

CCS MCLAYS LIMITED TERMS AND CONDITIONS OF PURCHASE
LAST UPDATED ON 6 JANUARY 2024

1. INTERPRETATION

1.1 Definitions:

"Bespoke" refers to goods manufactured against the contract, specifically to the Customer's agreed specification.

"Business Day" a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.

"Business Hours" the period from 9.00am to 5.00pm on any Business Day.

"Conditions" the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.

"Contract" the contract between CCS MCLAYS LIMITED and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" CCS MCLAYS LIMITED (registered in England and Wales with company number 03602069), on its own account and for and on behalf of its associated companies and its subsidiaries (each being a **"Group Company"** and together **"CCS MCLAYS LIMITED'S Group"**).

"Customer Materials" has the meaning set out in clause 8.

"Delivery Date" the date specified in the Order, or, if none is specified, within 7 Business Days of the date of the Order.

"Delivery Location" the address for delivery of Goods as set out in the Order.

"Goods" the goods (or any part of them) set out in the Order.

"Off the Shelf Goods" goods which are readily available as a stocked product and which are not bespoke manufactured to an agreed specification to meet CCS MCLAYS LIMITED's Order.

"Order" CCS MCLAYS LIMITED's order for the Goods, as set out in CCS MCLAYS LIMITED's Order.

"Specification" any specification for the Goods, including any related plans and drawings, that is agreed by CCS MCLAYS LIMITED and the Supplier, and which may be expressly stated on the Order or in separate communication and agreed prior to placing the Order.

"Supplier" the person or firm from whom CCS MCLAYS LIMITED purchases the Goods together with any of its associated companies or its subsidiaries (each a **"Group Company"** and together **"Supplier's Group"**).

1.2 Interpretation:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to **writing** or **written** excludes fax but not email.

2 BASIS OF CONTRACT

2.1 Under no conditions are Goods to be manufactured or supplied without an official Order. Any Goods manufactured and/or supplied without an official Order will be rejected and not paid for. Supplier invoices must include the official Order reference applicable to the Goods manufactured and/or supplied.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.3 The Order constitutes an offer by CCS MCLAYS LIMITED to purchase the Goods in accordance with these Conditions.

2.4 The Order shall be deemed to be accepted on the earlier of:

2.4.1 the Supplier issuing a written acceptance of the Order; and

2.4.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3 GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Specification (whether based on a full inspection or spot sampling check);

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by CCS MCLAYS LIMITED expressly or by implication, and in this respect CCS MCLAYS LIMITED relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, without limitation EN and medical devices regulatory standard, and any subsequent statutory or regulatory terms that supercede these.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 CCS MCLAYS LIMITED may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing CCS MCLAYS LIMITED considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, CCS MCLAYS LIMITED shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 CCS MCLAYS LIMITED may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4 DELIVERY

- 4.1** The Supplier shall ensure that:
 - 4.1.1** the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2** each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered, and
 - 4.1.3** if the Supplier requires CCS MCLAYS LIMITED to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2** The Supplier shall deliver the Goods:
 - 4.2.1** on the Delivery Date stated on the submitted Order (or at an alternative date communicated to and agreed with CCS MCLAYS LIMITED);
 - 4.2.2** at the Delivery Location stated on the Order; and
 - 4.2.3** during CCS MCLAYS LIMITED's Business Hours, or as instructed by CCS MCLAYS LIMITED; and
 - 4.2.4** in accordance with the CCS MCLAYS LIMITED's Goods Inwards Procedure document, and specifically relating to delivery booking-in procedures, pallet size and product labelling requirements as previously provided to all CCS MCLAYS LIMITED'S Suppliers including the Supplier.
- 4.3** Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4** If the Supplier:
 - 4.4.1** delivers less than 95.0% of the quantity of Goods ordered, CCS MCLAYS LIMITED may reject the Goods; or
 - 4.4.2** for Bespoke Goods, delivers more than 105% of the quantity of Goods ordered, CCS MCLAYS LIMITED may at its discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense.
- 4.5** If the Supplier delivers more or less than the quantity of Goods ordered, and CCS MCLAYS LIMITED accepts the delivery, a pro rata adjustment shall be made to the invoice. Orders in excess of the above level (105% of Order quantity) for Bespoke Goods will not be accepted. Contracts for Off the Shelf Goods will be supplied to the exact Order Quantity, unless variance is agreed in writing by the Customer and the Customer's Order or the Supplier's Invoice is amended to reflect any such variance.
- 4.6** The Supplier shall not deliver the Goods in instalments without CCS MCLAYS LIMITED's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle CCS MCLAYS LIMITED to the remedies set out in clause 5.

5 CUSTOMER REMEDIES

- 5.1** If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, CCS MCLAYS LIMITED may exercise any one or more of the following rights and remedies:
 - 5.1.1** to terminate the Contract;
 - 5.1.2** to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.1.3** to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 5.1.4** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 5.1.5** to recover from the Supplier any costs incurred by CCS MCLAYS LIMITED in obtaining substitute goods from a third party; and
 - 5.1.6** to claim damages for any other costs, loss or expenses incurred by CCS MCLAYS LIMITED which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2** If the Goods are not delivered on the Delivery Date CCS MCLAYS LIMITED may, at its option, claim or deduct by way of liquidated damages 5.0% of the price of the Goods for each week's delay in delivery until the earlier of delivery or termination or abandonment of the Contract by CCS MCLAYS LIMITED, up to a maximum of 50.0% of the total price of the Goods. If CCS MCLAYS LIMITED exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 5.3** These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.4** CCS MCLAYS LIMITED's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6 TITLE AND RISK

Title and risk in the Goods shall pass to CCS MCLAYS LIMITED on completion of delivery.

