

Greiner Bio-One Ltd

Terms and Conditions of Sale

1. DEFINITIONS, INTERPRETATION AND GENERAL

- 1.1 In these Conditions:
 - (a) 'the Company' means Greiner Bio-One Limited;
 - (b) 'the Customer' means the individual, firm, company or other party with whom the Company contracts;
 - (c) 'Euro' means the single currency according to European Community law;
 - (d) 'International Supply Contract' means such a contract as is described in section 28(3) of the Unfair Contract Terms Act 1977;
 - (e) 'Normal Business Hours' means the hours of 9am to 5pm Monday to Friday (excluding English public and bank holidays);
 - (f) 'supply' includes (but is not limited to) any supply under a contract of sale; and
 - (g) 'these Conditions' means the standard conditions and any other terms of sale set out or referred to in the Company's acknowledgment of order.
- 1.2 The headings in these Conditions are for convenience only and are not for the purpose of interpretation.
- 1.3 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.
- 1.4 If any provision of these Conditions (or of any other conditions or other terms that may be agreed in writing between the Company and the Customer) is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
- 1.5 Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the provisions of these Conditions.
- 1.6 References to clauses are to clauses of these Conditions, unless stated otherwise.

2. CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS

- 2.1 No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Customer shall be subject to these Conditions and save as set out in these Conditions no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation on contract will bind the Company only if in writing and signed by a director of the Company.
- 2.2 Unless otherwise agreed in writing by the Company, these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 2.3 Any general description contained in the Company's catalogues or other advertising material or otherwise shall not form a representation or be part of the contract.
- 2.4 Where the Company has not given a written acknowledgment of the Customer's order these Conditions will nonetheless apply to the contract provided that the Customer has had prior notice of them.
- 2.5 The Company reserves the right to correct any clerical or typographical error made by its employees at any time.

3. SPECIFICATION, INSTRUCTION OR DESIGN

- If goods are made to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer then:
- (a) the suitability and accuracy of that specification, instruction or design will be the Customer's responsibility; and
 - (b) the Customer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; and
 - (c) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made to such specification, instruction or design.

4. INSPECTION

- 4.1 Subject to the prior written agreement of the Company, the Customer shall be entitled to inspect, or to arrange inspection on its behalf by a third party, the goods at the Company's premises during Normal Business Hours. The Customer shall provide the Company with the name and address of the persons to be authorised to carry out such inspection, which persons shall be subject to the Company's approval.
- 4.2 Before any inspection is carried out pursuant to clause 4.1, the Customer shall give the Company not less than 3 days' written notice.
- 4.3 In the course of any inspection carried out by or on behalf of the Customer, the Customer shall ensure that any person appointed by it to carry out the inspection shall comply with the Company's safety requirements.
- 4.4 The Customer shall not disclose and shall procure that its employees or agents appointed to carry out the inspection shall not disclose any confidential information or trade secrets of the Company which are discovered in the course of inspection.

5. CUSTOMER'S REPRESENTATIONS

- 5.1 Where the Company has supplied the goods to the Customer accompanied by a test certificate, the Customer shall maintain a record of the identity of such goods from the date of delivery until such time as the goods are installed/incorporated into other items.
- 5.2 If the Customer modifies the goods the provisions of clause 11.3 shall not apply and the Company shall have no liability in respect of any loss or damage arising from or in connection with any defect of failure in the goods or any error regarding weight, dimensions, and capacity.
- 5.3 The Customer shall store the goods in clean, dry, well ventilated conditions.

6. QUOTATIONS AND PRICES

- 6.1 Unless otherwise agreed in writing, the Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying any goods (including, but not limited to, any such increase arising from any error or inadequacy or change to any specification, instructions or design provided by the Customer, any modification carried out by the Company at the Customer's request or any change in taxes, customs duties, freight charges, insurance premiums or exchange rates) and such increased prices ruling at the date of dispatch by the Company shall be substituted for the previous contract price. In particular, but without prejudice to the generality of the foregoing, if the contract price is specified or payable in the Euro or in a currency other than pounds sterling ('the Payment Currency'), the Company shall be entitled to increase the contract price to take account of any change in the exchange rates between pounds sterling and the Payment Currency (as evidenced by the exchange rates quoted by Barclays Bank plc) which is to the detriment of the Company and which occurs between the acceptance of the order and the actual payment of the contract price.
- 6.2 All prices are quoted exclusive of VAT and the Customer shall pay any and all taxes, duties and other governmental charges payable in respect of the goods.

