

KEENPAC TERMS AND CONDITIONS INTERPRETATION

- 1.1 In these Terms, the following expressions shall have the following meanings:
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| Business Day | a day other than a Saturday, Sunday or public holiday in England and Wales; |
| Buyer | the entity named in the Quotation which has submitted to Keenpac an order for Goods; |
| Buyer Materials | all logos, marks, names, drawings, designs, Specifications and approvals supplied by the Buyer; |
| Contract | each agreement between Keenpac and the Buyer for the supply of Goods in accordance with these Terms which is formed in the manner set out in clause 1.2; |
| Delivery | delivery of the Goods as more particularly defined in clause 5.2; |
| Goods | the goods described in the Quotation; |
| Insolvency Event | any event referred to in clause 10.2.2; |
| Intellectual Property Rights | means all patents, know-how, copyrights, trade or service marks, design rights, and all other intellectual property rights of any kind; |
| Keenpac | Keenpac is a trading division of Bunzl Retail & Healthcare Supplies Limited registered in England under company number 62537 which has its registered address at York House, 45 Seymour Street, London, W1H 7JT; |
| Quotation | Keenpac's quotation of the prices or other charges payable by the Buyer for the Goods; |
| Specification | The agreed specification of the Goods including any artwork, trademarks, logos, designs, samples, drawings or other information relating to the Goods provided or approved by the Buyer. |
- 1.2 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 2 **QUOTATIONS, ORDERS AND CONTRACTS**
- 2.1 Quotations are not binding on Keenpac and are subject to withdrawal and alteration at any time before acceptance takes place as set out in clause 2.2 and shall be valid for 10 days following the date of issue after which Keenpac may re-quote.
- 2.2 No order is binding upon Keenpac until accepted by Keenpac. Acceptance of an order shall take place when Keenpac instructs its supplier to commence production of the Goods, or if earlier, whenever the order is expressly accepted by Keenpac in writing.
- 2.3 Upon acceptance by Keenpac in accordance with clause 2.2, a binding Contract shall exist between Keenpac and the Buyer for the supply of Goods.
- 2.4 The Contract comprises these Terms, the Quotation and any additional terms agreed in writing between the parties and Keenpac shall sell, and the Buyer shall purchase, the Goods in accordance with the Contract.
- 2.5 If there is any conflict between these Terms and the additional terms of the Contract specifically agreed by the parties, the latter shall prevail.
- 3 **DESIGN, SAMPLES AND SPECIFICATIONS**
- 3.1 Where Keenpac has agreed to provide designs for the Goods, Keenpac shall not commence production of the Goods until the Buyer has given its written approval of the designs and such designs shall then form part of the Specification.
- 3.2 Keenpac shall if requested by the Buyer and at the Buyer's expense make and submit to the Buyer for approval pre-production samples of the Goods.
- 3.3 Where Goods are produced which conform in all material respects to an approved production sample, the Goods shall be treated as conforming to the Specification.
- 3.4 The Buyer agrees that printing plates, moulds and other tooling items used by Keenpac to produce the Goods are exclusively owned by Keenpac.
- 3.5 The Buyer is responsible for ensuring the accuracy of all information and the suitability of all designs and Specifications provided as Buyer Materials. Keenpac is entitled to rely on and use all Buyer Materials without further enquiry.
- 3.6 The Buyer grants Keenpac the right to use Buyer Materials to perform the Contract.
- 3.7 The Buyer shall keep Keenpac indemnified at all times against all claims, demands, costs (including legal costs on a full indemnity basis), expenses, losses and liabilities incurred by Keenpac as a result of any claim that any Buyer Materials used or Goods produced by Keenpac using any Buyer Materials infringes any rights of any third parties, including any Intellectual Property Rights.
- 3.8 All Intellectual Property Rights in the Goods shall as between the parties remain at all times vested in Keenpac. No Intellectual Property Rights of Keenpac are transferred to the Buyer and no licences to use any Intellectual Property Rights of Keenpac are granted to the Buyer except as may be necessary for the usual use of the Goods supplied.
- 4 **PRICES AND PAYMENT**
- 4.1 Prices for the Goods shall be as stated in the Quotation.
- 4.2 Keenpac shall be entitled to invoice upon delivery of the Goods, or as otherwise stated in the Contract.
- 4.3 The Buyer shall pay the invoice in full and cleared funds no later than 30 days after the date of the invoice.
