

# KEEBLECARE

Unit 14  
Chamberlayne Road  
Bury St Edmunds  
Suffolk  
IP33 1SN



STANDARD TRADING CONDITIONS

CONDITIONS OF CONTRACT      KEEBLECARE

## 1 GENERAL

- a) "The Goods" means the Goods the subject of the contract or contracts to which these conditions apply. "The Seller" means KeebleCare. "The Buyer" means the person, firm or company by whom the Goods are purchased.
- b) Unless otherwise expressly agreed in writing by the Seller every sale by the Seller shall be subject to these conditions to the exclusion of any other terms whether contained in any earlier set of conditions issued by the Seller or in a form of order or any other document issued by the Buyer or the Buyers agents or otherwise arising whether expressly or by implication.
- c) Commitments made by the Sellers agents representatives or employees, whether verbal or in writing, shall not constitute a binding contractual offer or acceptance unless and until they are confirmed formally in writing on the Companies headed note paper signed by a duly authorised representative of the Company.

## 2 DESCRIPTION OF GOODS

Except as otherwise agreed in these conditions, all descriptive matter, samples, specifications catalogues and advertising matter are published or issued of the sole purpose of giving approximate idea of the Goods described therein and no information contained in any other document whatever shall form part of the contractual description of the Goods, nor shall they form part of the contract. The Seller reserves the right to make without notice such reasonable modifications in specifications, descriptions, designs, materials or finishes as it deems necessary or desirable. The Buyer shall not be entitled to object or reject the Goods or any of them by reason of such reasonable modifications.

## 3 DELIVERY

- a) Conditions and fees for carriage are set out on the current price list but may be varied or amended at any time.
- b) The Seller shall not be liable in respect of any loss or damage in transit unless notice in writing is given to the carrier and to the Seller within the period specified in the contract of carriage.
- c) Times or dates quoted by the Seller for completion of delivery of Goods are intended as a guide only. Whilst every endeavour will be made to adhere to such times or dates they shall not be the essence of this contract.
- d) The Quantities of any consignment of Goods ascertained by the Seller upon despatch from the Sellers premises shall be prima facie evidence of the quality received by the Buyer on delivery.
- e) If for any reason the Buyer fails to accept delivery of the Goods within seven days of being advised by the Seller that the Goods are ready for delivery or if it is the Buyers obligation to collect the Goods within seven days of being advised by the Seller that the Goods are ready for collection, the Buyer shall remain liable to pay the price for the Goods with interest at the times and the rate specified in these Conditions and without prejudice to any other right conferred upon it in that event by these terms or by law the Seller shall be entitled to store the Goods. The Buyer shall be liable to the Seller for the reasonable cost of such storage and shall be responsible for all loss or damage to the Goods howsoever arising (including loss or damage caused by the negligence of the Seller).
- f) The Seller shall have the right at any time to cancel this Contract as regards the whole or any part of the Goods not accepted by the Buyer or as regards any balance which the Seller cannot deliver by reason of the Buyer's default hereunder in each case without prejudice to any claim for damages which the Seller may have.

## 4 FORCE MAJEURE

- a) If events beyond the Seller's reasonable control prevent or hinder the Seller from delivering the Goods in accordance with the contract the date for delivery shall be extended by the period of delay caused by such events.
- b) If the period of delay extends beyond a reasonable period then either party may by notice in writing given to the other terminate the contract as regards any Goods undelivered provided that if the Buyer cancels the contract the Seller may by counter notice in writing given within 28 days of such cancellation require the Buyer to take and pay for at the proper proportion of the contract price any of the Goods purchased for the purpose of the contract or for which there is no other market readily available to the Seller at the contract price or proportion thereof.
- c) If the Seller shall pursuant to sub-clause (a) above tender to the Buyer less than the contractual quantity of Goods or shall tender and Goods or shall tender and Goods late the Buyer shall except and pay for the Goods so tendered.
- d) The Seller shall have no liability to the Buyer whatsoever in the respect of any failure by the Seller to perform the contract in whole or in part by reason of any matter outside the Sellers reasonable control.

## 5 PAYMENT

Prices of Goods quoted by the Seller in its acceptance or orders are based on costs prevailing at the time of acceptance, in the event that any rise in costs shall occur before the Goods are delivered or in the case of delivery by instalments are delivered the contract price or a proportion thereof representing the remaining instalments as the case may be shall be increased by such an amount as shall fairly represent the increase in the cost to the Seller and in the event of dispute such amount shall be determined by the Seller's auditors whose decision shall be conclusive and binding on the Buyer.

