

SCOTT MITCHELL ASSOCIATES ("THE SELLER") STANDARD TERMS AND CONDITIONS OF SALE/SERVICE



1. Applicability

- 1.1 These Conditions alone shall govern and be incorporated in every contract, whether written or oral, for the sale of goods and services made by or on behalf of the Seller with any customer ("the Buyer"). They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a partner or other authorised representative of the Seller.
- 1.2 Purchase Orders placed on behalf of the Buyer are non-cancellable, other than with the written agreement of the Seller. If the Buyer believes that the items, quantities and prices of any Sales Order Confirmation sent by the Seller are not as specified on their Purchase Order written notification indicating the errors must be received by the Seller within 5 working days of receipt of the Sales Order Confirmation.
- 1.3 Acceptance by the Buyer of delivery of the goods and services shall (without prejudice to any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.

2. Prices

Unless otherwise specified, VAT and any other tax or duties payable by the Buyer and delivery charges shall be added to the price.

3. Payment

- 3.1 **Payment of invoices will, unless otherwise agreed in writing, be made in full without any deduction or set-off within 30 days from end of month.**
- 3.2 Time of payment shall be of the essence in all contracts between the Buyer and the Seller to which these Conditions apply.
- 3.3 The Seller reserves the right to suspend the provision of goods and services to the Buyer where either any amounts are overdue under any contract with the Buyer until all such amounts have been paid or the Buyer has exceeded any agreed extension of credit.
- 3.4 Interest will be payable on overdue accounts at the rate of 10% over the Barclays plc base rate from time to time to run from the due date for payment until receipt by the Seller of the full amount whether before or after judgement.
- 3.5 All Bank charges incurred in transmitting payments to us to be paid by you the Customer.

4. Returns

- 4.1. Returns will only be accepted with shipment costs to the Seller prepaid by the Buyer and in the following situations:
 - a) Shipping or order processing error by the Seller.
 - b) Defective products
- 4.2. **Any non-conforming goods should be reported to the Seller within 7 calendar days of receipt.** All goods will be deemed to have been accepted by the Customer if notification to the contrary is not received within this period. Returns must be pre-approved in advance by the Seller.
- 4.3 Where Products have been pre-approved in advance by the Seller, and returned to the Seller, credit given will be based on the original invoice number and total amount.
- 4.4 **The Seller can not accept the return of medicines.**

5. Delivery

- 5.1 Delivery or despatch dates mentioned in any quotation, order acceptance form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by the service of any notice.
- 5.2 Delivery shall be at the Buyer's premises unless otherwise stipulated or agreed by the Seller. Unless agreed in writing the Buyer shall inspect the goods and services immediately on their arrival at the Buyer's premises.
- 5.3 **If the Buyer refuses or fails to take delivery of goods and services tendered in accordance with the contract or fails to take any action necessary on its part for delivery of the goods and services, the Seller shall be entitled to immediate payment in full and to terminate the contract with immediate effect. The Seller shall also be entitled to dispose of the goods and services as the Seller may determine and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including without limitation storage costs from the due date of delivery).**
- 5.4 Unless otherwise expressly agreed the Seller may effect deliver in one or more instalments. Where delivery is affected by instalments each instalment shall be treated as a separate contract governed by these Conditions.

- 5.5 Section 32(2) of the Sale of Goods and Services Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in Section 32(3) of that Act.

6. Risk

Subject where appropriate to Condition 5, risk in the goods and services shall pass on delivery.

7. Title

- 7.1 The goods and services shall remain the Seller's property until the Buyer has paid both their price and any other sums due from the Buyer to the Seller.
- 7.2 The Buyer's right to possession of the goods and services shall cease if;
- 7.2.1 The Buyer has not paid for the goods and services in full by the expiry of any credit period allowed by the contract; or
- 7.2.2 The Buyer is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangement; or
- 7.2.3 A receiver, liquidator or administrator is appointed in respect of the Buyer's business.
- 7.3 On cessation of the Buyer's right to possession of the goods and services in accordance with this Condition the Buyer shall at his own expense make the goods and services available to the Seller and allow the Seller to repossess them.
- 7.4 The Buyer hereby grants the Seller, his agents and his employees an irrevocable licence to enter during normal business hours any premises where the goods and services are stored in order to repossess them. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller under it.
- 7.5 Notwithstanding the provisions of this Condition, the Seller may bring an action for the price due under this contract at any time after the price has become payable under this contract.

