

## STANDARD TERMS FOR THE SALE OF PRODUCTS

### 1 Interpretation

#### 1.1 In these Terms:

“BUYER” means save where a person is acting as an agent for a principal whose identity is made known to the Seller prior to the Contract being formed, in which case the Buyer is deemed to be the agent’s principal, the person who accepts the Seller’s Written quotation for the sale of the Products or whose Written order for the Products is accepted by the Seller;

“SELLER” means Gulfhead Limited (registered in England and Wales under number 2631195);

“CONTRACT” means the contract for the sale and purchase of the Products;

“INCOTERMS” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

“MATERIAL SAFETY DATA SHEET” means the sheet containing information on the chemical composition and guidance for the safe use of the Products;

“PRODUCTS” means the Products (including any instalment of the Products or any parts for them), which the Seller is to supply in accordance with these Terms and includes where the context so admits, and if applicable, any containers in which the Products are supplied;

“PRODUCT DATA SHEET” means the information and instructions data sheet supplied to the Buyer in respect of the Products

“TERMS” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“WRITING”, and any similar expression, includes facsimile transmission and comparable means of communication, as well as electronic mail.

1.2 A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation.

### 2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Products in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 the Buyer.

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

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 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 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.

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

3.3 The quantity, quality and description of the Products and any specification for them shall be as set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).

3.4 If the Products are to be manufactured or any process is to be applied to the Products 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.

3.5 The Seller reserves the right to make any changes in the specification of the Products which are required to conform with any applicable statutory or E.U. requirements or, where the Products are to be supplied to the Seller’s specification, which do not materially affect their quality or performance.

3.6 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.

3.7 Quotations are valid for 30 days only. Thereafter, the Buyer is not entitled to accept a quotation without confirmation in Writing from the Seller that it remains valid.

### 4 Price of the Products

4.1 Save where the parties have agreed to alternative terms of price and/or payment (such variation to be effective only where set out in Writing), the price of the Products shall be the Seller’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller’s published price list 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 Written notice to the Buyer at any time before delivery, to increase the price of the Products 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 Products 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 Except as otherwise stated in the Seller’s Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller’s premises, the Buyer shall be liable to pay the Seller’s charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 Certain Products may be supplied in returnable containers in which case a deposit will be payable in accordance with the Seller's list price. Such containers must be returned to the Seller at an address agreed in Writing between the Parties. Upon receipt by the Seller of the container in good and re-usable condition the Seller shall return the deposit to the Buyer.

## **5 Terms of payment**

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Products on or at any time after delivery of the Products, unless the Products are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Products, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Products are ready for collection or (as the case may be) the Seller has tendered delivery of the Products.

5.2 Save where the parties have agreed to different terms of payment in Writing, the Buyer shall pay the price of the Products within 30 days of the date of the Seller's invoice. In either case Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Products 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 any due date then, without limiting any other right or remedy available to the Seller, the Seller may:

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 Products (or the Products 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 Judgment) on the amount unpaid, at the rate of 6 per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.3.4 in the event that clause 5.3.3 is declared unenforceable by a competent court of law, claim interest under the Late Payment of commercial Debts (Interest) Act 1998.

5.4 All payments shall be made in sterling unless otherwise agreed in Writing between the parties.

5.5 the Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have against the Seller.

## **6 Delivery**

6.1 Save where clause 13 applies and unless the Buyer and the Seller otherwise agree in Writing, delivery of the Products shall be made by the Buyer collecting the Products at the Seller's premises or at the premises of an agent of the Seller, at any time after the Seller or the agent (as applicable) has notified the Buyer that the Products are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller or an agent of the Seller delivering the Products to that place.

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

6.3 Where delivery of the Products is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 2 per cent more or 2 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6.4 Where the Products 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 Terms 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.

6.5 If the Seller fails to deliver the Products (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Products to replace those not delivered over the price of the Products.

6.6 If the Buyer fails to take delivery of the Products 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 limiting any other right or remedy available to the Seller, the Seller may:

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

6.6.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or 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 Products shall pass to the Buyer:

7.1.1 in the case of Products to be delivered at the Seller's premises or to the premises of an agent of the Seller, at the time when the Seller or the Seller's agent notifies the Buyer that the Products are available for collection; or

7.1.2 in the case of Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Seller or the Seller's agent has tendered delivery of the Products.

7.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Products and all other Products 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 Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and bailee, and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Products in the ordinary course of its business.

