

## **CONDITIONS OF BUSINESS OF MICROBIAL DEVELOPMENTS LIMITED**

### **1 DEFINITIONS**

In these Conditions

"the Seller" means Microbial Developments Limited.

"the Buyer" means the person firm or company buying goods from the Supplier.

"Goods" means the items forming the subject matter of the contract between the Seller and the Buyer.

"Parties" means the Seller and the Buyer.

"Order" means the Buyer's instructions to the Seller to supply the Goods.

"Containers" includes crates, boxes, drums, beams and other containers in which Goods are packed for delivery.

"Seller's Recommendations for Use" means the Seller's recommendations for use (if any) contained in the Seller's published literature current at the time of the Contract.

Nothing in these Conditions shall exclude or restrict the statutory rights of a Buyer who deals as a consumer within the meaning of the Unfair Contract Terms Act 1977.

Nothing in these Conditions shall exclude or restrict the conditions implied by Section 12 of the Sale of Goods Act 1979.

Clause headings are for information only and shall not affect (nor be treated or interpreted so as to affect) construction of these Conditions.

### **2 INCORPORATION OF CONDITIONS**

2.1 All Goods are sold or agreed to be sold by the Seller subject to these Conditions of Sale which override any other terms or conditions stipulated or referred to by the Buyer whether in the Order or any document issued by the Buyer or in any negotiations and so that these Conditions of Sale are the only terms or conditions upon which the Seller sells or supplies the Goods.

2.2 No variation of these Conditions shall be effective unless made in writing and signed by a duly authorised representative of the Seller.

### **3 ACCEPTANCE OF ORDERS**

3.1 Each Order constitutes a separate Contract between the Parties. Where the Goods are to be supplied by instalments each such instalment shall be deemed to be a separate Contract.

3.2 Orders are accepted subject to availability of the Goods at the time of despatch

3.3 The Company reserves the right to impose a small order surcharge on any order falling below the minimum order value in place at the time of the Order.

### **4 PRICES**

4.1 Prices are quoted exclusive of Value Added Tax.

4.2 Where at the Buyer's request the Seller undertakes urgent delivery the Seller reserves the right to make an exceptional charge for carriage or for such delivery irrespective of the value of the Order in question.

4.3 The Seller may at any time before delivery vary the price of the Goods by notice to the Buyer. The Buyer may within one week of receipt of such notice cancel the order for the Goods, but if delivery of the Goods is to be made by instalments the Buyer shall be entitled to cancel only the undelivered portion of the order. No other remedy shall be available to the Buyer in respect of such variation in price. If the Buyer shall not make any such cancellation within such one week period the varied price shall apply to the Contract except as regards those of the Goods already delivered when the variation is made.

## **5 PAYMENT**

- 5.1 Unless otherwise agreed in accordance with Clause 2.2, payment for the Goods is due on or before the twentieth day of the calendar month following the date of invoice ("the due date for payment").
- 5.2 Payment shall be deemed not to have been made until any and all cheques drafts and bills by which payment is to be effected have been cleared or honoured (as the case may be).
- 5.3 Without prejudice to any other of its rights, the Seller reserves the right to charge interest on payments outstanding after the due date for payment at the rate (both before and after judgment) of four per cent per annum above HSBC Base Lending Rate in force on the due date for payment or eight per cent per annum, whichever shall be the higher, calculated on the outstanding balance (including interest) due from the due date for payment down to receipt by the Seller of payment. The Seller reserves the right to reduce or cancel the amount of interest payable hereunder and the Buyer acknowledges that any such action or omission for whatever reason shall not amount to a waiver of Seller's rights hereunder or as a course of conduct varying the terms of the Agreement.

