

# BECTON, DICKINSON U.K. LIMITED

## GENERAL CONDITIONS OF SALE ("Conditions")

### 2009 EDITION

#### 1. Definitions

In these Conditions:

- 1.1 "Company" means Becton, Dickinson U.K. Limited.
- 1.2 "Buyer" means the person, firm, company or authority to which Goods are supplied subject to these Conditions.
- 1.3 "Conditions" means the terms and conditions set out below as amended from time to time.
- 1.4 "Goods" means the goods supplied by the Company to the Buyer subject to these Conditions.
- 1.5 "Contract" means any agreement for the purchase of Goods by the Buyer to which these Conditions relate.
- 1.6 "Price List" means the standard price list for the Goods issued by the Company from time to time as amended from time to time.

#### 2. Existence of Contract

- 2.1 Subject to the terms of any other written agreement between the parties, whose terms are expressed to prevail in the event of conflict between its terms and the terms set out herein, these Conditions shall apply to and be incorporated in all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order or similar document or which could be implied by trade custom, practice or course of dealing.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions to the exclusion of all other terms and conditions and shall be subject to acceptance by the Company. Accordingly, no binding contract shall be created by the placing of any order by the Buyer unless and until the Company has dispatched the Goods to the Buyer.
- 2.3 Any variation to these Conditions (including any special terms agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 2.4 No particulars, statements or descriptions, whether contained in any advertising matter, catalogues, brochures, price lists or otherwise provided by the Company concerning the Goods, nor any oral representations by any employee, agent or representative of the Company shall form part of the Contract or these Conditions or be treated as a representation on the part of the Company.

#### 3. Cancellation

- 3.1 The Contract may not be cancelled by the Buyer except with the written consent of the Company.
- 3.2 The Company at its option may cancel the Contract by serving written notice to the Buyer in the event that:
  - (A) a petition is presented, order made, meeting convened, resolution passed or any step is taken by any person (including the Company) with a view to the winding up (whether solvent or insolvent) of the Buyer, or the Buyer ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Company before that step is taken; or
  - (B) the Buyer stops or suspends or threatens to suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to do so under section 123 of the Insolvency Act 1986; or
  - (C) a petition for an administration order is presented or an application for an administration order is made, or an administrator is appointed or notice of intention to appoint an administrator is given, or any other step is taken by any person with a view to the administration of the Buyer under the Insolvency Act 1986 including the passing of any resolution by the director or shareholders of the Buyer approving the presentation of any such petition, the making of any such application or appointment of the giving of any such notice; or
  - (D) it becomes illegal under the laws of any applicable jurisdiction for the Company to supply the Goods to the Buyer.

#### 4. Prices and Minimum Order Values

- 4.1 Prices, unless specified separately, will be those quoted in the Price List in force at the date that the relevant Goods are despatched and are subject to variation by the Company without notice prior to the despatch of the relevant Goods. Additional delivery charges are applicable for certain Goods or quantities of Goods.
- 4.2 Where the Buyer orders less than the minimum order quantity for any Goods specified in the Price List the Company may refuse to accept such order.

#### 5. Payment

- 5.1 Unless otherwise agreed in writing between the parties, the price of the Goods shall be paid in cash on or before delivery.
- 5.2 Where the Company agrees in its sole discretion to supply the Goods on credit, the Goods shall be paid for not later than thirty (30) days from the date of invoice ("Due Date"). The Company reserves the right to close the account or withhold further supplies of Goods if a Buyer fails to settle the invoice by the Due Date, without prejudice to any existing rights the Company may have in respect of any such unpaid invoice.
- 5.3 Any credit terms or extension of credit allowed to the Buyer by the Company may be changed or withdrawn at any time.
- 5.4 If the Buyer defaults in the payment when due of any sum payable by it under the Contract, its liability shall be increased on such sum from the Due Date until the actual payment (both before and after judgement) at that annual rate which is the rate provided for under the Late Payment of Commercial Debts Act 1998 and all applicable subordinate legislation as amended from time to time. The Buyer will reimburse the Company for all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- 5.5 Time shall be of the essence of the Contract for the purposes of this Condition 5 only.
- 5.6 If in the opinion of the Company, the credit-worthiness of the Buyer deteriorates before delivery of the Goods, the Company may require full or partial payment of the Price prior to delivery of the Goods or the provision of security for payment by the Buyer in a form acceptable to the Company. The Company will notify the Buyer of this requirement.

