

BAYER CONDITIONS OF BUSINESS

1 DEFINITIONS

In these Conditions of Business (the "Conditions"):

"the Seller" means the Bayer company specified to the Buyer, including, without limitation, in the relevant Bayer despatch note or Bayer invoice.

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

"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.

"Sellers 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.

"Contract" means the contract for sale and purchase of the Goods.

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 The Seller shall sell and the Buyer shall purchase the Goods subject to these Conditions, which shall apply to each Contract. Acceptance by the Buyer of the delivery of Goods shall (without prejudice to condition 3 or any other manner in which evidence of incorporation of these conditions is evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 2.2 These Conditions shall 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.
- 2.3 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 Without limitation, a quotation, a price list or any other price display prepared or disseminated by the Seller does not constitute an offer by the Seller. The Seller reserves the right to withdraw or revise an offer at any time prior to its acceptance of an Order (the "Acceptance").
- 3.2 An Acceptance by the Seller pursuant to Condition 3.1 shall only be effective where it is either in writing and signed by the Seller's authorised representative or in the event a delivery is made pursuant to an Order such delivery will constitute unqualified Acceptance.
- 3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order submitted by the Buyer.
- 3.4 Supply of Goods pursuant to each Order is subject to availability of the Goods at the time of despatch.
- 3.5 The Seller shall impose a delivery charge of £30 on any Order of less than £200 (excluding VAT).
- 3.6 Each Order and Acceptance constitutes a separate Contract between the parties. Where the Goods are supplied by instalments each instalment shall be deemed to be the subject of a separate Contract.
- 3.7 The Seller reserves the right to refuse to supply goods to the Buyer at any time until it is satisfied that the Buyer possesses all regulatory approvals and has in place an adequate emergency plan to ensure that it can successfully carry out a product recall which may be required by the regulatory authorities or reasonably required by the Seller.

4 PRICES

- 4.1 Prices are quoted by the Seller exclusive of Value Added Tax and other applicable taxes or duties and the cost of any import or other licences or clearances and, unless otherwise specified, inclusive of delivery charges (provided the time and place of such delivery has been agreed in advance by the Seller).
- 4.2 Where at the Buyer's request the Seller undertakes urgent delivery, the Seller reserves the right to make an exceptional charge for delivery irrespective of the value of the Order in question.
- 4.3 In the event where the Acceptance sets out a delivery schedule which provides for the delivery to be made in whole or in part on a date falling two weeks or more from the date of Acceptance the Seller may at any time before delivery vary the price of the Goods by notice to the Buyer provided such notice is given to the Buyer on a date falling no later than the date falling ten days prior to the date of delivery. 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 2.3, payment for the Goods is due on or before the twentieth day of the calendar month following the date of the invoice issued by the Seller for the Goods ("the due date for payment") and time of payment is of the essence.
- 5.2 Payment shall be deemed not to have been made until the Seller has received all sums payable in cleared funds and the Buyer is not entitled by reason of any set-off, counterclaim, abatement or analogous deduction to withhold payment of any amount due to the Seller.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other of its rights, the Seller shall be entitled to:-
 - 5.3.1 cancel any Contract and/or suspend any further deliveries to the Buyer; and
 - 5.3.2 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 Barclays Bank PLC 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 until receipt by the Seller of payment in cleared funds. The Seller reserves the right to reduce or cancel the amount of interest payable under this Clause 5.3.2 and the Buyer acknowledges that any such reduction or cancellation for whatever reason shall not amount to a waiver of Seller's rights or a course of conduct varying the terms of these Conditions.

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. As a result, the Buyer shall not be entitled to refuse to accept Goods or to terminate any 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; or
 - 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 requested by the Seller all instructions, licences, guarantees, deposits and all such information and other assistance as may be reasonably required by the Seller.
- 6.5 For the purposes of sales made to any Buyer in the Republic of Ireland, Sections 32(2) and 32(3) of the Irish Sale of Goods Act 1893 (as amended) shall not apply.

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 shall be entitled to deliver against an Order up to 10% more or less than the weight or volume ordered. Where the quantity of Goods delivered by the Seller is more or less than the quantity ordered (and the amount of the shortfall or excess has been identified by the Seller and the Buyer), the Seller shall invoice the Buyer for the quantity ordered and shall subsequently:-
 - 7.2.1 issue the Buyer with a credit note in respect of any shortfall in the amount actually delivered against the Order quantity; or
 - 7.2.2 issue the Buyer with an additional invoice in respect of any excess in the amount actually delivered against the Order quantity and that invoice shall be payable by the Buyer in accordance with Clause 5.

The quantity actually delivered will be stated in the delivery note.

8 CONTAINERS AND PALLETS

- 8.1 Returnable Containers will be returned to the Seller's address (as notified by the Seller) in good condition and at the Buyer's cost within three months of delivery. Any deposit made by the Buyer on such Containers 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 damaged or not returned within the period of three months from delivery. The Seller's account and rejection of damaged returnable Containers 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 will be made, the amount of which will be notified by the Seller to the Buyer from time to time.

9 LOSS, DAMAGE OR NON-DELIVERY

- 9.1 Where the Buyer agrees to collect the Goods, the Seller shall not in any circumstances be liable for any damage from whatever cause which arises while the Goods are in transit.
- 9.2 The Buyer shall inspect the Goods immediately on delivery (as defined in Clause 6.2) and shall have no claim in respect of any shortage in quantity or defect in the Goods which would be apparent on inspection unless the Buyer notifies the Seller in writing giving details of such shortage or defect within three days of delivery. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such shortage or defect, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.3 Where the Buyer claims that any Goods are damaged or defective, the Buyer must retain the Goods for the Seller's inspection. Such inspection will be carried out by the Seller within 14 days of receipt by the Seller of notification of the damage or defect.

10 WARRANTY

- 10.1 Subject to the provisions of this Clause 10, the Seller warrants that the Goods are of satisfactory quality provided that the Seller shall have no liability under this warranty:-
 - 10.1.1 in respect of any defect in the Goods arising from:
 - (i) fair wear and tear;
 - (ii) wilful damage;
 - (iii) negligence;
 - (iv) abnormal use or working conditions;
 - (v) failure to follow the Seller's Recommendations for Use; or
 - (vi) misuse or alteration of the Goods without the Seller's approval; or
 - 10.1.2 if the total price for the Goods has not been paid by the due date for payment.
- 10.2 Subject to the provisions of this Clause 10, where in connection with the supply of any Goods, the Seller provides technical advice or consultancy services to the Buyer in relation to the Goods, the Seller warrants that such advice and services shall be provided with all reasonable skill and care.
- 10.3 Prior to its use or supply of any Goods, the Buyer shall carry out its own examination, investigation and tests in relation to the Goods to ensure that they are suitable for the Buyer's intended purposes and applications. Immediately upon discovery of any defects in the Goods and in any event, within a reasonable period after delivery, the Buyer shall notify the Seller specifying the defect identified. The Buyer shall retain the Goods for the Seller's inspection. The Seller shall have no liability for defects which are not notified to it in accordance with this Clause 10.3 or which are notified to it after the end of the Seller's recommended shelf life for the relevant Goods.
- 10.4 Except as set out in Clauses 10.1 and 10.2 or in any other warranty (or guarantee) given in writing by the Seller in connection with the sale of any specified Goods, all other conditions, guarantees or warranties whether express or implied by statute, common law or otherwise (including any warranty as to the non-infringement of third party intellectual property rights), are hereby excluded to the fullest extent permitted by law.
- 10.5 The Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), any implied warranty, condition or other term, any duty at common law or under the Contract, for any loss of profit, loss of data, loss of contracts, loss of production or any indirect, special or consequential loss or damage.
- 10.6 Notwithstanding any other provision of these Conditions, the entire liability of the Seller in relation to any Goods and/or any associated advice or services, whether by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the Contract shall not exceed two (2) times the price of the Goods.
- 10.7 Nothing in this Clause 10 shall limit or exclude the Seller's liability in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987 or any other equivalent legislation in force in the jurisdiction of the Buyer.
- 10.8 For the purposes of sales made to any Buyer in the Republic of Ireland, the contractual rights which such Buyer enjoys by virtue of Sections 12,13, 14 and 15 of the Irish Sale of Goods Act 1893 (as amended) are in no way prejudiced by anything contained in these conditions save to the extent permitted by law.

11 RETENTION OF TITLE

- 11.1 Notwithstanding delivery and the passing of risk in the Goods under Clause 6, the Goods shall 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 processed or re-sold by the Buyer in the normal course of the Buyer's business, whichever shall first occur.
- 11.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods on behalf of the Seller in a fiduciary capacity and shall:-
 - 11.2.1 not allow the Goods to become the subject of any charge or lien or other third party interest;
 - 11.2.2 keep and maintain the Goods in a good and stable condition (at no cost to Seller) and 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;
 - 11.2.3 maintain comprehensive insurance cover in respect of the Goods to the full replacement value against all risks and if required prove to the Seller that such insurance has been effected;
 - 11.2.4 at the Seller's request, deliver up the Goods to the Seller, and, if the Buyer fails to do so straight away, permit the Seller to enter upon the premises of the Buyer with such transport as may be necessary and re-possess any Goods to which the Seller has title.
- 11.3 In the event that the Buyer processes or resells the Goods in the normal course of the Buyer's business, if requested by the Seller, the Buyer shall 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 11. In addition, in such circumstances the Buyer will hold all monies received by the Buyer from such dealings in trust for the Seller.
- 11.4 Where the Buyer is situated in Scotland and the delivery of Goods is made in Scotland then Clauses 11.1 to 11.3 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.

12 INTELLECTUAL PROPERTY

The Buyer shall not be entitled to use any of the intellectual property of the Seller including without limitation any of the Seller's trade marks except with the prior written approval of the Seller.

