

1. **Interpretation**

1.1 In this Contract, the following terms will have the following meanings:

- "Conditions" the terms and conditions set out in this document and including any special terms agreed in writing between DRYTAC and Customer;
- "Contract" the contract between DRYTAC and Customer for the sale and purchase of Goods in accordance with the Order, and these Conditions;
- "Customer" the person or firm who purchases the Goods from DRYTAC;
- "DRYTAC" DRYTAC Europe Limited (company number 1563073) whose trading address is at DRYTAC House, Filwood Road, Fishponds, Bristol BS16 3RY;
- "Force Majeure Event" events, circumstances or causes beyond a party's reasonable control;
- "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 order form and accepted by DRYTAC, or the Customer's acceptance of DRYTAC's quotation for the Goods;

- 1.2 In the Contract, unless the context otherwise requires:
- 1.2.1 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.3 any reference to the singular will include the plural and vice versa;
- 1.2.4 any reference to one gender will include a reference to the other genders and vice versa;
- 1.2.5 the headings in the Contract are for convenience only and will not affect its interpretation.

2. **Basis of the Contract**

- 2.1 DRYTAC will supply and Customer will purchase the Goods in accordance with the Order, and these Conditions which apply to the Contract to the exclusion of any other terms that the Customer seeks to incorporate, or which are implied by conduct, trade, custom, practice or course of dealing.
- 2.2 For the avoidance of doubt, no other terms are incorporated into this Contract, unless otherwise expressly stated.
- 2.3 This is not a sale by sample. Any samples, drawings or advertising produced by DRYTAC and any illustrations contained in DRYTAC's catalogue 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.

3. **Orders and Specification**

- An order submitted by the Customer shall only be deemed accepted by DRYTAC when confirmed in writing by an authorised representative of DRYTAC. Where DRYTAC provides a quotation, the order is made and the Contract comes into existence on the Customer's acceptance (whether verbal or written) of the quotation.
- 3.2 The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate. The Customer shall provide DRYTAC with any necessary information relating to the Order within a sufficient time to enable DRYTAC to deliver the Goods in accordance with the Contract.
- 3.3 To the extent that Goods are to be manufactured in accordance with a specification given by the Customer, the Customer shall indemnify DRYTAC against all liabilities, costs, losses, expenses and damages (including any direct, indirect or consequential losses) incurred by DRYTAC in connection with any claim made against DRYTAC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with DRYTAC's use of such specification.
- 3.4 Orders may not be cancelled by the Customer prior to delivery of the Goods, without the written agreement of DRYTAC. In such case, the Customer will be liable to DRYTAC for payment of all costs reasonably incurred by DRYTAC in fulfilling the Order up until the date of cancellation.

4. **Prices**

- 4.1 The price of the Goods will be the price stated in the Order or, if no price is stated (or a quoted price is no longer valid), the price listed in DRYTAC's published price list in force as at the date of delivery. Any quotation given by DRYTAC shall only be valid for 30 days from its date of issue.
- 4.2 DRYTAC reserves the right, by giving notice to the Customer at any time before delivery, to increase prices for Goods to reflect any increase in the cost of the Goods due to:
- 4.2.1 any factor beyond DRYTAC's control (including foreign exchange fluctuations, the imposition of or increase in taxes, duties and levies, significant increases in labour, materials and other costs of manufacture); and/or
- 4.2.2 any change to delivery dates, quantities or specifications for the Goods requested by the Customer; and/or
- 4.2.3 any delay caused by any instructions of the Customer or failure of the Customer to comply with Clause 3.2 above.
- 4.3 Unless otherwise agreed in writing by DRYTAC:
- 4.3.1 all prices for Goods includes packaging but are otherwise based on delivery "ex works" (as per the Incoterms applicable at the time of the Order, which terms (in so far as they relate to the basis of delivery only are deemed to be incorporated by reference to this Contract);
- 4.3.2 where DRYTAC agrees to deliver the Goods otherwise than at DRYTAC's premises, the Customer must reimburse DRYTAC for all transportation costs incurred by it, including, but not limited to all freight and related shipping and carrier charges, insurance, customs clearance, payment of any taxes and duties payable on the Goods, warehousing and storage in transit; and
- 4.3.3 all prices and any other amounts payable by the Customer are exclusive of any value added tax or other applicable sales tax.

5. **Terms of Payment**

- 5.1 DRYTAC may invoice the Customer for the Goods on or at any time after completion of delivery in accordance with Clauses 6.1 and 6.2.
- 5.2 The Customer will pay the invoice in full and cleared funds within 30 days from date of invoice in which the invoice was raised. Time for payment is of the essence.
- 5.3 If the Customer fails to make any payment by the due date, then DRYTAC will be entitled (but without prejudice to any other right or remedy it may have) to:
- 5.3.1 terminate the Contract or (without prejudice to its right to terminate subsequently) suspend any further deliveries of Goods to the Customer; and/or
- 5.3.2 charge the Customer interest on the amount unpaid, at the rate of 4 per cent per annum above the Barclays Bank base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the unpaid amount, whether before or after judgment; and/or
- 5.3.3 appropriate any payment made by the Customer to such of the Goods (or goods supplied under any other contract between the Customer and DRYTAC) as DRYTAC may think fit (notwithstanding any purported appropriation by the Customer).
- 5.4 The Customer must pay all amounts due or in connection with the Contract without deduction, set-off, counterclaim or withholding (except for any deduction or withholding required by law). DRYTAC may at any time, without limiting any other right of remedy it may have, set off any amount owing to it by the Customer against any amount payable by DRYTAC to the Customer.

6. **Delivery of Goods**

- 6.1 The Goods will be delivered ex works (as per the Incoterms applicable at the time of the Order, which are incorporated by reference to this Contract) to DRYTAC's premises at DRYTAC House, Filwood Road, Fishponds, Bristol BS16 3RY ("Delivery Location") and will be made available at the Delivery Location on the date specified in the Order, or as otherwise notified by DRYTAC to the Customer giving reasonable notice in advance. Delivery is completed when DRYTAC places the Order at the Customer's disposal at the Delivery Location.
- 6.2 Where DRYTAC agrees to deliver the Goods otherwise than at the Delivery Location, delivery is completed when DRYTAC places the Order at the Customer's disposal at the agreed location.
- 6.3 In relation to delivery time-scales: -
- 6.3.1 DRYTAC will endeavour to meet any delivery dates specified in the Order but shall have no liability for any delay in delivering an Order;
- 6.3.2 time of delivery will not be of the essence;
- 6.4 If the Customer fails to take or accept delivery of the Goods (except where the failure was the result of a default by DRYTAC) within 5 days of DRYTAC notifying the Customer that the Order is available at the Delivery Location, DRYTAC may:
- 6.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- 6.4.2 after more than 14 days, resell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) either account to the Customer for any excess amount received over the amount paid by the Customer for the Goods or charge the Customer for any shortfall.
- 6.5 DRYTAC may deliver the Goods in instalments and invoice for each instalment separately. Each delivery will constitute a separate contract and any delay in delivery or defect in an instalment shall not entitle the Customer to cancel or withhold payment for any other instalment.

7. **Risk and Property in Goods**

- 7.1 Risk in Goods will pass to the Customer on delivery (as determined by Clauses 6.1 and 6.2 above).
- 7.2 Title to the Goods will not pass to the Customer until DRYTAC receives full payment in cleared funds for them.

