

STANDARD TERMS AND CONDITIONS FOR SALE OF PRODUCTS (2022)



Interpretation

Definitions:
Affiliate: any company, enterprise, corporation or business entity which controls, is controlled by, or is under common control with the Supplier. For this purpose, "control" shall mean the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of an entity (other than a natural person), whether through holding a majority of the voting rights of that entity, by contract or otherwise.
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions.
Customer: the person who purchases the Products from the Supplier.
Expenses: any out-of-pocket costs incurred by the Supplier in fulfilling an Order, including (without limitation): postage, packaging, carriage, freight, and handling charges; insurance; currency conversion and banking charges applicable to the payment method used; value added tax or any other applicable sales tax in the country in which the Supplier is resident; and any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Location is located.
Force Majeure Event: an event or circumstance beyond the Supplier's reasonable control including without limitation acts of God, accidents, fire, breakdown of plant or machinery, unavailability or shortage of any Product or raw materials, strikes and lock-outs.

Products: the products set out in the Order.
Order: the Customer's order for the Products as referred to in clause 3.1.
Sanctions: any laws or regulations relating to economic or financial sanctions, export controls, trade embargoes or restrictive measures from time to time imposed, administered or enforced by a Sanctions Authority.
Sanctions Authority: the UK and the United Nations (UN) and any other governmental authority with jurisdiction over the Supplier or any of its Affiliates (or any part of their respective business or operations), and in each case their respective governmental, judicial or regulatory institutions, agencies, departments and authorities, including (without limitation) the UN Security Council, Her Majesty's Treasury and the UK's Office of Financial Sanctions Implementation and Department of International Trade.

Orders: the Supplier's orders for the Products (noting without limitation manufacturing specifications and processes, storage requirements, health and safety information including material safety data sheets) as issued, updated, amended and revised by the Supplier from time to time and which shall be made available to the Customer on written request.
Supplier: Thornton & Ross Limited (registered in England and Wales with company number 00185947) whose registered office is at Linthwaite Labs, Manchester Road, Huddersfield, West Yorkshire, HD7 5QH.

Interpretation:
(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
(b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
(c) a reference to writing or written includes emails or fax.
(d) a reference to person shall be deemed to be a reference to any person, firm, company or institution

Basis of contract
These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (including without limitation any standard or printed terms tendered by the Customer or referred to in any communications from the Customer), or which are implied by trade, custom, practice or course of dealing.
The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or specifications contained in the Supplier's catalogues or website are produced for illustration only and shall not form part of the Contract nor have any contractual force.

Orders
Orders may be placed by the Customer by way of a telephone order, email, fax or EDI as determined by the Supplier from time to time depending on the type of Product that the Customer intends to purchase.
Orders are only accepted by the Supplier if the Supplier confirms such acceptance in writing or (if earlier) when the Supplier delivers the Products, at which point the Contract shall come into existence. The Supplier reserves the right not to accept the Customer's Order at any time and for any reason and whether in whole or in part.
Each Order that is accepted by the Supplier in accordance with the provisions of clause 3.2 creates a separate Contract.

The Customer shall comply with any minimum order quantities that the Supplier may from time to time notify the Customer and/or pay any administration fee that the Supplier may specify in respect of any orders below such minimum order quantities. Such fee shall be notified to the Customer either in writing or at the time that the Customer places the order.
Acceptance of any Order by the Supplier is subject (without limitation) to (i) a satisfactory credit check being carried out by or on behalf of the Supplier, and (ii) to supplies of the Products being available and unsold.
The Customer has sole responsibility for accurately identifying the Products that it requires.
If the Customer cancels any Order then the Customer shall indemnify the Supplier in full against all losses expenses costs charges and expenses which the Supplier suffers or incurs as a result of such cancellation.

Where the Supplier accepts Orders placed by the employees, agents or contractors of the Customer, the Supplier shall not be responsible for vetting the authorisation of such employee agent or contractor and the Supplier shall not be liable to the Customer for any losses incurred by virtue of the Supplier's acceptance of such an Order.
Notwithstanding any other provision of these Conditions, the Supplier may at any time and for any reason stop making any further deliveries of any Product to the Customer and demand immediate payment of all Products that have been supplied to the Customer prior to such date.
None of the Products are sold on a "sale or return" basis and the Supplier has no obligation to accept the return of any Products.

Without prejudice to clause 3.10, the Supplier may at its discretion accept return of certain Products if (i) the Customer requests such a return by no later than the Business Day after the day of delivery, (ii) the Supplier is satisfied that the Products have been stored properly and correctly, (iii) the Products are in current whole packs with unbroken seals and are not in any way damaged or unfit for sale, (iv) no dispensing labels have been attached or attempted to have been attached and then removed from the packaging of the Products, and (v) the Customer pays an uplift fee to the Supplier in such amount as specified by the Supplier. If any of these conditions are not fulfilled in relation to any Products where the Supplier has at its discretion accepted their return then the Customer shall be responsible for all destruction and other costs and expenses incurred by the Supplier in arranging for the return and destruction of such Products.