13 FORCE MAJEURE

The Seller shall not be liable in any way for any loss or damage arising directly or indirectly as a result of delivery of the Goods being prevented or delayed by events due to the Buyer or by reason of any matters or events beyond the reasonable control of the Seller including (but without limitation):

- (i) acts of war, terrorism or sabotage, Government action or riots;
 - (ii) lockouts, strikes or industrial action wherever taking place, shortage of labour, raw materials, fuel or power as a result of non-delivery or any other cause, lack of transport, breakdowns, accidents to machinery or late provision to the Seller of any materials, information or instructions pertinent to the fulfilment of the Contract by the Seller; and
 - (iii) Act of God, accidents, fire, flood or storms,
- 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.

14. BUYER'S UNDERTAKINGS

- 14.1 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 it passes the Goods of the need to comply with such Recommendations for Use.
- 14.2 The Buyer will at all times indemnify the Seller in respect of all loss, damage and expenses suffered, incurred or paid by the Seller or any affiliated company of the Seller as a result of any claims brought by third parties in connection with the Buyer's use of the Goods otherwise than in accordance with the Seller's Recommendations for Use.

15 ASSIGNMENT

- 15.1 Each Contract is personal to the Buyer and the Buyer shall not assign or charge the benefit of any Contract without the Seller's prior written consent.
- 15.2 The Seller is a member of a group of companies and accordingly the Seller shall be entitled to assign any Contract to any member of its group without the need for the consent of Buyer and, in the event of any such assignment, the Buyer shall execute such documents as the Seller may request to ensure that the benefit and the burden of the Contract is properly transferred to the Seller's group company.

16 DEFAULT OR INSOLVENCY OF BUYER

- 16.1 If the Buyer shall breach any of these Conditions or any other of its obligations to the Seller, or suffers any judgment or any distress, seizure or execution is levied against it, or if the Buyer makes or offers any arrangement or composition with creditors, or commits 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 winding-up resolution or petition (other than for the purpose of solvent 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, or if the Buyer ceases to trade, or if the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, then without prejudice to any other right or remedy available to the Seller the Seller may without notice:
- 16.1.1 cancel suspend or terminate any Contract or any unfulfilled part of any Contract; and
- 16.1.2 halt any Goods in transit and decline to make further deliveries except upon receipt of advance payment or satisfactory security; and/or
- 16.1.3 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.
- 16.2 The granting by the Seller to the Buyer of time or any other relief or concession shall in no way prejudice or constitute a waiver of the Seller's entitlement to enforce any of its rights under any Contract or these Conditions (except and to the extent that it shall constitute a variation of these Conditions which has been made in accordance with Clause 2.3).
- 16.3 If the Seller terminates any Contract in accordance with this Clause 16, then, without prejudice to any other rights the Seller may have, it shall be entitled to retain any advance payment made by the Buyer.

17 NOTICES

- 17.1 All notices shall be in writing and sent by first class post, fax or email and shall be effective from the time received.
- 17.2 Notices shall be deemed to have been received:
- 17.2.1 if sent by first class post, two working days after posting; in proving such service it shall be sufficient to show that the envelope was put in the post and properly addressed to the Buyer's or Seller's address as shown on the Order or Acceptance (respectively) failing that to the address at which one party reasonably believes the other to be carrying on business;
- 17.2.2 if sent by email or fax, the next working day after transmission provided that the email or fax is sent to the appropriate Company Secretary or other such appropriate person as is identified for such purpose in the Order or Acceptance.

18 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 exclusive jurisdiction of the courts of England and Wales for the resolution of all disputes arising under the Contract.

19 SEVERANCE

If any provision of these Conditions and/or any Contract is declared void or otherwise unenforceable then the provision shall be omitted and the remaining provisions of this Agreement shall continue in full force and effect.

20 WEEE

- 20.1 The Buyer shall be responsible for and shall exclusively finance (all costs and expenses):
- (a) the collection and delivery of all waste electrical and electronic equipment (WEEE) arising or deriving from the Goods to an Authorised Treatment Facility as approved by the Environment Agency ("AATF"); and
- (b) the treatment, recovery and environmentally sound disposal of all WEEE arising or deriving from the Goods
- as required by the UK Waste Electrical and Electronic Equipment Regulations 2006 SI 3289, as enacted, amended, replaced or supplemented from time to time ("WEEE Regulations").
- 20.2 The Buyer shall comply with all additional obligations placed upon the Buyer by the WEEE Regulations by virtue of the Buyer accepting the responsibility set out in clause 20.1.
- 20.3 The Buyer shall provide the Seller's WEEE compliance scheme operator, (as appointed by the Seller and identified to the Buyer from time to time), with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Seller's membership of the operator's compliance scheme.
- 20.4 This clause 20 applies to all new electrical and electronic equipment (EEE) put on the UK market by the Seller after 13 August 2005 (known as new WEEE), as well as all EEE put on the UK market before 13 August 2005 (known as historic WEEE) which becomes waste as a result of a purchase of new EEE from the Seller after August 2005.
- 20.5 If the Buyer resells the EEE to a UK-based reseller or end-user of the EEE, the Buyer will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to such reseller or end-user. The Buyer agrees to indemnify and keep indemnified and hold harmless the Seller and its compliance scheme operator from and against all costs and expenses which the Seller or the compliance scheme operator incurs or suffers in the UK as a result of a direct or indirect breach or negligent performance or failure in performance by the Buyer of its obligations in this clause 20.

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Bayer



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