

## CONDITIONS OF SALE OF HERB UK LIMITED

### ◆ In these Conditions:

**Acknowledgement of Order.** means the Supplier's written and signed acknowledgement, to which these Conditions are attached, of the Customer's Order; **Conditions.** are these terms and conditions of sale and any special terms and conditions on the face of the Acknowledgement of Order; **Contract.** is the contract for the purchase and sale of the Products entered into between the Supplier and the Customer of which these Conditions and the Acknowledgement of Order form part; **Customer.** is the person who places an order for the Products pursuant to the quotation of the Supplier and whose order for the Products is accepted by the Supplier; **Products.** are the Products (including any instalment of the Products) which the Supplier is to supply; **Quotation.** is the Quotation given by the Supplier's authorised representative. **Supplier.** is Herb UK Limited, whose registered office is at 310 Ampress Lane, Ampress Park, Lymington, Hampshire, SO41 8JX

### 1. BASIS OF THE SALE

1.1 All Products are sold subject to the Supplier's prior approval of the Customer's credit and to the Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Quotation is accepted or purported to be accepted, or any order is made or purported to be made, by the Customer.

1.2 No variation to these Conditions shall be binding unless agreed in writing by a director of the Supplier.

1.3 The Supplier's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Supplier in writing.

1.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk. 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 Supplier shall be subject to correction without any liability on the part of the Supplier.

### 2. CONTRACT

2.1 The Supplier's quotation shall be deemed to be an invitation to the Customer to make an offer to purchase the Products subject to the Conditions and such offer by the Customer shall not constitute a valid Contract until accepted by the Supplier's authorised representative, which acceptance shall be conveyed to the Customer by service of an Acknowledgement of Order.

2.2 The quantity and description of and any specification for the Products shall be those set out in the Supplier's Quotation (if accepted by the Customer) or the Acknowledgement of Order. If there is any conflict between the provisions of the Quotation and those of the Acknowledgement of Order then the latter shall prevail.

### 3. DELIVERY

3.1 The Products may, at the Customer's option, be delivered by any one of the following methods:

(a) by collections from the works of the Supplier by the Customer, the Customer's agent, or an independent contractor hired by the Customer;

(b) by delivery by the Supplier, the Supplier's agent, or an independent contractor hired by the Supplier to a location reasonably designated by the Customer; or by any other method agreed in writing between the Supplier and the Customer.

3.2 The Customer warrants the details of any address for delivery stipulated by the Customer.

3.3 The Supplier shall use its best endeavours to ensure that the Products are delivered on or before the date specified on the Acknowledgement of Order, however any dates given for the delivery of the Products are approximate only and the Supplier shall not be liable for any loss, direct or indirect, which may arise from delay in delivery of the Products however caused. Time for delivery shall not be of the essence.

3.4 The Products may be delivered in instalments. Each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

3.5 If the Customer or other third party nominated by the Customer fails to take delivery of the Products within 14 days of being notified that the Products are ready for collection or delivery (as the case may be) or fails to give the Supplier adequate delivery instructions at the time stated for delivery or has requested a delay in delivery or the Customer is unable to give access to its premises for the purposes of delivery or installation then the Supplier may at the risk and expense of the Customer store the Products until actual delivery and charge the Customer for the costs (including insurance) of storage and redelivery, or sell the Products at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Customer for the excess over sums owing by the Customer or charge the Customer for any shortfall. The date of the Products being put into storage shall be deemed to be the date of delivery and, unless the Products have already been paid for, the Customer shall be invoiced for the Products at that date. Once the Products are in storage, the Supplier will not have any obligation to take any further steps in relation to the Products, unless and until has received full written instruction from the Customer.

3.6 The Supplier shall not be liable in respect of any damage to the Products, discrepancy in the Customer's order, shortage in the Products delivered, loss of the Products in transit or any claim that the Products delivered or collected do not otherwise comply with the Contract unless:

(a) a claim is made by the Customer in writing within 3 days of the date of delivery or collection (or if not delivered or collected within 7 days of the anticipated date of delivery or collection) and proof of damage occurring before delivery or collection (as the case may be) is established to the Supplier's satisfaction. All Products and packaging must be retained and made available for inspection, by or on behalf of, the Supplier; and  
(b) (where applicable) the Customer has complied and reasonably cooperated with the requirements of the carrier and of the insurer regarding damage, discrepancy, shortage or loss.

In no circumstances may the Products be returned to the Supplier by the Customer without the prior written consent of the Supplier. Where Products are returned and no liability on the part of the Supplier under this Condition 3.6 or any warranty provision in these Conditions is found, a handling charge reasonably specified by the Supplier will, at the Supplier's discretion, be either deducted from any credit allowed by the Supplier or be payable to the Supplier by the Customer upon demand.

