

Specflue Limited – Terms and Conditions of Purchase

1 INTERPRETATION

In these Terms and Conditions the following definitions apply:

“Buyer” means Specflue Limited;

“Goods” means goods supplied to the Buyer by the Seller in accordance with the Terms and Conditions;

“Order” means an order for Goods placed by the Buyer;

“Out of Pocket Costs” means ad hoc expenses including but not limited to reimbursements or compensation to claimants;

“Seller” means the person, firm or company to whom an Order is addressed;

“Technical Guidance” means the product quality specification set out in any technical guidance document issued by the Buyer from time to time to its Sellers;

“Terms and Conditions” means these terms and conditions.

2 GENERAL

These Terms and Conditions shall be incorporated into each Order (but in the case of an Order for the provision of services only so far as they are relevant). The Seller’s acknowledgement of the Order, commencement of work on the Goods, shipment or supply of the Goods, whichever occurs first, shall be deemed to be the Seller’s acceptance of the Order. THE SELLER’S ACCEPTANCE OF THE ORDER IS LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS AND THE BUYER SHALL NOT BE BOUND BY ANY OTHER TERMS OR CONDITIONS PROPOSED BY THE SELLER OR PRINTED IN ANY DOCUMENTATION PROVIDED BY THE SELLER IN CONNECTION WITH THE ORDER.

3 VARIATION

The Buyer reserves the right to amend these Terms and Conditions from time to time on giving 4 weeks prior notice to the Seller.

4 SPECIFICATION

(1) The Seller warrants that the Goods shall conform with all specification requirements set out in any Technical Guidance, together with any other specifications, drawings, samples or other descriptions agreed between the Seller and Buyer. Conformity with the foregoing shall not absolve the Seller of any other legal or moral responsibility relating to the supply of the Goods or any other aspect of its activities.

(2) The Seller shall provide relevant product information to enable formulation of a comprehensive product specification for the Goods or otherwise to satisfy the Buyer that appropriate legislative or regulatory requirements are complied with. No changes shall be made to any agreed specification without the prior agreement of the Buyer.

(3) The Seller shall provide reasonable access to the Seller’s premises to employees or representatives of the Buyer to verify at source that the Goods conform to specifications. The Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. Such inspection and testing shall not absolve the Seller from liability or responsibility under these Terms and Conditions nor imply acceptance of any of the Goods.

(4) Unless otherwise agreed in writing between the parties, should the Seller wish to cease supply, for whatever reason, of an existing product to the Buyer, it is the Seller’s responsibility to ensure 6 months’ written notice is provided to the Buyer. Notice should be served in accordance with Clause 26 of these Terms and Conditions.

5 LEGISLATIVE REQUIREMENTS

The Seller warrants that the Goods including their packaging and labelling shall comply with all relevant UK and EC legislation, regulations, British standard specifications, codes of practice or general trade or other recognised regulations or specifications relating to the supply and sale of the Goods. Without prejudice to the generality of the foregoing the Seller warrants that:

(1) it has carried out such checks as a prudent supplier could reasonably be expected to carry out to comply with all the aforementioned legislation and regulations and that it is in all the circumstances reasonable for the Buyer to rely on those checks; and

(2) all its premises, equipment and machinery used in connection with the manufacture, storage and supply of goods comply with the appropriate standards.

6 PRODUCT QUALITY, FITNESS FOR PURPOSE AND SELLER’S CARE AND SKILL

(1) The Seller warrants that the Goods shall be of the agreed quality, free from defects in material or workmanship and wrapped, packaged and labelled appropriately so as to prevent damage or deterioration in delivery or storage.

(2) The Seller warrants that the Goods shall be fit for the particular purpose for which Goods of this type are normally used.

(3) Where the Order is for the provision of services the Seller warrants that it will provide the services in a good and workmanlike manner using all reasonable care and skill and in accordance with any service level agreement agreed between the Buyer and the Seller.

7 NO THIRD PARTY RIGHTS

The Seller warrants that the Goods shall be free from any third party lien, claim, title or interest.

