

BARD LIMITED

CONDITIONS OF SALE

(These Conditions do not apply in respect of a Consumer Sale).

1. Interpretation

1.1 In these Conditions;

'BUYER' means the person who accepts a quotation from the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.

'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

'SELLER' means Bard Limited of Forest House, Brighton Road, Crawley, West Sussex RH11 9BP (registered in England and Wales under number 939600).

'CONDITIONS' means that 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.

'CONTRACT' means the contract for the purchase and sale of the Goods.

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.

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

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation..

2. Basis of the Sale

2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any application specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation/tender (if accepted by the Buyer) or the buyer's order/tender documents (if accepted by the Seller).

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark, or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price shall be the Bard Limited Hospital List or NHS Drug Tariff price current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The Company's prices do not include handling and delivery, this is charged separately; and includes the mainland of the U.K, Channel Islands & Ireland;

a) the Seller reserves the right to charge for all deliveries regardless of value

b) Additional costs will be incurred by the buyer for urgent/next day/short delivery requests; regardless of order value.

4.4 The price is exclusive of any applicable VAT, which the buyer shall be additionally liable to pay the Seller.

4.5 The cost of pallets and returnable containers may be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of Payment

5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to;

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

6.1 Delivery of the Goods shall be made to the delivery address stated on the Buyer's order or tender documents unless alternative arrangements for delivery have been made and agreed by the parties in writing. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

6.2 Delivery of the Goods by the Seller does not include the provision of labour and equipment for unloading, which the Buyer shall be liable to provide, at the Buyer's own cost and risk.

6.3 When the Seller delivers the Goods, the Seller's liability for so doing shall be limited to delivering them as near to the place where the goods are required as a safe hard road permits. In any particular case the Seller should agree to relax this condition, the relaxation shall be deemed to have been given in consideration of any indemnity from the Buyer against all losses, costs and expenses which the Seller may incur or pay as a result of such relaxation.

6.4 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

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

6.6 If the Buyer fails to take delivery of the Goods or any part of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may;



6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;

and

6.6.2 sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any money's or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passed to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification and be free from defects in material and workmanship at the time of delivery.

8.2 The above warranty is given by the Seller subject to the following conditions

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working or storage conditions, failure to follow the Seller's instructions (whether oral or in writing), abuse, misuse, alteration or repair of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer under these provisions shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within 48 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is refused and 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 defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods under these provisions is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, conditions or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employee or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;

8.7.1 Act of God, explosion, flood, tempest, fire or accident;

8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;

8.7.4 import or export regulations or embargoes;

8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.7.7 power failure or breakdown in machinery

8.7.8 delivery slots are not available from the buyer

8.8 Without prejudice to provisions of the above clause the Seller will accept the return of Goods delivered with full credit provided that;

8.8.1 The Buyer requests prior authorisation in writing within 14 days from delivery of the Goods specifying;

- (a) the reason for the return
- (b) product code, quantity and where applicable batch number(s)
- (c) purchase order number invoice number and date

and

8.8.2 The Seller accepts that either;

- (a) the Goods were damaged in transit and the Buyer reported that fact to the Seller in accordance with the provisions of clause 8.4

or

- (b) the Goods were delivered in error

8.8.3 At its sole discretion the Seller may agree to accept returned Goods for other reasons provided they are returned in a condition acceptable to the Seller and subject to payment of a handling charge of up to 25% of the full price.

9. Insolvency of the Buyer

9.1 This claim applies if;

9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);

or

9.1.2 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer;

or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business;

or

9.1.4 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.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Favoured Purchaser Discount

If any Favoured Purchaser Discount applies, the Buyer warrants that the Goods are purchased for its own use only and in the event of any resale, any discount allowed to the Buyer shall forthwith be payable to the Seller.

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 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.

11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by the Seller and the arbitrator appointed by the Seller and the arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1950.

11.5 The Contract shall be governed by the laws of England.