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- 7.3 Until title to the Goods passes to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as DRYTAC's property;
  - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3 maintain the Goods in satisfactory condition and keep them secure and insured against all risks for their full price from the date of delivery;
- but (for the avoidance of doubt) the Customer will be entitled to resell or use the Goods before DRYTAC receives payment provided that resale or use is in the ordinary course of its business. If the Customer resells the Goods before that time, it does so as principal and not as DRYTAC's agent and title to those Goods shall pass from DRYTAC to the Customer immediately before the time at which resale by the Customer occurs.
- 7.4 Until title in the Goods passes to the Customer, DRYTAC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so forthwith, enter any premises of the Customer or any third party where the Goods are stored to recover the Goods.
- 7.5 The Customer must not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of DRYTAC.
- 7.6 Without prejudice to any other rights DRYTAC may have, if the Customer fails to comply with Clauses 7.3, 7.4 or 7.5 above, all sums owing by the Customer to DRYTAC will immediately become due and payable.
8. **Warranties and Liability**
- 8.1 DRYTAC warrants that on delivery, the Goods shall:
- 8.1.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 ("SGA"));
  - 8.1.2 conform in all material respects with any written descriptions and/or any applicable specification provided by DRYTAC as part of the Order; and
  - 8.1.3 be free from material defects in design, material and workmanship.
- 8.2 DRYTAC does not warrant that the Goods will be suitable for any particular purpose and the terms implied by sections 13 to 15 SGA are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 The Customer will ensure that: -
- 8.3.1 the Goods are stored in appropriate conditions following delivery;
  - 8.3.2 all reasonable steps are taken prior to any particular use (whether by the Customer or any other person) to verify that the Goods are suitable for that use, including the testing of the Goods on a sample of the materials to which they are to be applied;
  - 8.3.3 the Goods are in any event used in an appropriate manner;
- and DRYTAC will not be liable to the Customer in respect of the Goods (whether for breach of Clause 8.1 or otherwise) that arises out of failure by the Customer to comply with Clauses 8.3.1, 8.3.2 or 8.3.3 above.
- 8.4 The Customer will notify DRYTAC in writing if it considers that the Goods are not as warranted under Clause 8.1: -
- 8.4.1 in the case of any defect, shortage or damage that is apparent on normal visual inspection, within 48 hours of delivery;
  - 8.4.2 in the case of any defect or damage that is not reasonably apparent on delivery, promptly and in any event within 14 days of that defect or damage becoming apparent or within 90 days of delivery, whichever is the earlier;
- and if the Customer fails to give notice in accordance with Clause 8.4, it shall be deemed to have accepted the Goods, and DRYTAC will not be liable for the Goods failure to comply with the warranties under Clause 8.1.
- 8.5 Subject to Clause 8.8, where notice is given by the Customer in accordance with Clause 8.4 and the Goods are found to be defective or not as warranted, DRYTAC shall, at its option:
- 8.5.1 (in the case of defects or damage) repair or replace the defective or damaged Goods (or any parts); and/or
  - 8.5.2 (in the case of shortages) supply such additional Goods as may be necessary to make up any shortage;
  - 8.5.3 (in the case of either defects, damage or shortages) refund or credit the price, or a proportion of the price, attributable to the Goods in question.
- 8.6 For the avoidance of doubt, DRYTAC's only liability to the Customer if the Goods do not comply with the warranties at Clause 8.1 is as set out in this Clause 8. Except as provided for in this Clause 8 or otherwise agreed by DRYTAC in writing, the Customer will have no right to reject or return the Goods to DRYTAC.
- 8.7 Save for advice given in written instructions supplied with the Goods, or any other advice, instructions or recommendations in writing given by DRYTAC, the Customer agrees that it will not rely on, and that DRYTAC will not be liable for, any advice or recommendations given by DRYTAC or any of its representatives in relation to the storage, application or use of the Goods.
- 8.8 DRYTAC will not be liable for the Goods' failure to comply with the warranties set out in Clause 8.1 above, where:
- 8.8.1 it arises as a result of fair wear and tear, wilful damage, negligence, or inappropriate or abnormal storage or working conditions;
  - 8.8.2 arises because the Customer failed to follow DRYTAC's written instructions;
  - 8.8.3 the Customer alters or repairs such Goods without DRYTAC's approval; and/or
