

HOUGHTON PLC - CONDITIONS OF SALE

1. **Definitions**

In these Conditions the following meanings apply: '**Container Policy**' the Company's Container Policy 'issued from time to time relating to the use and returns of barrels and semi bulk containers. '**Company**' Houghton plc. '**Customer**' Customer named in any Order acknowledgement thereof or quotation issued by the Company. '**Goods**' the products specified in any acknowledgement, quotation, invoice or delivery note. '**Contract**' the contract for the sale of the Goods or the provision of the Services by the Company to the Customer comprising these conditions, the Container Policy, the Product Data Sheets and any acknowledgement. '**Order**' any order placed by the Customer for Goods or Services. '**Acknowledgement**' the Company's written acknowledgement of order where issued or other correspondence from time to time relating to the supply to the Customer. '**Product Data Sheet**' the written information made available from time to time by the Company in relation to the Goods. '**Services**' any service provided by the Company whether in relation to the supply of Goods or otherwise.

2. **General**

2.1 The Company transacts business only on these Conditions which shall be incorporated into the Contract to the exclusion of all other terms and conditions and to the exclusion of all prior promises, terms, quotations, estimates, representations, undertakings or implications whether oral or in writing, except to the extent that they are included in any formal specific acknowledgement thereof issued by the Company.

2.2 These Conditions, (and excluding any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document), may only be varied in writing signed by a person duly authorised by the Company.

3. **Prices**

The price for the Goods and the Services shall be as set out in any Acknowledgement issued or otherwise communicated to the Customer by the Company and is exclusive of Value Added Tax any other applicable duty or tax and these will be paid by the Customer.

4. **Delivery and Passing of Risk and Title**

Risk in the Goods shall pass to the Customer when they are made ready for collection by the Customer (or its carrier), or where the Company is to deliver at the time the carrying vehicle arrives at the delivery address but before unloading. Title to the Goods shall pass when paid for in full.

5. **Container Policy**

The Customer shall comply with the terms of the Container Policy in respect of the use and return of, and/or payment in respect of, containers and barrels.

6. **Payment**

6.1 Payment for Goods, Services or packaging must be received by the Company, in pounds sterling, not later than the 20th day of the month following the month in which the relevant invoice is issued. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received payment in cleared funds.

6.2 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of two percent above the base rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made whether before or after judgement.

7. **Performance of the Contract**

7. 1 The Goods shall be delivered within a reasonable period depending upon the nature of the Goods and available stocks. Time of delivery shall not be of the essence unless so stated in the Acknowledgement.

7.2 If the Company is delayed or hindered in or prevented from performing the Contract or any part thereof by any circumstances beyond its control then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented or hindered and such suspension shall not constitute a breach of the Contract on the part of the Company. The Company may set any sums it owes to the Customer against sums the Customer owes the Company.

7.3 Except as specifically provided in these Conditions or in the relevant Product Data Sheets or unless otherwise agreed in writing, all specifications shown in any Company catalogue or sales literature are approximate only and must not be relied upon.

7.4 The Company shall be entitled to discontinue, alter or improve any of the Goods or Services at any time and the Company shall be entitled to substitute the Goods which are the subject of a Contract with Goods which are suitable for the purposes for which the original Goods were designed but at the same price.

8. **Guarantee**

8.1 The Company will at its option rectify or replace faulty Goods or Services free of charge or refund the purchase price. Goods or Services will be faulty if: (a) the Goods do not reasonably comply with or reasonably fulfill the purposes set out in the relevant Product Data Sheet which is current in respect of the Goods at the time of the Order; or (b) the Goods fail to conform to any relevant sample; or (c) where specifications and other data relating to the Goods are supplied by the Customer, there is a failure on the part of the Company to manufacture the Goods in accordance with such specifications or other data; or (d) subject to Condition 8.1(c), the Goods 'are not of satisfactory quality or fit for any purpose stated in the Acknowledgement where issued; or (e) the Services were not provided with reasonable care and skill.

8.2 Nothing contained in these Conditions shall operate so as to exclude Section 12(a) of the Sale of Goods Act 1979 nor save in the case of international supply contracts, to exclude the liability, of the Company for death or personal injury resulting from the negligence of the Company its employees or agents.

