

HENKEL UK LIMITED - Conditions of Sale

1. DEFINITIONS

"Company" means Henkel Limited and its successors;

"Customer" means any person whose order for purchase of the Products is accepted by the Company;

"Products" means Products which the Company agrees to supply to the Customer.

2. GENERAL CONDITIONS

2.1 Subject to paragraph 4 the Company shall sell and the customer shall purchase the Products in accordance with any order of the Customer, which is accepted by the Company, subject to these Conditions, which shall take effect to the exclusion of any other terms and conditions whatsoever of the Customer or otherwise. No addition, variation or waiver shall be binding unless accepted in writing by the Company.

2.2 Samples supplied and advice or recommendations as to the storage, applications or use of the Products given by the Company or its employees or agents to the customer or its employees or agents are for guidance only and any such matter is followed or acted upon entirely at the customer's own risk without liability to the company.

3. QUOTATIONS

3.1 Quotations issued by the Company are merely invitations to order Products from the Company and do not create a contract.

3.2 The price in a quotation shall be valid for a period of one month from the date of the quotation.

4. ORDERS

4.1 The Company shall not be bound by any order submitted by the customer unless and until accepted by the Company. Orders rejected by the Company will normally be notified to the customer within three days.

4.2 No terms or conditions of the Customer's purchase order except those of a quantitative and descriptive nature shall apply to the contract.

4.3 The Customer shall indemnify the Company on demand against all damages, costs and expenses incurred by the Company resulting from any purported alteration or cancellation of the contract by the Customer.

4.4 The minimum order value for products is as follows – Direct & Key customers, UK £50.00 Southern Ireland Euro 50.00 excl VAT. Wholesale customers UK £250 Southern Ireland Euro 350 excl VAT

5. DESCRIPTIONS AND SPECIFICATION

5.1 If the Products are to be manufactured by the Company in accordance with a specification or request of the customer or should any change be made to the Products at the request of the Customer the Customer shall indemnify the company against all claims losses damages costs and expenses arising from any resultant infringement of any third party's property rights.

5.2 Where the Customer's specifications or requests are used or incorporated in the products the Company shall not be liable for the quality or performance of the Products provided that the Company has reasonably sought to comply with such specifications or requests.

5.3 The Company reserves the right to change any specification at any time. The Company shall notify the customer of any material change is made after the Company has accepted the Customers order where the Products are made to the Customer's specification.

6. PRICES

6.1 The price of the Products shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company's published price list current at the date of the despatch of the order by the Company. Prices shall be exclusive of value added tax and any other government duty or tax.

6.2 The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the products to reflect any increase in the cost to the Company which is due to any factor beyond the reasonable control of the Company.

6.3 Prices include the cost of the Company's standard packaging for Products. The cost of returnable containers and pallets may be charged to the Customer in addition to the price of the Products but credit will be given to the customer (less expenses incurred) provided that they are returned undamaged to the Company within a reasonable time. The cost of any additional packaging required by the Customer shall be borne by the Customer.

6.4 Returnable containers or any other returnable packaging shall not be used by the Customer other than for the Products.

6.5 The Company may make delivery charges where necessary.

7. DELIVERY AND COLLECTION

7.1 Where delivery of the Products is to be made by the Customer collecting the Products at the Company's premises the Customer shall agree the date and time of collection with the Company's sales office at least 48 hours before collection.

7.2 Subject to paragraph 7.1 any dates quoted for delivery for Products are approximate only and the Company shall not be liable for any delay in delivery of the Products. The Customer shall not be entitled to cancel the order by reason of such delay unless the company acknowledges in writing that the delay is unreasonable. Time for delivery shall not be of the essence. The Products may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.

7.3 The Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered and the quantity delivered shall be deemed to be the quantity ordered and the invoice price shall be adjusted pro rata.

7.4 The Customer shall ensure that vehicles and employees of the Company or the Company's carrier are given free and unhindered access to an appropriate entrance at the address for delivery of the Products.

7.5 The Customer shall arrange for the Product to be unloaded promptly at the delivery point at its own cost and the Customer shall be responsible for any delay or damage to the Products during unloading.

7.6 The Company will charge the Customer for Products which the Customer fails to accept when delivery of the Products is duly tendered by the Company.

7.7 Where applicable the weights obtained at the station shall be binding for invoicing.

7.8 If the Customer fails to collect or take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company the Customer may:

7.8.1 store the products until actual delivery and charge the Customer for reasonable cost (including insurance) of storage or

7.8.2 Sell the Product at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.

8. INSPECTION

8.1 The Customer shall count the Products and check for superficial damage on delivery to or collection by the Customer.

8.2 Any short delivery or damage to the Products must be noted on the delivery note and shall be notified to the Company and the carrier in writing within three days of delivery of or collection by the Customer of the related Products.

