

Terms and Conditions of Sale

1. Interpretation

1.1 Definitions:

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 Goods in accordance with these Conditions;

Customer: the person, firm or company who agrees to buy the Goods from the Supplier;

Force Majeure Event: an event or circumstance beyond a party's reasonable control;

Goods: the goods (or any part of them) described in the Order;

Order: the Customer's order for the Goods, as set out overleaf;

Specification: the specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier and as set out in or referred to the Order;

Supplier: Farmiloe & Farmiloe (W.B.S.) Limited (registered in England and Wales with company number 00671298).

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising supplied by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer.

3. Goods

3.1 The Goods are as described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or to the extent that the nature or quality of the Goods are not materially affected.

4. Delivery

4.1 The Supplier shall ensure that:

each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods 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 Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 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 Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest

market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or default or delay by a third party or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 Subject to clause 5.2, if ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may, to the extent possible, resell or otherwise dispose of part or all of the Goods and the Customer shall be liable to pay a cancellation charge not exceeding 75% of the price of the Goods.

5. Quality

5.1 The Supplier warrants that on delivery, the Goods shall:

5.1.1 conform in all material respects with the Specification;

5.1.2 be free from material defects in design, material and workmanship;

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4 be fit for any purpose set out in the Order.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within seven days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods (if possible), or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 any further use of such Goods is made after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of the Supplier following the Specification;

5.3.4 the Customer alters or repairs the Goods without the prior written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage, installation or working conditions; or

5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.3.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in

- respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
- 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs; and
- 6.4.3 the Customer shall hold any proceeds from a resale or the use of the Goods as fiduciary for the Supplier and shall be accountable to the Supplier for any sums so held.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Supplier may at any time:
- (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- 7.3.1 excludes amounts in respect of value added tax (VAT), or other equivalent sales tax, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 7.3.2 excludes the costs and charges of transport of the Goods where specifically required or agreed, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate set by s.6 Late Payment of Commercial Debts (Interest) Act 1998 . 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.
- 7.7 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.
- 8. Termination**
- 8.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 8.1.1 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 7 days of that party being notified in writing to do so;
- 8.1.2 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;
- 8.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods 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 8.1.1 to clause 8.1.4, 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 or any other contract or agreement on the due date for payment.
- 8.3 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.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 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.
- 8.6 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.
- 9. Limitation of liability**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 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 contract or business, or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 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 [the price of the Goods paid by the Customer.

10. **Force majeure**

Neither party shall 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 [four] weeks, the party not affected may terminate this Contract by giving written notice to the affected party.

11. **General**

11.1 **Assignment**

11.1.1 The Supplier may transfer its rights and obligations under the Contract to another party, but the Customer may not do so unless the Supplier agrees in writing.

11.2 **Entire agreement**

11.2.1 This Contract constitutes the entire agreement between the Supplier and the Customer and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2.2 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

11.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 **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.

11.5 **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 to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.6 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

11.7 **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.

11.8 **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.