such claim.

9 - TERMINATION

- 9.1 If the Customer breaches any terms of, or purports to cancel, the Contract with the Supplier or becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Customer is about to breach any such terms or cancel the Contract or become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer and repossess any Goods which have not been paid for, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clauses 9.2(a) to(h) (inclusive) above;
 - (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (m) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10 - CONFIDENTIALITY AND INTELLECTUAL PROPERTY

The Customer shall ensure that, without the Supplier's consent:

- (a) no confidential information of the Supplier (including, without limitation, that which relates to the design of the Goods) of which it becomes aware (which information shall at all times remain the property of the Supplier) shall be copied, used, or disclosed and that all materials containing such information shall be returned to the Supplier at the end of the Contract; and
- (b) any trade names or marks that the Supplier uses or in connection with the Goods are not supplemented by any mark of the Customer, interfered with or obscured.

11 - WAIVER

No waiver by the Supplier of any breach of the Customer's obligations shall constitute a waiver of any prior or subsequent breach and the Supplier's rights shall not be affected by any delay, failure, or omission to enforce or express forbearance granted in respect of any obligation of the Customer.

12 - CANCELLATION OR VARIATION

- 12.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives). No order which has been submitted to and accepted by the Supplier may be cancelled or amended at any time by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation.

13 - ASSIGNMENT AND THIRD PARTY RIGHTS

- 13.1 The Customer may not assign, transfer or sub-contract any benefit or burden it has under the Contract to any other party without the prior written consent of the Supplier. The Supplier may assign, transfer or sub-contract any benefit or burden it has under the Contract to any third party.
- 13.2 A person who is not a party to a Contract shall not have any rights under or in connection with it.

14 - SURVIVAL OF PROVISIONS

Termination of the Contract, for whatever reason, shall not affect any of its provisions which are intended to continue to have effect after it has come to an end.

15 - SEVERABILITY AND CUMULATION OF REMEDIES

- 15.1 If the whole or any part of any clause(s) of the Contract is invalid, that invalidity shall not affect the validity of any other provision.
- 15.2 Rights and remedies of the Supplier under the Contract are independent, cumulative and without prejudice to its rights under general law.

16 - FORCE MAJEURE

The Supplier 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 the Contract caused by any circumstances beyond its control, which shall without limiting the generality of the term, be deemed to include war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown, or damage to machinery or equipment, fire, flood, act of god, strike, lock-out or other industrial disputes (whether or not involving employees of the Supplier) or shortage of materials at the market rates existing when the Contract is made, legislative or administrative interference. On the occurrence of any such event, the Supplier may at its discretion perform, suspend performance of or terminate the Contract.

17 - GOVERNING LAW

These Conditions and the Contract, and any dispute or claim arising out of or in connection with them or it or their or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

18 - NOTICES

- 18.1** No notice to be given to the Supplier shall be effective unless given in writing delivered by first class post or by hand or by facsimile transmission (subject to confirmation by post within three days) and received by the Supplier at its address stated below or such other address as the Supplier may notify to the Customer in writing at its address for service.
- 18.2** Any notice or confirmation given by post which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope (properly addressed and prepaid first class) containing that notice is posted. Any notice to be given by hand or by facsimile transmission after 6.00 pm on any Business Day shall, if given effectively, be deemed to have been given at 9.00 am the following Business Day.

19 - DISTANCE CONTRACTS

If the Customer is a consumer purchasing Goods under a distance contract, as those terms are defined in the Consumer Protection (Distance Selling) Regulations 2000 (the Distance Selling Regulations) these Conditions shall be subject to the provisions of the Distance Selling Regulations and in the event of there being any conflict between these Conditions and the Distance Selling Regulations, the Distance Selling Regulations shall prevail.

20 - HEADINGS

Headings to these Conditions are for convenience only and shall not effect their construction.