7. DELIVERY

- 7.1 For all contracts other than International Supply Contracts and unless otherwise specified in writing by the Company:
- (a) the Company shall deliver the goods, by the means most convenient to the Company, to the address or addresses specified by the Customer at the time of placing its order or (in the event that the Customer fails so to specify an address) to any address at which the Customer resides or carries on business;
 - (b) the prices quoted by the Company shall include packaging and but exclude UK delivery (and any special aspects of inspection, packaging, insurance and overseas delivery shall be charged separately and over and above the price for the goods); and
 - (c) the Customer shall provide proper access for unloading of delivery vehicles
- 7.2 If the contract requires the Customer to take delivery of the goods at the Company's premises then:
- (a) for the purposes of this sub-clause 'the goods' shall mean the whole or any instalment of the goods and 'the collection date' shall mean the date on which the goods are or will be ready for delivery; and
 - (b) the Company shall notify the Customer of the collection date and the Customer shall take delivery of the goods within 5 days of the collection date.
- 7.3 If the contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the contract save that in the event of any inconsistency between the Incoterms and any express term of the contract (including these Conditions) the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.
- 7.4 Should the Company be delayed in or prevented from delivering the goods due to a failure of the Company's (or its sub-contractor's) computerised business or manufacturing systems or due to any cause beyond the reasonable control of the Company, the Company shall be at liberty to terminate the order placed by the Customer without incurring any liability for any loss or damage arising therefrom (but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made).
- 7.5 While the Company will endeavour to deliver the goods by any date or within any period agreed upon, such dates and periods are estimates only, given in good faith, and the Company will not be liable for any failure to deliver within such a period. Time for delivery shall not be of the essence of the contract. The Company shall be entitled to defer delivery until any monies due from the Customer have been received.
- 7.6 If the Customer shall for any reason fail to take delivery of the goods on the agreed date or dates or delay in doing so then without prejudice to any other rights of the Company whether under these terms and conditions or otherwise the Company shall be entitled to make an additional charge in respect of any delay caused by such failure and for any costs incurred as a result of repeated delivery necessitated by such failure.

8. RISK IN THE GOODS

- 8.1 Save in the case of International Supply Contracts and subject to any agreement in writing by the Company, the risk in goods which the Company agrees to supply shall pass to the Customer on:
- (a) delivery; or
 - (b) the date on which the Customer defaults (which expression shall have the meaning set out in clause 9.1(c)); or
 - (c) the date on which the goods being ready for delivery, delivery is postponed at the Customer's request, whichever shall first occur.
- Delivery shall be deemed to be completed before off-loading or (in the case of delivery at the Company's premises) loading of the goods.
- 8.2 All other goods or materials shall be at the Customer's sole risk at all times, and the Company shall not be liable for any loss or damage sustained by any goods or materials left with the Company, howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any employee or agent of the Company. The customer shall adequately insure such goods and materials in respect of loss or damage whilst the same are under the Company's control and/or in transit from and to premises occupied by the Company.