- 4.4 If the Buyer fails to make any payment when due, without affecting any other rights which it may have, Keenpac shall be entitled to exercise all or any of the following rights:
- 4.4.1 suspend production and/or deliveries of Goods until paid;
 - 4.4.2 require the Buyer to pay any costs of storage of undelivered Goods;
 - 4.4.3 to charge interest on the overdue amount at the statutory rate and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), which shall accrue from day to day (both before and after any judgment) from the due date until payment in full is received by Keenpac.
- 4.5 The Buyer may not withhold, make deduction from, set off against or make abatement of any payment due to Keenpac.
- 4.6 Upon termination of the Contract the Buyer shall pay all sums due to Keenpac for Goods provided up to the date of termination.
- 5 **DELIVERY**
- 5.1 Unless agreed otherwise, Keenpac shall be responsible for delivery of the Goods to the Buyer at the delivery address specified in the Quotation.
- 5.2 Delivery will take place when the Goods are unloaded at the Buyer's premises or nominated delivery destination.
- 5.3 Dates and times for delivery are estimates only and time shall not be of the essence. Keenpac shall not be liable for any loss or damage caused directly or indirectly by any delays in delivery.
- 5.4 The Buyer may only terminate the Contract by reason of any delay in delivery where the delay is due to Keenpac's default and exceeds 30 Business Days from the agreed delivery date.
- 5.5 The Buyer acknowledges that Keenpac's ability to meet delivery dates is dependent upon the Buyer providing all necessary Buyer Materials and assistance within any timescales in the Contract, or otherwise promptly.
- 5.6 Delivery may take place by instalments in such quantities as Keenpac may reasonably decide. Such instalments shall be separate obligations and breach of one or more of them shall not entitle the Buyer to cancel any subsequent instalment or repudiate the Contract as a whole.
- 6 **SHORTAGES AND DEFECTS**
- 6.1 On Delivery, the Buyer shall provide a signed proof of delivery and shall:
- 6.1.1 no later than 2 (two) Business Days after Delivery, notify Keenpac in writing of any shortage of Goods that ought reasonably to have been apparent on a reasonable inspection of the Goods; and
 - 6.1.2 no later than 2 (two) Business Days after Delivery, notify Keenpac in writing of any damage to the Goods that ought reasonably to have been apparent on a reasonable inspection of the Goods.
- 6.2 In the event that the Buyer notifies Keenpac of a claim pursuant to clause 6.1 Keenpac shall, at its option, make up any shortfall in the Goods, or repair or replace the Goods (as appropriate) which are subject to the Buyer's claim, or credit sums paid for the relevant Goods.
- 6.3 For claims not notifiable under clauses 6.1, these must be notified to Keenpac by the Buyer no later than 20 Business Days after the Buyer first becomes aware of the circumstances giving rise to the claim and in any case no later than 65 Business Days after delivery has been made, failing which Keenpac shall have no liability for such claim.
- 6.4 The Buyer agrees to co-operate with any product recall operation initiated by Keenpac.
- 6.5 Once the Buyer becomes aware that a defect in the Goods may exist, it must not use or supply the Goods, and must take all steps necessary to prevent their use by any of its customers or other third parties to whom it has supplied the Goods.
- 7 **RISK AND PROPERTY**
- 7.1 Risk of loss or damage to the Goods shall pass to the Buyer on Delivery.
- 7.2 Title in the Goods shall pass from Keenpac to the Buyer on receipt by Keenpac in full of the price (including VAT) for the Goods and all other sums then due from the Buyer under the Contract.
- 7.3 Until such time as the title in the Goods has passed to the Buyer under clause 7.2 the Buyer may use the Goods and pass title to its customers in the ordinary course of its trade, provided that the Buyer's right to use the Goods shall automatically cease upon the occurrence of an Insolvency Event.
- 7.4 If:
- 7.4.1 payment of the prices for the Goods becomes overdue;
 - 7.4.2 the Buyer is in breach of any of its obligations under the Contract;
 - 7.4.3 Keenpac exercises any right to terminate the Contract or any other contract between Keenpac and the Buyer; or
 - 7.4.4 an Insolvency Event occurs or Keenpac reasonably expects that an Insolvency Event is about to occur;
- Keenpac shall be entitled upon demand to the immediate return of all the Goods which remain in the ownership of Keenpac, and the Buyer irrevocably authorises Keenpac to recover such Goods and for that purpose, to enter any place. The Buyer shall take all reasonable steps to help Keenpac recover