3.7 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of the Incoterms and these Conditions, the latter shall prevail.

### 4. PRICE & CANCELLATION

4.1 All prices are quoted subject to acceptance within any period specified and to any increase which may occur as a result of factors falling outside the control of the Supplier.

4.2 VAT and any other applicable customs or excise duties or taxes (where applicable) will be added to all invoices at the rate ruling at the date of despatch. Which will be added and shall be payable by the Customer in accordance with the law applicable from time to time against an appropriate invoice.

4.3 Quotations may be withdrawn at any time prior to Acknowledgement of Order.

4.4 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier 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 Supplier as a result of cancellation.

### 5. PAYMENT AND INTEREST

5.1 Methods of Payment: The method of payment shall be at the sole discretion of the Supplier who shall notify the Customer in writing of the method to be adopted. The Supplier shall be under no obligation to deliver the Products where the Customer has failed to pay the full price for the Products without deduction or set off.

If the Supplier permits a period of credit payment shall be due within thirty days of the date of despatch of the Products unless a different period is agreed in writing by the parties. The Supplier shall at any time be entitled to bring an end to the granting of credit to the Customer where for example (without limitation) the Supplier is unable to obtain reasonable credit insurance which is cost effective to the Supplier. Whichever method of payment is adopted, time for payment shall be of the essence of the Contract and all payments shall be made in Pounds Sterling unless otherwise specified by the Supplier.

5.2 On the due date for payment the Customer shall pay to the Supplier 100% of the Price without any right of set-off, deduction, retention or withholding whatsoever.

5.3 Interest shall be payable by the Customer on any money which is not paid by it to the Supplier under the Contract by the due date for its payment ("the Due Date for Payment"). Such interest shall accrue and be calculated on a daily basis, both before and after any judgment and until the date on which it is actually paid, at a rate equivalent to the rate prevailing at the Due Date for Payment as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998. Interest shall be compounded quarterly and be payable on demand.

### 6. RETENTION OF TITLE AND RISK

6.1 The risk in the Products shall pass to the Customer on delivery. At that moment, the Customer shall become responsible for the care and protection of the Products and shall take out at its own expense adequate and comprehensive all risks cover on the Products (with a note of the Supplier's interest endorsed therein until the Supplier has received payment of the price in full).

6.2 Notwithstanding delivery and the passing of risk in the Products, title in the Products (including full legal and beneficial ownership) shall not pass to the Customer until the Supplier has received (in cash or cleared funds) payment in full for all Products supplied by the Supplier to the Customer under all contracts between them. Payment of the full price for the Products shall include the amount of any interest or other sums payable under contracts between the Supplier and the Customer.

6.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Supplier's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property. Until that time or until otherwise notified by the Supplier in writing or until the happening of any event set out in these Conditions entitling the Supplier to terminate this Contract the Customer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to the Supplier for the proceeds of the sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

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

6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for an indebtedness, any of the Products which remain the property of the Supplier.

### 7. TERMINATION

7.1 The Supplier shall have the right immediately on notice ("Notice of Cancellation") to the Customer to cancel or to suspend any further deliveries under the Contract or to terminate the Contract or any other contract with the Customer without any liability to the Customer and, if the Products have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

7.1.1 the Customer informs the Supplier that it is unlikely or unable to make payment or threatens to suspend payments or fails to make any payment when due or breaches any provision of the Contract;

7.1.2 the Customer makes or threatens to make 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; or an encumbrance takes possession, or a receiver, administrative receiver or administrator or any similar official under any overseas jurisdiction is appointed in respect of the whole or any part of the assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business, or suspends or intends to suspend payment of its debts, or commences negotiations with any or all of its creditors with a view to rescheduling its debts, or a petition is filed, or a notice is given or a resolution is passed or an order is made for the winding up of the Customer (being a company); or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer;

7.1.3 the Customer commits or is a party to dishonest or fraudulent conduct in relation to the Contract;

7.1.4 distress or execution being levied upon the Customer's property or assets which is not discharged within 14 days.

7.2 The right of termination given by Condition 7.1 above shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement, which are expressed to survive termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract.

7.3 If the Supplier serves a Notice of Cancellation to the Customer then the Supplier shall have the option to buy back at cost price any stock purchased and delivered to the Customer and which the Customer has paid for in full upon the Supplier giving to the Customer 14 days notice of its intention to do so. If no notice is given to the Customer then the Customer shall have a period of 3 months within which to dispose of any remaining stock in a manner which does not devalue the Products or the Intellectual Property Rights. Any unsold stock shall be returned without charge to the Supplier.

