

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Acknowledgement of Order”	the Company’s standard form acknowledgement of order
“Buyer”	the person(s), firm or company whose order for the Goods is accepted by the Company
“Company”	Marcegaglia (UK) Limited
“Contract”	any contract between the Company and the Buyer for the sale and purchase of the Goods formed in accordance with Condition 2
“Goods”	any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract
“Terms and Conditions”	the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company as specified on the front of the Acknowledgement of Order.

1.2 The headings in these Terms and Conditions are for convenience only and will not affect the construction or interpretation of the Contract.

2. FORMATION

2.1 Subject to any variation under Condition 2.6, the Contract will be upon these Terms and Conditions and the Acknowledgement of Order to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each order or acceptance of a quotation for Goods will be deemed to be an offer by the Buyer to purchase Goods upon these Terms and Conditions. The Contract is formed when the order is accepted by the Company by way of the Acknowledgement of Order. No Contract will come into existence until the Acknowledgement of Order is issued by the Company. All orders must be on the Company’s standard order form.

2.3 Unless otherwise stated, any quotation is valid for a period of 14 days only from its date, provided the Company has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.5 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer’s acceptance of these Terms and Conditions.

2.6 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director of the Company.

3. CANCELLATION

3.1 The Company may cancel the Contract at any time prior to delivery.

3.2 Subject to Conditions 8.4 and 12, the Buyer may not cancel the Contract at any time prior to delivery without the prior written consent of a director of the Company.

3.3 If the Buyer cancels the Contract other than in accordance with Conditions 5.2, 8.4 and 12, the Buyer shall indemnify the Company in full against all costs, expenses, liabilities, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) and damages which the Company incurs as a result of or in connection with the cancellation.

4. **THE GOODS**

4.1 The quantity and description of the Goods will be as set out in the Acknowledgement of Order.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

4.3 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements, or, do not materially affect their quality or performance.

4.4 The Company may deliver and the Buyer is obliged to accept Goods up to 10% more or 10% less than the quantity ordered and the price for such Goods will, subject to the Company's approval, be adjusted accordingly.

5. **PRICE**

5.1 The price for the Goods will be the price set out in the Acknowledgement of Order and, unless otherwise stated, is inclusive of any costs of packaging, but exclusive of any costs of the carriage of the Goods and any value added tax or other applicable sales tax or duty, which will be added to the sum in question.

5.2 The Company shall be entitled to increase the price for the Goods set out in the Acknowledgement of Order prior to delivery of the Goods if the Company, in its sole discretion, considers the same to be justified by any material increase in the price of raw materials or components used by the Company in the manufacture of the Goods, or in the cost of labour or other overheads. The Company shall notify the Buyer of any such increase. The Buyer shall have 3 days from the date of the Company sending any notice of such a price increase to the Buyer to notify the Buyer that it wishes to cancel the Contract, otherwise the Buyer will have been deemed to have accepted the increase in the price for the Goods

5.3 The Company will be entitled to increase the price of the Goods following any changes in the specification made both at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in Condition 4.3.

6. **PAYMENT**

6.1 The Company may invoice the Buyer for the Goods on or at any time after delivery and, subject to Condition 6.5, payment is due:

6.1.1 on the day the Buyer receives the invoice, if the Buyer does not have an approved credit account; or

6.1.2 no later than 30 days from the last day of the month in which the invoice was issued, if the Buyer has an approved credit account,

unless agreed otherwise by the Company in writing.

- 6.2 All payments are due in pounds sterling, unless otherwise stated in the Acknowledgement of Order.
- 6.3 Time for payment will be of the essence.
- 6.4 No payment will be deemed to have been received until the Company has received cleared funds.
- 6.5 All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.
- 6.6 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 6.7 The Company may appropriate any payment made by the Buyer to the Company to such of the invoices for the Goods as the Company thinks fit, despite any purported appropriation by the Buyer.
- 6.8 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, the Company will have a lien on any of the Buyer's property in the Company's possession and will be entitled to suspend and cancel future deliveries of the Goods and suspend or cancel any discount offered to the Buyer until the outstanding amount has been received by the Company from the Buyer.
7. **INSTALMENTS**
- 7.1 The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 7.2 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.
8. **DELIVERY**
- 8.1 Unless otherwise specified in the Acknowledgement of Order, delivery of the Goods will be made ex-works as defined in Incoterms 2000.
- 8.2 The Buyer will take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
- 8.3 All delivery times are quoted in the Acknowledgement of Order and are estimates only. The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time stated in the Acknowledgement of Order and, if no time is stated, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in Condition 8.4.
- 8.4 Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 30 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this Condition 8.4 then:
- 8.4.1 the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order or part of the order which has been cancelled; and

8.4.2 the Buyer will be under no liability to make any payments under Condition 6.1 in respect of that order or part of the order which has been cancelled.