7 PRICE AND PAYMENT

- 7.1** The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2** The price of the Goods:
 - 7.2.1** excludes amounts in respect of value added tax (**VAT**), which CCS MCLAYS LIMITED shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 7.2.2** includes the costs of packaging, insurance and carriage of the Goods (unless carriage is expressly stated on the Order as a separate line entry);
 - 7.2.3** is to be charged in the currency stated upon the Order. CCS MCLAYS LIMITED will only transact in GBP£ Sterling, United States \$ and € Euros; and
 - 7.2.4** where contract is for the import of goods (either to the UK or another CCS MCLAYS LIMITED location or contracted third party logistics provider location) the agreed Incoterms are to be F.O.B. (Free On Board), as defined by the International Chamber of Commerce (ICC), unless otherwise expressly agreed and quoted for to the Customer prior to the contract being placed.
- 7.3** No extra charges shall be effective unless agreed in writing with CCS MCLAYS LIMITED.

- 7.4** The Supplier may invoice CCS MCLAYS LIMITED for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, CCS MCLAYS LIMITED's order number, the Supplier's VAT registration number, and any supporting documents that CCS MCLAYS LIMITED may reasonably require.
- 7.5** CCS MCLAYS LIMITED shall pay correctly rendered invoices within the Customer's standard payment terms (or prior agreed terms if different to standard). Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6** If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4.0% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 14 days after the dispute is resolved until payment.
- 7.7** CCS MCLAYS LIMITED may at any time, without notice to the Supplier, set off any liability of the Supplier to CCS MCLAYS LIMITED against any liability of CCS MCLAYS LIMITED to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, CCS MCLAYS LIMITED may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by CCS MCLAYS LIMITED of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

8 CUSTOMER MATERIALS

The Supplier acknowledges that all materials, equipment, cutters and tools, drawings, Specifications, and data supplied by CCS MCLAYS LIMITED to the Supplier (Customer Materials) and all rights in the Customer Materials are and shall remain the exclusive property of CCS MCLAYS LIMITED. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to CCS MCLAYS LIMITED, and not dispose or use the same other than in accordance with CCS MCLAYS LIMITED's written instructions or authorisation.

9 INDEMNITY

- 9.1** The Supplier shall keep CCS MCLAYS LIMITED indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by CCS MCLAYS LIMITED as a result of or in connection with:
- 9.1.1** any claim made against CCS MCLAYS LIMITED for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 9.1.2** any claim made against CCS MCLAYS LIMITED by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 9.1.3** any claim made against CCS MCLAYS LIMITED by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 9.2** This clause 9 shall survive termination of the Contract.

10 INSURANCE

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on CCS MCLAYS LIMITED's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 CONFIDENTIALITY

- 11.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2** Each party may disclose the other party's confidential information:
- 11.2.1** to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.2.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3** Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12 COMPLIANCE WITH RELEVANT LAWS AND POLICIES

- 12.1** In performing its obligations under the Contract, the Supplier shall:
- 12.1.1** comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 12.1.2** comply with the Mandatory Policies; and
- 12.2** Breach of clause 12.1 shall constitute an irremediable material breach of the Contract, thereby entitling CCS MCLAYS LIMITED to immediately terminate the Contract for any such breach.

13 TERMINATION

- 13.1** CCS MCLAYS LIMITED may terminate the Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. CCS MCLAYS LIMITED shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2** Without limiting its other rights or remedies, CCS MCLAYS LIMITED may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.2.1** the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Supplier being notified in writing to do so;
- 13.2.2** the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 13.2.3** the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 13.2.4** the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.2.5** the Supplier's financial position deteriorates to such an extent that in CCS MCLAYS LIMITED's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3** On termination or expiry of the Contract, the Supplier shall immediately return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.4** Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.5** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14 FORCE MAJEURE

- 14.1** Subject always to clause 14.2, neither party shall be in breach of the Contract nor liable for delay in the performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
- 14.2** For the avoidance of doubt, Covid-19, or any other pandemic or epidemic, is not Force Majeure for the purposes of the Contract and is not a reason for lack of performance. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

15 GENERAL

15.1 Assignment and other dealings

- 15.1.1** CCS MCLAYS LIMITED may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 15.1.2** The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of CCS MCLAYS LIMITED.
- 15.2 Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of CCS MCLAYS LIMITED. If CCS MCLAYS LIMITED consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

15.3 Entire agreement.

- 15.3.1** The Contract constitutes the entire agreement between the parties and supercedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter.
- 15.3.2** Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 15.4 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by CCS MCLAYS LIMITED.

15.5 Waiver.

- 15.5.1** Except as set out in clause 2.5, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 15.5.2** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 15.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 Notices.

- 15.7.1** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- 15.7.1.1** delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 15.7.1.2** sent by email to the addresses used in correspondence between the Supplier and CCS MCLAYS LIMITED, and must also be directed to the customer representative responsible for initially placing the Order;
- 15.7.2** Any notice shall be deemed to have been received:-
 - 15.7.2.1** if delivered by hand, at the time the notice is left at the proper address;
 - 15.7.2.2** if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; and
 - 15.7.2.3** if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 15.7.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.8 Third party rights.**
- 15.8.1** Unless it expressly states otherwise in this agreement, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.