



## Baerlocher UK Limited

### Terms of Trading

#### Your attention is drawn to the provisions of clause 7

#### 1 Basis of Contract

- 1.1 These Terms apply to the contract for the sale of the goods (**Contract**) to the exclusion of any other terms you seek to impose or which are implied by law.
- 1.2 Your order (**Order**)\_constitutes an offer to purchase the goods in accordance with these Terms and shall only be deemed to be accepted when we issue a written acceptance, at which point the Contract will come into existence.

#### 2 Price

- 2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Our quotations lapse after 30 days (unless otherwise stated).
- 2.3 The price quoted includes delivery (unless otherwise stated).
- 2.4
- 2.5 Rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.6 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

#### 3 Delivery

- 3.1 Although we make all reasonable efforts to effect delivery in accordance with prearranged dates, such dates are estimates only and time shall not be of the essence.
- 3.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the Contract, however:
  - 3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
  - 3.2.2 if you cancel the Contract, you will have no further claim against us under that Contract.
- 3.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 3.4 If for any reason you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided adequate instructions we may:
  - 3.4.1 treat the goods as having been delivered on that day (for the purposes of risk, inspection and payment); and
  - 3.4.2 charge you for the storage or redelivery of those goods.
- 3.5 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
- 3.6 We may decline to deliver if:
  - 3.6.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
  - 3.6.2 the premises (or the access to them) are unsuitable for our vehicle.

#### 4 Risk

- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
  - 4.2.1 when the goods are loaded at our premises (if you are collecting them or arranging carriage); or
  - 4.2.2 when the goods are unloaded at your premises or address specified by you (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged, not delivered or not in accordance with the contract, you must write to tell us within seven days of delivery or the expected delivery time. You must not use or process the goods, and give us (and any carrier) a fair chance to inspect the damaged goods within 14 days of your notification. If you fail to notify us in accordance with these requirements, you will not be entitled to reject the goods and will be deemed to have accepted the goods in accordance with the contract.

#### 5 Payment terms

- 5.1 You are to pay us in cash or in cleared funds prior to delivery, unless you have an approved credit account.
- 5.2 If you have an approved credit account, payment is due no later than 30 days after the date of our invoice unless otherwise agreed in writing.
- 5.3 Time for payment shall be of the essence of the Contract.
- 5.4 If you fail to pay us in full on the due date we may:
  - 5.4.1 suspend or cancel future deliveries;
  - 5.4.2 cancel any discount offered to you;



- 5.4.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;
  - a. calculated (on a daily basis) from the date of our invoice until payment;
  - b. compounded on the first day of each month; and
  - c. before and after any judgment (unless a court orders otherwise);
- 5.4.4 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
- 5.4.5 recover (under clause 4.7) the cost of taking legal action to make you pay.
- 5.5 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 5.6 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.7 While you owe money to us, we have a lien on any of your property in our possession.
- 5.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under the Contract.

## **6 Title**

- 6.1 Until you pay all debts you may owe us:
  - 6.1.1 all goods supplied by us remain our property;
  - 6.1.2 you must store them so that they are clearly identifiable as our property;
  - 6.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
  - 6.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:
    - a. we revoke that right (by informing you in writing); or
    - b. you become insolvent.
- 6.2 You must inform us (in writing) immediately if you become insolvent.
- 6.3 If your right to use and sell the goods ends you must allow us to remove the goods.
- 6.4 We have your permission to enter any premises where the goods may be stored:
  - 6.4.1 at any time, to inspect them; and
  - 6.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

