

TERMS AND CONDITIONS.

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Applicable Law means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

Appointed Representatives means the persons by the parties for the purposes of Condition 27;

Brexit means (a) the United Kingdom (UK) ceasing to be a member state of the European Union (EU) and/or the European Economic Area (EEA) on Exit Day; and/or (b) the commencement, end of or variation in any transitional, trading or other arrangements from time to time between: (i) the UK and the EU and/or EEA (including during any implementation period and IP Completion Day); and/or (ii) the UK and any other country, group of countries, international organisation, bloc or body (including the World Trade Organization) in contemplation of or (directly or indirectly) in connection with the UK's said cessation of membership;

Conditions means the Supplier's terms and Conditions of sale set out in this document;

Contract means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order;

Customer means the named party in the Contract which has agreed to purchase the Goods from the Supplier and whose details are set out in the Order;

Documentation means any descriptions or other related materials supplied in connection with the Goods;

Exit Day shall have the meaning in the European Union (Withdrawal) Act 2018;

Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay..

Goods means the goods set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;

Location means the address or addresses for delivery of the Goods as set out in the Order or such other address or addresses as notified by the Supplier to the Customer at least 28 Days prior to shipping;

Minimum Quantity means the Minimum Quantity for an Order as notified by the Supplier to the Customer from time to time;

Order means an order for the Goods from the Supplier placed by the Customer;

Parties means the Customer and the Supplier;

Price has the meaning given in Condition 3.1;

Specification means the description provided for the Goods by the Supplier to the Customer prior to the Order being placed;

Supplier means Qualitops (UK) Limited of 22-26 King Street, King's Lynn, Norfolk, PE30 1HJ, registered number 7073871;

The Windsor Framework Agreement means the arrangements introduced to replace the Northern Ireland Protocol; and

VAT means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

1.2.2 any Condition, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 a reference to a gender includes each other gender;

1.2.7 words in the singular include the plural and vice versa;

1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email); and

1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 2.5 Each Order must be for at least the Minimum Quantity.
- 2.6 If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the Supplier's written acceptance of the Order.
- 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
- 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Goods shall (subject to Conditions 3.2, 3.4 and 3.5) be the price notified to the Customer by the Supplier immediately prior to the Order being received by the Supplier (the **Price**).
- 3.2 The Price is exclusive of VAT (or equivalent sales tax), and all and any customs and other importation charges, levies, taxes or duties (including but not limited to charges pursuant to the Import of Products, Animals, Food and Feed System) or Brexit relating to the importation of the Goods for which the Customer will be liable to pay in full and will form part of any invoice pursuant to Condition 4.
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Price at any time by giving the Customer not less than 28 Days notice in writing provided that the increase does not exceed 10% of the Price in effect immediately prior to that increase.
- 3.5 Notwithstanding Condition 3.4, the Supplier may increase the Price with immediate effect by written notice to the Customer where there is an increase in the cost to the Supplier of supplying the Goods (or any part of the Goods) where that is due to any factor beyond the control of the Supplier to include (but not limited to):
 - 3.5.1 any increase or imposition of new taxes, duties, levies and customs charges (howsoever arising);;
 - 3.5.2 foreign exchange fluctuations;
 - 3.5.3 change in delivery dates, quantities and specifications requested by the Buyer;
 - 3.5.4 any delay caused by the inaccuracy of any instruction or information given by the Buyer.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Goods, partially or in full (at the Supplier's discretion), at any time following acceptance of the Order.
- 4.2 The Customer shall pay all invoices:
 - 4.2.1 in full without deduction or set-off, in cleared funds within 28 Days of the date of each invoice; and
 - 4.2.2 to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - 4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of Barclays Bank plc from time to time in force, and
 - 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Supplier may set and vary any previously agreed credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order.
- 6.2 The Goods shall be deemed delivered on their arrival at the Location.
- 6.3 The Customer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 6.4 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.5 Delivery of the Goods shall be accompanied by a delivery note stating the Order number.
- 6.6 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.
- 6.7 The Supplier shall not be liable for any delay in or failure of delivery caused by:
 - 6.7.1 the Customer's failure to make the Location available;
 - 6.7.2 the Customer's failure to prepare the Location as required for delivery of the Goods;
 - 6.7.3 the Customer's failure to provide the Supplier with adequate instructions for delivery of the Goods;
 - 6.7.4 a Business Continuity Event;

