

## Terms & Conditions of Business for Sale of Goods and Services

Revised ..... 18 August 2021

### 1. Definitions

1.1 In these conditions:

BRIGHTWELL means Brightwell Dispensers Limited (registered in England under No.661996) whose registered office is at Unit 9, Euro Business Park, Estate Road, Newhaven, BN9 0DQ, East Sussex, England

BUYER means the person whose order for goods and/or services is accepted by Brightwell

CONDITIONS means Brightwell's standard terms and conditions set out in this document

CONTRACT means the contract for the purchase and sale of the goods and/or the supply of Services

DELIVERY DATE means the date specified by Brightwell upon which the goods are to be despatched

GOODS means the articles (including any instalments of the articles or any part for them)

which Brightwell is to supply in accordance with these conditions

INTELLECTUAL PROPERTY all industrial and intellectual property rights (whether registered or unregistered including without limitation patents, trademarks, design rights and copyright and any application for any of the foregoing

SERVICES means the design, consultancy, project management or other services to be supplied by Brightwell pursuant to these conditions

SPECIFICATION means any specification for the goods or in respect of any services detailing the goods and/or services to be provided by Brightwell agreed from time to time in writing between Brightwell and the Buyer (or as otherwise deemed agreed under clause 3) including any details of the goods/services to be provided, time estimates for reaching relevant stages and relevant payment provisions

WRITING includes email transmissions.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The clause headings in these conditions are for convenience only and shall not affect their interpretation.

### 2. Basis of Sale

2.1 Any order for goods and/or services shall be deemed to be an offer by the Buyer to purchase the goods and/or services pursuant to these conditions and any relevant specification. If Brightwell accepts such an order, Brightwell shall issue an acknowledgement of order and a contract shall be deemed to have been created and these conditions shall apply to that contract to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply. For the avoidance of doubt these conditions shall (unless otherwise agreed in writing between the parties) apply to each and every contract for the supply of goods and/or services by Brightwell to the Buyer and any terms of trading or other similar document forwarded to Brightwell by the Buyer after the issue by Brightwell of an acknowledgement of order shall not apply to or act as a variation of the contract.

2.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Brightwell.

2.3 Brightwell's employees or agents are not authorised to make any representations concerning the goods and/or services unless confirmed by Brightwell in writing and Brightwell's liability if any shall be governed by the terms of such written representations. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

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- 2.4 Any advice or recommendation given by Brightwell or its employees or agent to the Buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by Brightwell is followed or acted upon entirely at the Buyer's own risk.
- 2.5 Any typographical, clerical or other error or omission in any specification, drawing, design or in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by Brightwell, shall be subject to correction without any liability on the part of Brightwell.
- 2.6 Certain goods within Brightwell's product range will require the user thereof to accept a User Licence Agreement prior to use. Where applicable, such User Licence Agreement will include details as to how any customer data is held, protected and used. Failure to accept the terms of any User Licence Agreement will result in the relevant goods being incapable of use and Brightwell will not be liable for any loss that arises from any refusal to accept any User Licence Agreement. The terms of the User Licence Agreement are available upon request and should be considered prior to the Buyer ordering the relevant goods.