9. PROPERTY RISK AND QUALITY CONTROL

9.1 Until full payment has been received by the Company from the Customer for the Products the subject of this or any other contract for the time being outstanding between the Company and the Customer.

9.1.1 Legal and beneficial ownership of the Products shall remain in the Company;

9.1.2 The Customer shall hold the Products as the Company's bailee and fiduciary agent, and shall keep the Products separate from those of the Customer and third parties properly stored, protected and insured and identified as the Company's property;

9.1.3 The Customer shall be entitled to resell or use the Products in the ordinary course of its business, but the Company shall be legally and beneficially entitled to the proceeds of sale and if requested by the Company the Customer shall pay all such proceeds of sale into a separate account or otherwise shall ensure that they are kept by or on behalf of the Company in a separate and identifiable form and are not mixed with any other monies. Forthwith on receipt of the proceeds of sale the customer shall pay to the company any sums outstanding to the Company its servants and agents are hereby irrevocably authorised to enter upon any land or building upon or with the Products are situated.

9.1.4 The Company may recover the Products at any time from the Customer (provided they are still in existence and have not been resold) and for that purpose the Company its servants and agents are hereby irrevocably authorised to enter upon any land or building upon or in which the Products are situated;

9.1.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the products but if the Customer does so all monies owing by the Customer to the Company shall (without) prejudice to any other right or remedy of the Company) forthwith become due and payable; and

9.1.6 The Customer shall upon notice in writing being given to it by the Company assign to the Company all its rights against its customer in respect of the disposal under 9.1.3 above.

9.2 All risk including that of damage to or loss of the Products shall pass to the Customer.

9.2.1 at the time when the Company has agreed that the Customer will collect the Products in the case of Products to be delivered at the Company's premises;

9.2.2 at the time of delivery but prior to unloading even if the Customer wrongfully fails to take delivery of the Products when the Company had tendered delivery of the Products in the case of Products to be delivered otherwise than at the Company's premises;

9.2.3 at the time of delivery of the Products to a carrier for delivery to the Customer in the case of Products to be delivered in a manner otherwise than as set out in 9.2.1 or 9.2.2 above.

9.3 In the event of any dispute as to the quality of the Products the Customer shall allow the Company at any time on reasonable notice to carry about quality control tests on the Products whether or not the proprietary right in the Products has passed to the Customer.

10. TESTING

The Company is under no duty to provide the Customer with tailor-made Certificates of Analysis and/or Conformity of any other form of quality certification pursuant to an order; any quality checks or data that are produced by the Company will not relieve the Customer of the responsibility to carry out his own quality checks nor do they confirm that the Products have certain properties or are suitable for any specific application.

11. INSURANCE

The Customer shall fully insure the Products against all risks from the time stipulated for the passing of risk in 9.2 above until all proprietary rights in such Products has passed to the Customer.

12. TERMS OF PAYMENT

12.1 The Customer shall settle its account with the Company by the end of the calendar month following the calendar month in which the Products are delivered to the Customer.

12.2 The Customer shall pay the price of the Products in accordance with paragraph 12.1 notwithstanding the property in the Products has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.

12.3 If the Customer fails to make any payment on the due date then without prejudice to any other right of remedy available to the Company the Company shall be entitled to:

12.3.1 in addition to the right in Clause 18.1.1) cancel the contract or suspend performance of the contract of any further deliveries to the Customer).

12.3.2 appropriate any payment made by the Customer to such of the Products (or the Products supplied in any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);

12.3.3 charge the Customer interest from the date payment is due on the amount unpaid at the rate of 2% per annum above the National Westminster Bank plc base rate from time to time calculated on a daily basis.

12.4 The Customer shall not be entitled to set off against or deduct from any payment due to the Company to the Customer for any reason whatsoever.

12.5 Where the company agrees to supply Products in instalments each instalment shall be paid for in full and failure to pay for any instalment shall entitle the Company to refuse to deliver any further instalment of the Products due under this or any other contract between the Customer and the Company.

13 INTELLECTUAL PROPERTY

The Customer shall not infringe any patent trade mark registered design copyright industrial or other intellectual property right belonging to the Company and relating to the Products or any other goods or matters supplied by the Company with or in relation to the Products.

14. CONFIDENTIALITY

All secret data and other confidential information of the Company shall remain the sole and exclusive property of the Company and shall not be used by the Customer or disclosed to any third party.

15. LIMITATION OR LIABILITY

15.1 Except as required by law the Company does not warrant that the Products shall be of a particular quality or fit any particular purpose.

15.2 Subject to these Conditions and except where the Products are sold under a consumer sale (within the Sale of Goods Act 1979) all warranties or terms implied by statute or common law are excluded as far as possible and in particular (but without limitation) the Company shall be under no liability.

