

Devyser UK Limited

GENERAL TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these terms:

Contract means each binding agreement for the supply of the Products;

Devyser means Devyser UK Limited registered in England and Wales with company number 13472517, and registered address at Gorse Stacks House, George Street, Chester CH1 3EQ;

Products means the goods described in the Contract;

Purchaser means the person whose order for the Products is accepted by Devyser;

Devyser's Group means Devyser and its ultimate holding company and any direct or indirect subsidiary undertaking of such holding company;

Financial Distress Event means where the Purchaser receives any demand for repayment of lending facilities or Devyser concludes in its discretion that: (i) the financial position of the Purchaser has deteriorated to such an extent that its ability to pay for the Products or otherwise comply with the terms of any Contract is put in jeopardy; or (ii) the Purchaser has no realistic prospect of avoiding an Insolvency Event;

Insolvency Event means any corporate action, application, order, proceeding or appointment or other step is taken or made by or in respect of the Purchaser for any composition, compromise or arrangement with any of its creditors, any restructuring plan, any moratorium, its winding-up (other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation), dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within four days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Purchaser is incorporated, resident or carries on business; and words defined in Devyser's quotation shall have the same meaning in these terms.

1.2 References to legislation shall be construed to include references to future re-enactments and modifications from time to time.

1.3 Headings to clauses shall not affect their meaning.

1.4 Words and phrases like "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words.

2. CONTRACTS

2.1 These terms shall apply to all supplies of the Products by Devyser to the Purchaser. No order of the Purchaser shall

be binding and no Contract shall arise until the Purchaser's order is accepted by Devyser expressly or by Devyser despatching any of the Products. Each Contract shall comprise these terms, any attached terms, Devyser's quotation and any additional terms that are agreed as applicable.

2.2 If any Contract contains provisions which conflict with these terms, those provisions of the Contract will prevail to that extent, except nothing shall prevail over the exclusions and limitations of Devyser's liability in these terms unless the provision expressly refers to those exclusions and states that it prevails over them.

3. PAYMENT

3.1 The price of the Products shall be as agreed or, if not so agreed, Devyser's published price list current at the date of the Contract.

3.2 The price and other sums payable shall be exclusive of any applicable VAT or other taxes and duties, which shall be payable in addition. All payments shall be made in GBP (£) unless otherwise agreed by the parties in writing.

3.3 Payment shall be due without any set off, withholding, deduction, abatement or counterclaim no later than 30 days after the date of the invoice to the bank account stated in that invoice, regardless of whether ownership of the Products has passed to the Purchaser.

3.4 Any and all bank charges arising in connection with the Purchaser's payment in accordance with Clause 3.3 shall be borne by the Purchaser.

3.5 Where Devyser has undertaken to arrange for carriage it shall do so as agent for the Purchaser and the Purchaser shall be responsible for all charges and expenses incurred, including delivery charges, transit insurance and customs duties.

3.6 In the event of late payment, Devyser shall be entitled to charge interest on the sums due at a rate of 15 % per annum.

4. DELIVERY AND ACCEPTANCE

4.1 Delivery shall be made ex works (INCOTERMS 2020).

4.2 Times for delivery or performance by Devyser are estimates only and, except by operation of law or as otherwise agreed, time shall not be of the essence.

4.3 If delivery of any Products has not been made 28 days after the agreed time, the Purchaser shall be entitled to rescind the Contract in respect of those Products and the liability of Devyser shall be limited to a cancellation of the price due for them. No compensation shall be payable by Devyser for late delivery.

