

## Terms and Conditions of Purchase (February 2017)

(Terms & Conditions under which Johnsons of Whixley Ltd will buy from a seller)

### 1. Definitions

#### 1.1. In these **Contract Terms**:

'**Buyer**' means Johnsons of Whixley Limited (Company Registration 616324);

'**Contract Terms**' means these terms and conditions of purchase;

'**Contract**' means each contract for the purchase of the **Goods** and the supply and acquisition of the **Services** on these **Contract Terms**;

'**Costs**' means all liabilities, losses (whether direct or indirect and including loss of profits), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid by the **Buyer**;

'**Goods**' means the goods (including any instalment, component, part of or raw materials used in such goods) described in the **Order**;

'**Order**' means the **Buyer's** purchase order of which these **Contract Terms** form part;

'**Price**' means the price of the **Goods** and/or the **Services**;

'**Seller**' means the person, firm or company so described in the **Order**;

'**Services**' means the services (if any) described in the **Order**;

'**Specification**' includes any plans, drawings, data, description, samples, standards, catalogue or other information relating to the **Goods** and/or **Services**; and

'**Writing**' includes facsimile or email transmission and '**Written**' shall be construed accordingly.

1.2. Any reference to a statutory provision, regulation or protocol includes a reference to any modification or re-enactment or replacement of the provision, regulation or protocol in force and all subordinate instruments, orders or regulations made under them.

### 2. Basis of purchase

2.1. The **Order** constitutes an offer by the **Buyer** to purchase the **Goods** and/or acquire the **Services** subject to these **Contract Terms**.

2.2. Any of the following are deemed to constitute the **Seller's** agreement to comply with these **Contract Terms**:

2.2.1. any acceptance of an **Order** by the **Seller** (notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms other than these **Contract Terms**);

2.2.2. the delivery or making ready for collection of any **Goods**; or

2.2.3. the performance of any **Services** by or on behalf of the **Seller**.

2.3. These **Contract Terms** shall apply to each **Contract** to the exclusion of any other terms and conditions on which any quotation has been given to the **Buyer** or subject to which the **Order** is accepted or purported to be accepted by the **Seller**.

2.4. No variation to these **Contract Terms** shall be binding unless agreed in writing by a member of the **Buyer's** Board of Directors.

### 3. Specifications and inspections

3.1. It is the responsibility of the **Seller** to ensure the quantity, quality and description of the **Goods** and the **Services** shall be as specified in the **Order** and/or in any applicable **Specification** supplied by the **Buyer** to the **Seller** or agreed in **Writing** by the **Buyer**.

3.2. The **Seller** shall allow the **Buyer** during normal working hours to inspect and test the **Goods** during production, processing or storage at the premises of the **Seller** or any third party prior to despatch and to test the **Services** during performance. Any inspection or testing by the **Buyer** shall not relieve the **Seller** of its obligations under the **Contract**.

3.3. If as a result of inspection or testing the **Buyer** is not satisfied that the **Goods** and/or **Services** will comply in all respects with the **Contract** and the **Buyer** informs the **Seller** within seven days of inspection or testing, the **Seller** shall take the necessary steps to ensure compliance.

3.4. The **Goods** shall be marked in accordance with the **Buyer's** instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

#### 4. Price

4.1. The **Price** of the **Goods** and the **Services** shall be as stated in the **Order** and, unless otherwise stated by the **Buyer**, shall be:

4.1.1. exclusive of any applicable VAT (which shall be payable by the **Buyer** subject to receipt of a VAT invoice);

4.1.2. (for collected **Goods**) inclusive of all charges for packaging, packing, insurance of the **Goods** and any duties, imposts or levies other than VAT; and

4.1.3. (for deliveries) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the **Goods** to the **Buyer's** specified delivery address and any duties, imposts or levies other than VAT.

4.2. No increase in the **Price** may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the **Buyer**.

4.3. The **Buyer** shall be entitled to any discount for prompt payment, bulk purchase, volume or purchase customarily granted by the **Seller**. In the absence of any other written agreement the **Buyer** shall be entitled to take a discount of 3% for payment within 21 days of receipt of invoice.

