

1. Application of Conditions

- 1.1 We shall sell and you shall purchase the goods in accordance with our quotation or offer accepted by you, or your order which is accepted by us.
- 1.2 These conditions shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by you.

2. Interpretation

- 2.1 in these conditions:-

"Business day" means any day other than a Saturday, Sunday or Bank Holiday;

"You" means the buyer who accepts our quotation or offer for the sale of the goods or where we accept your order for the goods;

"the Contract" means the contract for the purchase and sale of the goods under these conditions;

"these Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

"the Delivery Date" means the date on which the Goods are to be delivered as stipulated in your order and accepted by us;

"the Goods" means the goods (including any instalment of the goods or any part for them) which we are to supply in accordance with these conditions;

"month" means calendar month;

"we, us or our" means WJ Leech & Sons Ltd, a company registered in England under 0485220 and includes all employees and agents of W J Leech & Sons Ltd;

"writing" includes any communication effected by telex, facsimile

transmission, electronic mail or any comparable means.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

3. Basis of Sale

3.1 Our employees or agents are not authorised to make any representations concerning the goods unless we confirm such in writing. In entering into the contract you acknowledge that you do not rely on, and waive any claim for breach of any such representations which are not so confirmed.

3.2 No variation to these Conditions shall be binding unless agreed in writing between you and us.

3.3 Sales literature, price lists and other documents issued by us in relation to the Goods are subject to alteration without notice and are not offers to sell the Goods capable of acceptance. An order placed by you may not be withdrawn, cancelled or altered after it has been accepted by us. No contract for the sale of the Goods shall be binding on us unless we have either issued a quotation which is expressed to be an offer to sell the Goods or we have accepted your order by whichever is the earlier of:-

3.3.1 our written acceptance;

3.3.2 delivery of the Goods; or

3.3.3 our invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any of our sales literature, quotation, price list, acceptance of offer, invoice or other documents or information shall be subject to correction and without any liability on our part.

4. Orders and Specifications

4.1 No order submitted by you shall be deemed to be accepted by us unless and until confirmed in writing by our authorised representative.

- 4.2 The specification for the Goods shall be those set out in our sales document unless varied expressly in your order and accepted by us. The Goods will only be supplied in the minimum units (or multiples) stated in our price list or in multiples of sales orders as specified. Orders received for quantities other than these will be adjusted accordingly. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by us are intended as a guide only and shall not be binding on us.
- 4.3 We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements. Goods may be supplied to our specification which do not materially affect their quality or performance.
- 4.4 No order which has been accepted by us may be cancelled by you except with our written agreement. You shall indemnify us 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 us as a result of cancellation.

5. Price

- 5.1 The price of the Goods shall be the price listed in our product price list or specific quotation price list current at the date of acceptance of your order or such other price as may be agreed in writing by you and us.
- 5.2 Where we have quoted a price for the Goods other than in accordance with our published price list, the price quoted shall be valid for 28 days only or such lesser time as we may specify.
- 5.3 We reserve the right by giving notice to you at any time before delivery to increase the price of the Goods to reflect any increase in cost to us which is due to any factor beyond our control (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for Goods which is requested by you, or any delay caused by your

instructions or your failure to give us adequate information or instructions.

- 5.4 We may at our sole discretion allow you quantity discounts subject to and in accordance with the conditions set out in our published price list for the Goods, current at the date of acceptance of your order.
- 5.5 Any settlement discount specified by us in the Contract will only be allowed by us in respect of Goods for which payment is received by us on or before the due date and provided that no other amounts owing by you to us are overdue and unpaid.
- 5.6 Except as otherwise stated under the terms of our quotation or our price list, and unless otherwise agreed in writing between you and us, all prices are inclusive of our charges for packaging and transport.
- 5.7 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which you shall be additionally liable to pay to us.

6. Payment

- 6.1 Subject to any special terms agreed in writing between you and us, we shall invoice you for the Goods on or at any time after delivery of the Goods. If the Goods are to be collected by you or you wrongfully fail to take delivery of the Goods, we shall be entitled to invoice you for the price at any time after we have notified you that the Goods are ready for collection or (as the case may be) we have tendered delivery of the Goods.
- 6.2 You shall pay the price of the Goods (less any discount or credit allowed by us, but without any other deduction credit or set off) within 30 days of our invoice or otherwise in accordance with such credit terms as may have been agreed in writing between you and us in respect of the contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to you. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 All payments shall be made to us as indicated on our form of acceptance or invoice.

6.4 We are not obliged to accept orders from you if you have not supplied us with references satisfactory to us. If at any time we are not satisfied as to your creditworthiness or for any other reason that we are not obliged to disclose to you, we may inform you without notice that no further credit will be allowed to you; in that event no further goods will be delivered to you other than against cash payment and notwithstanding Clause 6.2 of these conditions, all amounts owing by you to us shall be immediately payable in cash and we shall not be liable for any losses (direct or indirect nor loss of profit) you may suffer as a result of our sudden decision to withdraw credit terms.

