

# CHALWYN LTD CONDITIONS OF SALE

## 1 DEFINITION

### 1.1 Conditions

are these terms and conditions of sale, any special terms and conditions on the face of the Seller's Tender or the Seller's written acceptance of the Purchaser's order (as the case may be);

### 1.2 Contract

is the contract for the purchase and sale of the Goods;

### 1.3 Goods

are the goods (including any instalment of the goods or any parts for them) which the Seller is to supply;

### 1.4 Purchaser

is the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

### 1.5 Seller

is Chalwyn Limited registered in England under number 381065;

### 1.6 Tender

is a tender made by the Seller's authorised representative and includes any quotation;

## 2 BASIS OF THE SALE

2.1 All Goods are sold subject to the Seller's prior approval of the Purchaser's credit and to the Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Tender is accepted or purported to be accepted, or any order is made or purported to be made, by the Purchaser.

2.2 No variation to these Conditions shall be binding unless agreed in writing by an authorised officer of the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Purchaser's own risk and, accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 CONTRACT

3.1 A Tender shall be deemed to be an invitation to the Purchaser to make an offer to purchase the Goods subject to the Conditions and such offer by the Purchaser shall not constitute a valid Contract until accepted in writing by the Seller's authorised representative.

3.2 No order submitted by the Purchaser shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.

3.3 The Purchaser is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Seller any necessary information within a sufficient time to enable the Seller to perform the Contract.

3.4 The quantity and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Purchaser) or the Seller's acceptance of the Purchaser's order.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification, drawing or design submitted by the Purchaser, the Purchaser shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Purchaser's specification, drawing or design.

3.6 The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

## 4 ILLUSTRATIONS

4.1 Unless the Seller provides the Purchaser with written notification to the contrary the Tender shall not be taken to incorporate nor will the Purchaser be entitled to rely on any drawings, specifications, photographs, illustration, advertising matter and other details in instructive books, catalogues or other publications normally supplied by the Seller.

## 5 DELIVERY

5.1 Unless otherwise stated on the Seller's written acceptance of order, delivery of the Goods shall be made by the Purchaser collecting the Goods at the Seller's premises and the Purchaser shall be responsible for the costs of carriage if the Seller agrees to deliver somewhere other than its premises. The Purchaser shall notify the Seller in writing and the courier (if applicable) within 24 hours of delivery of any damage or shortage.

5.2 Any dates given for the delivery of the Goods are approximate only and the Seller shall not be liable for any loss, direct or indirect, which may arise from delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence.

5.3 The Goods may be delivered in instalments. Each delivery shall constitute a separate contract and failure by the Purchaser to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

5.4 If the Purchaser fails to take delivery of the Goods or fails to give the Seller adequate delivery instruction at the time stated for delivery then the Seller may:

5.4.1 store the Goods until actual delivery and charge the Purchaser for the costs (including insurance) of storage; or

5.4.2 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Purchaser for the excess over sums owing by the Purchaser or charge the Purchaser for any shortfall.

## 6 PRICES

6.1 All prices are quoted subject to acceptance within any period specified and to any increase which may occur as a result of factors falling outside the control of the Seller (such as, without limitation, any increase in the price of raw material, the costs of labour or other costs of manufacture). Where no price has been quoted, the price shall be that listed in the Seller's price list current at the date of the Seller's acceptance of the Purchaser's order.

6.2 VAT and any other duties or taxes where application will be added to all invoices at the rate ruling at the date of despatch.

6.3 The Purchaser shall pay the Seller's invoices without any deduction or set off. The Seller may recover the price notwithstanding that delivery may not have taken place and property in the goods has not passed to the Purchaser. The time of payment shall be of the essence.

## 7 EXTRA COST

All additional costs incurred by the Seller as a result of a delay or alteration of the work caused by any instructions or lack of instructions of the Purchaser, or any interruption, delay, error, or work occasioned by an act of default of the Purchaser, will be charged in addition.

## 8 CANCELLATION

No order which has been accepted by the Seller may be cancelled by the Purchaser except with the agreement in writing of the Seller and on terms that the Purchaser shall indemnify the Seller 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 Seller as a result of cancellation.

## 9 ACCEPTANCE OF GOODS

The Purchaser shall inspect the Goods on delivery and unless the Purchaser notifies any defects in writing within 7 days of delivery shall be deemed to have accepted them. After acceptance the Purchaser shall not be entitled to reject Goods which are not in accordance with the Contract. In no event shall the Purchaser be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Purchaser to reject the Goods.

