

# CONCEPT DISTRIBUTION LIMITED

## TERMS AND CONDITIONS



### 1. Definitions

" Buyer " means any person , firm or company placing an order with the seller .

" Conditions " means these terms and conditions of sale and supply .

" Contract " means any contract between the seller and the buyer for the sale of goods or supply of services to the buyer.

" Export Contract " means any contract for the supply of goods which is an international supply contract as defined in section 26 of the unfair contract terms act 1977.

" Goods " means any goods supplied by the seller to the buyer .

" Seller " means Concept Distribution Limited .

" Services " means any service performed by the seller for the buyer .

In these conditions the masculine will include the feminine and neuter and vice versa and the singular shall include the plural.

Headings are for convenience only and shall not form part of these conditions .

### 2. Existence of Contract

a) Unless otherwise agreed in writing between the buyer and seller , these conditions shall apply to all contracts to the exclusion of all other terms and conditions including any terms and conditions which the buyer may purport to apply under any purchase order or similar document .

b) These conditions shall also apply to any future oral or written contract save to the extent that the subject matter herein is in conflict with any written agreement signed by the seller and governing the contract , whereon the provisions of such written agreement shall prevail .

c) No verbal representation or verbal statement by an employee or agent of the seller shall form part of the contract nor shall any such verbal representation or statement be treated as constituting a representation on the part of the seller or a term of the contract unless such representation or statement shall be confirmed in writing .

### 3. Amendments and Cancellation

a) The terms of the contract shall not be varied unless the seller expressly makes or accepts any variation in writing.

b) The contract may only be cancelled by the buyer with the seller's prior written consent and upon cancellation the seller shall be entitled to invoice the buyer for all goods and services provided to the buyer upto the point of cancellation .

### 4. Quantities

a) Any quantities stated by the seller are not binding on the seller . They are commercial estimates only and the seller will make all reasonable efforts to achieve .

### 5. Samples , Telephone Orders and Advice

a) If the contract is a sale by sample contract , the goods will correspond with the sample as far as reasonably possible given the nature of the goods .

b) The seller is prepared to receive the buyer's order by telephone but will be under no liability whatsoever for any error or omission claimed by the buyer to have arisen in relation to a telephone order and the contract shall be deemed to relate to the goods actually supplied .

### 6. Orders

Orders are accepted by the seller upon delivery of the goods or the supply of the services the subject of the order unless acceptance is otherwise communicated .

### 7. Delivery

a) Delivery of the goods or performance of the services shall be made at the agreed place .

b) Where delivery is made at a place other than the seller's premises , the buyer will provide , without causing any material delay to the seller or its agent , safe and proper means of access to and egress from such place and suitable facilities for the unloading of the goods ( including were reasonably needed the attendance of the buyer's representative at such delivery ) . If the same are not provided , the seller shall be entitled to withhold delivery and / or charge the buyer for any additional costs and time incurred or spent by the seller or its agent .

c) All dates for delivery are estimates only and time for delivery is not of the essence of the contract . The seller may make delivery in advance of the delivery date upon giving reasonable notice to the buyer .

d) The seller shall not be liable in any way for any direct or indirect loss , damage or expense ( including loss of profits and liability to third parties ) suffered or incurred by the buyer as a consequence of any delay in delivery .

e) The seller may deliver in instalments if it wishes and each delivery shall constitute a separate contract. Failure by the seller to deliver one or more of such instalments or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to any remedies by adjustment of or in relation to any other relevant contract .

f) The buyer must inspect all goods within 3 working days from delivery . If any goods are damaged , missing or lost , the buyer must submit a detailed written claim to the seller within 3 working days of delivery of the goods . If the buyer fails to submit a claim within 3 working days of delivery of the goods , the seller shall be released from any liability in respect of damage or loss in transit or short delivery .

g) The buyer shall sign all appropriate paperwork required by the seller before accepting the goods and must ensure that he is in possession of and fully cognizant with the appropriate Health and Safety Data Sheet and comply with all the requirements specified therein . The buyer should immediately contact the seller if it is not in possession of any such

Data Sheet . The buyer further undertakes , where appropriate , to draw the attention of its customers , employees and agents to the content of the relevant Data Sheet . All Data Sheets shall be in accordance with English law .

h ) The buyer shall indemnify the seller against any loss or expenditure incurred by the seller , and against any liability which the seller may be under to any third party as a direct result or indirectly of any breach by the buyer of its obligations under this condition 7 .

## 8. Risk

a ) In respect of any contract other than an export contract , the risk of damage to or loss of the goods shall pass to the buyer upon delivery , or if the buyer wrongfully fails to take delivery , the time when the seller tenders delivery of the goods . Delivery shall be taken as occurring :-

- Where the goods are delivered by the seller , when the goods are offloaded from the seller's or its agent's vehicles .
- Where the goods are collected by the buyer , when the goods are loaded onto the vehicle used by the buyer or its agent .

b ) In respect of any Export Contract , the risk of damage to or loss of the goods shall pass to the buyer in accordance with the Incoterm agreed between the parties .

## 9. Price

a ) Unless otherwise agreed in writing , the price payable for the goods shall be as stated in the seller's price list current at the date of despatch from the seller's premises and shall be payable in sterling . Such price shall be exclusive of any storage , carriage and insurance , 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 .

b ) The seller has the right from time to time to increase quoted prices in order that it may maintain its profit margin on the same .