9. PAYMENT

- 9.2 For the purposes of this clause:
- (a) 'the goods' shall mean the whole or any instalment of the goods which the Company has agreed to supply;
 - (b) the 'relevant date' shall mean the date on which
 - (i) the invoice is dated; or
 - (ii) the Company despatches the goods; or
 - (iii) the Customer takes delivery of the Goods; or
 - (iv) the Customer defaults whichever shall first occur; and
 - (c) the Customer defaults if he fails to provide an address for delivery as required by the contract or (if it is agreed that the Customer will take delivery at the Company's premises) he fails to take delivery in accordance with such agreement
- 9.3 Unless otherwise specified in writing by the Company payment shall be made by the Customer net cash in Pounds Sterling not later than 30 days after the relevant date notwithstanding that property in the goods has not passed to the Customer.
- 9.3 Time for payment shall be of the essence of the contract. Without prejudice to any other rights it may have the Company reserved the right to charge interest at Barclays Bank plc base rate plus 4% or at the rate specified from time to time under the provisions of Late Payment of Commercial Debts (Interest) Act 1988 (whichever is the higher) on all overdue accounts and for the purposes of clauses 10 and 12 the full purchase price of the goods shall include all interest payable hereunder.
- 9.4 In the event that the currency in which the Company has specified payment is to be made is fully replaced by the Euro, the contract price shall be exclusively owed in Euro and this shall not have the effect of terminating the contract between the Company and the Customer.

10. FAILURE TO PAY, CANCELLATION OR DEFERMENT

- 10.1 If there shall be an Intervening Event the Company may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any goods in transit and treat the contract of which these Conditions form part as determined but without prejudice to its rights to the full purchase price for goods delivered and damages for any loss suffered in consequence of such determination.
- 10.2 For the purposes of this clause 10 "an Intervening Event" shall be any of the following:
- (a) failure by the Customer to make any payment when it becomes due;
 - (b) breach by the Customer of any of the terms or conditions of the contract;
 - (c) the Customer's proposal for or entry into any composition or arrangement with creditors;
 - (d) the presentation against the Customer of any petition for a bankruptcy order, administration order, winding-up order or similar process;
 - (e) the appointment of an administrative receiver or receiver in respect of the business of any part of the assets of the Customer; and
 - (f) the Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1988).
- 10.3 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director of the Company.
- 10.4 Any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of, any goods of the performance of any services will be payable by the Customer forthwith on demand.

11. LIMITATION OF LIABILITY

- 11.1 The Company will have no liability for damage in transit, shortage of delivery or loss of goods unless the Customer shall have given to the Company written notice of such damage, shortage or loss (together with reasonable particulars thereof) within 8 days of receipt of the goods or (in the case of total loss) the receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to re-supplying (in whole or part at the Company's discretion) such goods and it shall be a condition precedent to any such liability that the Customer shall, if so requested, provide authority for the company's employees or agents to inspect any damaged goods within 14 days of such request.
- 11.2 Save as provided in clause 11.1, the Company will have no liability for any direct or consequential loss arising out of any damage in transit shortage of delivery or loss of goods.
- 11.3 (a) The Company's liability in respect of any breach of the Company's declaration of conformance or in respect of any defect in or any failure of goods supplied or work done is limited to re-supplying (with new goods) or (at its discretion) paying for the re-supply of goods, in the case of defects apparent upon inspection, within 14 days of delivery and, in the case of defects not so apparent, within 12 months of delivery to the customer, by reason of fault or incorrect design, workmanship, parts or materials are found to be defective or fail or are unable to perform in accordance with the contract.
- (b) Without prejudice to clause 3, the goods shall not be deemed to be defective by reason that they are not fit for their purpose unless the Customer and the Company have undertaken as part of the contract to be solely responsible for providing the goods for the exact purpose.
- (c) In the event of any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract, the Company's liability in respect of any direct loss or damage sustained by the Customer as a result of such error shall not exceed the price of the goods in respect of which the description is incorrect.
- (d) Conditions precedent to the Company's liability hereunder shall be that the Customer shall have given to the Company reasonable notice of the defect, failure or error and shall have provided authority for the Company's servants or agents to inspect the goods.
- (e) The Company shall have no other or further liability in respect of any direct or consequential loss (including but not limited to loss of profits, loss of business or other economic loss) or damage sustained by the Customer arising from or in connection with any such breach, defect, failure or error as aforesaid.
- 11.4 Where the Company re-supplies goods in accordance with the foregoing provisions of this clause 11 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.
- 11.5 All goods supplied by the Company are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the contract is a contract of sale, all other conditions, warranties and other terms, express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this clause will not apply to any such term.
- 11.6 (a) In the event of any negligence or wilful default on the part of the Company, its employees, agents of sub-contractors in or in connection with the supply of any goods or the design or in connection with the supply of any goods or the design or manufacture thereof or in the carryout out of any work, the Company shall have no liability to the Customer save as otherwise provided in these conditions.
- (b) For the purposes of sub-clause 11.6(a), the expression "the carrying out of any work" shall, without prejudice to its generality include the carrying out of all work done in or in connection with the design, manufacture, treatment, testing, delivery, erection, installation, repair or servicing of any goods or in the preparation or provisions of any information of advice.
- (c) This clause and these conditions shall have effect subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977.
- (d) The Customer shall not in any circumstances be entitled to withhold payment for monies due whether as a means of setting off monies owed to it by the Company or otherwise.