8 INTELLECTUAL PROPERTY RIGHTS

(1) The Seller shall indemnify the Buyer from and against any and all liability, actions, proceedings, claims, costs, expenses, losses or damage incurred by the Buyer in relation to any actual or alleged infringement of any patent, registered design, trade mark, copyright or other registered or unregistered intellectual property right arising out of the sale or use of the Goods provided always that the Seller shall not be required to indemnify the Buyer against such infringements where the Goods are supplied to the particular design or specification of the Buyer.

(2) The use by the Seller of any material in which the copyright, patent, trade mark, trade name, registered design, or other intellectual property rights are vested in the Buyer shall be limited solely to performance of the Order.

(3) Labels, packaging and any other materials bearing or subject to the Buyer’s name, trade mark or other intellectual property shall, upon termination or cancellation of an Order, be at the Buyer’s option either delivered up to the Buyer carriage paid or destroyed.

(4) All data, specifications, or other materials supplied by or paid for by the Buyer in connection with the supply of the Goods shall be and remain the property of the Buyer. The Seller hereby waives any lien or other rights that it might otherwise have on or in respect of any of the Buyer’s property.

(5) Where the Buyer commissions the Seller under or in connection with an Order to create any work, design, concept, data, invention, new product or improvement, ownership of such works, designs, concepts, data, inventions, new products and improvements including all intellectual property rights therein shall vest in the Buyer upon their creation and any right, title or interest which may be vested in the Seller is hereby assigned to the Buyer with the intent that all such intellectual property rights shall be the sole and absolute property of the Buyer.

(6) Without limitation to Clause 8(5) above, the Seller hereby assigns to the Buyer all works, designs, concepts, data, inventions, improvements and discoveries (whether such is patentable or not or capable of any kind of registration) created or conceived after the Buyer commissioning the Seller to create or conceive the same made by any person employed by or working under the direction of the Seller including all intellectual property rights therein.

(7) The Supplier shall on request give to the Buyer the originals and copies of all documents, designs, drawings, data and information of whatsoever nature in its possession or under its control belonging to the Buyer pursuant to Clauses 8(5) and 8(6).

9 CONFIDENTIALITY

The Seller may as a result of an Order receive confidential information concerning the Buyer. The Seller may also be in possession of property belonging to the Buyer pursuant to Clause 8. The Seller agrees that it will treat all such information as confidential and will not directly or indirectly disclose it or use it for any purpose other than to fulfil its obligations to the Buyer under the Order.

10 PRICE

(1) The prices agreed between the Seller and Buyer shall not be subject to any increase or additional levy, save for the application of VAT (subject to Clause 10(2)) or any increase in the rate thereof, unless agreed by the Buyer 3 months in advance of the application of such increases and where the Seller provides all relevant justification documents in support of such increases. Any increases sought should be timed to coincide with the issue by the Buyer of its own customer price lists where applicable.

(2) It is the responsibility of the Seller to notify the Buyer of the VAT status of each product and any subsequent changes to that status. The Seller shall be liable for all costs incurred by the Buyer for failure to notify such status or changes thereof.

(3) The Buyer shall be entitled to any discount for prompt payment, bulk or volume purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

11 PAYMENT

(1) All invoices must be validated against delivery notes. Invoices may not be issued prior to the date of delivery of the Goods. All invoices must quote the Buyer’s Order number and be sent to the Buyer at an address specified by the Buyer. A signed delivery note will be made available on request.

(2) In the event that the Seller’s invoice is for an amount greater than the price of the Goods to which the invoice relates as recorded in the Buyer’s ledger, the Buyer may withhold payment of the full amount of the invoice pending agreement of the amount outstanding. Alternatively, the Buyer may raise and forward to the Seller a detailed debit note for the difference and deduct such amount from the invoice. The Buyer may, at its discretion, charge an additional £20 administration fee.

(3) If a signed delivery note does not accompany the Seller’s invoice and the quantity of Goods to which the invoice relates is greater than the quantity of Goods recorded in the Buyer’s copy of the delivery note, the Buyer will raise and forward to the Seller a detailed debit note for the value of the undelivered quantity of Goods and deduct such amount from the invoice. The Buyer may, at its discretion, charge an additional £20 administration fee.