15.2.1 in respect of any defect in the Products arising from any drawing design or specification supplied by the Customer;

15.2.2 in respect of any defect caused by the Customer and arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of any products without the Company's approval;

15.2.3 under any implied or express warranty condition or guarantee if the total price for the Products has not been paid by the due date for payment; or

15.2.4 in respect of Products not manufactured by the Company the Customer shall be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

- 15.3 Except as expressly provided in these Conditions the Company shall be under no liability to the Customer unless:
- 15.3.1 written notice of the Customer's claim received by the Company within fourteen days of the delivery of the products to the Customer or of the Customer's order or where the claim is in respect of any failure to deliver the Products within twenty-one days of the date of the Company's invoice; and
- 15.3.2 in respect of all claims arising out of any loss or damage to the Products in transit the Customer notifies the carrier and the Company in writing within three days of delivery.
- 15.4 Where the Customer makes a claim in accordance with paragraph 15.3 and the Products received are damaged defective or not of merchantable quality then a sample of the Products in question shall at the written request of the Company be returned carriage paid to the Company in the condition in which they were received by the Customer. The Company will examine the same and if in the Company's sole discretion, the Company decides that the complaint is justified in whole or in part without creating any obligation to do so the Company's may select:
- 15.4.1 to replace all or any of the Products;
- 15.4.2 to accept the return of all or any of the Products giving credit to the Customer for the price thereof; or
- 15.4.3 make an allowance to the Customer of what in the Company's sole discretion it estimates to be the difference in value between the Products delivered and the Contract price.
- 15.5 Subject to these conditions, except in respect of death or personal injuries caused by the Company's negligence the Company shall not be liable to the Customer for any consequential loss or damage which arises out of or in connection with the sale and supply of the products or their use or resale by the Customer.
- 15.6 Except in respect of damage for which the Company is not legally entitled to exclude liability the Company's liability for any claim or series of claims shall not exceed the sum for which the Company has reasonably insured. Full details of such insurance will be supplied on the Customer's written request.
- 16. FORCE MAJEURE**
The Company shall not be liable for any failure to fulfil any obligation if prevented from so doing by any cause beyond its reasonable control. In the event of any such failure the Company may defer or determine this contract or any part of it or any other contract between the Company and the Customer without any liability of the Company to the Customer and without prejudice to the Company's other rights.
- 17. INDEMNITY**
The Customer shall indemnify the Company in respect of all damage injury or loss occurring to any person or property and against all claims charges or expenses in connection therewith arising from the condition or use of the Products in so far as any such damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Customer or its servants agents or employees or by any breach by the Customer of its obligations to the Company under these Conditions.
- 18. TERMINATION**
18.1 The Company shall be entitled to terminate this and all other contracts with the Customer upon the happening of any of the following events:
18.1.1 failure by the Customer to pay any sum due to the Company under this or any other contract on the due date;
18.1.2 breach by the Customer of any other condition of this or any other contract with the Company and failure to remedy the breach within 30 days of the Company having given the Customer written notice of the breach;
18.1.3 the Customer being an individual dies or becomes bankrupt enters into receivership or a composition or arrangement for the benefit of its creditors or being a body corporate has an administrator receiver appointed over all or any of its assets or goes into liquidation either voluntary or compulsory (unless as part of a bona fide scheme of reconstruction or amalgamation).
- 18.2 No forbearance or indulgence by the Company shown or granted to the Customer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be taken as admitting any liability whatsoever or waiving any of these Conditions or any liability here under.
- 18.3 In the event of termination the Customer shall forthwith pay the Company under this and any other contract and the Company shall be entitled immediately to repossess all Products in the possession of or under the control of the Customer or of any servant or agent of the Customer the Company being entitled to enter upon the premise belonging to the Customer or under the control of the Customer for such purposes.
- 19. MISCELLANEOUS**
19.1 The Company is a member of the group of companies whose holding company is Henkel Limited and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group provided that any act or omission of such other member shall be deemed to be the act or omission of the Company.
- 19.2 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 such other address as may at the time be notified to the party giving notice.
- 19.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
- 19.4 These Conditions shall be governed by and construed in all respects in accordance with the laws of England and the parties hereby submit themselves to the jurisdiction of the English Courts.
- 19.5 These Conditions shall where applicable survive termination of the contract.
- 19.6 The Customer shall not assign any benefit under the contract without the written consent of the Company, which may if given be on such terms as to guarantee or indemnity or otherwise as the Company thinks fit.
- 20. CREDIT CARD REFUND POLICY**
The General Policy is to issue a credit note but if cc refunds have to be made the following rules will apply;
- 20.1 Refunds will only be made on to CARD of the original purchase
- 20.2 Refunds will be issued within three (3) days of a valid request.