12. RETENTION OF TITLE

The following provisions shall apply to all contracts other than International Supply Contracts and to all goods which under the contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliances by the Customer with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice limit or extinguish the Company's rights under this clause.

- (a) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all goods and supplies, whether under the contract or otherwise. Until such time the Company shall be entitled to recover the goods or any part thereof and, for the purpose of exercising such rights, the Customer hereby grants a licence to the Company its employees and agents (with appropriate transport) to enter upon the Customer's premises and any other location where the goods are situated and remove the goods.
- (b) The Customer is hereby granted a licence by the Company to incorporate the goods in any other products.
- (c) The licence granted under sub-clause 12(a) shall extend to detaching the goods from any property to which they are attached or into which they have been incorporated or from any other products of goods to which they have been incorporated or from any other products or goods to which they have been attached pursuant to the licence granted under sub-clause 12(b) hereof.
- (d) The Customer is hereby licensed to agree to sell on the goods and any products incorporating any of them on condition that the Customer shall inform its customer of the provisions of sub-clauses 12(a) to 12(c). The Customer acts as the Company's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 9 hereof remit to the Company the full purchase price of the goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
- (e) The Customer shall maintain an appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this sub-clause do not affect the Customer's obligations under clause 9.
- (f) The licences granted under such sub-clause 12(b), 12(c) and 12(d) shall be terminable forthwith at any time upon notice by the Company to the Customer.
- (g) In the case of International Supply Contracts property in the goods shall pass to the Customer on delivery.

13. INTELLECTUAL PROPERTY

Unless otherwise agreed in writing by the Company an intellectual property rights in the goods and in any tooling and in any drawings of other documentation supplied or produced by the Company shall vest in and remain vested in the Company, the Customer agrees to execute any documents the Company deems necessary to give effect to this clause.

14. TOOLING

All tooling purchased or produced by the Company for the contract shall be and remain the property of the Company unless otherwise agreed in writing, notwithstanding that the Customer may have made payment or part payment therefor.

15. CONFIDENTIALITY

The Customer agrees that it and its employees and agents will keep confidential all drawings and designs supplied by the Company and will not use, copy or reproduce the same save as specifically authorised by the Company in writing.

16. TESTS

16.1 If the Company agrees to carry out any special tests it shall be entitled to charge therefor.

16.2 If the Company agrees that any tests (whether special tests or the Company's standard tests) shall be carried out in the presence of the Customer or his representative the Company shall notify the Customer of the date from which it is or will be ready to carry out such tests. The Customer undertakes that he or his representative will, by prior appointment, attend at the premises where the goods are situated within 14 days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and he shall be bound by the results thereof.

17. USE AND SAFE HANDLING

The Customer warrants that it will pass on to all third parties to whom it may supply the goods of any of them all information as to the use and safe handling of such goods as may have been provided to the Customer of the Company.

18. LICENCES

The Customer acknowledges that goods for delivery outside of the United Kingdom may be subject to United Kingdom export controls as well as import controls at their destination. The Customer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the despatch dates for the goods to be supplied and for obtaining all necessary documentation and lodging the same with the Company prior to despatch of the goods

19. LAW AND JURISDICTION

The proper law of all contracts with the Company shall be English law which shall govern in all respects the construction and effect of such contracts and of these conditions. The Customer agrees that in the event of any dispute arising out of the contract or the performance thereof he will submit to the jurisdiction of the English Courts.