Delivery
The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Products are ready and subject to the Customer paying the Expenses which will be included on the invoice. The Customer hereby represents and warrants to the Supplier that the Delivery Location complies with all relevant regulatory and registration requirements for the receipt storage and handling of the Products. The Customer shall have sole responsibility for the security of the Delivery Location.
Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products or for any loss incurred by the Customer of whatever nature as a result of late delivery or non-delivery of the Products.
The Customer's signature on a delivery note will be evidence that the Customer has accepted delivery of the Products.

If the Customer fails to take delivery of the Products before the Delivery Location then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:
(a) delivery of the Products shall be deemed to have been completed on the day on which the Supplier notified the Customer that the Products were ready; and
(b) the Supplier shall store the Products until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

Where the Delivery Location is outside of the United Kingdom then on delivery, the Supplier (or its appointed carrier) shall provide the Customer with such export documents as are necessary and such the Customer is responsible to prepare, together with the carrier's way note.
If ten Business Days after the day on which the Supplier notified the Customer that the Products were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price paid by the Customer for the Products or charge the Customer for any shortfall below the price of the Products.
The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

The Supplier shall not be liable for any shortages or quantities of Products delivered or any damage to the Products which ought to be reasonably apparent on inspection by the Customer or if the Customer gives written notice to the Supplier with details of such shortage and/or damage by no later than the second Business Day after the date on which the Products were delivered. The Customer must retain all damaged Products and/or packaging for inspection by the Supplier.
The Supplier's total liability in relation to any shortages and/or damaged products as referred in clause 4.8 shall be limited to either providing replacement Products or giving credit to the Customer for such Products as determined by the Supplier.
Where the Delivery Location or the Customer is outside of the United Kingdom, the Customer is responsible for obtaining at its own cost, such import licenses and other consents in relation to the Products as are required from time to time, and if required by the Supplier, the Customer shall make those licenses and consents available to the Supplier prior to the relevant shipment.

Title and risk
The risk in the Products shall pass to the Customer on delivery.
Title to the Products shall not pass to the Customer until the earlier of:
(a) the Supplier receives payment in full (in cash or cleared funds) for the Products and any other Products that the Supplier has supplied to the Customer, in which case title to the Products shall pass at the time of payment of all such sums; and
(b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 5.4.

(Until title to the Products has passed to the Customer, the Customer shall be deemed to be the Supplier's agent for the purposes of:
(a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Supplier's property;
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
(c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.1; and
(e) give the Supplier such information relating to the Products as the Supplier may require from time to time.)

Subject to clause 5.5, the Customer may resell the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:
(a) it does so as principal and not as the Supplier's agent; and
(b) title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 7.1, then, without limiting any other right or remedy the Supplier may have:
(a) the Customer's right to resell the Products in the ordinary course of its business ceases immediately; and
(b) the Supplier may at any time require the Customer to deliver up all Products in its possession that have not been resold and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

Price and payment
The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in the NHS price list in force as at the date of delivery for the relevant Product as agreed by the Supplier with the Department of Health from time to time. The NHS price list for the Product is available from the Department of Health. The Supplier may at any time and without notice change the NHS price list. In the event of any such change, the new price list will apply to all purchases made by the Customer from the date such change is effective.
If the Customer fails to pay the Supplier by the payment date or withholds any amount due to the Supplier, the Supplier the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
The price of the Products:
(a) excludes amounts in respect of value added tax (VAT) government tax or duty, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid invoice; and
(b) unless otherwise agreed, excludes the costs and charges of packaging and transport of the Products to the Delivery Location. The Customer shall be responsible for the cost of such delivery, which shall be invoiced to the Customer.

6.4 The Supplier may invoice the Customer for the Products on or at any time after dispatch.
6.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice (unless the Customer and the Supplier have agreed other terms, in which case the payment date shall be the date as so agreed). Payment shall be made by direct debit to the bank account nominated in writing by the Supplier. Time for payment is of the essence. The Supplier shall be entitled at any time to require the Customer to pay for any Product before delivery is made.

6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then without prejudice to any other remedy available to the Supplier as a result of such failure, the Customer shall pay interest on the overdue amount at the rate of 8% per annum or 4% per annum above the base rate from time to time of Barclays Bank plc, whichever is the higher. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
6.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6.8 Any credit terms offered by the Supplier are subject to review from time to time and the Supplier reserves the right to vary or withdraw any credit facilities at any time and such variation or withdrawal shall take place immediately upon issue of notice to that effect from the Supplier. To facilitate such review, the Customer agrees to provide to the Supplier such financial and other information as the Supplier may reasonably request.

