

**RONALD BRITTON LTD**  
**CONDITIONS OF SALE**

**1. FORMATION AND INTERPRETATION OF CONTRACTS**

1.1 In these terms and conditions: the "Seller" means Ronald Britton Ltd; the "Buyer" means the person, firm or company whose order for the Goods is accepted by the Seller; the "Goods" means any goods (or any part thereof) which the Seller is to supply to the Buyer; the "Contract" means any contract (incorporating these terms and conditions) between the Seller and the Buyer for the sale and purchase of the Goods.

1.2 All quotations are made and all orders are accepted by the Seller subject to these terms and conditions and no addition or variation to these terms and conditions or any Contract is effective unless the Seller so agrees in writing signed by a director of the Seller. These terms and conditions override any other terms and conditions or any document or other communication used by the Buyer. Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

1.3 The construction, validity and performance of the Contract shall be governed by English law and the English courts shall have [non-] exclusive jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) shall not apply to export sales.

**2. FORCE MAJEURE**

2.1 The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract because of any delay in performing or failure to perform any of the Seller's obligations under the Contract if the failure or delay was caused by:

2.1.1 any act of default on the part of the Buyer; or

2.1.2 any act of God, war, riot, civil commotion; or

2.1.3 strike, lock out, sit-in, industrial or trade dispute; or

2.1.4 fire, flood, adverse weather, disease, accident to plant or machinery or shortage of any material, fuel, labour, electricity or other supply; or

2.1.5 any other cause whatsoever which the Seller could not reasonably have been expected to prevent.

**3. PRICES**

3.1 Save where otherwise agreed by the Seller in writing, the price of the Goods shall be the price set out in the Seller's Acknowledgement of Order (or, in the event that no price is specified therein, the price set out in the Seller's published price list current at the date of delivery). The prices stipulated are the net price of the Goods and exclusive of VAT and any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.

**4. PAYMENT**

4.1 The first three orders made by a new Buyer are on a pro-former invoice basis, after which the Buyer can apply for a credit account. The Seller's agreement to a credit account is subject to credit application and credit references.

4.2 Unless otherwise stated, where credit is agreed payment is due and payable to the Seller in the currency agreed net 30days date of invoice.

4.3 The Seller may invoice the Buyer for the Goods at any time after despatch.

4.4 All payments due shall be made by the Buyer without any deduction (whether by way of set-off, counterclaim or otherwise) unless the Buyer has a valid court order requiring an amount equal to such deductions to be paid by the Seller to the Buyer.

4.5 Time of payment is of the essence of the Contract.

4.6 If the Buyer fails to make full and prompt payment on the due date, then (without prejudice to the Seller's other rights and remedies) the Buyer shall be liable to pay to the Seller interest (both before and after judgement) on the amount due calculated at 4% above The Co-operative Bank plc base rate until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest). Any costs incurred by the Seller in the collection of overdue accounts will be chargeable to and payable by the Buyer.

## 5. DESPATCH AND DELIVERY

5.1 Unless otherwise agreed, delivery of the Goods shall be on the basis of EXW (Ex Works - Incoterms 2000, in each case to the place specified in the Seller's Acknowledgement of Order.

5.2 Any stated delivery date is an estimate only and shall not be of the essence of the contract. If no dates are so stated, delivery will be within a reasonable time.

5.3 Subject to the other provisions of these terms and conditions the Seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence) nor unless such delay exceeds 180 days will any delay entitle the Buyer to terminate or rescind the Contract.

5.4 The Seller may deliver the Goods by instalments, each instalment to be a separate contract.

5.5 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide evidence proving the contrary.

5.6 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless written notice is given to the carrier (if appropriate) and the Seller within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.7 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or (at the Seller's option) issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.8 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to either the carrier (if appropriate) or the Seller for the purpose of these terms and conditions.

## 6. TITLE

6.1 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect

of:

6.1.1 the Goods; and

6.1.2 all other sums which are or which become due to the Seller from the Buyer on any account.

