

TERMS AND CONDITIONS OF PURCHASE

For the Purchase of Products

By

WHERRY & SONS LIMITED

Company number: 00104785

Registered office: The Old School, High Street, Rippingale, Lincolnshire, PE10 0SR

TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 Definitions:

"Business Day"	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Conditions"	means the terms and conditions set out in this document.
"Contract"	means the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.
"Customer"	means Wherry & Sons Limited (registered in England and Wales with company number 00104785).
"Delivery Date"	means the date specified in the Order.
"Delivery Location"	means the address for delivery of Goods as set out in the Order.
"Force Majeure Event"	means any circumstance not within a party's reasonable control including, without limitation, acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lock-outs.
"Goods"	means the goods (or any part of them) set out in the Order.
"Order"	means the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's quotation.
"Specification"	means any specification for the Goods that is agreed in writing by the Customer and the Supplier.
"Supplier"	means the supplier of the Goods to the Customer.

1.2 Interpretation:

- 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 and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to **writing** or **written** includes fax and email.

2. **BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, 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.

2.3 The Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order and the Supplier doing an act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.4 The Supplier 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.

3. **THE GOODS**

3.1 The Supplier shall ensure that the Goods:

3.1.1 correspond with their description and any applicable Specification;

3.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 are safe for human consumption and free of contamination;

3.1.4 comply with all applicable statutory and regulatory requirements relating to the production, labelling, packaging, storage, handling, consumption and delivery of the Goods; and

3.1.5 are produced using process and procedures which comply with all relevant law and regulation including, without limitation, anti-slavery laws.

3.2 The Supplier shall ensure that at all times it had and maintains all the licences, permissions, authorisations, consents and permits that it needs to produce, sell and carry out its other obligations under the Contract.

3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's warranties and undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. **DELIVERY**

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

4.1.2 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the batch or consignment number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by batch instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods on the Delivery Date, at the Delivery Location, and during the Customer's normal business hours, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 If the Supplier delivers more than 105% of the quantity of the Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of the Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods, taking into account the current market value of the Goods delivered.

4.5 The Supplier shall not deliver the Goods in batch instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by batch instalments, they may be invoiced and paid for separately.

5. **CUSTOMER REMEDIES**

5.1 If the Goods are not delivered on the Delivery Date, or do not comply with the warranties and undertakings set out in clause 3.1 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following rights and remedies:

5.1.1 to terminate the Contract;

5.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

5.1.3 to require the Supplier to replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

5.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

5.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and

5.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 These Conditions shall apply to any replacement Goods supplied by the Supplier.

5.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. **TITLE AND RISK**

Title and risk in the Goods shall pass to the Customer on completion of delivery.

7. **PRICE AND PAYMENT**

7.1 The price of the Goods shall be the price set out in the Order.

7.2 The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.

7.3 No extra charges shall be effective unless agreed in writing with the Customer.

7.4 The Supplier may invoice the Customer for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Customer's order number, the Supplier's VAT registration number and any supporting documents that the Customer may reasonably require.

7.5 The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice or as mutually agreed in writing. Payment shall be made to the bank account nominated in writing by the Supplier.

7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

7.8 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

8. **INDEMNITY**

8.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

8.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the production, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- 8.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects/contamination in Goods, to the extent that the defects/contamination in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 8.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 8.2 This clause 8 shall survive termination of the Contract.

9. **INSURANCE**

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. **TERMINATION**

- 10.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 10.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 10.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- 10.2.2 the Supplier 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), obtaining a moratorium, 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;
- 10.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, 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;
- 10.2.4 the Supplier suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.2.5 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

10.3 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.

10.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. **FORCE MAJEURE**

11.1 Provided it has complied with clause 11.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement (except for the Customer's obligation to make payment of sums due in accordance with clause 7) by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

11.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

11.3 The Affected Party shall as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

11.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the party not affected by the Force Majeure Event may terminate this agreement by giving written notice to the Affected Party.

12. **ASSIGNMENT**

12.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

12.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, delegate, 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 the Supplier.

13. **ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14. **VARIATION**

Except as set out in these Conditions, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

15. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. **SEVERANCE**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 16 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. **NOTICES**

17.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax or email.

17.2 Any notice shall be deemed to have been received:

17.2.1 if delivered by hand, on signature of a delivery receipt;

17.2.2 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 or at the time recorded by the delivery service; and

17.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2.3, business hours mean 9.00am to 5.00pm on a Business Day.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. **THIRD PARTY RIGHTS**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19. **GOVERNING LAW AND JURISDICTION**

19.1 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.

19.2 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.