4.4. The **Buyer** shall be entitled to recover or deduct from the **Price**:

4.4.1. any amount which is disputed by the **Buyer**, pending resolution of such dispute;

4.4.2. any **Costs** incurred as a result of the non supply or rejection of **Goods** or **Services**; and

4.4.3. any sums owing by the **Seller** to the **Buyer** or by any other company within the **Seller's** group.

#### 5. Invoicing and Payment

5.1. Time of payment shall not be of the essence of the **Contract**.

5.2. The **Seller** may only invoice for items that are included in the **Order**.

5.3. Invoices may be sent on or after receipt of the **Goods** or **Services**.

5.4. In order to be processed, each invoice must quote the **Order** number.

5.5. No sum may be invoiced more than 90 days after the collection or delivery of the **Goods** or the performance of the **Services**.

5.6. In the absence of any other **Written** agreement, the **Buyer** shall pay the **Price** of the **Goods** and/or the **Services** within 90 days after the end of the month following receipt by the **Buyer** of a proper invoice or, if later, after acceptance of the **Goods** or **Services** in question by the **Buyer**.

#### 6. Information

6.1. The **Seller** shall provide to the **Buyer** on request any information about the **Goods**, and any components, parts or raw materials used in producing the **Goods** that the **Buyer** considers necessary including information relating to any possible risks to health and safety presented by the **Goods**.

#### 7. Delivery or collection

7.1. Time of delivery or collection of the **Goods** and of performance of the **Services** is of the essence of the **Contract**.

7.2. The **Goods** shall be delivered to or collected from, and the **Services** shall be performed at, the address specified by the **Buyer** on the date or within the period stated in the **Order**. The **Buyer** reserves the right to amend any delivery or collection instructions.

7.3. Delivery will be between 0730 - 1600 Monday to Thursday and 0730 - 1230 Friday unless otherwise agreed with the **Buyer** in **Writing** prior to delivery.

7.4. No additional charges will be paid by the **Buyer** to the **Seller** in the event of a delay, regardless of the cause, in unloading the delivery of an **Order** or performance of a **Service** at the address specified by the **Buyer**.

7.5. Delivery shall be deemed to be made on receipt of the **Goods** and/or the **Services** by the **Buyer** in accordance with all terms of the **Contract**.

7.6. Where the date of delivery of the **Goods** or of performance of the **Services** is to be specified after the placing of the **Order**, the **Seller** shall give the **Buyer** reasonable notice of the specified date.

7.7. Each consignment of **Goods** must be accompanied by a prominently displayed delivery note stating the number of the **Order**, full description and quantity of **Goods** supplied, plant passport numbers, Intrastat numbers and values, all relevant packaging information (including number of pallets, CC trolleys (which must be correctly labelled in accordance with CC's current protocol) shelves and extensions), delivery address and **Seller's** invoice number.

7.8. A copy of the delivery note must be e-mailed to the Purchasing and Incoming Goods department of the **Buyer** not less than 12 hours prior to delivery or collection.

7.9. The **Buyer** shall not accept delivery or performance by instalments unless previously agreed in writing. If **Goods** are to be delivered or **Services** are to be performed by instalments, the **Contract** will be treated as a single contract and not severable.