#### 6. Terms of despatch and delivery

- 6.1 Goods will be delivered CPT (as defined by Incoterms 2000) the address in the UK as notified to the Company on the purchase order or as notified to the Company by the Buyer on the telephone when the Buyer places the order.
- 6.2 Times or dates quoted by the Company for delivery of the Goods are intended as estimates only and shall not be of the essence. The Company shall not be liable in any way for any direct or indirect loss, damage or expense (including loss of profits and liability to third parties) suffered or incurred by the Buyer as a consequence of any delay in delivery.
- 6.3 The Company reserves the right to deliver the Goods by instalments in any sequence and to tender a separate invoice in respect of each instalment. Where the Goods are delivered by instalments, the Contract shall become severable and each instalment shall be deemed to be the subject of a separate Contract. No default or failure by the Company in respect of one or more instalments shall entitle the Buyer to treat the Contract as repudiated or to damages.

#### 7. Acceptance

- 7.1 On receipt of the Goods the Buyer shall immediately inspect and examine the Goods, and, within ten (10) days of delivery, shall give written notice of any alleged shortage, or alleged defect not apparent from the visual exterior examination, to the Company. The Buyer shall be deemed to have accepted the Goods if no such written notice is served on the Company within ten (10) days of the date of delivery.
- 7.2 After acceptance the Customer shall not be entitled to reject any Goods which are not in accordance with the Contract.
- 7.3 The Buyer shall permit the Company to inspect any Goods alleged to be defective or damaged or any cases or packing in any consignment where shortage is alleged to have occurred and, if so requested by the Company, shall return the same to the Company.
- 7.4 If the Buyer fails to comply in any respect with Condition 7.1 or 7.3, the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods. If the Buyer, having complied with Condition 7.1 and 7.3, establishes to the Company's reasonable satisfaction that the Goods are not in accordance with the Contract or are defective, the Buyer's sole remedy in respect thereof shall be limited, as the Company may elect to making good any shortage, to replacing such Goods or refunding all, or part of, the Contract price against return of the Goods.

#### 8. Return of Goods to the Company

- 8.1 Subject to Condition 7 above, no Goods delivered in accordance with the Contract will be accepted for return, unless accompanied by the Company's "Application for Customer Return of Product Form" available on request from the Company, and on terms to be determined at the absolute discretion of the Company.
- 8.2 Such Goods must be returned to the Company carriage-paid at the Company's instruction only and must be securely packed in their original shipping cartons. The transit risk in all Goods returned to the Company, other than collection by the Company's representative, shall be the Buyer's unless a carrier nominated by the Company for the purpose is used and unless on the day the Goods are despatched written notice is sent by post or handed to the Company's representative giving the Buyer's name and address, the number of packages, the contents of each package and, where applicable, the name and address of the carrier. Each package shall contain a clear indication of the Buyer's name and address and a list of the contents.
- 8.3 Where Goods are returned directly to the Company's representative, documentation must be supplied and receipted stating the Buyer's name, address, the date and details of the Goods returned.
- 8.4 Goods returned without the prior written approval of the Company may, at the Company's absolute discretion, be returned to the Buyer or retained at the Buyer's cost without prejudice to any rights or remedies the Company may have.

#### 9. Property and risk

- 9.1 For the purposes of this Condition 9.1, "Delivery" shall take place when the Goods are delivered to the first carrier. Risk in the Goods shall pass to the Buyer on Delivery. Property and ownership in the Goods, notwithstanding delivery of the Goods to the Buyer, shall not pass from the Company until (a) the Buyer shall have paid the Company in full therefore pursuant to Condition 5; and (b) no other sums are then outstanding from the Buyer to the Company on any account whatever whether or not such sums have become due for payment.
- 9.2 While property in the Goods remains with the Company pursuant to this Condition, the Buyer shall hold the Goods on a fiduciary basis only and as bailee for the Company. The Buyer shall store the Goods separately from its own Goods and those of any other person in good condition and marked in such a way that they are clearly identifiable as the property of the Company and shall insure the Goods to their full value against "All Risks" to the reasonable satisfaction of the Company.
- 9.3 In the event that the Company is entitled to exercise any of its rights under Condition 10, any right of the Buyer to sell, dispose of, deal or in any way use Goods in which the property remains vested in the Company shall cease forthwith. The Buyer shall immediately place any of the Goods in its possession or under its control at the disposal of the Company and Company shall (without prejudice to any of its other rights and remedies) have the right to re-possess and use such Goods and may together with its servants or agents, enter upon any land or building, vehicle or vessel or other place upon which such Goods are reasonably thought to be situated for the purpose of removing any such Goods.
- 9.4 For the purpose of so taking possession the Buyer gives to the Company irrevocable authority to enter its premises without notice for the purpose of collecting and removing the Goods.
- 9.5 Notwithstanding the foregoing, the Buyer may (subject to Condition 10 below) sell the Goods in the ordinary course of its business, but may not otherwise deal with, sell, part with possession of, consume or otherwise dispose of the Goods until title to them has passed to the Buyer as aforesaid.
- 9.6 Any sale by the Buyer permitted by Condition 9.5 above shall, as between the Buyer

and its customer, be effected by the Buyer as principal and not as agent, but as between the Buyer and the Company the Buyer shall have a fiduciary duty to account to the Company for the proceeds of any such sale up to the total amount outstanding to the Company as aforesaid, and pending such accounting shall hold the same on trust for the Company.