7. Delivery

7.1 Delivery of the Goods shall be made by our delivering the goods to the place in the United Kingdom specified in your order and accepted by us as the location to which the Goods are to be delivered. If no place of delivery is so specified then you must collect the Goods at our premises promptly after we have notified you that the Goods are ready for collection.

7.2 The delivery date is approximate only and time for delivery shall not be of the essence unless previously agreed by us in writing. We may deliver the Goods in advance of the Delivery Date upon giving reasonable notice to you.

7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract. Our failure to deliver any one or more instalments in accordance with these Conditions or any claim by you in respect of any one or more instalments shall not entitle you to treat the contract as a whole as repudiated.

7.4 If you fail to take delivery of the Goods or any part of them on the Delivery date and/or fail to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, we shall be entitled upon giving notice to you, to store or arrange for the storage of the Goods and then notwithstanding the provisions of condition 10.1 of these Conditions risk in the Goods shall pass to you, delivery shall be deemed to have taken place and you shall pay us

all costs and expenses including storage and insurance charges arising from such failure.

8. Non-Delivery

8.1 If we fail to deliver the Goods or any of them on the delivery date other than for reasons outside our reasonable control or due to your fault or your carrier's fault then:-

8.1.1 if we deliver the Goods at any time thereafter we shall not be liable in respect of such late delivery.

8.1.2 if you give written notice to us within two Business days after the Delivery Date and we fail to deliver the goods within 28 Business days after receiving such notice, you may cancel the order and our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of obtaining similar goods to those not delivered over the price of the Goods not delivered.

9. Inspection/Shortage

9.1 You are under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.

9.2 Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined"

9.3 We shall not be liable for any damage or shortage that would be apparent on reasonable careful inspection if the terms of this clause 9 are not complied with and, in any event we will not be liable if a written complaint is not delivered to us within two days of delivery detailing the alleged damage or shortage.

9.4 In all cases where defects or shortages are complained of we shall not be liable unless we are given a reasonable opportunity to inspect the Goods before any use is made of them and you have not altered or modified the Goods.

9.5 Subject to condition 9.3 and condition 9.4 we shall make good any shortage in the Goods and where appropriate any Goods damaged in transit as soon as it is

reasonable to do so, but otherwise we shall be under no liability whatsoever arising from such shortage or damage.

10. Risk and Retention of Title

10.1 Risk of damage to or loss of the Goods shall pass to you at:

10.1.1 in the case of Goods to be delivered at our premises, the time when we notify you that the Goods are available for collection; or

10.1.2 in the case of Goods to be delivered otherwise than at our premises, the time of delivery or, if you wrongfully fail to take delivery of the Goods, the time when we have tendered delivery of the Goods.

10.2 Notwithstanding delivery and the passing of risk in the Goods, legal and beneficial title of the Goods shall not pass to you until we have received in cash or cleared funds payment in full of the price of the Goods and any other Goods supplied by us to you and you have repaid all monies owed to us regardless of how such indebtedness arose.

10.3 Until payment has been made to us in accordance with these Conditions and title in the Goods has passed to you, you shall be in possession of the Goods as our bailee and shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by us and shall insure the Goods against all reasonable risks.

10.4 In the event that you sell or transfer the Goods to a third party before legal and beneficial title has passed to you under these Conditions the proceeds of the sub-sale or transfer (or such proportion as is due to us) shall be held by you on our behalf. You shall ensure that such monies or funds, and that all monies held on our behalf are identified as such.

10.5 We may in accordance with the provisions of the Companies Act 2006, register any charge created by these conditions.

10.6 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property. If you do so then all

money owing by you to us shall (without prejudice to any other right or remedy we have) forthwith become due and payable.

10.7 We reserve the right to repossess any goods in which we retain title without notice.

You irrevocably authorise us to enter your premises during normal business hours for the purpose of repossessing Goods in which we retain title or for the purpose of inspecting the Goods to ensure compliance with the storage and identification requirements of sub-clause 10.3.

10.8 Your right to possession of the Goods in which we maintain legal and beneficial title shall terminate if:

10.8.1 you commit or permit any material breach of your obligations under these Conditions;

10.8.2 you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors;

10.8.3 you are or become the subject of a bankruptcy order or you take advantage of any other statutory provision for the relief of insolvent debtors;

10.8.4 you convene any meeting of your creditors, enter into a voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge-holder (as defined in paragraph 14 of schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for your winding up or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

11. Assignment

11.1 We may assign the Contract or any part of it to any person, firm or company.

11.2 You shall not be entitled to assign the Contract or any part of it without our prior

written consent.

12. Defective Goods

- 12.1 If on delivery any of the Goods are defective in any material respect and either you lawfully refuse delivery of the defective goods or, if they are signed for on delivery "condition and contents unknown" you give written notice of such defects to us within three business days of such delivery, we shall at our option:-
- 12.1.1 replace the defective Goods within 28 days of receiving your notice; or
 - 12.1.2 refund the price for the Goods which are defective to you;
- but we shall have no further liability to you in respect thereof and you may not reject the Goods if delivery is not refused or you do not give notice as aforesaid.
- 12.2 No Goods may be returned to us without our prior written agreement. Subject thereto any Goods returned which we are satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall at our sole discretion either be replaced free of charge or we shall refund or credit to you the price of such defective goods but we shall have no further liability to you.
- 12.3 If you purchase any Goods within six months of the launch of such goods you shall have the right to return the Goods or any part of such order within two months of delivery, provided always that if you exercise such right you shall:-
- 12.3.1 return such Goods at your risk and cost; and
 - 12.3.2 indemnify us against any cost incurred by us in rectifying any deterioration of the Goods caused by incorrect storage or use whilst in your hands.
- 12.4 We shall not be liable for any defect arising from fair wear and tear, or for your wilful damage, negligence, subject to normal conditions, or failure to follow our instructions (whether oral or in writing) misuse or alteration of the Goods without our approval, or any other act or omission on the part of you, your employees or agent or any third party.
- 12.5 Subject as expressly provided in these Conditions and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by

statute or common law are excluded to the fullest extent permitted by law.

- 12.6 Where the Goods are sold under a consumer sale your statutory rights are not affected by these Conditions.
- 12.7 Except in respect of death or personal injury caused by our negligence, or as expressly provided in these Conditions we shall not be liable to you by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute or under the express terms of the Contract, for any direct consequential loss or damage sustained by you (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence or by our servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by you.
- 12.8 You shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by you complies with all applicable statutory handling and sale of the Goods by you is carried out in accordance with directions given by us or any competent governmental or regulatory authority and you will indemnify us against any liability loss or damage which we might suffer as a result of your failure to comply with this condition.

13. Your Default

- 13.1 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:-
- 13.1.1 cancel the order or suspend any further deliveries to you;
- 13.1.2 appropriate any payment made by you to such of the Goods (or the Goods supplied under any other Contract between you and us) as we may think fit (notwithstanding any purported appropriation by you); and
- 13.1.3 charge you interest (both before and after any judgment) on the amount unpaid at a rate of two per cent per annum above the average national bank

base rate from time to time until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest)

13.2 If:-

13.2.1 you fail to perform or observe any of your obligations hereunder or otherwise in breach of the Contract; or

13.2.2 you enter into administration or make any voluntary arrangements with your creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) become bankrupt or (being a company) go into liquidation; or

13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or

13.2.4 you cease, or threaten to cease, to carry on business; or

13.2.5 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly

then, without prejudice to any other right or remedy available to us, we shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to you. If the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or engagement to the contrary.

14. Limitation of our liability

14.1 Subject to condition 7, condition 8 and condition 13, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of;

14.1.1 any breach of Conditions;

14.1.2 any use made (including but not limited to modifications) or resale by you of any of the goods, or of any product incorporating any of the Goods; and

14.1.3 any presentation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the Conditions implied by section 12 of the Sales of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these conditions excludes or limits our liability:
- 14.3.1 for death or personal injury caused by our negligence; or
 - 14.3.2 for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
 - 14.3.3 for fraud or fraudulent misrepresentation.
- 14.4 Subject to condition 14.2 and 14.3:
- 14.4.1 our total liability in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 14.4.2 we shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15. Confidentiality, Publication and Endorsements

- 15.1 You undertake to us that:-
- 15.1.1 you will regard as confidential the Contract and all information obtained by you relating to our business and/or products and will not use or disclose to any third party such information without our prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of your default;
 - 15.1.2 you will not use or authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which we are licenced to use or which is owned by us upon any premises, note paper, visiting cards,

advertisements or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by us and (where appropriate) its licensor;

15.1.3 you will use all reasonable endeavours to ensure compliance with this Condition by its employees, servants and agents.

15.2 This condition shall survive the termination of the Contract.

16. Communication

16.1 All communications between the parties about the contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

16.1.1 (in the case of the communication to us) to our registered office or such changed address as shall be notified to you by us; or

16.1.2 (in the case of the communication to you) to your registered office (if it is a company) or (in any other case) to any address of yours set out in any document which forms part of the Contract or such other UK address as shall be notified to us by you.

17. Force Majeure

17.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout then (subject to sub-clause 17.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

17.2 Sub-Clause 17.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

17.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this agreement.

17.4 If and when the period of such incapacity exceeds six months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

18. Waiver

No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

19. Severance

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 the remainder of the provision in question shall not be affected thereby.

20. Third Party Rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contract (Rights of Third Parties) Act 1999.

21. Governing Law and Jurisdiction

The Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.