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

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 Products which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## 8 Use and disposal of the Products

- 8.1 The Buyer acknowledges that the Products sold under this Contract are, or may be, hazardous to human health and the environment.
- 8.2 The Buyer undertakes to comply with all applicable legislation from time to time in force in any relevant jurisdiction that relates to the purchase, receipt, use, handling, storage and disposal of the Products.
- 8.3 The Buyer shall ensure that its employees, independent contractors and any other agents of the Buyer who handle or use the Products comply with the instructions for use and disposal set out in the Product Data Sheet and Material Safety Data Sheet.
- 8.4 The Buyer acknowledges that the Seller makes no warranty and assumes no liability for the accuracy or sufficiency of any data or instructions set out on any Product Data or Material Safety Data Sheet or contained in any other communication (whether oral or in Writing).

## 9 Indemnity

- 9.1 The Buyer shall defend, indemnify and hold harmless the Seller against any and all liability, loss, claims, expenses or damage the Seller may suffer or incur by reason of or in any connected with this Contract, including but not limited to, any action or default of the Buyer or its agents, howsoever arising from the purchase, receipt, use, storage, handling or transportation of the Products.

## 10 Warranties and liability

- 10.1 Subject to the following provisions the Seller warrants that at the time of delivery the Products will correspond with their specification or description. The Seller gives no other warranty in respect of the Products and the Buyer hereby acknowledges that once delivery of the Products has taken place the storage, handling, use and condition of the Products shall be the sole responsibility of the Buyer.
- 10.2 The above warranty is given by the Seller subject to the following conditions:
- 10.2.1 the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
  - 10.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow any of the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Products without the Seller's approval;
  - 10.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;
  - 10.2.4 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.
- 10.3 Subject as expressly provided in these Terms, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.4 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer is not affected by these Terms.
- 10.5 A claim by the Buyer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days 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 not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Products 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 Products had been delivered in accordance with the Contract.
- 10.6 Where a valid claim in respect of any of the Products which is based on a defect in the quality or condition of the Products or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 10.7 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Products, except as expressly provided in these Terms.
- 10.8 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 Products, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 10.8.1 Act of God, explosion, flood, tempest, fire or accident;
  - 10.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 10.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 10.8.4 import or export regulations or embargoes;
  - 10.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 10.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 10.8.7 power failure or breakdown in machinery.

## 11 Intellectual Property

- 11.1 If a claim is made against the Buyer that the Products infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 11.1.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;
  - 11.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

- 11.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 11.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 11.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 11.1.6 without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## **12 Insolvency of buyer**

- 12.1 This clause 12 applies if:
- 12.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 12.1.4 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.
- 12.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, 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.

## **13 Export terms**

- 13.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Terms, but if there is any conflict between the provisions of INCOTERMS and these Terms, the latter shall prevail.
- 13.2 Where the Products are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.
- 13.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Products shall be delivered FAS the sea port of shipment and the Seller shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 13.5 The Buyer shall supply to the Seller all such details and instructions as are reasonably required by the Seller concerning the place to which the Products are to be delivered.
- 13.6 In the event that the Buyer requires delivery to be made to a different seaport of shipment, the Buyer shall make such request to the Seller in Writing.
- 13.7 The Seller shall be under no obligations to accept such variation as to place of delivery, but in the event that the Seller agrees to arrange delivery of the Products to the place requested by the Buyer, the Buyer shall be responsible for any additional costs howsoever incurred.
- 13.8 Save where alternative arrangements are agreed in Writing, payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 30 days after sight to the order of the Seller at such branch of a bank in England as may be specified in the bill of exchange.
- 13.9 The Buyer shall not offer the Products for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or sell the Products to any person if the Buyer knows or has reason to believe that that person intends to resell the Products in any such country.

## **14 Cancellation**

- 14.1 The Seller shall be entitled to cancel the order at any time by giving written notice to the Buyer. If the Seller exercises its right of cancellation it shall have no liability in respect of the Contract or in respect of any damage whatever arising from such cancellation.

## **15 General**

- 15.1 The Seller's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller), together with these Terms constitute the whole Contract between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Contract.
- 15.2 A notice required or permitted to be given by either party to the other under these Terms 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.
- 15.3 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.
- 15.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 15.5 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 15.6 The Buyer shall not assign the Contract or any benefits or interests arising under the Contract without the prior written consent of the Seller.
- 15.7 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.