(4) If the Seller does not supply an invoice for Goods delivered within 6 months of the date of delivery the Buyer shall not be obliged to make payment for the Goods.

(5) Any queries relating to invoices or payments, part paid or not paid, or deductions made by the Buyer from a payment to the Seller, must be made within 12 months of the date of delivery of the goods or services or the deduction being made or the Buyer shall not be obliged to make any payment to the Seller in relation to those items.

12 DELIVERY

Unless otherwise agreed between the parties, the Seller shall deliver the Goods to such destination as the Buyer may direct. Each delivery shall be accompanied by a delivery note clearly marked with the Buyer’s Order number, the description and number of units of the Goods, as well as such other relevant information or paperwork as requested by the Buyer or as otherwise required by any applicable legislation or regulations. All invoices and credit notes must be valid for VAT purposes.

13 RISK

The Goods will be delivered to the destination directed by the Buyer at the risk of the Seller who will maintain adequate insurance. Risk shall not pass from the Seller to the Buyer until the Goods have been unloaded, checked and accepted on the Buyer’s behalf at the designated delivery point.

14 PROPERTY

Property in the Goods shall pass to the Buyer when the Goods have been delivered to the Buyer (or the Buyer’s appointed recipient), unloaded, checked and accepted on the Buyer’s behalf.

16 FORCE MAJEURE

Neither party shall be responsible for any delay or failure to make or take delivery of all or any part of the Goods due to causes beyond the party’s control, specifically excepting pricing or cost increases. Notwithstanding the foregoing the defaulting party shall use its best efforts to mitigate the effects of any default which, in the case of the Seller, shall include using its best efforts to secure an alternative source of supply for the Goods.

17 REJECTION

(1) Without prejudice to any other rights it may have, if any of the Goods or the packages containing the same shall be found within a reasonable time of delivery to be defective or, in the Buyer’s reasonable judgment, to not comply with the Order or with any of these Terms and Conditions or any term implied by law including quantity, quality, specification, or description, the Buyer shall be entitled to reject those Goods or any part of them irrespective of whether the Buyer had initially accepted them. The whole of any consignment may be rejected if a reasonable sample of the Goods taken indiscriminately from that consignment is found in the Buyer’s reasonable judgment not to conform in every material respect with the aforementioned requirements.

(2) The Buyer will be entitled to return rejected Goods to the Seller (and the Seller shall bear all risks and expenses related to the return of rejected Goods including without limitation freight, duties and insurance) or the Buyer may elect to store such Goods at the Seller’s risk subject to a storage charge payable by the Seller for the period until collection by the Seller. In any event, the Buyer shall be entitled to charge the Seller for any costs incurred by the Buyer as a result of rejections of Goods.

(3) Any acceptance by the Buyer of Goods which are in any way defective or which do not otherwise conform with these Terms and Conditions or any term implied by law shall be without prejudice to any rights or remedies which the Buyer may have against the Seller.

18 TERMINATION FOR CAUSE

Without prejudice to any of its other rights or remedies and without incurring any liability, the Buyer may terminate an Order or any part thereof in the event that the Seller commits a material breach of its obligations contained in the Order or any form of insolvency proceedings are commenced in respect of the Seller. Upon receipt of a notice of termination from the Buyer, the Seller shall immediately stop and cause all of its suppliers and sub-contractors to stop all work under the Order or the part which has been terminated.

19 NON-DELIVERY

Time is of the essence for an Order. If the Goods are not delivered on the date(s) specified in the Order, the Buyer may, without liability and without prejudice to any other rights or remedies it may have: (a) terminate the Order by notice to the Seller effective upon receipt in respect of Goods not yet shipped or services not yet rendered; and (b) buy substitute Goods elsewhere and recover from the Seller any additional expenditure reasonably incurred.