- 6.7.5 Force Majeure.
- 6.8 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable storage and insurance charges incurred by the Supplier in doing so.
- 6.9 If 28 Days following the due date for delivery of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in Condition 6.10.
- 6.10 In the event of the Supplier exercising its right to resell or otherwise dispose of the Goods pursuant to Condition 6.9 then, the Supplier shall:
- 610.1 deduct all reasonable storage charges and costs of resale; and
- 6.10.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.
- 7 Risk**
- Risk in the Goods shall pass to the Customer on delivery.
- 8 Title**
- 8.1 Title to the Goods shall pass to the Customer only once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.2.1 hold the Goods as bailee for the Supplier;
- 8.2.2 store the Goods separately from all other material in the Customer's possession;
- 8.2.3 take all reasonable care of the Goods and keep them in the Condition in which they were delivered;
- 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
- 8.2.6 not remove or alter any mark on or packaging of the Goods;
- 8.2.7 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 9 Warranty**
- 9.1 The Supplier warrants that the Goods shall, upon delivery, conform in all material respects to the Specification, be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and conform to the requirements of the Food Safety Act 1990 and all other Applicable Law.
- 9.2 The Supplier further warrants in respect of Goods supplied to Northern Ireland that they will comply with such aspects of the Windsor Framework Agreement that will apply to the supply of Goods pursuant to these Conditions and that any Goods supplied into Northern Ireland will be solely for sale to, or final use, by consumers in the United Kingdom including where those Goods have been subject to non-commercial processing.
- 9.3 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 9.4 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with Condition 9.1, provided that the Customer serves a written notice on the Supplier within three Days of delivery of the Goods.
- 9.5 The Supplier shall not be liable for any failure of the Goods to comply with Condition 9.1:
- 9.5.1 where such failure arises by reason of wilful damage or negligence on the part of the Customer or the Customer's agents;
- 9.5.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on storage;
- 9.5.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods; or
- 9.5.4 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with Condition 9.1.
- 9.6 Except as set out in this Condition 9:
- 9.6.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
- 9.6.2 shall have no liability for their failure to comply with the warranty in Condition 9.1 and all warranties and Conditions (including the Conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 10 Indemnity and insurance**
- 10.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

11 Limitation of liability

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Condition 11.
- 11.2 Subject to Condition 11.5, the Supplier's total liability shall not exceed the amount that the Supplier has been able to recover from its insurers.
- 11.3 Subject to Condition 11.5, the Supplier shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to Condition 11.5, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 11.4.1 loss of profit;
 - 11.4.2 loss of data;
 - 11.4.3 loss of use;
 - 11.4.4 loss of production;
 - 11.4.5 loss of contract;
 - 11.4.6 loss of opportunity;
 - 11.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 11.4.8 harm to reputation or loss of goodwill;
 - 11.4.9 any loss arising from a Business Continuity Event.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.5.1 death or personal injury caused by negligence;
 - 11.5.2 fraud or fraudulent misrepresentation; or
 - 11.5.3 any other losses which cannot be excluded or limited by Applicable Law.

12 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 60 Days, either party may terminate the Contract by written notice to the other party.

13 Termination

- 13.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 13.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 13.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 Days of receiving written notice of such breach;
 - 13.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 28 Days after the date that the Supplier has given notification to the Customer that the payment is overdue;
 - 13.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled;
 - 13.1.5 stops carrying on all or a significant part of its business.
- 13.2 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

14 Notices

- 14.1 Any notice or other communication given by a party under these Conditions shall:
- 14.1.1 be in writing;
 - 14.1.2 be sent to the parties at their registered office or such other address the parties may from time to time notify to the other in accordance with these Conditions.
- 14.2 Notices may be given, and are deemed received:
- 14.2.1 by hand: on receipt of a signature at the time of delivery;
 - 14.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Day after posting (excluding a Saturday, Sunday or a bank or public holiday in England); and
 - 14.2.3 by email provided confirmation is sent by first class post on receipt of a delivery receipt email from the correct address.
- 14.3 This Condition 14 does not apply to notices given in legal proceedings or arbitration.

15 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

16 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

17 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

18 Entire agreement

18.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

18.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

18.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

19 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

20 Assignment

20.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

20.2 The Supplier may at any time assign any or all of its rights under the Contract provided that it gives to the Customer prior written notice of the assignment including the identity of the assignee.

21 Set-off

21.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

21.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

22 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

23 Severance

23.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

23.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

24 Waiver

24.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

24.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

24.3 A waiver of any term, provision, Condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

25 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Conditions shall prevail to the extent of the conflict.

26 Third party rights

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

27 Dispute resolution

27.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this Condition 27.

27.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

27.3 Within 14 Days of service of the notice, the Appointed Representatives shall meet to discuss the dispute and use all reasonable endeavours to reach a negotiated resolution of the dispute.

27.4 Until the parties have completed the steps referred to in Condition 27.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

28 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

29 Jurisdiction
The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim.

We agree to these terms and conditions:

Full company name:
Registered/Trading address:
.....
.....
Authorised Signature.....
For and on behalf of the Supplier
Name of Signatory:
Position:
Date:

Internal Use Only:
For Qualitops (UK) Limited:
Name:
Position:
Date:

