

1 Interpretation

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

Administration Fee: the administration fee is detailed on the Order/Quotation.

Conditions: the terms and conditions set out in this document and as may be amended from time to time in accordance with clause 11.6.

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

Customer: the person or firm who purchases the Products from the Supplier.

Data Sheet: the specification for the Products.

Products: the products (or any part of them) set out in the Order.

Order: the quotation/order confirmation sent by the Supplier to the Customer.

Supplier: Genan Limited (registered in England and Wales with company number 06761240).

2 Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.3 Our General Terms shall be valid as a framework agreement for all future business of the same type with the Customer, without us having to refer to them again in every individual case.

3 Products

3.1 The Products are described on the Data Sheet.

3.2 The Supplier reserves the right to amend the specification of the Products set out on the Data Sheet if required by any applicable statutory or regulatory requirements. Any change will be notified to the customer.

4 Delivery

4.1. The Customer shall collect the Products ex-works or delivery shall be in accordance with Incoterms as agreed on the Order.

4.2. Delivery of the Products shall be completed on the collection by the Customer of the Products or the delivery of the Products by the Supplier to the Delivery Location.

4.3. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.4. Unless stated to the contrary on the Order the Products may be delivered in instalments at the sole option of the Supplier.

4.5. If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality and being the cheapest available in the market, less the price of the Products. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.6. On delivery in accordance with clause 4.2, the Customer will be required to sign the dispatch/delivery note confirming receipt of the type and quantity of the Products.

5 Quality

- 5.1 The Supplier warrants that on delivery the Products shall:
- (a) conform with the Data Sheet;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier within 10 days of delivery that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Products; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Supplier's cost,
 - (d) the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 5.3 The supplier shall not be liable for Products' failure to comply with the warranty set out in clause 5.1. in any of the following events:
- (a) The Customer makes any further use of such Products after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 - (c) the Customer alters such Products without the written consent of the Supplier;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6 Title and Risk

- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2 Title to the Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Products; and
 - (b) any other Products or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) hold the Products on a fiduciary basis as the Supplier's bailee;
 - (b) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to the provisions of clause 8.1; and
 - (f) give the Supplier such information relating to the Products as the Supplier may require from time to time,
- but so long as the Customer is not in default of payment the Customer may resell or use the Products in the ordinary course of its business.
- 6.4 If before title to the Products passes to the Customer the Customer becomes subject to the provisions of clause 8.1, or the Supplier reasonably believes that any such event is about to

happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them. I have taken advice and this is indeed legal. We don't have to put it in but it does allow us to do this if we so wished.

7 Price and Payment

- 7.1 The price of the Products shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), delivery destination, quantities or types of Products ordered, or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 Provided the Customer has been approved by the Supplier's credit risk insurer the Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms as stated on the Order confirmation beginning with the date of invoice otherwise payment in full is to be made prior to delivery unless the Order is to be supported by a bank guarantee or similar security approved by the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.4 The Customer may object to the increase in price of the Products provided that such objection is made in writing within seven days following receipt of notification of the price increase. In the event of objection, the Supplier may terminate the Contract without any obligation regarding the supply of the Products that may be outstanding at the date of termination.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 1.5% per month Such interest shall accrue on a daily basis from the due date until the date of the actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.7 In addition to the payment of interest pursuant to clause 7.4 the Supplier reserves the right to levy the Administration Fee if the Customer fails to make payment by the due date.

8 Customer's Insolvency or Incapacity

- 8.1 If the Customer becomes unable to pay its debts or enters into any form of insolvency, or the Supplier reasonably believes that such events are about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Products delivered to the Customer shall become immediately due.

- 8.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9 Limitation of Liability

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or

- 9.2 Subject to clause 9.1:

- (a) the Supplier shall 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 arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors); and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents subcontractors shall not exceed 100% of the price of the Products and shall be limited to damage that was foreseeable and within the contemplation of the parties at the start of the Contract.
- (c) The Supplier shall not be liable for any loss or damage to any equipment or machinery used by the Customer in connection with the Product and it is for the Customer to satisfy itself that the Product can be used with such equipment or machinery.
- (d) The Supplier shall not be liable for any loss or damage in connection with any supply of the Products unless any claims for damages are made within 12 months from the date of delivery.

10 Force Majeure

- 10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11 General

11.1 Assignment and subcontracting

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email.

11.3 Severance

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

11.4 Waiver

- (a) No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights

- (a) A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 Entire Agreement

- (a) Notwithstanding anything to the contrary expressed in or to be implied from this Contract, this Contract shall be deemed to contain the entire agreement and understandings between the party which supersedes any and all previous agreements and understandings between the parties and the Customer acknowledges that in accepting the Order and in entering into this Contract the Customer has not relied or will not rely on any statements, representations, warranties or undertakings which are not expressly set out in the Contract including without limitation to the generality of the foregoing any statements, representations, warranties or undertakings contained in any other documents made available by the Supplier prior to the execution of this Contract. This clause shall not exclude any liability for fraudulent misrepresentation.

11.7 Variation

- (a) Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

11.8 Governing law and jurisdiction

- (a) The Contract shall be governed by and construed in accordance with English law.

11.9 Alternative Dispute Resolution

- (a) If any dispute arises out of this **Contract** save in connection with payment the parties will first of all use good faith to meet to discuss the dispute and attempt to resolve it. If the dispute has not been resolved within 7 days of the meeting of the parties then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.