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

6.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;

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

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

6.2.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On the Seller's request, the Buyer shall produce the policy of insurance to the Seller; and

6.2.5 hold the proceeds of the insurance referred to in condition 6.2.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

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

6.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Seller accordingly; and

6.3.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.4 The Buyer grants the Seller, 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.

6.5 All risk in the Goods shall pass to the Buyer at the time of delivery and the Buyer shall keep the Goods fully insured in accordance with condition 6.2.4 until payment has been made in full in respect of those Goods.

## 7. DESCRIPTION OF GOODS

7.1 All specifications, descriptions, drawings, catalogues, advertising matter and samples of Goods provided or published by the Seller are intended only to serve as an approximate guide and shall not form part of the Contract.

7.2 The Seller may without any prior notice make any changes to the specification, formulation, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.

7.3 No variation in the specification or formulation of any Goods which, in the Seller's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Seller will constitute a breach of Contract or impose any liability upon the Seller.

## 8. WARRANTIES

8.1 Where the Seller is not the manufacturer of the Goods the Seller will endeavour to transfer to the Buyer the benefit of any warranty or

guarantee given to the Seller.

8.2 The Seller warrants that (subject to the other provisions of these terms and conditions) upon delivery and:

8.2.1 for a period of 3 months from the date of delivery; or

8.2.2 (where the nature of the Goods is such that they have a shorter shelf-life,) for such period as may be specified in the Seller's Data Sheet despatched with the relevant Goods,

the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

8.3 The Seller shall not be liable for a breach of the warranty in condition 8.2 unless:

8.3.1 the Buyer gives written notice of the defect to the Seller (and, if the defect is as a result of damage in transit, to the carrier) within 7 days of:

8.3.1.1 the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or

8.3.1.2 the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

8.3.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller for the examination to take place at the Seller's premises. The cost of so returning the Goods shall be borne by the Buyer, unless the Goods do not conform with the warranty in condition 8.2 (in which case, the Seller shall reimburse to the Buyer any costs reasonably and properly incurred by the Buyer in returning the relevant Goods).

8.4 The Seller shall not be liable for a breach of the warranty in condition 8.2 if:

8.4.1 the defect arises because the Buyer failed to follow the Seller's oral or written instructions and/or recommendations and/or warnings as to the storage, commissioning or use of the Goods or (if there are none) good trade practice; or

8.4.2 the Buyer alters such Goods or mixes other substances or goods with such Goods other than in accordance with industry accepted standards and/or procedures; or

8.4.3 the defect in such Goods arises from any specification supplied or approved by the Buyer.

8.5 If the Buyer makes a valid claim against the Seller based on a defect in the quality of the Goods then the Seller shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Seller.

8.6 If the Seller complies with condition 8.5 it shall have no further liability for a breach of the warranty in condition 8.2 in respect of the quality of such Goods.

8.7 Any Goods replaced by the Seller pursuant to this condition 8 will be supplied pursuant to these terms and conditions.

## 9. LIMITATION OF LIABILITY

9.1 Save as provided in conditions 5.6 and 5.7 in respect of any non-delivery of Goods, the following provisions of this condition 9 and the

provisions of condition 8 set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

9.1.1 any breach of these terms and conditions; and

9.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

9.3 Nothing in these terms and conditions excludes or limits the liability of the Seller for fraudulent misrepresentation or death or personal injury caused by the Seller's negligence.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 9.4 AND 9.5

9.4 Subject to conditions 9.2 and 9.3:

9.4.1 the Seller'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 total net price of the Goods supplied under the Contract; and

9.4.2 the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of the Contract for any loss of profit or for any indirect or consequential loss or damage, loss of use, loss of production, loss of contract or any financial or economic loss or any indirect or consequential damage whatsoever or by reference to accrual of such costs, claims, damages or expenses on a time basis, costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Seller, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.