8. Third Party Rights

- 8.1 In respect of international supply contracts (as defined by section 26 of the unfair contract terms Act 1977) only, the Seller shall have no liability to the Buyer in the event of goods and services infringing or being alleged to infringe the rights of any third party. If an allegation of infringement is made in respect of the goods and services or if in the Seller's reasonable opinion such an allegation is likely to be made, the Seller may at its option and at its own expense:
- (a) modify or replace the goods and services without detracting from overall performance thereof, so as to avoid the infringement; or
- (b) procure for the Buyer the right to continue to use the goods and services; or
- (c) repurchase the goods and services at the price paid by the Buyer less depreciation at such rate as is applied by the Seller to its own equipment.
- 8.3 The Buyer shall notify the Seller forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance as the Seller may request. The cost of any such proceedings shall be borne by the Seller in such proportions as the parties shall determine.

9. Specifications and Information

Unless expressly agreed in writing by the Seller all drawings, designs, specifications and particulars of dimensions submitted by the Seller are approximate only and the Seller shall not be liable in respect of any deviations.

10. Liability

- 10.1 The Seller warrants that for a period of 12 months the goods and services will conform to their product description, that they will be of merchantable quality and that they will be fit for their purpose. The Seller may alter any product from time to time at its discretion. No representation or warranty is given that the goods and services are, or will be, identical to goods and services which may have been sold previously to the Buyer. Nothing in these Terms and Conditions shall constitute or create the relationship of principal and agent, employer and employee or of a partnership between the parties. Neither party shall have the authority to bind the other for any purpose.
- 10.2 The Seller shall not be liable to the Buyer:-
- 10.2.1 for non-delivery unless a written claim is received by the Seller within 7 calendar days from the date of the Seller's invoice
- 10.2.2 for damage to or loss of the goods and services or any part of them in transit (where the goods and services are carried by the Seller's own transport or by a carrier on behalf of the Seller) unless the Buyer shall notify the Seller of any such claim within 7 calendar days of receipt of the goods and services or the scheduled date of delivery whichever shall be the earlier
- 10.2.3 for defects in the goods and services caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the Buyer or of any third party;
- 10.3 Where liability is accepted by the Seller the Seller's only obligation shall be to refund the cost of such goods and services to the Buyer.
- 10.4 The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstance exceed the cost of the defective, damaged or undelivered goods and

services which give rise to such liability as determined by net price invoiced to the Buyer in respect of any occurrence or series of occurrences.

10.5 Subject to this Condition:

10.5.1 All conditions warranties and representations expressed or implied by statute, common law or otherwise in relation to the goods and services are hereby excluded;

10.5.2 The Seller shall be under no liability to the Buyer for any loss damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise howsoever arising (and whether or not caused by the negligence of the Seller its employees or agents) other than liability for death or personal injury resulting from the Seller's negligence;

10.5.3 The Seller shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, howsoever caused, and including without limitation loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

10.6 In respect of consumer transactions only (as defined by The Consumer Transactions (Restrictions on Statements) Order 1976 as amended) nothing in these Conditions shall affect the statutory rights of any consumer.

11. Licences and Consents

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods and services by the Buyer, the Buyer shall obtain the same at its own expense and if necessary produce evidence of the same to the Seller on demand. Failure to do so shall not entitle the Buyer to withhold or delay payment of the price. The Buyer shall be responsible for any additional expenses or charges incurred by the Seller resulting from such failure.

12. Force Majeure

12.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods and services by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including but not limited to an Act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the goods and services or of raw materials by the Seller's normal source of supply or the manufacture of the goods and services by the Seller's normal means or the delivery of the goods and services by the Seller's normal route or means of delivery.

12.2 If due to such circumstances the Seller has insufficient stocks to meet all its commitments, the Seller may apportion available stocks between its customers at its sole discretion.

13. Assignment

None of the rights or obligations of the Buyer under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Seller.

14. Lien

The Seller shall be entitled to a general lien on all goods and services and property owned by the Buyer in the Seller's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any goods and services sold and delivered to the Buyer under any contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sums owed to the Buyer by the Seller.

15. Headings

The headings of these Conditions do not form part of the Conditions and shall not affect their interpretation.

16. Severability

If any of these Conditions is held to be invalid, illegal or unenforceable in any respect whether in whole or in part such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of a Condition affected.

17. Waiver

Failure by the Seller to exercise or enforce any rights under any contract subject to these Conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

18. Notices

Any notice hereunder shall be in writing and be deemed to have been duly given if delivered personally or sent by prepaid first class post (airmail if to an address outside the UK) or fax to the party concerned at its last known address. Notices delivered personally shall be deemed to have been given when delivered, notice sent by first class post shall be deemed to have been given seven days after despatch (fourteen days if given by airmail) and notices sent by fax shall be deemed to have been given on the date of despatch.

19. Governing Law

The law applicable to the contract shall be English Law and the parties favour and submit to the jurisdiction of the English courts.