



Cherrytech Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of clause 8

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

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 as amended from time to time in accordance with clause 10.6.

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Company.

Delivery Location: has the meaning given in clause 3.2

Force Majeure Event: has the meaning given in clause 8.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order or other written confirmation of the Customer's order (which for this purpose shall include emails), as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is supplied to the Company by the Customer, or produced by the Company and agreed in writing by the Customer.

Company: CHERRYTECH LIMITED (registered in England and Wales with company number 04160509) whose registered address is Cherryhill Farm, Uplands Road, Denmead, Hampshire, PO7 6HG, England.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, a company and any other corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) 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.
- (d) 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.
- (e) A reference to **writing** or **written** includes faxes.



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BASIS OF CONTRACT

- 1.3 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.
- 1.4 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 1.5 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 1.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Company and the Customer for the sale of the Goods.
- 1.7 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue, provided that the Company has not previously withdrawn it.

2. DELIVERY

- 2.1 The Company shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable); and
 - (b) if the Company requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- 2.2 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business ("**Delivery Location**")



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- 2.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 2.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 2.5 The Company shall 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 delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 2.6 The Company shall not be liable for any delay in the delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.7 If the Company 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 Company 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 the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.8 If the Customer fails to take delivery of the Goods within 3 Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready; and
 - (b) the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 2.9 If 10 Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.



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2.10 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

2.11 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3. QUALITY

3.1 Where the Company is not the manufacturer of the Goods, if requested to do so in the Order the Company shall endeavour (where commercially reasonable and subject to applicable law) to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

3.2 The Customer shall ensure the suitability and safety of the Goods for all intended purposes and any quality control or safety tests relied upon by the Customer must be conducted in accordance with applicable regulatory requirements in order to determine the safety and effectiveness of the Goods in any particular application.

3.3 Subject to clause 3.2, the Company warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description and (if applicable) the Specification;
- (b) be free from material defects in design, material and workmanship.

3.4 Subject to clause 4.6, if:

- (a) the Customer gives notice in writing of any defects in the Goods:
 - (i) in the case of a defect that is apparent on normal visual inspection, within 5 Business Days of delivery; and
 - (ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent (but in any event within 3 months of delivery); and
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.



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- 3.5 If the Customer has not given notice of any defects in the Goods within the relevant time period specified in clause 4.4 above, it shall be deemed to have accepted the Goods.
- 3.6 The Company shall not be liable for Goods' failure to comply with the warranty set out in clause 4.3 if:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 3.4; or
 - (b) the defect arises because the Customer failed to follow the Company'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; or
 - (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; or
 - (d) the Customer alters or repairs such Goods without the written consent of the Company; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 3.7 Except as provided in this clause 3, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.3.
- 3.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 3.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 4. TITLE AND RISK**
- 4.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 4.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company for sales of the Goods or any other products to the Customer.
- 4.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;



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- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Company immediately if it becomes subject to any of the events listed in clause 0; and
- (f) give the Company such information relating to the Goods as the Company may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

4.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 0, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, 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.

5. PRICE AND PAYMENT

5.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in pounds sterling in the Company's published price list in force as at the date of delivery or deemed delivery.

5.2 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

5.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.



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- 5.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 5.5 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 5.6 Unless otherwise agreed by the Company in writing, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made in the currency set out in the invoice to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 5.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment ("**Due Date**"), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England base lending rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.8 Notwithstanding clause 5.7, the Company may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company 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 Company to the Customer.
- 6. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 6.1 If the Customer becomes subject to any of the events listed in clause 0, or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 6.2 For the purposes of clause 6.1, the relevant events are:



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- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- (c) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- (d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (f) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.2(a) to clause 6.2(g) (inclusive); or
- (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (j) the financial position of the Company deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- (k) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.



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7. LIMITATION OF LIABILITY

7.1 This clause sets out the entire financial liability of the Company (including any liability for the acts or omissions of the Company's respective employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract, including any deliberate breach of the Contract by the Company, or its employees, agents or subcontractors;
- (b) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

7.2 Nothing in the Contract shall limit or exclude the liability of the Company for:

- (a) death or personal injury resulting from negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) breach of section 2 of the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

7.3 Without prejudice to clause 7.2, the Company shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- (a) loss of profit;
- (b) loss of goodwill;
- (c) loss of business;
- (d) loss of business opportunity; or
- (e) special, indirect or consequential damage,

suffered by the Customer that arises under or in connection with the Contract.

7.4 Without prejudice to clause 7.2 or clause 7.3, the Company's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the price of the Goods under the Contract.

8. FORCE MAJEURE

8.1 A party, provided that it has complied with the provisions of clause 8.3, shall not be in breach of the Contract, nor liable for any failure or delay in performance of any obligations under the Contract (and, subject to clause 0, the time for performance of



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the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:

- (a) Acts of God, flood, earthquake, volcanic activity, storm or other natural disaster;
- (b) epidemic or pandemic;
- (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (d) terrorist attack, civil war, civil commotion or riots;
- (e) nuclear, chemical or biological contamination or sonic boom;
- (f) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
- (g) fire, explosion or accidental damage;
- (h) loss at sea;
- (i) extreme adverse weather conditions;
- (j) interruption or failure of utility service, including but not limited to electric power, gas or water;
- (k) any labour dispute, including but not limited to strikes, industrial action or lockouts;
- (l) non-performance by suppliers or subcontractors; and
- (m) collapse of building structures, failure of plant machinery, machinery, computers or vehicles.

8.2 The corresponding obligations of the other party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.

8.3 Any party that is subject to a Force Majeure Event shall not be in breach of the Contract provided that:

- (a) it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.



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8.4 If the Force Majeure Event prevails for a continuous period of more than 3 months, either party may terminate the Contract by giving 14 days' written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

9. INDEMNITY

9.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of such Specification. This clause shall survive termination of the Contract

10. GENERAL

10.1 Assignment and subcontracting.

- (a) The Company may at any time assign, transfer, 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, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

10.2 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, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.



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

10.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

10.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.6 **Variation.** Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.

10.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.