### **3. Orders and Specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Brightwell unless and until confirmed in writing by Brightwell's authorised representative.
- 3.2 The Buyer shall be responsible to Brightwell for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving Brightwell any necessary information relating to the goods and/or services within a sufficient and reasonable time to enable Brightwell to perform the contract.
- 3.3 Where Brightwell provides any written specification (whether in respect of goods, services or otherwise) or drawings or designs to the Buyer it shall be the sole responsibility of the Buyer to check the accuracy and suitability of the same for the Buyer's purposes and Brightwell provides no warranty in respect of such accuracy or suitability. Unless the Buyer, in writing to Brightwell raises any reasonable objection to any such specification, drawing or design or otherwise requires any reasonable amendment thereto within 14 days of submission to the Buyer (time being of the essence), Brightwell shall assume that any such specification, drawing or design has been agreed and approved by the Buyer. Where any specification, drawing or design is agreed and approved (whether expressly or by implication under this clause) any subsequent amendments or alterations proposed by the Buyer may only be made if specifically agreed in writing by Brightwell (at Brightwell's sole discretion) and Brightwell shall be entitled to require payment from the Buyer of the reasonable and proper charges and expenses incurred by Brightwell in making any subsequent amendments or alterations.
- 3.4 The Buyer is solely responsible for ensuring that, at or before the time of placing the order, Brightwell is made aware in writing of any required standards or tolerances in respect of any goods to be supplied by Brightwell to the Buyer. Brightwell shall not be liable for any goods failing to meet any standards or tolerances required by the Buyer unless Brightwell is made aware of the same in writing, at or before the time of placing the order, or subsequently agrees in writing that the goods will meet such required standards or tolerances.
- 3.5 The quantity, price, currency, quality and description of and any specification for the goods shall be those set out in Brightwell's acknowledgement of order or as may be subsequently agreed in writing between Brightwell and the Buyer or as provided in clause 3.3.
- 3.6 A specification shall set out any services to be performed by Brightwell and shall be agreed in writing between Brightwell and the Buyer before any order for the services is accepted and, in any event, before performance is commenced. Any subsequent variations to a service specification shall be subject to the prior written agreement of the parties. Unless otherwise specified any fees and expenses payable and any applicable timescales for the provision of the services shall be estimates only and time shall not be of the essence.

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- 3.7 Brightwell reserves the right to make any changes in the specification for the goods or services which are required to conform with any applicable statutory or EC requirements or, where any goods and/or services are to be supplied to Brightwell's specification, which do not materially affect their quality or performance.
- 3.8 Except for cancellation pursuant to Clauses 4.2 and 6 hereunder no order which has been accepted by Brightwell may be cancelled by the Buyer except with the agreement in writing of Brightwell and on terms that the Buyer shall indemnify Brightwell in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Brightwell as a result of cancellation.

#### **4. Price of the Goods and/or Services**

- 4.1 The price of the goods shall be Brightwell's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in Brightwell's published price list current at the date of acceptance of order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Brightwell without giving notice to the Buyer.
- 4.2 Brightwell reserves the right, by giving notice to the Buyer at any time up to thirty days before delivery, to increase the price of the goods to reflect any increase in the cost to Brightwell which is due to any factor beyond the control of Brightwell (such as, without limitation, any foreign exchange fluctuation, currency regulation alteration of duties, significant increase in the cost of materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give Brightwell adequate information or instructions PROVIDED that the Buyer may cancel this contract within seven days of any such notice from Brightwell (time being of the essence).
- 4.3 Estimates for the fees and expenses payable for the services and the timescales for payment (if in instalments) shall be as set out in the service specification.
- 4.4 All prices and fees are exclusive of any applicable Value Added Tax ("VAT") which shall be due at the rate ruling on the date of Brightwell's invoice.

#### **5. Terms of Payment**

- 5.1 Subject to any special terms agreed in writing between the Buyer and Brightwell, Brightwell shall be entitled to invoice the Buyer for the price of the goods on or at any time after the goods have been dispatched to or, where applicable, made available for collection by the Buyer at Brightwell's premises.
- 5.2 The Buyer shall pay the price of the goods within 30 days of the end of the month in which Brightwell's invoice is raised.
- 5.3 Unless any special terms are agreed in writing between the Buyer and Brightwell or contained in the service specification, invoices in respect of fees and expenses for the provision of services shall be payable within 30 days of issue.
- 5.4 Time of payment shall be of the essence of the contract and receipts for payment will be issued only on request.
- 5.5 If the Buyer fails to make payment in full by close of business on the due date then, without prejudice to any other right or remedy available to Brightwell, Brightwell shall be entitled to:
- 5.5.1 cancel the contract or suspend any further deliveries of goods or the provision of any further services to the Buyer; and
- 5.5.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of four per cent per annum above National Westminster Bank Plc base rate from time to time until payment is made;
- 5.5.3 require the Buyer to indemnify Brightwell against any reasonable legal costs or debt collection agency costs reasonably incurred by Brightwell in obtaining payment regardless of whether or not proceedings are issued.