## 10. Payment

a ) The seller's terms of settlement are cash on delivery unless otherwise agreed and any relaxation of these terms granted by the seller may be withdrawn at any time without notice . The buyer will reimburse to the seller all costs and expenses ( including legal costs and interest ) incurred in the collection of any overdue amount . For the purposes of this condition only , time shall be the essence of the contract .

b ) The buyer shall not be entitled to set off any sum claimed against payments due to the seller under any contract .

c ) Where appropriate the seller will issue credit notes to the buyer which shall be set off only against such invoices as the seller specifies . Cash refunds against credit notes will be given at the seller's sole discretion .

## 11. Retention of Title

a ) Notwithstanding the delivery of and the passing of risk in the goods to the buyer , title in the goods shall not pass to the buyer until :-

- The buyer shall have paid the seller in full therefore pursuant to Condition 10 a no other sums are then outstanding from the buyer to the seller on any account whatsoever whether or not such sums have become due for payment .

b ) Until such time as title in the goods passes to the buyer , the buyer shall hold such goods as the seller's fiduciary agent and bailee , and shall keep such goods properly stored , protected and insured .

c ) Until such time as title passes in the goods passes to the buyer , the seller shall be entitled at any time to require the buyer to deliver up such goods to the seller and if the buyer fails to do so forthwith , to enter upon any premises of the buyer or any third party where such goods are stored and mark , identify and repossess such goods .

d ) In the event that the seller exercises any of its rights under conditions 11 c , any right of the buyer to sell , dispose of , deal or in any way use goods in which title has not passed to the buyer shall cease forthwith . This condition 11 d is without prejudice to any other rights and remedies available to the seller .

e ) The buyer shall not be entitled to pledge or in any way change by way of security for any indebtedness any of the goods which remain the property of the buyer .

## 12. Effect of Default by the Buyer

a ) 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 all sums outstanding in respect of goods and services shall become payable immediately .

The seller may at its absolute discretion and without prejudice to any other rights and remedies it may have :-

- Suspend all future deliveries of goods or performance of services to the buyer and / or terminate the contract without liability on its part and
- Require payment of interest on all amounts due at a daily rate equivalent to 4 % above the the base rate of The Royal Bank of Scotland PLC from time to time in force on the balance outstanding until payment is made in full , such interest to accrue after as well as before any judgement , and
- Exercise and of its rights pursuant to condition 11 .

Unless the seller expressly elects otherwise , any contract between it and the buyer shall remain in existence notwithstanding any exercise by the seller of its rights under this clause .

## 13. Intellectual Property

a ) No warranty or representation is given by the seller that the goods do not infringe any copyright , patents , trademarks , registered designs or other industrial property rights of third parties .

b ) The supply of goods by the seller shall not confer any right upon the buyer to use any of the seller's trademarks ( except

in the re-sale of goods in the packaging supplied by the seller ) , or any of the seller's copyrights , patents , trademarks or design rights , and at all times such copyrights , patents , trademarks and design rights shall remain the absolute property of the seller .

c ) The buyer shall not alter any packaging comprising the goods and shall not obliterate or obscure any warnings or advice appearing on such packaging concerning the use , storage or disposal of the goods .

#### **14. Warranties and Liabilities**

a ) By their nature the type of goods supplied by the seller may vary from precise specification depending upon raw materials and formulation used . The seller therefore does not warrant precise compliance with technical or data sheets and labels describing them . The seller warrants that the goods will be within the tolerances specified by the seller .

b ) The seller reserves the right to use alternative raw materials or formulations in manufacturing the goods without notice to the buyer provided that the goods shall not be rendered unfit for the purposes communicated by the buyer to the seller. Minor changes in the colour , appearance or performance in the goods as a result shall not be actionable by the buyer .

c ) Any goods supplied by the seller as " trial / sample 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.

d ) Subject to the provisions of conditions 14 e the seller's liability to the buyer whether for any breach of the contract or any duty owed to the buyer or otherwise shall be limited , as the seller may elect , to making good any shortage , replacing the goods or refunding all , or part of , the contract price against return of the goods .The seller should be under no liability for any consequential or indirect loss suffered , or liability to third parties , incurred by the buyer .

e ) Liability for death or personal injury resulting from the negligence of the seller shall not be limited , save in the case of export contracts only the seller shall not be liable for death or personal injury resulting from the negligence of the seller .

f ) Subject as expressly provided in these conditions , all warranties , conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law.

g ) Nothing in this condition 14 shall have the affect of excluding or limiting any liability of the seller under the Consumer Protection Act 1987 or similar consumer protection legislation to a person who has suffered damage as a result of a defective product .

h ) The seller shall not be liable to the buyer nor be deemed to be in breach of contract by reason in any delay in performing or failing to perform , any of the seller's obligations in relation to the contract if the delay or failure was due to any cause beyond the seller's reasonable control including any difficulties in obtaining raw materials , labour , fuel , parts or machinery , power failure or breakdown of machinery . Any such delay or failure on the part of the seller shall not affect the obligation of the buyer to pay for the goods already delivered .

#### **15. Regulations and Labelling**

a ) In the case of an export contract , 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 licences , customs 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 .

b ) The seller accepts no responsibility for the content or the design of the buyer's labels , get-up or literature where these are provided other than by the seller .

#### **16. Contracts ( Rights of Third Parties ) Act 1999**

The Contracts ( Rights of Third Parties ) Act 1999 is excluded and shall not apply to any contract .

#### **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 in no way affect the seller's rights to enforce such provision at a later date .

#### **18. Severability**

If 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 .

#### **20. 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 non-exclusive jurisdiction of the english courts .