

NOTE: Your attention is in particular drawn to the provisions of condition 10.4.

## 1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these Conditions.
- You/Your:** means you, the person, firm or company who purchases Products from us.
- We/Us/Our:** means Vita Manufacture Limited, registered in England with company No. 12782222 (registered office: 9 Firecrest Court Harrier Way, Eagle Business Park, Yaxley, Peterborough. PE7 3WL).
- Contract:** any contract between us and you for the sale and purchase of the Products, incorporating these Conditions.
- Delivery Point:** the place where delivery of the Products is to take place under condition 4.
- Products:** any products or goods agreed in the Contract to be supplied to you by us (including any part or parts of them).
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

## 2 APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all our sales and any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by one of our directors. You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Products by you from us shall be deemed to be an offer by you to buy Products subject to these Conditions. No order placed by you shall be deemed to be accepted by us until a written acknowledgement of order is issued by us or (if earlier) we deliver the Products to you.
- 2.5 You must ensure that the terms of your order and any applicable specification are complete and accurate.
- 2.6 Any quotation is given on the basis that no Contract shall come into existence until we despatch an acknowledgement of order to you. Any quotation is valid for period of 30 days only from its date, unless we have previously withdrawn it.

## 3 DESCRIPTION

- 3.1 The quantity and description of the Products shall be as set out on our quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising we issue and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4 DELIVERY

- 4.1 Unless we otherwise agree in writing, we (or our agents) will deliver the Products to your address specified (or to such other place as we agree in writing with you).
- 4.2 Any dates we specify for delivery of the Products are intended to be estimates and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 Subject to the other provisions of these Conditions, we will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by our negligence), nor shall any delay entitle you to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason you fail to accept delivery of any of the Products, or we are unable to deliver the Products on time because you have not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Products shall pass to you (including for loss or damage caused by our negligence);
- (b) the Products shall be deemed to have been delivered; and
- (c) we may store the products until delivery, whereupon you will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 You must provide at the Delivery Point and at your expense adequate and appropriate equipment and manual labour to unload the Products.
- 4.6 If we deliver to you a quantity of Products of up to 10% more or less than the quantity accepted by us, you are not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata Contract rate.
- 4.7 We may deliver the Products by separate instalments. Each separate instalment shall be

invoiced and paid for in accordance with the provisions of the Contract.

- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.

## 5 NON-DELIVERY

- 5.1 The quantity of any consignment of Products as recorded by us on despatch from our place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary.
- 5.2 We shall not be liable for any non-delivery of Products (even if caused by our negligence) unless you gives written notice to us of the non-delivery within 5 days of the date when the Products would in the ordinary course of events have been received.
- 5.3 Our liability for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

## 6 RISK/TITLE

- 6.1 The Products are at your risk from the time of delivery.
- 6.2 Ownership of the Products shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:
- (a) the Products; and
- (b) all other sums which are or which become due to us from you on any account.
- 6.3 Until ownership of the Products has passed to you, you must:
- (a) hold the Products on a fiduciary basis as our bailee;
- (b) store the Products (at no cost to us) separately from all your other goods or any third party in such a way that they remain readily identifiable as our property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (d) maintain the Products in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you must produce the policy of insurance to us.
- 6.4 You may resell the Products before ownership has passed to us solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of your business at full market value; and
- (b) any such sale shall be a sale of our property on your own behalf and you will deal as principal when making such a sale.
- 6.5 Your right to possession of the Products shall terminate immediately if:
- (a) you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency; or
- (b) you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under the Contract or any other contract between us and you, or are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
- (c) you encumber or in any way charge any of the Products.
- 6.6 We shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from us.
- 6.7 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.
- 6.8 Where we are unable to determine whether any Products are the products in respect of which your right to possession has terminated, you will be deemed to have sold all products of the kind sold by us to you in the order in which they were invoiced to you.
- 6.9 On termination of the Contract, howsoever caused, our (but not your) rights contained in this condition 6 shall remain in effect.

## 7 PRICE

- 7.1 Unless otherwise agreed by us in writing, the price for the Products shall be the price set out in our price list published on the date of delivery or deemed delivery.
- 7.2 The price for the Products shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts you must pay in addition when you pay for the Products.

## 8 PAYMENT

- 8.1 Subject to condition 8.4, payment of the price for the Products is due in pounds sterling 5 days from date of invoice.
- 8.2 Time for payment shall be of the essence.

- 1.1 days from date of invoice.
- 1.2 Time for payment shall be of the essence.
- 1.3 No payment shall be deemed to have been received until we have received cleared funds.
- 1.4 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.
- 1.5 You must make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.
- 1.6 If you fails to pay us any sum due pursuant to the Contract, you will be liable to pay us interest on such sum from the due date for payment at the annual rate of [3] % above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 2 QUALITY

- 2.1 Where we are not the manufacturer of the Products, we will endeavour to transfer to you the benefit of any warranty or guarantee given to us.
- 2.2 We warrant that (subject to the other provisions of these Conditions) on delivery the Products shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 2.3 We shall not be liable for a breach of the warranty in condition 9.2 unless:
  - (a) you gives written notice of the defect to us, and, if the defect is as a result of damage in transit to the carrier, within 2 days from the time when goods are delivered; and
  - (b) we are given a reasonable opportunity after receiving the notice of examining such Products and you (if asked to do so by us) return such Products to our place of business at our cost for the examination to take place there.
- 2.4 We shall not be liable for a breach of the warranty in condition 9.2 if:
  - (a) you make any further use of such Products after giving such notice; or
  - (b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
  - (c) you alter the Products without our written consent.
- 2.5 Subject to condition 9.3 and condition 9.4, if any of the Products do not conform with the warranty in condition 9.2 we will at our option replace such Products (or where possible, the defective part) or refund the price of such Products at the pro rata Contract rate provided that, if we so request, you must, at our expense, return the defective Products (or the part of such Products which is defective) to us.
- 2.6 If we comply with condition 9.5 we shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Products.

## 3 LIMITATION OF LIABILITY

- 3.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
  - (a) any breach of these Conditions;
  - (b) any use made or resale by you of any of the Products, or of any product incorporating any of the Products; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 3.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 3.3 Nothing in these Conditions excludes or limits our liability:
  - (a) for death or personal injury caused by our negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 3.4 Subject to condition 10.2 and condition 10.3:
  - (a) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) we shall not be liable to you for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 4 ASSIGNMENT

We may assign the Contract or any part of it to any person, firm or company.

## 5 FORCE MAJEURE

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by you (without liability to you) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, you are be entitled to give notice in writing to us to terminate the Contract.

## 6 GENERAL

- 6.1 Each of our rights or remedies under the Contract is without prejudice to any other right or remedy we may have whether under the Contract or not.
- 6.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 6.3 Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract.
- 6.4 Any waiver by us of any breach of, or any default under, any provision of the Contract by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 6.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 6.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## 7 COMMUNICATIONS

- 7.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by email:
  - (a) (in case of communications to us) to our registered office or such changed address as shall be notified to you by us; or
  - (b) (in the case of the communications to you) to your registered office (if you are a company) or (in any other case) to any address set out in any document which forms part of the Contract or such other address as we may notify to you.
- 7.2 Communications shall be deemed to have been received:
  - (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 7.3 Communications addressed to us shall be marked for the attention of Obinna Okeke.

## CUSTOMER ACKNOWLEDGEMENT & ACCEPTANCE

All supplies of Products by Vita Manufacture Limited are subject to these Terms and Conditions of Supply. By moving ahead, you confirm that you accept that these Terms and Conditions of Supply will apply in respect of all future supplies to you.