9.5 The Buyer shall indemnify the Seller and keep it indemnified in full against all liability, loss, damages, costs and expenses (including legal expenses on an indemnity basis) which the Seller may suffer or incur as a result of or arising out of or in connection with:-

9.5.1 any negligence by the Buyer in connection with the Contract or breach of the Contract by the Buyer;

9.5.2 the storage, use or sale of the Goods by the Buyer or any other act, omission or negligence of the Buyer in connection with the Goods including, without limitation, any failure of the Buyer to follow the oral or written instructions and/or recommendations and/or warnings of the Seller (including any given by e-mail) regarding the chemical nature of the Goods and the possibility of explosions or the particular manner in which the Goods should be used (except where the Seller is liable to the Buyer in accordance with these terms and conditions);

9.5.3 any claims brought or threatened against the Seller by any third party in connection with the use or sale of the Goods by the Buyer (except where the Seller is liable in respect thereof in accordance with these terms and conditions).

## 10. TERMINATION

10.1 The Contract will terminate immediately upon the happening of any one or more of the following events; the Buyer (not being a body

corporate) has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

10.2 The Contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following; the Buyer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

10.3 If any of the circumstances referred to in condition 2.1 continues for more than 3 months, the Seller or the Buyer may give notice in writing to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 14 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

10.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Seller accrued prior to termination. The provisions of these terms and conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination of the Contract, including (without limitation) conditions 4.3, 4.5, 6, 8 and 9.

## 11. ASSIGNMENT

11.1 The Seller may assign, licence or sub-contract all or any part of its rights or obligations under the Contract without the Buyer's consent.

11.2 The Buyer shall not assign, mortgage, charge, sub-let or otherwise dispose of any Contract or any rights thereunder in whole or in part without the Seller's prior written consent.

## 12. INTELLECTUAL PROPERTY

12.1 All intellectual property rights in the Goods remain vested in the Seller.

12.2 The Seller shall not be liable to the Buyer for any infringement of any intellectual property rights caused by the Goods or their re-use or sale by the Buyer. The Buyer shall forthwith notify the Seller in writing if the Buyer is aware of any such infringement or alleged infringement. The Seller may at its own expense conduct any negotiations or proceedings arising from any such allegation. The Buyer agrees to give the Seller such reasonable assistance as the Seller may reasonably require in respect of any such negotiations or proceedings at the Seller's reasonable cost and expense.

12.3 The Buyer shall not without the Seller's prior written consent allow any trade mark or service mark of the Seller or other word or mark applied to the Goods (or the packaging thereof) to be obliterated, obscured or omitted or any further word or mark to be added thereto; and the Buyer shall not use or apply any such word or mark without the Seller's prior written consent.

### 13. DATA PROTECTION

13.1 For the purposes of the Data Protection Act 1998, the data controller in relation to any personal data supplied is Ronald Britton Ltd. Such data may include your name, contact and billing information (including company, financial information, telephone number, fax number and e-mail address) and transaction information.

13.2 Information supplied may be processed for the following purposes:

13.2.1 To administer any services and or products provided by the Seller.

13.2.2 To check credit references, prevent fraud and, if necessary, trade and recover debts.

13.2.3 To assess purchasing preferences in order to review, develop and improve services offered by the Seller.

13.2.4 For the Seller's own market research.

13.2.5 To offer the Buyer products and services from the Seller by e-mail, telephone, fax or mail.

13.2.6 To send the Buyer promotional information about the Seller's new products or services and or other information the Buyer may find interesting.

13.3 The Seller may also pass on information relating to the Buyer to other companies within the Colorlord Ltd Group world-wide, persons acting as agents and other carefully selected organisations as third party processors or data controllers, such as logistics companies, credit reference agencies etc. In this context information supplied may include the transfer of data outside the European Economic Area.

### 14. NOTICES

14.1 Any notice or communication under these terms and conditions may be given by hand or sent by first class pre-paid post, facsimile transmission or by e-mail and shall be deemed to have been duly served:

14.1.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

14.1.2 if delivered by hand, on the day of delivery;

14.1.3 if sent by facsimile transmission or by e-mail on a working day prior to 4:00pm, at the time of transmission and otherwise at 9:00am on the next working day.

14.2 Any notice or communication shall be made in writing or by facsimile or e-mail addressed to the recipient at its registered office or its usual facsimile number or e-mail address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).