7. **Termination**
7.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to discharge its obligations under the Contract is in jeopardy.

7.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 7.1(a) to clause 7.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

7.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
7.4 The Supplier may terminate the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

7.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
7.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

8. **Warranties and Limitation of Liability**
8.1 The Supplier warrants to the Customer that all Products supplied under the Contract will comply in all material respects with the Specification and will be manufactured in accordance with all applicable laws.
8.2 All other representations and warranties in relation to the quantity or quality of the Products or their fitness for purpose or otherwise, whether express or implied are hereby excluded to the fullest extent permissible by law.
8.3 The Supplier will not be liable for any faults in the Products caused by the Customer as a result of deliberate damage, negligence, failure to follow the Supplier's instructions or misusing the Products or failing to store them in a proper and safe environment.

8.4 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
(b) fraud or fraudulent misrepresentation;
(c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.5 Subject to clause 8.3:
(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of goodwill, increased cost of working, or any indirect or consequential loss arising under or in connection with the Contract; and
(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed of the purchase price of the Products paid for by the Customer in the last 12 months.

9. **Data Protection**
9.1 The Customer agrees that the Supplier may use the Customer's data (including without limitation sales data and personal data) collected from the Customer in its capacity as an unincorporated trader or, as applicable, as an incorporated entity, for administration, marketing, risk assessment, customer services, VAT reporting, product information updates, analysing the Customer's purchasing preferences, statistical analysis, credit checking and also in connection with any assignment of this Contract in accordance with clause 13.1(a).
9.2 The Customer further agrees that such data may be used by the Supplier and its Affiliates to contact the Customer (by email, telephone, mail or text) to inform the Customer about other products or services offered by the Supplier and any of its Affiliates which the Supplier reasonably believes may be of interest to the Customer. By providing the Supplier with its data, the Customer consents to being contacted by these methods for these purposes. In the event that the Customer does not wish to receive marketing information from the Supplier or its Affiliates then the Customer should contact the Supplier at the address set out above.

9.3 By providing the Supplier with personal data, the Customer consents to the processing of that data, including sensitive personal data, by the Supplier and its sub-contractors for the purposes described above. The Customer also consents to the transferring of Customer personal data to countries which do not provide the same level of data protection as the UK, if necessary for the purposes set out in clause 9.1, in the event that the Supplier makes such a transfer then the Supplier will, if appropriate, put a contract in place to ensure that Customer information is protected.

10. **Intellectual Property.**
10.1 All patents, registered and unregistered design rights, copyright, registered and unregistered trademarks, knowhow and all other intellectual property rights of whatever nature in the Products and all processes, documents, reports, and any other material or work relating to the Products vest absolutely in the Supplier and nothing in the Contract shall give any rights to the Customer in relation to any such intellectual property rights.
10.2 If any intellectual property rights arise in relation to the Products as a result of this Contract which do not vest in the Supplier then the Customer shall assign to the Supplier with full title guarantee and free from all third party rights, all such intellectual property rights and the Customer shall, promptly at the Supplier's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Supplier may from time to time require for the purpose of securing for the Supplier the full benefit of such intellectual property rights.

11. **Product recalls**
11.1 The Customer undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products from the market. These records shall include records of deliveries to customers. The Customer shall give any assistance that the Supplier may reasonably require to recall, as a matter of urgency, any Products from the market.

12. **Force majeure**
12.1 The Supplier shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for more than 3 months, the Customer may terminate this Contract by giving written notice to the Supplier.

13. **General**
13.1 **Assignment and other dealings.**
(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 **Confidentiality.**
(a) The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Supplier or of any of its Affiliates except as permitted by clause 13.2(b).
(b) The Customer may disclose any of the Supplier's confidential information:
(i) to its employees, officers or representatives who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under or in connection with this agreement. The Customer shall ensure that its employees, officers and representatives to whom it discloses the Supplier's confidential information comply with this clause 13.2; and
(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) The Customer shall not use any the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

13.3 **Entire agreement.**
(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

13.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
13.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.7 **Notices.**
(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
(b) Notices or other communications shall be deemed to have been received if delivered personally, when left at the address referred to in clause 13.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after (a); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

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

13.8 **Compliance with laws.** The Customer shall:
(a) comply with all applicable laws, including but not limited to health and safety, anti-bribery and Sanctions laws and regulations in the jurisdiction where the Supplier is based;

- (b) co-operate with the Supplier in all matters relating to the provisions of the Contract;
 - (c) maintain books and records to provide necessary assurance as to its compliance with the terms of the Contract for a period of no less than 6 years following the last date of supply hereunder;
 - (d) Provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the necessary assurances to the Supplier that the Customer has complied with its obligations under the Contract; and
 - (e) indemnify the Supplier against any liability on account of an infringement of this clause 13.8.
- Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.