## 8. Acceptance

- 8.1.** The **Seller** shall supply the **Buyer** in good time with any instructions or other information required enabling the **Buyer** to accept delivery of the **Goods** and performance of the **Services**.
- 8.2.** The **Buyer** shall be entitled to reject all or any part of the **Goods** delivered or **Services** performed which are not in accordance with the **Contract**, including a right to reject defective **Goods** even if the defect is minor.
- 8.3.** The signing of any delivery note or other document acknowledging physical receipt of any **Goods** shall not be deemed to constitute or evidence acceptance of the **Goods**.
- 8.4.** The **Buyer** shall not be deemed to have accepted any **Goods** and/or **Services** until the **Buyer** has had a reasonable time to inspect or test them following delivery or, if later, within a reasonable time after, any latent defect has become apparent.
- 8.5.** The **Buyer** shall not be deemed to have accepted the **Goods** merely by virtue of the **Goods** having been sold to a third party upon or after delivery or the **Goods** having been incorporated or converted them into other products or works.
- 8.6.** The **Buyer** shall not be deemed to have accepted the **Goods** or **Services** by virtue of having required the **Seller** to repair or replace **Goods** or **Services** under these **Contract Terms**.
- 8.7.** The **Seller** shall remove any packaging material or any **Goods** rejected by the **Buyer** within seven working days of notification of the rejection, after which the **Buyer** reserves the right to remove or destroy the **Goods**, any **Costs** incurred may be debited to the **Seller**.
- 8.8.** **Goods** showing inherent pest or disease symptoms within 30 days of delivery, unless the symptoms are those of a notifiable pest or disease as defined by APHA or where statutory action is required by APHA, in which case it will be 120 days, will be rejected and disposed of and all **Costs** reclaimed.
- 8.9.** **Goods** showing signs of weed infestation within 90 days of delivery will be rejected and disposed of and all **Costs** reclaimed.

## 9. Risk and Title

- 9.1.** Risk of damage to or loss of the **Goods** supplied shall pass from the **Seller** upon acceptance by the **Buyer** in accordance with the **Contract**.
- 9.2.** Risk shall not pass to the **Buyer** by virtue of the **Goods** having been sold to a third party.
- 9.3.** Title of the **Goods** shall pass to the **Buyer** upon collection by the **Buyer** or contracted haulier or delivery to the address specified, unless payment for the **Goods** is made prior to collection or delivery, when it shall pass to the **Buyer** once payment has been made.

## 10. Compliance

- 10.1.** The **Seller** shall comply with all applicable regulations (including the General Product Safety Regulations 1994) and other legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the **Goods** and performance of the **Services** and concerning hazardous substances.
- 10.2.** Any **Goods** that are hazardous shall be appropriately marked, packed and carried.

## 11. Warranties

- 11.1.** The **Seller** warrants to the **Buyer** that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under the **Contract**.
- 11.2.** The **Seller** warrants to the **Buyer** that the **Goods**:
- 11.2.1.** will be of satisfactory quality and fit for all purposes for which the **Goods** are commonly supplied;
  - 11.2.2.** will be free from defects in design, material and workmanship;
  - 11.2.3.** will correspond with any relevant **Specification**;
  - 11.2.4.** will comply with all statutory requirements, regulations and EU regulations relating to the manufacture and sale of the **Goods** or the supply of the **Services** including product safety, packaging, labelling (including the appropriate British Standard or equivalent specification unless otherwise agreed), the Consumer Protection Act 1987, the General Product Safety Regulations 1994, under any regulations relating to hazardous substances or under the Environmental Protection Act 1990; and
  - 11.2.5.** will comply with all applicable health and safety requirements.
- 11.3.** The **Seller** warrants to the **Buyer** that the **Services**:
- 11.3.1.** will be performed by appropriately qualified and trained personnel, with due care and diligence and to such standards of quality as it is reasonable for the **Buyer** to expect in all the circumstances; and
  - 11.3.2.** will comply with all statutory requirements, regulations and EU regulations relating to the performance of the **Services**.

## 12. Rights and Remedies on Default

**12.1.** If **Goods** are not delivered in whole or in part or **Services** are not performed on the due date then the **Buyer** shall be entitled to cancel the **Order** (or any part) without liability to the **Seller** and purchase substitute items or services elsewhere and recover from the **Seller** any loss or additional **Costs** incurred.