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5.6 The Buyer may not withhold payment of any invoice or amount due to Brightwell by reason of any legal or equitable right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.

## **6. Delivery of Goods/Services and Force Majeure**

6.1 Delivery of the goods shall be made by the Buyer collecting the goods at Brightwell's premises at any time after Brightwell has notified the Buyer that the goods are ready for collection or, if some other place for delivery is agreed by Brightwell (including delivery to the Buyer's appointed carrier), by Brightwell delivering the goods to that place and the Buyer shall make all arrangements necessary to take delivery of the goods wherever tendered for delivery.

6.2 Notwithstanding that Brightwell may have delayed or failed to deliver the goods (or any part of them) by the quoted delivery date the Buyer shall be bound to accept delivery without repudiating this contract and to pay for the goods in full providing that delivery is tendered by Brightwell within two months of the delivery date. Brightwell may deliver the goods in advance of the quoted delivery day on giving reasonable notice to the Buyer.

6.3 Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Brightwell to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

6.4 The location for the delivery of any services shall be at Brightwell's premises unless provided otherwise by the service specification.

6.5 Brightwell shall not be liable for the consequences of any delay in the delivery of goods and/or services, and in particular, but without prejudice to the generality of the foregoing, shall be under no liability whatsoever for any delay in delivery or completion caused (directly or indirectly) by any one or more of the following: (a) strikes (b) lockouts (c) fires (d) accidents, whether to personnel or machinery, materials equipment or apparatus (e) defective material (f) lack of availability of material (g) delay through war or civil commotion (h) government regulations (i) acts of God or (j) any other circumstances beyond the control of Brightwell.

6.6 If any delay shall occur through any cause mentioned in Clause 6.5 above Brightwell reserves the right to defer the delivery date or the provision of services for a reasonable time having regard to all the circumstances. If such delay occurs then either party may at its option forthwith terminate this contract by giving to the other 14 days written notice. The consequences of such cancellation shall be governed by the provisions of Clause 6.7 and in no such case shall Brightwell be responsible for any loss (whether direct, indirect, or consequential) which may result.

6.7 If either party shall so terminate this contract the Buyer shall pay a proportionate part of the contract price for goods and/or services delivered up to the date of termination.

6.8 Where the goods are delivered by carrier, claims for damage or loss in transit or incomplete delivery (however arising) will not be considered by Brightwell unless both Brightwell and the carrier are advised by the Buyer within 28 days of the delivery date.

## **7. Risk, Property in the Goods and Inspection on Delivery**

7.1 Risk of damage to or loss of the goods shall pass to the Buyer, when:

7.1.1 in the case of goods to be collected by the Buyer, at the time when Brightwell notifies the Buyer that the goods are available for collection; and

7.1.2 in the case of goods to be delivered at the Buyer's premises or such other premises as the Buyer may specify, when the goods are so delivered.

7.2 Notwithstanding delivery or the passing of risk in the goods or any other provision contained in these conditions, the legal and equitable title in the goods shall not pass to the Buyer until:

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- 7.2.1 the Buyer has paid the price plus VAT in full; and
- 7.2.2 no other sums whatsoever are due from the Buyer to Brightwell.
- 7.3 Until title in the goods has passed to the Buyer in accordance with clause 7.2 the Buyer shall hold the goods and each of them on a fiduciary basis as bailee for Brightwell. The Buyer shall store the goods (at no cost to Brightwell) separately from goods in its possession and marked in such a way that they are clearly identified as Brightwell's property. The Buyer shall properly protect and insure the goods.
- 7.4 Notwithstanding that the goods remain the property of Brightwell pursuant to clause 7.2 the Buyer may sell or use the goods in the ordinary course of business at full market value for the account of Brightwell. Any such sale or use of Brightwell's property by the Buyer shall be on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the goods passes to the Buyer pursuant to clause 7.2 the entire proceeds of sale or otherwise of the goods shall be held on a fiduciary basis by the Buyer for Brightwell.
- 7.5 Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been re-sold) Brightwell shall be entitled at any time to require the Buyer to deliver up the goods to Brightwell and, if the Buyer fails to do so forthwith, Brightwell may enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods. On the making of such request the rights of the Buyer under clause 7.4 shall cease.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Brightwell, but if the Buyer does so all monies owed by the Buyer to Brightwell (without prejudice to any other right or remedy of Brightwell) shall forthwith become due and payable.
- 7.7 The Buyer must inspect the goods upon delivery and report to Brightwell in writing any defects that are (or would reasonably be expected to be) apparent upon such inspection within 4 weeks of delivery (time being of the essence) and Brightwell shall not be liable for any defects that are not reported in accordance with this clause 7.7. The warranty set out in clause 8 shall not apply to any defects that would be apparent upon such an inspection and which are not reported to Brightwell in accordance with this clause.

## **8. Warranties and Liability**

- 8.1 Subject to the conditions set out below Brightwell warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for such period as is specified in any quotation for the goods or in the relevant acknowledgement of order or instruction manual for such goods. The start date for any warranty period shall be the date of issue of Brightwell's invoice for the relevant goods.
- 8.2 The above warranty is given by Brightwell subject to the following conditions:
- 8.2.1 Brightwell shall be under no liability in respect of any defects in the goods arising from any drawing design or specification supplied or approved by the Buyer (either expressly or under the provisions of clause 3.3).
- 8.2.2 Brightwell shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Brightwell's instructions (whether oral or in writing) or industry standard practice, mis-use or alteration or repair of the goods without Brightwell's approval.
- 8.2.3 Brightwell shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the goods has not been paid in accordance with these conditions.
- 8.2.4 The above warranty does not extend to failures in peristaltic pump heads or peristaltic tubing or rubber seals/valves or for damage arising as a result of chemicals attack (other than by chemicals recommended for use with the relevant goods) or to plant material or equipment not manufactured by Brightwell in respect of which the Buyer shall only be entitled to the benefit on any such warranty or guarantee as is given by the manufacturer to Brightwell.

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- 8.2.5 The above warranty shall not apply to defects that are or would reasonably be expected to be apparent on inspection at delivery and which are not reported to Brightwell by the Buyer in accordance with clause 7.7.
- 8.3 Brightwell warrants that it will use reasonable skill and care in performing the services in accordance with any service specification but, unless otherwise confirmed in writing by Brightwell, provides no warranty that any result or objective can be or will be achieved or attained at all or by any specific date. If Brightwell perform any part of the services negligently or materially in breach of contract then, at any time within 6 months of receiving notification from the Buyer of such negligent performance or performance in breach, Brightwell shall have the right to re-perform such services if reasonably practicable at Brightwell's cost.
- 8.4 Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 Where any valid claim in respect of any goods which is based on any defect or quality or condition of the goods is notified to Brightwell, Brightwell shall make good by replacement or repair free of charge any defect which may appear in the goods but the goods must be returned to Brightwell for repair. This clause shall not apply to defects that are or would reasonably be expected to be apparent on inspection at delivery and which are not reported to Brightwell by the Buyer in accordance with clause 7.7.
- 8.6 Except in respect of death or personal injury caused by Brightwell's negligence, Brightwell shall not be liable to the Buyer by reason of any representation, or any implied warranty condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Brightwell, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or re-sale by the Buyer or in connection with the supply of services except as expressly provided in these conditions.
- 9. Indemnity for breach of patent, copyright, design etc. and Intellectual Property**
- 9.1 Provided that the goods have not been sold or used contrary to Brightwell's specific instructions and save where the goods have been produced to the Buyer's specifications, if any claim is made against the Buyer that the goods infringe or that their use or sale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, then, subject to clause 8.6, Brightwell shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
- 9.1.1 the Buyer shall ensure that Brightwell are given full control of any proceedings or negotiations in connection with any such claim; and
- 9.1.2 the Buyer shall give Brightwell all reasonable assistance for the purposes of any such proceedings or negotiations; and
- 9.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim, or compromise any such claim or proceedings without the consent of Brightwell (which shall not be unreasonably withheld); and
- 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use his best endeavours to do); and
- 9.1.5 Brightwell shall be entitled to the benefit of and the Buyer shall accordingly account to Brightwell for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 9.1.6 Without prejudice to any duty of the Buyer at common law, Brightwell shall be entitled to require the Buyer to take such steps as Brightwell may reasonably require to mitigate and reduce any such loss damages costs or expenses for which Brightwell is to indemnify the Buyer under this clause.

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- 9.2 The Buyer shall indemnify Brightwell against all loss damages costs or expenses in respect of any infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person arising directly or indirectly from the carrying out of work in accordance with the Buyer's express or implied specifications.
- 9.3 Each party shall be the owner of its respective Intellectual Property in any material or product or process which it has created (or the creation of which was undertaken by a third party which it commissioned to create such material or product or process) and which is in existence at the date the relevant contract for the provision of goods and/or services is made. Each party agrees not to use any of the Intellectual Property of the other party save for the purposes of the relevant contract. Where any new material or product or process is created during the course of the provision of any goods and/or services under the relevant contract by either party without involving the use of the other party's confidential information then, save to the extent that such material or product or process embodies the Intellectual Property of the other party, all Intellectual Property in such new material or product or process shall belong to the party which creates it.
- 9.4 Unless otherwise agreed in writing where any new material or product or process is created during the course of the provision of the goods and/or services jointly by the parties or by one party using any confidential information of the other then, save to the extent that such material product or process embodies the Intellectual Property of one party, all Intellectual Property in such new material product or process shall belong to the parties jointly who shall at their joint expense take all reasonable steps to protect the same.

## **10. Insolvency of the Buyer**

- 10.1 This clause applies if:
- 10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);  
or
- 10.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer;  
or
- 10.1.3 the Buyer ceases, or threatens to cease, to carry on business;  
or
- 10.1.4 Brightwell reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to Brightwell, Brightwell shall be entitled forthwith to determine any contract then subsisting with the Buyer and upon written notice of such determination being given to the Buyer in accordance with these conditions any subsisting contract shall be deemed to be determined but without prejudice to any claim that Brightwell may have in respect of any antecedent breach by the Buyer of any of the Buyer's obligations under the contract.

## **11. Export Terms**

- 11.1 Where the goods are supplied for export from the United Kingdom the contract shall be governed by Incoterms 2020.
- 11.2 Payment of all amounts due to Brightwell shall be made in the manner set out in Brightwell's acknowledgement of order.

## **12. Copyright and design rights**

- 12.1 Brightwell reserves all rights protected by statute licence registration or common law vested in it by way of registered designs, design copyright or trademarks or trade secrets in all documents drawings plans or specifications technical data or formula or any goods or materials written down or manufactured by Brightwell and the Buyer shall not reproduce the same or cause or permit them to be reproduced without the written consent of Brightwell.

## **13. General**

- 13.1 The Buyer shall not assign or transfer or purport to assign or transfer the contract or the benefit thereof to any third party whatsoever.
- 13.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or at that party's usual or last known

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place of business or to such email address as either party may provide to the other expressly for the purposes of the service of notices under the contract.

- 13.3 No waiver by Brightwell of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4 The contract is not made for the benefit of, nor shall any of its provisions be enforceable by, any person other than the Buyer and Brightwell and their respective successors and permitted assignees.
- 13.5 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 13.6 The contract shall be governed by the Laws of England and all disputes arising out of this contract shall be subject to the exclusive jurisdiction of the English courts.

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