## 10 PAYMENT

10.1 Payment shall be made in full on the placing of an order unless the Purchaser has a credit account with the Company, when the Company may invoice the Purchaser for the price of the Goods on or at any time after dispatch of the Goods, or, if the Purchaser is to arrange delivery, at any time after the Company has notified the Purchaser that the goods are ready for collection.

10.2 If the Purchaser fails to make any payment on the due date the Company may charge the Purchaser interest (both before and after any judgement) on the amount unpaid, at the rate of 7 per cent per annum over the base rate from time to time of Lloyds Bank Plc until payment in full is received.

## 11 PROPERTY AND RISK

11.1 The property in the Goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

11.2 Risk of damage to or loss of the Goods shall pass to the Purchaser upon collection or delivery of the Goods.

11.3 Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and their parties and properly stored, protected and insured and identified as the Seller's property but may resell or use the Goods in the ordinary course of its business.

11.4 The Purchaser shall further be entitled to process the Goods delivered by the Seller and/or to incorporate them or with any other product or products subject to the express condition that the new product or products or any chattel whatsoever containing any part of our goods shall be separately stored and marked so as to be identifiable as being made from or with the Seller's property. If such goods are mixed with goods the property of any person other than the Purchaser, or are processed with or incorporated therein, the product thereof shall be or shall be deemed to be owned by the Seller in common with that other person.

11.5 Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been sold), the Purchaser shall deliver up the Goods to the Seller on demand and, if the Purchaser fails to do so immediately, the Seller may enter any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.

11.6 The Purchaser may not pledge or in any way charge by way of the security for any indebtedness any of the Goods which remain the property of the Seller, but if the Purchaser does so all monies owing by the Purchaser to the Seller shall immediately become due and payable.

11.7 Nothing in the above shall affect the determination of any question as to whether, or the time at which, the Goods have been duly supplied pursuant to the Contract.

## 12 TERMINATION

12.1 The Seller shall have the right immediately to terminate, or suspend any further deliveries under, the Contract or any other contract with the Purchaser without any liability to the Purchaser, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

12.1.1 the Purchaser fails to make any payment when due or breaches any provision of the Contract;

12.1.2 the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Purchaser; or the Purchaser ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of these events is about to occur in relation to the Purchaser.

12.2 The right of termination given by Clause 11.1 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement.

## 13 WARRANTIES AND LIABILITIES

13.1 The Seller warrants that it holds unencumbered title to the Goods. Subject to the conditions set out below, the Seller warrants that the Goods will be free from defects in material and workmanship for a period of 6 months from the date of delivery.

13.2 The above warranty does not apply:

13.2.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser.

13.2.1 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow the Seller's instruction (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval.

13.2.2 if any sum owing by the Purchaser to the Seller has not been paid;

13.2.4 to parts, materials or equipment not manufactured by the Seller, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

13.3 The Seller shall replace or repair free of charge the Goods (or the part in question) which do not meet the warranty in condition 12.1, at the Seller's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Purchaser. Replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original warranty period, whichever is the longer.

13.4 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest permitted by law.

13.5 Save as otherwise expressly provided in these Conditions, the following provisions set out the Seller's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:

13.6 To the extent the law does not permit such liability to be excluded the Seller's liability to the Purchaser for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence shall not be limited.

13.7 To the extent the law does not permit such liability to be excluded the Seller accepts liability to the Purchaser for damage to the tangible property of the Purchaser resulting from the negligence of the Seller or its employees, agents or sub-contractor not exceeding £5m for any one incident or series of incidents arising from a common cause.

13.8 To the extent the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, the Seller's entire aggregate liability for all claims shall be limited to damages of an amount equal to the price of the Goods.

13.9 Subject to condition 13.7 above, the Seller shall not be liable to the Purchaser for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Purchaser as a result of a claim by a third party) even if such loss was reasonably foreseeable or the Seller had been advised of the possibility of the Purchaser incurring the same.

13.10 The Seller shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or government action, import or export regulation or embargoes, industrial action, difficulties in obtaining supplies or breakdown in machinery.

13.11 Save as otherwise expressly provided, the Purchaser shall indemnify the Seller in respect of any cost, claim, loss or liability made by any person in connection with the Goods.

## 14 GENERAL

14.1 The Purchaser may not assign its rights and obligations.

14.2 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.3 No delay or failure by the Seller in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Seller of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Seller shall be effective unless in writing.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and remainder of the provision in question shall not be affected.

14.5 These Conditions and the Seller's acceptance of order constitute the entire agreement between the Seller and the Purchaser concerning the supply of the Goods and replace and supercede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

14.6 The Seller's rights are cumulative and in addition to any rights available to it at common law.

14.7 The Contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.