8.5 The Buyer will provide at its expense adequate and appropriate equipment and manual labour for loading or unloading the Goods at the place where delivery of the Goods is to take place under Condition 8.1 in accordance with any applicable legislation, regulations and best practice, including without limitation, relevant Health & Safety legislation.

8.6 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Company's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) the Company may:

8.6.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with Condition 8.6.2 and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

8.6.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

9. **RISK / OWNERSHIP**

9.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with Condition 8.6).

9.2 Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.

9.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

9.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

9.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

9.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.

9.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

9.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and

9.4.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.

9.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in Condition 12.1 occur.

9.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.

9.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

9.8 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

9.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 9 will remain in effect.

10. **WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY**

Warranty

10.1 The Company will, free of charge, within a period of 3 months from the date of delivery of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material or workmanship, replace, or at its option refund the price of, such Goods. This obligation will not apply where:

10.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;

10.1.2 the Goods have been improperly installed or connected;

10.1.3 any maintenance requirements relating to the Goods have not been complied with;

10.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or

10.1.5 the Buyer has failed to notify the Company of any defect or suspected defect within 14 days of the delivery where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 3 months from the date of delivery.

10.2 The Company will refund to the Buyer the cost of carriage on the return of any such defective or damaged Goods, and will deliver any replacement Goods to the Buyer at the Company's own expense.

10.3 Any Goods which have been replaced will belong to the Company. Any replacement Goods will be liable to replacement under the terms specified in Condition 10.1 for the unexpired portion of the 3 month period from the original date of delivery of the replaced Goods.

Exclusion of Liability

10.4 In the event of any breach of the Company's express obligations under Conditions 8.3, 10.1, 10.2 and 10.3 above the remedies of the Buyer will be limited to damages.

10.5 The Company does not exclude its liability (if any) to the Buyer:

10.5.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;

10.5.2 for personal injury or death resulting from the Company's negligence;

10.5.3 under section 2(3) Consumer Protection Act 1987;

10.5.4 for any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or

10.5.5 for fraud.

10.6 Except as provided in Conditions 8.3 and 10.1 to 10.5, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or

consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:

- 10.6.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company or on the part of the Company's employees, agents or sub-contractors;
- 10.6.2 any breach by the Company of any of the express or implied terms of the Contract;
- 10.6.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; or
- 10.6.4 any statement made or not made, or advice given or not given, by or on behalf of the Company.

10.7 Except as set out in Conditions 8.3 and 10.1 to 10.5, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.

10.8 Subject to Condition 10.6, the Company's aggregate liability under the Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct loss howsoever caused (other than for death or personal injury caused by the Company's negligence) will be limited to the price of the Goods.

Indemnity

10.9 The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract.

11. FORCE MAJEURE

The Company will not be in breach of the Contract or liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control of the Company including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Company or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, transport delays or default of suppliers or subcontractors and the Company will be entitled to a reasonable extension of time for performing such obligations.

12. TERMINATION

12.1 The Company may by written notice terminate the Contract immediately if the Buyer is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect, is unable to pay its debts as they fall due, has any distraint, execution or other process levied or enforced on any of its property, ceases to trade or appears in the reasonable opinion of the Company likely, or is threatening, to cease to trade, or the equivalent of any of the above occurs to the Buyer in another jurisdiction to which the Buyer is subject. Failure to pay any sums due in accordance with Condition 6.1 is a material breach of the terms of the Contract which is not capable of remedy.

12.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Company accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13. **GENERAL**

- 13.1 Time for performance of all obligations of the Buyer under the Contract is of the essence. Time for performance of all obligations of the Company under the Contract is not of the essence.
- 13.2 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.
- 13.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 13.4 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 13.5 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract. The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 13.6 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.7 The Contract contains all the terms which the Company and the Buyer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 13.7 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 13.8 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.

14. **JURISDICTION**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.