## 6 PAYMENT

- a) Unless otherwise agreed by the Seller in writing, payment in respect of all Goods and charges invoiced at the Quoted Price as hereinafter defined shall be due on the invoice date and payable 30 days from date of invoice.
- b) Without prejudice to the generally of sub-clause (a) above in the event that any discount (whether for quantity or otherwise) shall be agreed between the Buyer and the Seller upon the price quoted by the Seller and the Buyer shall not be entitled to the benefit of the agreed discount unless payment is received by the Seller strictly in accordance with the provisions of sub-paragraph (a) above.
- c) Time for payment shall be of the essence.
- d) Interest shall be payable at the rate of 3% per month and shall accrue from day to day on:
  - i) All overdue payments and,
  - ii) The price of any Goods of which the Buyer shall have failed to take delivery such interest continuing to accrue until the date they are actually delivered to the Buyer or otherwise disposed of,
- e) The Buyer shall pay the price of the Goods (including any increased price pursuant to clause 5 hereof) and all charges due hereunder without any deduction (save in respect of any discount shown upon the invoice relating to Goods and allowable strictly in accordance with sub-paragraph (b) above) whether by way of set-off counterclaim or otherwise howsoever.

## 7 DAMAGE OR DEFECTS

- 1) In the case of Goods manufactured or processed by the Seller the Seller warrants that subject to the normal limits of industrial quality of the Goods shall at the time of delivery be reasonably fit for the purpose of which the Buyer has given appropriate written details to the Seller prior to the Contract and free from defects in workmanship and materials. If any Goods do not conform to that warranty the Seller will at its option repair or replace the Goods.
- 2) The foregoing warranty is conditional upon:-
- a) the Buyer giving written notice to the Seller of the alleged defect in the Goods such notice not be received by the Seller within Seven days of the time when the Buyer discovers or ought to have discovered the defects and in any event within six months of delivery of the Goods.
  - b) The Buyer affording the Seller a reasonable opportunity to inspect the Goods or if so requested by the Seller returning the allegedly defective Goods to the Seller's works carriage paid for inspection to take place there.
  - c) The Buyer making no further use if the Goods after the time in which the Buyer discovers or ought to have discovered the defect.
  - d) The defective Goods having been stored serviced used and maintained in accordance with any instructions issued by the Seller or in accordance with general trade price.
  - e) There having been no negligence or misuse on the part of the Buyer its servants or agents.
  - f) The Goods not having been altered cut or repaired by any person other than the Seller or those authorised by the Seller.
- 3) The liability of the Seller to the Buyer under sub-paragraph (1) of this condition for indirect or consequential loss or damage howsoever caused shall be limited to those risks in respect of which the Seller maintains a policy of insurance PROVIDED THAT the liability of the Seller hereunder shall in no case exceed the amount actually recovered by the Seller from its insurer in respect of any insured risk.
- 4) Save as otherwise provided in sub-clauses (1) & (3) hereof and to the extent permitted by law:-
- a) All conditions and warranties expressed or implied are hereby expressly excluded.
  - b) The Seller shall be under no liability for any loss or damage howsoever caused which arises in respect of the Buyers liability to any third party.
  - c) The Seller shall be under no liability for any direct or indirect consequential loss or damage howsoever caused.
- 5) Nothing herein contained shall be construed as an attempt to exclude or limit the Seller in negligence for the death or injury to any person.
- 6) Where Goods are not maintained or processed by the Seller
- i) Then at the Buyers request the Seller shall in the vent of the same being defective by reason of defective workmanship or materials, assign to the Buyer such rights (if any in respect of such defects as the Seller has against the person, firm or company who supplies such goods or part to the Seller) and such assignment shall be in full settlement of any claims the Buyer may have against the Seller in respect of or arising as a consequence of such defects.
  - ii) The Seller gives no warranty as to the patent, registered design, copyright and other industrial property rights in or in connection with the Goods.

## 8 SELLERS LIEN

The Seller shall in respect of all sums due or owing from the Buyer under this or any other contract between the Buyer and the Seller have a general lien on all Goods and property of the Buyer in the Sellers possession (although such Goods or some of them may have been paid for) and shall after the expiration of 14 days notice to the Buyer be entitled to dispose of such Goods and property as it deems fit, and apply the proceeds towards such sums.

## 9 SAMPLE FOR INSPECTION

Notwithstanding that a sample of the Goods be exhibited by the Buyer such sample is so exhibited and inspected solely to enable the Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample and subject to the normal variation between bulk and sample accepted by the trade.

## 10 TERMINATION OF CANCELLATION

- a) In the event of:
- i) any distress, execution or other legal process being levied upon any of the Buyers assets.
  - ii) The Buyer entering into any arrangement or composition with its creditors, committing an act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up except for the purposes of amalgamation or reconstruction as a solvent company or a receiver being appointed in respect of the whole or any part of its undertaking or assets.
  - iii) non-payment by the Buyer of any monies due from the Seller; the Seller shall be entitled to suspend all or future deliveries and instalments under this or any other contract, an on written notice to cancel the undelivered portion of this or any contract between the Buyer and the Seller and sell the Goods elsewhere.
- b) In the event of cancellation by the Seller in accordance with sub paragraph (a) above or any cancellation and/or repudiation of the contract by the Buyer the Seller shall be entitled to recover as compensation from the Buyer for such cancellation or breach a sum not less than 15% of the contract price of the Goods to which the cancellation or breach relates.
- c) The exercise of the rights conferred by this condition shall be without prejudice to any other right enjoyed by the Seller pursuant to these conditions or by law, including in particular the right to recover the Goods or the proceeds thereof from the Buyer pursuant to condition 11 thereof.