### 8. DEFAULT

The Customer shall fully and effectively indemnify the Supplier against the total expense to the Supplier arising out of the Customer's breach or breaches of these conditions of sale. Such expense shall include (without limitation) (1) all expenses incurred by the Supplier in sourcing and manufacturing the Products (2) all court fees (3) all amounts payable to the Supplier's professional advisers (payable on an indemnity basis) in pursuing claims against the Customer for breach or breaches of these conditions of sale and for enforcing any judgment/s and/or order/s (4) all amounts payable to the Supplier's insurers and/or debt recovery agents, in each case including anticipated sums payable by the Supplier only after payment of any sums from the Customer.

### 9. WARRANTY

9.1 The Supplier warrants that on delivery, the Products shall conform with their description, be free from material defects in design, material and workmanship, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Supplier.

9.2 The Customer shall give notice in writing to the Supplier within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in this clause 9.1 (a "Relevant Claim") and provided that the Supplier is given a reasonable opportunity of examining such Products and the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

9.3 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 9.1 in any of the following events:

9.3.1 The Customer makes any further use of such Products after giving notice in accordance with clause 9.2;

9.3.2 The defect arises because the Customer (or a third party) failed to follow the Supplier's oral or written instructions as to the storage or use of the Products or (if there are none) good trade practice regarding the same;

9.3.3 The Customer alters the Products without the written consent of the Supplier; or

9.3.4 The defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions.

9.4 The Customer shall, immediately it becomes aware of a matter which may result in a Relevant Claim involving a third party:

9.4.1 immediately give notice to the Supplier of the details of the matter;

9.4.2 afford access to the Supplier and permit copies to be taken of any materials, records or documents as the Supplier may require to take action under sub-clause 9.4.3;

9.4.3 allow the Supplier the exclusive conduct of any proceedings and/or take whatever action as the Supplier shall direct to defend or resist the matter, including the use of professional advisers nominated by the Supplier; and

9.4.4 not admit liability or settle the matter without the written consent of the Supplier.

9.5 The Customer undertakes to maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Products or any of them from the retail and/or wholesale markets. These records shall include records of deliveries to customers (including details of batch numbers, delivery date, name and address of customer, and telephone number and fax or telex number if available).

9.6 The Customer shall, at the Supplier's cost, give such assistance as the Supplier shall require for the purpose of recalling as a matter of urgency any quantities of the Products or any of them from the retail and/or wholesale market.

9.7 The Supplier shall not be liable for any increased costs, expenses, economic loss, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special indirect or consequential loss (including loss of damage suffered by the Customer as a result of an order brought by a third party) arising out of these Conditions or the supply of the Products generally even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same. The Supplier does not attempt to limit liability for personal injury or death caused by its negligence or the negligence of its employees or agents.

9.8 For the avoidance of doubt the Supplier shall not be responsible for any claim, loss or damage which is caused by the Customer's misuse or mishandling of the Products.

9.9 Subject to the provisions of the Unfair Contract Terms Act 1977, all warranties other than those expressly set out in this Agreement or the Supplier's current Conditions of Sale, conditions, representations whether written or oral or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.10 To the extent the law does not permit the liabilities concerned to be excluded and saved as otherwise expressly provided, the Supplier's entire aggregate liability for all claims shall be limited to damages of an amount equal to the price of Products in question.

9.11 The Customer accepts that the limitations and exclusions set out in the Agreement are reasonable having regard to all the circumstances including, without limitation, the price and that it has been given and has taken the opportunity to negotiate the Agreement.

### 10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall be solely responsible for obtaining, paying for and complying with any necessary licences, approvals or consents of any government or other relevant authority, in respect of the Products including (without limitation) relating to its acquisition, importation, carriage or use of the Products (including where the Products are exported out of the UK), and shall produce evidence of the same to the Supplier upon demand. The Customer shall not be entitled to withhold or delay payment of the Price due to its failure to obtain such licences, approvals or consents. The Customer shall be responsible for the payment of any applicable customs duties and/or taxes on importation of the Product. The Customer shall indemnify the Supplier against all additional expenses or charges incurred by the Supplier resulting from such failure.

10.2 The Customer shall comply fully with all user instructions and safety recommendations issued by the Supplier in relation to the Products and the Supplier shall not be liable to the Customer as a result of the Customer failing fully to observe the provisions of this Condition, save where death or personal injury results from the negligence of the Supplier or its sub-contractors.

### 11. INTELLECTUAL PROPERTY RIGHTS

11.1 Ownership of Intellectual Property Rights: The Customer acknowledges that all intellectual property rights including (without limitation), copyright, moral rights, patents, registered design, formulas, design right, trademarks, know-how or other rights of a similar nature ("Intellectual Property Rights") in the Products are and shall remain the sole property of the Supplier or such other party as may be identified therein or thereon, including those relating to any part of the Products manufactured by the Supplier in accordance with any instructions or specification of the Customer.

