

Henderson European Limited

Terms and Conditions

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given in clause 11.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods as set out in the Supplier's written acceptance of the Customer's written order.

Supplier: Henderson European Limited (registered in England and Wales with company number 07568667).

Website: www.hendersonseuropeanltd.com.

1.2 **Construction.** In these Conditions, the following rules apply:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors or permitted assigns.

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by 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. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole

purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 Any advice or recommendation given by the Company or its employees or agents as to the storage, application or use of the Goods which is not specifically confirmed in writing by the Supplier is followed, relied or acted upon is entirely at the Customer's own risk. Accordingly, the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any typographical, clerical or other error in any sales literature, quotation, price list, acknowledgement of order, invoice or other information issued by the Supplier shall be subject to correction without any liability on the Supplier.

2.8 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 21 Business Days from its date of issue.

3. GOODS

3.1 The Goods are described in the Supplier's brochures and publications, and on the Supplier's Website and other Websites.

3.2 The Supplier reserves the right to amend the specification of the Goods.

4. DELIVERY

4.1 The Supplier shall ensure that:

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

if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 Unless otherwise agreed in writing, the Customer shall collect the Goods from the Supplier's premises at Henderson European Ltd, Great Grove Farm, Murray Road, Ottershaw, Surrey, KT16 0HT, United Kingdom or such other location as may be advised by the Supplier prior to delivery (**Collection Location**) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.

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

4.4 Where the Supplier agrees to arrange delivery:

The Supplier shall be entitled to charge and be paid for an additional sum for delivery to include the cost of cases and packaging which shall be non-returnable;

The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready;

Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location;

Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods;

If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Customer fails to give adequate delivery instructions or fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.6 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Customer shall indemnify the Supplier in full against all other losses, damages, charges and expenses incurred by the Supplier as a result of the Customer's said failure to take delivery or give adequate instructions to do so.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 The Goods are sold as seen and inspected by the Customer or the Customer's appointed agents.
- 5.2 No warranty is given or implied in respect of the quality of the Goods and the Supplier shall have no liability to the Customer in respect of the Goods.
- 5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for: the Goods; and

any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as the Supplier's bailee;
 - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time,

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 All prices are subject to alteration by the Supplier without notice.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Supplier shall be entitled without prejudice to any other rights:

To withhold delivery of Goods until such outstanding funds are received by the Supplier;

To charge and be paid interest on any outstanding balance at an annual rate of 4% above Barclays Bank Plc base lending rate from time to time in force. Such interest to accrue on a daily basis from the due date until the date of actual payment of the overdue

amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;

To discontinue forthwith the provision of any further Goods or services whether forming part of the same or any other contract; and

To repossess the Goods, and for the purpose thereof the Supplier shall be entitled to enter upon any premises or site without notice where the Goods are reasonably thought to be stored.

- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

- 8.2 For the purposes of clause 8.1, the relevant events are:

the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(being an individual) the Customer is the subject of a bankruptcy petition or order;

a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 0 to clause 0 (inclusive);

the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

fraud or fraudulent misrepresentation;

breach of the terms implied by section 12 of the Sale of Goods Act 1979;

defective products under the Consumer Protection Act 1987; or

any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

- 9.2 Subject to clause 9.1:

the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £[AMOUNT] **OR** [[PERCENT]% of] the price of the Goods.

10. HEALTH AND SAFETY

- 10.1 The Customer undertakes that prior to use of the Goods, he will carry out or arrange for the carrying out of such testing, examination and investigation as may be necessary to ensure, so far as is reasonably practicable, that the Goods will be safe and without risk to health when properly used.

- 10.2 The Customer should only use the Goods in accordance with the manufacturer's instructions.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been

foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

conditions, shall only be binding when agreed in writing and signed by the Supplier.

- 12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

12. GENERAL

12.1 Assignment and subcontracting.

The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Notices.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 0; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and