  - 8.8.4 it arises as a result of DRYTAC following any drawing, design or specification supplied by the Customer.
- 8.9 DRYTAC will not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss, loss of anticipated revenues or savings, loss of business (whether caused by DRYTAC, its employees, agents or otherwise) arising under or in connection with the Contract.
- 8.10 DRYTAC's total liability to the Customer for all losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not in any event exceed the total amount payable or paid by the Customer for the Goods under the Contract.
- 8.11 Nothing in this Contract limit or exclude either party's liability for:
- 8.11.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 8.11.2 fraud or fraudulent misrepresentation;
  - 8.11.3 breach of the terms implied by section 12 SGA;
  - 8.11.4 defective products under the Consumer Protection Act 1987.
- 8.12 Neither party will 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.
9. **Termination**
- 9.1 Without limiting its other rights or remedies, DRYTAC may terminate the Contract with immediate effect or suspend any further deliveries of Goods if:
- 9.1.1 the Customer takes any step or action in connection with it entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to solvent restructuring), being wound up (whether voluntary or otherwise), having a receiver appointed to take any of its assets or ceasing to carry on business, or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
  - 9.1.2 the Customer suspends, threatens to suspend, ceases, or threatens to cease to carry on all or a substantial part of its business; or
  - 9.1.3 DRYTAC reasonably believes that any of the events described above is about to occur; or
  - 9.1.4 the Customer commits any material breach of any provisions of the Contract and in the case of a breach capable of remedy fails to remedy the same within 30 days (or such other notice period as DRYTAC thinks fit) after receipt of a written notice specifying the breach and requiring it to be remedied.
  - 9.1.5 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.2 On termination of the Contract for any reason stated above, all sums payable under the Contract will become immediately due notwithstanding any previous agreement to the contrary and Customer shall immediately pay to DRYTAC all outstanding unpaid invoices and interest.
- 9.3 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. 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.
10. **General**
- 10.1 Any notice under the Contract will be in writing and will be sent by first class registered post, hand delivery or fax to the address/number for the relevant party as stated in the Contract or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address/number):
- 10.1.1 if despatched by first class, registered post - 48 hours from the time of posting;
  - 10.1.2 if delivered by hand - at the time of actual delivery;
  - 10.1.3 if despatched by fax - 24 hours after the time of the despatch
- 10.2 The Customer will not be entitled to assign or sub-contract or otherwise dispose of any of its rights or obligations under the Contract without the prior written consent of DRYTAC. DRYTAC may assign, sub-contract or otherwise dispose of any of its rights and obligations under the Contract without the consent of the Customer.
- 10.3 DRYTAC will be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any holding company or subsidiary or any other subsidiary of any such holding company but any act or omission of any such company shall for the purposes of the Contract be deemed to be the act or omission of DRYTAC.
- 10.4 No delay or failure by DRYTAC to exercise any right or remedy provided in this Contract or by law shall constitute a waiver of such 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 such right or remedy.
- 10.5 No variation of this Contract shall be effective unless it is in writing between the authorised representatives of Customer and DRYTAC.
- 10.6 This Contract constitutes the entire agreement and understanding between the parties and supersedes and extinguishes all previous agreements, prior drafts, undertakings, representations, warranties and arrangements between them, whether written or oral, relating to its subject matter. The Customer agrees that it does not rely on, and 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 Contract. The Customer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 10.7 The Customer will keep confidential any confidential information relating to the Goods and/or to DRYTAC and its business affairs.
- 10.8 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 10.9 Unless expressly stated in the Contract, nothing in the Contract will confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 10.10 The Contract will be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have Exclusive jurisdiction to settle any contractual or non-contractual dispute or claim in connection with this Contract.