20 ASSIGNMENT AND SUB-CONTRACTING

The Seller shall not assign, transfer, or sub-contract the production or supply of any Goods without the prior written consent of the Buyer.

21 BUYER’S STAFF

The Seller agrees that, in order to protect the confidential information of the Buyer, it will not without the Buyer’s prior written consent, employ any senior member of the Buyer’s personnel for six months from the date on which they leave the Buyer’s employment.

22 INDEMNITY

In addition to the Seller’s other obligations hereunder, the Seller shall defend, indemnify and hold the Buyer harmless against any and all demands, damages, claims, liabilities, losses, costs and expenses (including legal expenses) arising out of or resulting from any known or unknown defect in the Goods or the negligence of, default of or breach of these Terms and Conditions (including breach of any warranty) by the Seller, its agents, employees or sub-contractors.

23 INSURANCE

The Seller shall insure with an insurance company of good repute against its liability under clause 22 (Indemnity), in the minimum sum of £10 million pounds, or such other sum as may be agreed, in respect of any one incident and in the event that the Seller fails to do so the Buyer may effect such insurance and charge the cost of the same together with an administrative charge of 5% to the Seller.

24 WAIVER AND REMEDIES

Neither the Buyer’s failure to insist on the performance of any of these Terms and Conditions, nor its failure to exercise any right or privilege, nor its waiver of any breach hereunder, shall be deemed to be a waiver of any of these Terms or Conditions or breaches by the Seller of an Order whether of the same or a similar type.

The Buyer’s signature of receipt, inspection, testing, payment for or use of the Goods furnished under an Order shall not affect the Seller’s obligations under the warranties contained in these Terms and Conditions which shall survive the Buyer’s inspection, testing, acceptance and/or use.

The rights and remedies provided by these Terms and Conditions are cumulative and are not exclusive of any rights or remedies provided by law.

25 THIRD PARTY RIGHTS

The parties do not intend that any term of an Order will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

26 NOTICES

All notices required to be given under these Terms and Conditions must be in writing and delivered by hand or sent by registered post guaranteed next day delivery to the address notified by each party to the other or failing such notification to the registered office address. Any notice so served shall be deemed to have been given if delivered by hand on the day of delivery or if sent by registered post guaranteed next day delivery on the day after posting.

27 GOVERNING LAW AND JURISDICTION

An Order shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with an Order and the legal relationships established by the Order.

28 SELLER’S LABELLING AND PACKAGING

The Seller shall be responsible for ensuring that all of its labelling and packaging complies with all prevailing and future legislation likely to come into force during the life of the Goods. The Buyer reserves the right to reject any Goods that in its view do not comply with such legislation.

29 COMPLAINTS

Without prejudice to Clause 22 (Indemnity), costs associated with complaints from customers relating to the Goods which are dealt with by the Buyer will be reimbursed by the Seller with a standard handling charge as the Buyer may impose from time to time plus “Out Of Pocket Costs” incurred by the Buyer. In the case of injury to customers or a serious complaint, the Seller shall provide the Buyer with all assistance reasonably required by the Buyer until the matter is resolved.

30 RECALLS/CLAIMS

The Seller shall immediately inform the Buyer of any quality defect which may affect the Goods and which is discovered before or after delivery. Without prejudice to Clause 22 (Indemnity) in the event of a withdrawal of any of the Goods due to any manufacturing or other defect, the Seller shall be responsible to the Buyer for all costs, losses and expenses incurred by the Buyer including without limitation loss of profit on sales, administration, recall and return expenses and any other consequential costs which may be incurred.

31 SERVICE LEVELS

(1) The Seller shall achieve the following targets for deliveries:

Quantity delivered: 99.8 percent of Order quantity

Delivery time: 99 percent of Orders within 30 minutes of delivery time

If these standards are not achieved the Buyer may seek appropriate recompense.

(2) Without prejudice to Clause 22 (Indemnity) if an out of stock situation is created for the Buyer due to the Seller’s failure to deliver at the agreed time the Buyer may seek appropriate recompense from the Seller which may be based on the value of each lost sale to the Buyer at the Buyer’s current list selling price.