## **7 Warranties**

- 7.1 We warrant that the goods:
  - 7.1.1 comply with their description on our order confirmation form; and
  - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.3).
- 7.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 7.3 If you believe that we have delivered goods that are defective in materials or workmanship, you must:
  - 7.3.1 inform us (in writing), with full details, as soon as possible; and
  - 7.3.2 allow us to investigate (we may need access to your premises and product samples).
- 7.4 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 6.3) in full, we will (at our option) replace the goods or refund the price .
- 7.5 We shall not be liable for the goods' failure to comply with the above warranty if:
  - 7.5.1 you make any further use of such goods after giving notice in accordance with clause 7.3;
  - 7.5.2 the defect arises because you fail to follow our 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;
  - 7.5.3 the defect arises as a result of our following any drawing, design or specification supplied by you;
  - 7.5.4 you alter or repair such Goods without our written consent;
  - 7.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 7.5.6 the goods differ from their description or their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.6 We are not liable for:



- 7.6.1 any indirect or consequential loss;
- 7.6.2 any financial loss;
- 7.6.3 any loss of profits;
- 7.6.4 any loss of use even if we are negligent.
- 7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to three million pounds (or the appropriate amount of insurance we have in place when the Contract is performed).
- 7.8 For all liabilities other than that referred to in clause 7.7 arising under or in connection with the Contract (whether in contract, tort or otherwise) our liability is limited to the price of the goods.
- 7.9 Nothing in these terms restricts or limits our liability for:
  - 7.9.1 fraud or fraudulent misrepresentation;
  - 7.9.2 death or personal injury resulting from negligence;
  - 7.9.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 7.9.4 defective products under the Consumer Protection Act 1987.

## 8 Specification

- 8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:
  - 8.1.1 the specifications or instructions are accurate;
  - 8.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
  - 8.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 8.2 We reserve the right;
  - 8.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and
  - 8.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.
- 8.3 Unless expressly stated in the contract gauges, weights, chemical composition and analysis, quantities and sizes will so far as possible be adhered to, but you must allow for a reasonable variation in the specification.
- 8.4 You must ensure that you comply with all statutory requirements in regard to the labelling and instructions of the goods and where the goods are repacked that labels and instructions are also transferred.

## 9 Return of goods

- 9.1 We will accept the return of goods from you only:
  - 9.1.1 by prior arrangement (confirmed in writing);
  - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and
  - 9.1.3 where the goods are as fit for sale on their return as they were on delivery.

## 10 Cancellation

- 10.1 You may not cancel the Contract unless we agree in writing (and clauses 3.2.2 and 10.2 then apply).
- 10.2 If the Contract is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 10.3 We may suspend or cancel the Contract, by written notice if:
  - 10.3.1 you fail to pay us any money when due (under the order or otherwise);
  - 10.3.2 you become insolvent;
  - 10.3.3 you fail to honour your obligations under these terms.

## 11 Waiver and variations

- 11.1 Any waiver or variation of these terms is binding in honour only unless:
  - 11.1.1 made (or recorded) in writing;
  - 11.1.2 signed on behalf of each party; and
  - 11.1.3 expressly stating an intention to vary the Contract.
- 11.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

## 12 Force majeure

- 12.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.
- 12.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.



## 13 General

- 13.1 The Contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.
- 13.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract.
- 13.3 If you are more than one person, each of you has joint and several obligations under these terms.
- 13.4 If any of these terms are unenforceable as drafted:
  - 13.4.1 it will not affect the enforceability of any other of these terms; and
  - 13.4.2 if it would be enforceable if amended, it will be treated as so amended.
- 13.5 We may treat you as insolvent if:
  - 13.5.1 you are unable to pay your debts as they fall due; or
  - 13.5.2 you (or any item of your property) become the subject of:
    - a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
    - b. any application or proposal for any formal insolvency procedure; or
    - c. any application, procedure or proposal overseas with similar effect or purpose.
- 13.6 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 13.7 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to by first class post the other's registered office or principal place of business. All such notices must be signed.
- 13.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 13.9 The Contract constitutes the entire agreement between the parties and each party acknowledges that it does not rely on any statement that is not set out in the Contract. Each party agrees that it shall have no claim for misrepresentation based on any statement in the Contract.
- 13.9 Any advice given by us regarding the technical application of the goods is given without obligation on our part and does not relieve you of your obligation to examine the goods and satisfy yourself of their suitability for your intended purpose.