## 11 RESERVATION OF TITLE

- a)
- i) Property of the Goods shall not pass to the Buyer until the price of the contract and any other sum whatsoever which is due from the Buyer to the Seller whether under this contract or otherwise howsoever have been paid in full.
  - ii) This clause delivered shall have passed to the Buyer in accordance with sub-paragraph (a) (i) the condition of the Buyer shall keep the Goods as bailee and shall store them in such a way that they are identifiable as the property of the Seller and are separate from all other Goods in the possession of the Buyer.
- c) Notwithstanding sub-paragraph (a) of this condition the Buyer shall be entitled to use or sell the Goods in the normal course of the Buyers business but only on the following conditions:-
- i) If the Goods at the time of sale by the Buyer remain identifiable and unincorporated and unmixed with other Goods then the Seller shall sell the Goods on behalf of the Seller and the proceeds of sale shall be held in trust in a separate identified account.
  - ii) if the Goods are prior to sale by the Buyer made up or incorporated in or mixed with other Goods then if they remain separately identifiable the Seller shall become a joint owner of the Goods in or with which the Goods are incorporated or mixed in such proportion as the value of the Goods bears to the value of the Goods in which the Goods are so incorporated or mixed;

iii) If the Buyer sells the Goods or Goods in or with which the Goods have been incorporated or mixed the sale shall be on behalf of the Seller as joint owner thereof as the case may be and the proceeds of any such sale (or the Sellers share thereof if the sale is of jointly owned property) shall be held in trust for the Seller and in separate identified account.

- d) At any time before the property in the Goods the subject of this contract shall have passed to the Buyer in accordance herewith the Seller may be notice in writing to the Buyer determine the Buyers right to us or sell the Goods and the Buyer shall thereupon at its own cost return the Goods to the Seller and shall cease to be in possession of the Goods with the consent of the Seller. At any time after the giving of such a notice the Seller may enter upon any premises where the Goods are or are reasonably believed to be and may remove the Goods.
- e) Notwithstanding the foregoing: the Goods are at the entire risk of the Buyer from the time of delivery;
- f) Nothing in this condition shall in any way limit or modify the Buyers obligation to pay for the Goods in accordance with these conditions.

## 12 DELIVERY BY INSTALLMENTS

Where more than one item of Goods is included in any order the Seller shall be entitled to make delivery by instalments. In such cases the delivery date shown on the Sellers acceptance of order shall be deemed to be estimated delivery date of the first instalments will be delivered within a reasonable time after the first instalment. The contract shall be construed as a separate contract in respect of each instalment. Nevertheless failure to accept delivery of and/or pay for any instalment shall entitle the Seller at its option to treat the contract as repudiated or alternatively to store the Goods at the Buyers risk and the Buyer shall be liable to the Seller for the reasonable cost of doing so.

- a) The Buyer shall not use the Goods for the purpose of designing or manufacturing identical Goods, without the Sellers prior written consent. All patent, registered design, copyright and other industrial property rights in or in connection with the Goods, the Seller may have shall remain the property of the Seller.
- b) The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance of the Buyers instructions which involves the infringement of any letters patent, trade marks, copyright or registered design.

## 14 INDEMNITY

The Buyer shall indemnify the Seller against all costs claims demands proceedings charges and expenses from which the Seller become liable in respect of the Goods except to the extent that liability is specifically imposed upon the Seller by Statute or assumed by the Seller under these conditions

## 15 SEVERANCE

The invalidity or unenforceability of any of these conditions or as part of any of these conditions shall not prejudice or affect the validity or enforceability of the remainder.

## 16 WAIVER

Any failure by the Seller to exercise any rights under these conditions shall not constitute a waiver or prevent the subsequent exercise of such rights.

## 17 NOTICE

Any Notice required to be given or served hereunder shall be addressed in the case of a notice given to or served on the Buyer at the address of the Buyer shown on the contract or invoice and in the case of the Seller at its registered office for the time being and may be given or served either:

- a) by letter leaving the same or sending the same by first class post in a pre-paid envelope and a notice so given or served shall be deemed to have been given or served.
  - i) On the day it was left or
  - ii) on the day following that it was posted if the address of the Seller and the Buyer shall both be within the United Kingdom or
  - iii) within 3 days of the date of the posting otherwise or
- b) by telex, cable or facsimile transmission and a notice so given or sent shall be deemed to have been given or served within 24 hours of transmission.

## 18 ENGLISH LAW

This contract shall be governed by English Law and the Buyer and the Seller shall submit to the jurisdiction of the English Courts.

I agree to be bound by these terms.

Signature .....

Name Of Company: .....

Date: .....