8.3 If the Company has notified the Customer in the Acknowledgement where issued or otherwise that the Goods are on trial only and are to be used by the Customer at its own risk, the Company shall not be liable, to the Customer in contract, tort or for breach of statutory duty or howsoever otherwise for any loss or damage or of any kind whatsoever incurred by the Customer as a result of the Customer's use of such Goods.

9. **Limitation of Liability**

9.1 The Company accepts liability subject to the other Conditions, only for direct injury and/or damage incurred by the Customer caused by a breach of the contract by the Company or by the negligent act or omission of the Company or its employees in the course of their employment which constitutes defects in design or material or workmanship provided that such liability shall in no event exceed five million pounds (£5,000,000) per claim or series of connected claims.

9.2 Except as and to the extent provided in Condition 8:-

(a) any term, condition, warranty, representation or undertaking on the part of the Company as to the quality of the Goods or their fitness or suitability for any purpose or the standard of workmanship exercised in the performance of the Services however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby, excluded and the provisions of Section 12(b) and Sections 13 to 15 inclusive of the Sale of Goods Act 1979 and Section 13 of the Supply of Goods and Services Act 1982 shall not apply to the Contract.

(b) the Company shall not be liable to the Customer in contract, tort or for breach of statutory duty or howsoever otherwise for any indirect or consequential loss (including but not by way of limitation economic loss) of any kind whatsoever which the Customer may suffer by reason of any act, omission, neglect or default in relation to the Goods or Services or the performance of the Contract by the Company its employees or agents.

10. **Sub-contracting and Assignment**

The Company may sub-contract the manufacture of the Goods or supply of the Services in whole or in part and assign charge or sub-let the Contract or any part of it.

11. **Designs, Drawings. Specifications and other data**

11.1 The Customer shall be solely responsible for the accuracy of any information relating to the

operating conditions in which the Customer would expect the Goods to operate, for the Customer's designs drawings specifications and other data supplied to the Company by the Customer its employees or agents and in conformity with which the Company is to advise upon the application of the Goods or is to manufacture the Goods.

11.2 The Customer shall indemnify the Company against all actions proceedings claims costs and expenses which may be brought against or incurred by the Company by reason of manufacture and supply of the Goods by the Company in accordance with such designs drawings specifications or other data provided by the Customer whether or not it is alleged in such actions proceedings and claims that any patent trade mark design copyright design right confidential information or other intellectual property or other exclusive right of any third party has been infringed.

12. **Health and Safety**

12.1 The Customer shall ensure that all information and instructions relating to and warnings in respect of the Goods supplied by the Company are passed on to, and, in a proper and responsible manner, drawn to the attention of, all persons using or proposing to use the Goods and are fully observed by such persons. The Customer shall comply with all legal requirements from time to time in force, and all recommendations or instructions from time to time issued by the Company relating to the use, transfer, storage and disposal of the Goods.

12.2 The Customer shall indemnify the Company against all costs, claims penalties, demands, liabilities and expenses of whatever nature incurred or suffered by the Company by reason of the failure of the Customer to comply with its obligations Under Condition 12.1 hereof.

13. **Breach of Contract by or Insolvency of the customer**

If the Customer commits any breach of the Contract or is unlikely to be able to pay its debts the Company may terminate the Contract forthwith.

14. **General Provisions**

14.1 The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any rights or remedies.

14.2 If at any time any one or more of these Conditions (or any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted here from and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be effected or impaired thereby.

14.3 The headings of these Conditions are inserted for ease of reference and shall not affect their construction.

14.4 Any notice to be given to the Company shall be sent to the address of its Registered Office at Beacon Road, Trafford Park, Manchester M17 1AF. Any notice to the Customer shall be sent to the address of the Customer last known to the Company. Any such notice may be given by post or facsimile transmission.

14.5 The Contract shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer hereby submit to the exclusive jurisdiction of the English Courts.

14.6. The Customer shall indemnify the Company against all liabilities costs or expenses of whatever nature arising out of or in connection with the resale, transfer or exchange of the Goods by the Customer to or with any third party.

14.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.