5. RISK, PROPERTY, SUSPENSION, CANCELLATION

- 5.1 Risk of loss or damage to the Products shall pass to the Purchaser at the time of delivery of the Products.
- 5.2 Devyser will still own the Products, regardless of delivery, until the Purchaser has paid Devyser in full for those Products and VAT thereon, and all other sums due from the Purchaser to Devyser at that time. Devyser may attribute money received from the Purchaser as being payment for any Products as Devyser thinks fit, regardless of the circumstances.
- 5.3 While Devyser still owns any of the Products, the Purchaser:
- 5.3.1 will hold those Products on a fiduciary basis as Devyser's property and on Devyser's behalf as bailee for Devyser;
- 5.3.2 may use or resell those Products on its own account in its ordinary course of trade, but this right will terminate immediately (without prejudice to Devyser's other rights) upon the occurrence of an Insolvency Event or during any period where payment is overdue;
- 5.3.3 may not otherwise deal with, pledge, encumber, sell or dispose of those Products.
- 5.4 If the Purchaser suffers an Insolvency Event, suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or is overdue in any payment due or a Financial Distress Event occurs, all sums shall become immediately due and payable and Devyser may, by immediate notice to the Purchaser, terminate the Contract, suspend or cancel any deliveries and/or terminate the Purchaser's right (if still subsisting) to use or resell the Products still owned by Devyser, and Devyser shall be entitled upon demand to the immediate recovery of all those Products. The Purchaser irrevocably gives Devyser authority to enter any place to recover those Products. Such recovery shall not cancel the Purchaser's obligation to pay the price for those Products, provided that Devyser shall make a fair allowance for the value of any Products which Devyser has recovered.

6. LEGAL COMPLIANCE, PRODUCT RECALL AND FIELD SAFETY CORRECTIVE ACTION

- 6.1 The Purchaser shall, at its own expense, comply with all laws, regulations and/or industry relevant codes in force from time to time applicable to the Products, their purchase, handling, use or onward sale.
- 6.2 If Devyser discovers a defect in the Products, the Purchaser shall immediately upon Devyser's request suspend sales of the Products and comply with any product recall operation initiated by Devyser. The Purchaser shall not itself instigate any product recall without first consulting with Devyser except in the case of emergency. The Purchaser shall assist Devyser in disseminating any information required by Devyser to third parties, and implementing any risk-reducing actions relating to a defective Product. The Purchaser will further assist Devyser in disseminating to third parties information related to any field safety corrective actions decided by Devyser.

7. COMPLAINT AND INCIDENT HANDLING

- 7.1 The Purchaser shall, immediately and without delay, report to Devyser:
- 7.1.1 any complaints from end-users relating to the Products;

- 7.1.2 any malfunction or deterioration in the characteristics and/or performance of the Products; and/or
- 7.1.3 any inadequacy in the labelling or the instructions for use of the Products.

8. QUALITY, WARRANTIES, EXCLUSIONS ON LIABILITY

- 8.1 Devyser shall have no liability in respect of any warranties, including implied warranties, other than those which are expressly set out in this Agreement. Devyser warrants that the Products shall comply with any written specification for the Products provided by Devyser to the Purchaser.
- 8.2 Subject to Clause 8.3 and Devyser's prior written authorisation, the Purchaser's sole and exclusive remedy for defective Products shall be replacement of the Products at no additional charge. Any defective Products shall be returned to Devyser at the Purchaser's cost and risk.
- 8.3 Devyser shall have no liability in respect of:
- 8.3.1 Products or parts thereof which have been subject to misuse, neglect or modification or which have not been transported, stored or used in accordance with Devyser's instructions and manuals; or
- 8.3.2 Products for which the defects were not reported to Devyser by the Purchaser at the earlier of:
- (a) 15 days from the date the defect was, or should have been, detected; and
- (b) one year from the date of delivery of the Products; and
- 8.3.3 any claim not falling under Clauses 8.3.1 and 8.3.2 above, unless made with reasonable details in writing to Devyser without unreasonable delay and in any event no later than two years from the date of delivery of the Products and subject to the exclusion of Clause 8.4.
- 8.4 Notwithstanding any other provision of the Contract, but subject to Clause 8.6, Devyser shall have no liability however arising, whether in contract, negligence or otherwise, out of or in connection with the Contract and/or the supply of the Products for any:
- 8.4.1 direct loss or damage;
- 8.4.2 indirect or consequential loss or damage; or
- 8.4.3 claim arising out of a claim against the Purchaser by a third party.
- 8.5 The parties agree that each of the sub-clauses in Clause 8.4 constitute separate terms and the introductory wording of Clause 8.4 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause is unenforceable for any reason, such unenforceability shall not affect any other provision within Clause 8.4 or otherwise.
- 8.6 The exclusions and limitations of liability contained in these terms and in the Contract shall not apply to the extent prohibited or limited by law and, in particular, nothing in the Contract shall affect liability for death or personal injury caused by negligence or for fraudulent misrepresentation or other fraud.
- 8.7 The Purchaser shall maintain adequate insurance, including product liability insurance, to cover its purchase, handling and use of the Products.