## **6 DELIVERY**

- 6.1 Any dates times or periods for delivery of Goods quoted by the Seller are estimates only and the Seller shall not be liable for failure to meet such estimates or for any costs charges or expenses incurred as a consequence of such failure and accordingly the Buyer shall not be entitled to refuse to accept Goods or to determine the Contract merely because of such failure.
- 6.2 Delivery shall take place:
  - 6.2.1 where the Seller undertakes delivery, when the Goods are loaded off the Seller's medium of transport at the station, port or address specified by the Buyer.
  - 6.2.2 where the Buyer undertakes to collect the goods, when they are loaded onto the Buyer's vehicle or other transport at the address of the Seller.
- 6.3 The Goods shall be at the Buyer's risk from the time of delivery as defined in Clause 6.2 or, if earlier when the Goods are made available for collection by the Buyer at the Seller's premises.
- 6.4 The Seller shall not be liable for and the Buyer shall fully indemnify the Seller against any and all costs, charges and expenses incurred due to delay in delivery of the Goods where such delay is a result of the Buyer's failure to provide as and when required all instructions, licences, guarantees, deposits and all such information and other assistance as may be reasonably required by the Seller.

## **7 QUANTITIES**

- 7.1 Where the Seller's published literature indicates that certain Goods are supplied in packages of a minimum number such Goods will only be supplied in multiples of such minimum number. Any Order which is not for such a multiple will be grossed up to the nearest such multiple and supplied and invoiced as such.
- 7.2 In the case of non-packaged Goods the Seller may deliver against an order an excess or deficiency of up to 10% of weight or volume ordered. The quantity actually delivered will be stated in the invoice.

## **8 CONTAINERS, PALLETS AND LOGGERS**

- 8.1 Returnable Containers or Loggers will be returned to Seller's Premises in good condition carriage forward within three months of delivery. Any deposit made by the Buyer on such Containers or Loggers shall be forfeited in the event of failure to return them undamaged within the specified period. When no deposit is required the Buyer agrees to reimburse the Seller the full replacement value of any Containers or Loggers damaged or not returned within the period of three months from delivery. The Seller's account and rejection of damaged returnable Containers or Loggers shall be accepted as final.
- 8.2 Returnable pallets must be returned to the address given on the delivery note within thirty days of delivery or a charge of £10 per pallet will be made.

## **9 LOSS DAMAGE OR NON-DELIVERY**

- 9.1 Where the Buyer undertakes to collect the Goods the Seller shall not in any circumstances be liable for any damage from whatever cause which arise while the Goods are in transit.
- 9.2 Where the Seller undertakes carriage.
  - 9.2.1 The Buyer shall advise the Seller in writing of any non-delivery of the whole or any part of any Order within ten days of the date of the Seller's invoice therefore.
  - 9.2.2 The Buyer shall inspect the Goods forthwith on delivery and shall have no claim in respect of any shortage or defect apparent on inspection of the Goods unless he notifies the Seller in writing giving details of such shortage or defect within three days of delivery. All claims not

made in writing and received by the Seller within the time period specified above shall be deemed waived.

- 9.2.3 Goods delivered in a damaged condition must be signed for as such and retained for the Seller's inspection. Such inspection will be carried out by the Seller within 14 days of receipt by the Seller of the delivery note duly signed.

## **10 RETURNS FOR CREDIT OR REPLACEMENT**

The return of Goods by the Buyer for credit or replacement will not be accepted by the Seller without the Seller's prior written authorisation and then only if the Goods are in a saleable condition of which the Seller shall be the sole judge. Where Goods so returned are accepted by the Seller, it shall be for the Seller, in its absolute discretion, to determine whether to give credit or a replacement quantity of the Goods. Refrigerated injectables will not be considered for Credit.