## 10. Default by the Buyer

- 10.1 In the event of any of the following:
- (A) the Buyer fails to pay for the Goods in accordance with Condition 5;
  - (B) the Buyer fails to pay any other debt due and payable to the Company;
  - (C) the Buyer commits a material breach of these Conditions or the Contract. For the avoidance of doubt, and without limitation, any breach of Conditions 5, 12 and 19.1 will be considered a material breach;
  - (D) if any distress or execution shall be levied upon any of the Buyer's goods;
  - (E) the Buyer offers to make any arrangement with or composition for the benefit of its creditors, any petition for the winding-up of the Buyer (being a limited company) is passed or represented (other than for the purpose of amalgamation or reconstruction) or (being an individual or partnership) commits an act of bankruptcy or bankruptcy proceedings are commenced or if a receiver or administrative receiver, administrator or manager is appointed over the whole or any part of the Buyer's business or if the Buyer shall suffer any analogous proceedings under foreign law; the provisions of Conditions 10.2 and 10.3 shall apply.
- 10.2 All sums outstanding in respect of Goods supplied by the Company (whether or not such sums have become due for payment), shall immediately become payable.
- 10.3 The Company may in its absolute discretion and without prejudice to any other rights which it may have:
- (A) suspend or cancel all future deliveries of Goods to the Buyer under any Contract and terminate such Contracts without further notice and liability upon its part; and/or
  - (B) appropriate any payment made by the Buyer for such Goods (or goods supplied under any other Contract with the Buyer) as the Company may in its sole discretion think fit; and/or
  - (C) claim interest in accordance with Condition 5.4

## 11. Limitation of Liability

- 11.1 Subject to Condition 7.4, the provisions of this Condition 11 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (A) any breach of the Contract or these Conditions, and
  - (B) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or these Conditions.
- 11.2 Subject to Condition 11.5 below, the Company shall not be liable to the Buyer by reason of any representation or implied warranty, condition or other term or any duty of common law, or under the express terms of these Conditions or otherwise, for any loss of profit (whether direct or indirect loss), revenue, anticipated savings, goodwill or any type of special, indirect or consequential loss or damage (including business interruption), howsoever arising, or whether occasioned by the negligence of the Company, its employees, agents or sub-contractors.
- 11.3 Except as expressly stated in the Contract or in these Conditions, the Company does not give any representations, warranties or undertakings in relation to the Goods or in relation to the performance of its obligations under the Contract or these Conditions. Any representation, condition or warranty which might be implied or incorporated into the Contract or these Conditions by reason of statute, common law or otherwise is excluded to the fullest extent permitted by law.
- 11.4 Subject to Condition 11.5 the Company's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.
- 11.5 Nothing in the Contract or these Conditions shall restrict or exclude the Company's liability:
- (A) under Part 1 of the Consumer Protection Act 1987;
  - (B) in respect of fraudulent misrepresentation;
  - (C) for death or personal injury caused by the Company's negligence or the negligence of its employees or sub-contractors;
  - (D) arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
  - (E) any other liability which may not be lawfully excluded or limited.
- 11.6 Each of the exclusions or limitations of liability in each of Conditions 11.1 to 11.5 shall be construed as a separate and independent exclusion. If any exclusion is found by a court or competent authority of any jurisdiction to be void or unenforceable:
- (A) the parties shall negotiate in good faith to replace such void or unenforceable exclusion with a valid exclusion which, as far as possible, has the same legal and commercial effect as that which it has replaced; and
  - (B) the legality, validity and enforceability of the remainder of these Conditions in that jurisdiction shall not be affected.

## 12. Trade Compliance

- 12.1 The Company and the Buyer agree to fully comply with all applicable laws, including but not limited to export control laws, governing trans-border sales, re-sales, shipments and transfers of Goods. The Company's obligation to supply Goods is contingent upon receiving any required governmental authorisations.
- 12.2 If a licence or consent of any government or other authority is required for the acquisition, or use of the Goods, the Buyer shall obtain the licence and consent at its own expense and if requested produce evidence of it to the Company on demand. Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay any payment of the price of the Goods. Any additional expenses or charges incurred by the Company resulting from such failure shall be paid by the Buyer.

## 13. Set off and counterclaim

- 13.1 The Buyer shall not be entitled to withhold payment of any invoice after its Due Date by reason of any right of set off or counterclaim which the Buyer may have or allege to have against the Company or for any other reason whatsoever.
- 13.2 The Company shall be entitled to set off against monies it is owed by the Buyer for the supply of Goods any monies which the Company owes the Buyer.

## 14. Force Majeure

- 14.1 If delivery of any or all of the Goods is prevented or delayed by an event of Force Majeure (as defined below in Condition 14.2), the Company shall be entitled to cancel or suspend deliveries of the Goods without prejudice to its rights to payment for any Goods already delivered.
- 14.2 Force Majeure means any circumstances not within the reasonable control of the Company, including, without limitation to the generality of the foregoing, industrial action, war, governmental action or regulation, act of God, riots or non-availability of stocks or materials.

14.3 The Company shall not be liable for any loss or damage arising directly or indirectly through or in consequence of such Force Majeure.

14.4 Either party may terminate an affected Contract if an event of Force Majeure continues for a period of six (6) months.

## 15. Assignment

15.1 The Buyer may not assign, sub-contract or in any way dispose of its rights and obligations under the Contract without the prior written consent of the Company.

## 16. Sub-contracting

16.1 The Company shall be entitled to carry out its obligations arising pursuant to these Conditions through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.

## 17. Entire Agreement

- 17.1 Without prejudice to the generality of Condition 2:
- (A) These Conditions, together with any documents referred to in it, constitute the whole agreement between the parties relating to the subject matter and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
  - (B) The Buyer acknowledges that it has not been induced to enter into the Contract by any representation or warranty other than those contained in these Conditions and, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

## 18. Provisions relating to these Conditions

- 18.1 Any term of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision hereof.
- 18.2 No waiver or forbearance by the Company, whether express or implied in enforcing any of its rights hereunder shall prejudice its right to do so in the future.
- 18.3 All Contracts shall be non-exclusive and shall not confer any distribution or agency rights unless otherwise specifically agreed in writing.

## 19. Intellectual Property

- 19.1 Unless otherwise agreed in writing all Goods shall be sold or re-sold only in the packages and packaging in which the Goods were supplied by the Company and in no case may any trade mark other than the trade mark carried by the Goods at the time of delivery be marked on or applied in relation to the Goods by the Buyer.
- 19.2 No right or licence is granted under the Contract to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right, except the right to use or re-sell the Goods.

## 20. Notices

- 20.1 Any notice required or permitted to be given by pursuant to these Conditions shall be in writing and served by 1st class post or by hand. The Buyer shall serve any such notice on the Company at the Company's registered office as detailed on invoices or such other address as the Company may from time to time notify to the Buyer. The Company may serve any such notice on the Buyer at the address notified to the Company or in default of notification to the address from which the Goods were ordered or if the Buyer is a company at the Buyer's registered office.
- 20.2 A properly addressed notice sent by 1st class post shall be deemed to have been given two days after the date of posting. A properly addressed notice served by hand shall be deemed to be given upon delivery at the relevant address if it is delivered no later than 17.00 on a Business Day or if it is delivered later than 17.00 hours on a Business day or at any time on a day which is not a Business Day, at 08.00 hours on the next Business Day.

## 21. Relationship of the parties

- (A) Nothing in these Conditions shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any party the agent of any other party for any purpose.
- (B) Subject to any express provisions to the contrary in these Conditions, the Buyer shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.
- (C) Except as expressly provided for in the relevant Contract, nothing in these Conditions shall be construed as the Company granting the Buyer agency or distribution rights in respect of the sale or distribution of the Goods. For the avoidance of doubt, any sale of Goods as between the Buyer and a third party shall be effected by the Buyer as principal and not as agent or distributor of the Company and the Buyer shall not hold itself out as being an agent or distributor of the Company.

## 22. Third party rights

22.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract or these Conditions.

## 23. Law and jurisdiction

23.1 These Conditions and all Contracts shall be governed by and construed in accordance with English law and subject to the non-exclusive jurisdiction of the English Courts.

## 24. Data Protection

24.1 The Company collects, uses and discloses personal data for purposes connected with the Contract, e.g. order handling, payments, etc.. Data may be collected from individuals or from other (e.g. published) sources. In order to operate effectively as a member of the global Becton, Dickinson and Company ("BD") group of companies, the Company may for these purposes transfer this data to any country worldwide in which BD's companies or third party providers that process data on our behalf (e.g. centralized data centres) do business, including the United States. Laws and practices relating to the protection of personal data may differ, and such laws may not offer the same level of protection outside the European Economic Area. By proceeding with the transaction Buyer agrees, in the exceptional cases where such consent is necessary, in its own right and on behalf of all of its employees, whom the Buyer shall duly inform, to this use, disclosure and transfer of personal data. Such persons have the right to access personal data that the Company holds and to update or amend any personal data. For further information, please contact the Company.