- 8.8 The Purchaser acknowledges that it had the opportunity to negotiate variations to the exclusions and limitations, upon the agreement of a higher price.

9. INTELLECTUAL PROPERTY

Notwithstanding any other provision of the Contract all intellectual property rights, such as but not limited to know-how, trade secrets, patent rights, trademarks, trade names, design rights, copyright and any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world, relating to Devyser and its products ("Devyser IPRs") belong to Devyser and/or its licensors exclusively and the Purchaser shall have no rights in relation to them. If notwithstanding this, any Devyser IPRs are acquired by the Purchaser (including any new Devyser IPRs), the Purchaser hereby assigns all such Devyser IPRs to Devyser.

10. FORCE MAJEURE

Devyser shall have the right to suspend delivery and/or cancel or reduce the volume of the Products to be supplied and shall not be liable in any way for loss, damage or expense arising directly or indirectly from this, or any other failure or delay in Devyser's performance of the Contract, to the extent that this has been caused by any circumstance beyond Devyser's reasonable control, including industrial or labour disputes (whether or not involving employees of Devyser), changes in laws and regulations or in the interpretation thereof, acts of authorities, war, blockades, epidemics, pandemics, civil emergencies, major accidents, currency restrictions or failure or delays by Devyser's suppliers.

11. CONFIDENTIALITY

- 11.1 The existence and content of the agreement between the parties shall be kept strictly confidential and not be disclosed to any third party without the prior written consent of the other party (such consent not to be unreasonably withheld).
- 11.2 All information which is not publically available, whether oral or written or in visual, electronic or tangible form, regarding or otherwise relating to a party or to any of its business matters, shall at all times be kept strictly confidential and may not be used for any other purpose than the performance or enforcement of the agreement between the parties, nor be disclosed to any third party without the prior written consent of the other party.
- 11.3 The restrictions in this section shall not apply to information and knowledge:
- 11.3.1 to the extent reasonably necessary to be used or disclosed by a party in order for it to secure its interests against the other party in connection with a dispute, controversy or claim arising out of or in connection with the agreement between the parties or to otherwise enforce its rights under the agreement;
 - 11.3.2 that was at the time of its disclosure or which becomes thereafter generally available to the public otherwise than as a consequence of a breach by the agreement; or
 - 11.3.3 that a party is required to disclose by law or any governmental or other regulatory authority or by any applicable contract or regulations of any applicable stock exchange or other marketplace.

- 11.4 Each party shall refrain from disclosing the other party's confidential information and trade secrets and from using such information or secrets other than for the performance of the agreement. The said obligations shall survive the agreement.

12. TRANSFERS AND SUB-DISTRIBUTORS

- 12.1 Devyser may perform any of its obligations or exercise any of its rights under the Contract itself or through any other member of Devyser's Group.
- 12.2 Devyser may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract.
- 12.3 The Purchaser shall not assign, transfer, charge, hold on trust for another, appoint a sub-distributor or intermediary or deal in any other manner with any of its rights or obligations under the Contract without the prior written consent of Devyser. In the case of appointing a sub-distributor or intermediary, and subject to such consent by Devyser, the Purchaser shall only do so by way of written agreement with the sub-distributor/intermediary, imposing the same obligations on the sub-distributor/intermediary as are imposed on the Purchaser under the agreement between the parties.

13. ENTIRE AGREEMENT

The Purchaser acknowledges that it does not rely on, and shall have no remedy in respect of, any representation, whether negligent or not, of any person which is not expressly set out in the Contract, and it shall not have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement, representation, warranty or other term which is expressly set out in the Contract.

14. EXPORT CONTROL

The Purchaser shall not export, directly or indirectly, any Products (or any products, including software, incorporating, or technical information relating to, any such Products ("Related Materials")) in breach of any applicable laws, regulations or relevant industry codes (including export control laws) of any country and where applicable, shall first obtain an export licence or other governmental approval before exporting any Products or Related Materials. The Purchaser shall obtain an undertaking on similar terms to the one set out above in this Clause 14 from any third party to whom it transfers any Products or Related Materials.

15. GOVERNING LAW AND JURISDICTION

The Contract shall be construed in accordance with the law of England and Wales. The parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

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