## **11 WARRANTY**

- 11.1 The Seller warrants that the Goods are manufactured with all reasonable care and skill and where applicable comply with the standard specifications set out in the Seller's published literature in relation to the Goods current at the date of the Order and made available to the Buyer on request and that the Goods are of merchantable quality. Save as aforesaid and save as regards any warranty (or guarantee) given in writing by the Seller as part of the sale or supply of any specific Goods, all other conditions, guarantees, warranties whether express or implied by statute common law or otherwise including (but without prejudice to the generality of the foregoing) conditions, guarantees and warranties as to quality fitness for use under any conditions whether known or made known to the Seller or not, are hereby excluded.
- 11.2 The Seller shall be under no liability in contract or in tort for any indirect consequential loss (including but without limiting the generality of the foregoing economic loss, loss of profits, loss of use or loss of production) arising out of or consequent upon or attributable to:
- 11.2.1 The contract for the sale of the Goods or the supply or use of the Goods and/or any Containers and/or packages, or
- 11.2.2 The Buyer or any third party having made use of or adopted in whole or in part any information or data or advice given by or on behalf of the Seller in relation to the Goods or their use, or
- 11.2.3 The use of Goods in abnormal conditions, or
- 11.2.4 In respect of Goods supplied, the occurrence of weeds pests or diseases which are resistant to such Goods.
- 11.3 The Seller will only accept liability for direct physical injury to persons or defects in the Goods caused by the negligence of the Seller or its servants (being negligence as defined in Section 1 of the Unfair Contract Terms Act 1977). Provided that the liability of the Seller under these Conditions in respect of any defects in the Goods shall in no case exceed the contract price for the Goods and it is hereby agreed for the avoidance of doubt that (except insofar as it is expressly otherwise provided in these Conditions) the Seller shall in no circumstances be liable for any costs, charges, damages, losses (including loss of profit) or expenses of any kind arising otherwise than directly out of any such negligence as aforesaid.
- 11.4 The application, use and/or processing (where permitted) of the Goods is the absolute responsibility of the Buyer. Any technical and other advice information and data provided by the Seller, whether verbally, in writing or by way of tests or trials, is given without warranty.
- 11.5 The Buyer shall be deemed to have carried out its own examination, investigation and tests to ensure the suitability of the Goods for their intended purposes and applications.

## **12 RETENTION OF TITLE**

- 12.1 Notwithstanding delivery and the granting of credit, the Goods (so long as they remain identifiable as Such Goods) remain the absolute property of the Seller until payment of all amounts invoiced by the Seller to the Buyer and outstanding from time to time or until the Goods are (where permitted and appropriate) processed or re-sold by the Buyer whichever shall first occur and until such time as the property in the Goods passes to the Buyer hereunder, the Buyer shall hold the Goods in a fiduciary capacity.
- 12.2 The Buyer shall be entitled (where permitted) to process the Goods and/or to re-sell the Goods to a third party in the normal course of the Buyer's business on condition that the Buyer shall insofar as the purchase price of the Goods remains unpaid in whole or in part at the time of such processing and/or resale:
- 12.2.1 Act and be deemed to act as the Seller's agent (but without imposing any liability on the Seller to any third party) and

- 12.2.2 Not allow the Goods to become the subject of any charge or lien howsoever arising and
  - 12.2.3 If requested by the Seller assign to the Seller any right or claim of the Buyer over any third party in respect of the Goods and impose upon any third party the same restrictions as are imposed upon the Buyer by this clause, and
  - 12.2.4 Insure and maintain comprehensive insurance of the Goods to the full replacement value thereof against all risks, and if required prove to the Seller that such insurance has been effected, and
  - 12.2.5 Keep and maintain the Goods in a good and stable condition (at no cost to Seller) and agree to store the Goods until they have been paid for or processed and/or re-sold in the normal course of the Buyer's business in such a way that they are readily identifiable as the property of the Seller.
- 12.3 At any time until the Goods have been paid for and without prejudice to any other remedies, the Seller or its agents shall be entitled immediately after giving notice of its intention to do so, to enter upon the premises of the Buyer with such transport as may be necessary and re-possess any Goods to which it has title hereunder.
  - 12.4 Nothing in this clause shall confer any right on the Buyer to return Goods supplied hereunder or to refuse or delay payment thereof, unless otherwise agreed in writing.
  - 12.5 Where the Buyer is situated in Scotland and the delivery of Goods is made in Scotland then the foregoing provisions of Clause 12.1 to 12.4 shall not apply but notwithstanding delivery the Goods shall remain the absolute property of the Seller until the purchase price of the Goods has been paid in full by the Buyer.

### **13 INTELLECTUAL PROPERTY**

- 13.1 No warranty or representation is given by the Seller that the Goods do not infringe any Letters Patent, Trade Marks, Registered Designs, Copyright or other intellectual property rights.
- 13.2 The use of the Seller's trade marks requires the prior written approval of the Seller.

### **14 FORCE MAJEURE**

The Seller shall not be liable in any way for any loss or damage arising directly or indirectly, through or in consequence of delivery of the Goods being prevented or delayed by happenings or occurrences due to or by reason of any matters or things beyond the control of the Seller including (but without limitation) mobilisation, hostilities, acts of the Queen's enemies or war (whether declared or not) Government action departmental instructions or Act of God, riots, combination of workmen, lockouts, strikes or disturbances wherever taking place, shortage of labour, raw materials, fuel or power in consequence of non-delivery or any other cause, want of transport, accidents, fire, flood, blocking of or accidents to aeroplanes, shipping or railway lines, failure of ships to sail at advertised times, reduction or stoppage of output at the works where the Goods are being manufactured or premises from which they are to be delivered through fire, flood, heat, frost, storm, tempest or intemperate weather, breakdowns, accidents to machinery, late provision to the Seller of any materials, information or instructions pertinent to the fulfillment of the Contract by the Seller or any other causes or any circumstances whatsoever beyond the Seller's control or any acts of the third parties whether criminal or otherwise and in these circumstances the Seller expressly reserves the right to cancel or suspend the whole or any part of the Contract or any delivery.

### **15 BUYER'S UNDERTAKINGS**

The Buyer undertakes to use handle and store the Goods in accordance with the Seller's Recommendations for Use and all relevant statutory provisions and will notify any person to whom he passes the Goods of the need to comply with such Recommendations for Use and will at all times indemnify the Seller in respect of all loss or damage suffered by any person, firm company or property and against all actions claims demands costs charges or expenses in connection therewith for which the Seller may become liable in respect of the Goods.

### **16 GENERAL LIEN**

- 16.1 The Seller shall have a general lien over any of the goods or chattels of the Buyer in the Seller's possession for any monies whatsoever due from the Buyer to the Seller.
- 16.2 If any lien is not satisfied within 14 days of such monies becoming due the Seller may in its absolute discretion sell such goods or chattels as agents for the Buyer and apply the proceeds towards the monies due and the expenses of the sale and shall upon accounting to the Buyer for the balance (if any) remaining, be discharged from all liability in respect of such goods or chattels.

## **17 ASSIGNMENT**

The Contract is personal to the Buyer who shall not assign or charge the benefit thereof without the Seller's express written consent.

## **18 DEFAULT, INSOLVENCY, ETC**

18.1 If the Buyer shall make default or commit a breach of these Conditions or of any other of his obligations to the Seller, or if the Buyer suffers any judgment or any distress, seizure or execution to be levied against it or if the Buyer shall make or offer any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order shall be presented or made against it, or if the Buyer is a limited company and any resolution or petition to wind up the Buyer's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver, administrator or administrative receiver is appointed over its undertaking, property or assets or any part thereof, then without prejudice to any other right or remedy available to the Seller the Seller may without notice: J

18.1.1 Cancel suspend or determine the Contract or any unfulfilled part thereof and t

18.1.2 Halt any Goods in transit and decline to make further deliveries except upon receipt of advance payment or satisfactory security and t

18.1.3 Either by an agent or itself have access to the Buyer's premises for the protection, removal, realisation and disposal of any Goods at any time }  
and from time to time in which the property shall not have passed from the Seller to the Buyer.

18.2 The granting by the Seller to the Buyer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of the Seller's entitlement to enforce any of its rights under the Contract (except and to the extent that it shall constitute a variation of these Conditions which had been made in accordance with Clause 2.2 hereof).

18.3 If the Seller terminates the Contract in accordance with this Clause, then without prejudice to any other rights the Seller may have it shall be entitled to retain any advance payment made by the Buyer.

## **19 NOTICES**

19.1 Notice shall be made in writing and posted in a first-class prepaid envelope to the Buyer's or Seller's address as shown respectively on the Order and Acceptance of Order or failing those to the address at which the one Party reasonably believes the other to be carrying on business.

19.2 A notice shall be deemed to have been given forty-eight hours after posting and in proving such service it shall be sufficient to show that the envelope was properly addressed and put into the post.

## **20 PROPER LAW**

The validity, construction and performance of the Contract shall be governed by the Law of England and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales for the resolution of all disputes arising under the Contract.

## **21 SEVERANCE**

These Conditions shall apply in full save that if any Act of Parliament or other Statutory Provision for the time being in force shall avoid or make unenforceable any of the provisions hereof these Conditions shall be deemed to apply with the exclusion of the provisions hereof which shall be void or unenforceable as aforesaid.