**12.2.** If any **Goods** or **Services** are not supplied or performed in accordance with the **Contract**, then the **Buyer** shall be entitled at any time within 24 months from the date of first use and/or completed performance of the **Goods** and **Services**:

**12.2.1.** to require the **Seller** to repair the **Goods** or replace the **Goods** or **Services** in accordance with the **Contract** within seven days (and the provisions of this **Contract Term** shall apply to any such repaired or replaced **Goods** or **Services**); or

**12.2.2.** whether or not the **Buyer** has previously required the **Seller** to repair the **Goods** or to supply any replacement **Goods** or **Services**, to cancel the **Contract** and require the repayment of any part of the **Price** which has been paid.

## 13. Indemnity

**13.1.** The **Seller** shall indemnify the **Buyer** in full against all **Costs** as a result of or in connection with:

**13.1.1.** breach of any warranty or other **Contract Term**;

**13.1.2.** any claim that the **Goods** infringe, or their importation, use or resale, infringes the patent, copyright, registered or unregistered design right, trade mark or other intellectual property rights of any other person;

**13.1.3.** any claim made against the **Buyer** in respect of any breach or alleged breach by the **Buyer** of any statutory provision, regulation or bye-laws or other rule of law arising from the acts or omissions of the Seller or its employees, agents or subcontractors;

**13.1.4.** any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the **Goods** and in performing the **Services**, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials.

## 14. Termination

**14.1.** The **Buyer** shall be entitled to cancel the **Order** in respect of all or part only of the **Goods** and/or the **Services** by giving notice to the **Seller** at any time prior to delivery or performance without incurring any liability to the **Seller** other than to pay for **Goods** and/or **Services** already delivered or performed at the time of such notice.

**14.2.** The **Buyer** shall be entitled to terminate the **Contract** without liability to the **Seller** and reserving all rights of the **Buyer** by giving notice to the **Seller** at any time if:

**14.2.1.** (without prejudice to any other **Contract Term**) the **Seller** is in breach of any of its obligations under these **Contract Terms**;

**14.2.2.** the **Seller** makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the **Seller** or anything analogous occurs under the laws of another jurisdiction; or

**14.2.3.** the **Seller** ceases, or threatens to cease, to carry on business, or substantially changes the nature of its business; or

**14.2.4.** the **Buyer** reasonably believes that any of the events mentioned above is about to occur in relation to the **Seller** and notifies the **Seller** accordingly.

## 15. Representatives at our Premises

**15.1.** The **Seller** will ensure that all its employees, agents and sub-contractors comply with the **Buyer's** regulations when at the **Buyer's** premises and carry official identification at all times which shall be produced on request by any member of the **Buyer's** staff.

**15.2.** The **Buyer** reserves the right to search all such persons who have been permitted access to the **Buyer's** premises and their property and/or vehicles at the time of their arrival and/or departure from the **Buyer's** premises.

## 16. Confidentiality

**16.1.** All information supplied to the **Seller** by the **Buyer** at any time in connection with the award of the **Contract**, the **Contract** and any **Specification** is and remains the **Buyer's** property and shall be regarded as confidential.

**17. General**

**17.1.** The **Seller** shall at all times maintain adequate insurance cover with a reputable insurer against its liability under the **Contract** and shall produce the policy and latest premium receipt to the **Buyer** on demand.

**17.2.** The **Order** is personal to the **Seller** and the **Seller** shall not transfer, assign, charge, dispose of or deal with in any manner or purport to do the same any of its rights or beneficial interests.

**17.3.** The **Seller** shall not sub-contract any of its obligations under the **Contract**.

**17.4.** Any notice to be given by either party to the other under these **Contract Terms** must be in **Writing** addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

**17.5.** Any waiver by the **Buyer** of any breach is not a waiver of any subsequent breach.

**17.6.** Failure or delay by the **Buyer** in enforcing or partially enforcing any provision of the **Contract** is not a waiver of any of its rights under the **Contract**.

**17.7.** If any provision of these **Contract Terms** is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these **Contract Terms** and the remainder of the provision in question shall not be affected.

**17.8.** The laws of England shall govern the **Contract**, and the parties submit to the non-exclusive jurisdiction of the English Courts.

**17.9.** The **Contract** does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.