11.2 Customer to Indemnify Supplier: The Customer shall indemnify the Supplier at all times (both before and after the supply of the Products) against all claims, proceedings, actions, liabilities, losses, costs (including legal costs), expenses, penalties and damage of whatsoever nature brought against, suffered or incurred by the Supplier relating to any infringement or alleged infringement of any Intellectual Property Right, or other confidential information arising out of:

(a) the Supplier's manufacture of, or carrying out of any other work in relation to, the Products in accordance with any instruction, specification, design, drawing or other data supplied by or on behalf of the Customer the supply of such Products to the Customer;

(b) the Customer's use of the Products in any way except as permitted by this Contract.

11.3 Trade Marks: The Customer shall ensure that any trade marks of the Supplier or other words or marks affixed to or used in relation to the Products are not obliterated, obscured or omitted without the Supplier's prior written consent. The Customer shall not add, affix or use any additional words or marks to or in relation to the Products without the Supplier's prior written consent. The Customer shall not process or alter the Products with the Supplier's prior written consent to the continued use or in relation to the Products of any trade marks of the Supplier or any other words or marks affixed to or used in relation to the Products.

11.4 If the Supplier serves a Notice of Cancellation then:

11.4.1 any rights granted to the Customer to use the Intellectual Property Rights shall cease (provided that if the Supplier does not elect to buy back stock from the Customer in accordance with clause 7.3, then the Customer shall have a limited licence to use the Intellectual Property solely for the purpose of disposing of the stock within the 3 month period permitted by clause 7.3);

11.4.2 the Customer agrees not to manufacture, sell, distribute or to trade under the Intellectual Property Rights or under any other mark or symbol similar to the Intellectual Property Rights whether directly or indirectly through any connected businesses for a period of 5 years after the date of the Notice of Cancellation and the Customer agrees to indemnify the Supplier against all and any loss, cost (including legal costs), expense or damage which the Supplier may suffer and which may arise out of the Customer's breach of this clause 11.4.

### 12. CONFIDENTIALITY

Save as otherwise permitted by the Contract, as required by law, as the same is or shall be in the public domain, is known by the Customer at the time of disclosure or is rightfully obtained by the Customer without restriction from third parties, the Customer shall keep strictly private and confidential all information and documentation disclosed by the Supplier to the Customer which relates to any drawings, designs, specifications or trade secrets of the Supplier (including without limitation the Supplier's proprietary processes of manufacture, know how or methods of carrying on business) or which is designated by the Supplier as confidential and will not use, copy or disclose any of such information and documentation to any third party whatsoever.

### 13. FORCE MAJEURE

The Supplier shall (1) in any event not be liable for loss or damage and (2) be entitled to cancel or rescind the contract if the performance of its obligations under the contract is in any way adversely affected by any cause whatsoever beyond the Supplier's control including (but not limited to) the delays or default of any sub-contractor, or caused by any act of God, war, strike, lock-out, trade dispute, hostility, riot, fire, explosion, flood, accident to plant or machinery, shortage of materials or labour, sabotage, lack of adequate fuel, power, injunction, compliance with governmental laws, regulations or orders, breakage or failure of machinery or apparatus, or any other cause whether or not of the class or kind enumerated which affects performance of the Contract arising from or attributable to acts, events, non-happenings, omissions or accidents beyond the reasonable control of the Supplier

### 14. GENERAL

14.1 The Customer may not assign any of its rights under the Contract without the prior written consent of the Supplier. The Supplier may assign all or any of its rights under the Contract without any requirement to notify or obtain the prior consent of the Customer.

14.2 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.

14.3 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.

14.4 These Conditions together with the Acknowledgement of Order constitute the entire agreement between the Supplier and the Customer concerning the supply of the Products and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

14.5 Any notice, request, instruction or other document to be given hereunder shall be delivered, sent by first class post or facsimile to the address of the other party as set out in the Acknowledgement of Order (or such other address as may have been subsequently notified) and any such notice or other document shall be deemed to have been served, if delivered, at the time of delivery, if sent by first class post, upon the expiration of 48 hours after posting if the recipient of the notice is within the UK or 5 days if the recipient of the notice is outside the UK and if sent by facsimile shall be deemed to have been delivered upon transmission to the correct number provided such notice is confirmed within 48 hours by either delivery or posting a copy by first class post to the appropriate address.

14.6 Nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of these Conditions.

14.7 The parties agree that this Contract shall be constructed in accordance with English law and for the exclusive benefit of the Supplier that the Courts of England are to have the exclusive jurisdiction to settle any disputes which may arise in connection with this Contract, but the Customer agrees that the Supplier shall be entitled to bring proceedings in connection with this Contract in any other court of competent jurisdiction.