them. Recovery by Keenpac of the Goods shall not of itself cancel the Buyer's liability to pay the whole or balance of the price for the Goods or affect any other rights of Keenpac under the Contract.

8 **QUALITY**

- 8.1 Subject to the provisions of this clause 8, Keenpac warrants that on Delivery the Goods will conform in all material respects with the Specification.
- 8.2 Keenpac reserves the right to use materials to manufacture the Goods which are different to the materials set out in the Specification provided that the use of different materials does not materially affect the nature or quality of the Goods and Keenpac shall notify the Buyer of any such change.
- 8.3 Keenpac shall use reasonable endeavours to ensure that the colours of the Goods match those colours set out in the Specification however Keenpac cannot guarantee exact colour matching in every case.
- 8.4 Any material thickness or sizes for the Goods specified in the Specification are subject to a $\pm 10\%$ tolerance. In the event that such tolerance is exceeded, Keenpac shall at its option replace the affected Goods or credit sums paid for them.
- 8.5 Keenpac shall not be liable for failure of the Goods to comply with clause 8.1 if the defect arises as a result of Keenpac's use of or reliance on the Buyer Materials.
- 8.6 Keenpac reserves the right to make any changes to the Goods which are required to conform to any applicable legal requirements or which do not materially affect their quality.

9 **LIABILITY**

- 9.1 Keenpac shall only be liable to the Buyer in respect of claims notified to Keenpac in accordance with Clause 6.
- 9.2 Subject to clause 9.4, the liability of Keenpac (whether for breach of contract, negligence, misrepresentation or however else arising) for any claims arising out of or in connection with each Contract and/or the Goods shall be limited in respect of all claims in aggregate to a sum equal to the price payable (exclusive of VAT) by the Buyer for the Goods under the Contract giving rise to the claim.
- 9.3 Notwithstanding any other provision of the Contract, but subject to clause 9.4, Keenpac shall have no liability (whether for breach of contract, negligence, misrepresentation or however else arising) out of or in connection with the Contract and/or the Goods for any:
- 9.3.1 direct or indirect loss of or damage to:
- (a) profit;
 - (b) revenue;
 - (c) business;
 - (d) anticipated savings;
 - (e) goodwill;
 - (f) reputation;
- 9.3.2 indirect or consequential loss or damage; or
- 9.3.3 claim arising out of a claim against the Buyer by a third party.
- 9.4 No exclusion or limitation shall apply to the extent prohibited by law and in particular nothing in the Contract shall affect liability:
- 9.4.1 for death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977;
- 9.4.2 for fraudulent misrepresentation or other fraud; or
- 9.4.3 for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

9.5 All warranties, conditions, terms and liabilities on the part of Keenpac are excluded except to the extent such exclusion is prohibited or limited by law.

9.6 This clause 9 shall survive termination of the Agreement for any cause.

10 **DURATION AND TERMINATION**

- 10.1 Each Contract shall be for the duration specified in it.
- 10.2 Without affecting any other rights and remedies it might have, Keenpac shall be entitled to terminate or suspend the Contract at any time without liability to the Buyer by giving written notice to the Buyer at any time if the Buyer:
- 10.2.1 is in breach of any material provision of, or purports to cancel, the Contract;
- 10.2.2 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Buyer is incorporated, resident or carries on business; and
- 10.2.3 in any other circumstances provided for in these Terms and/or the Contract.

11 **CONFIDENTIALITY**

- 11.1 Neither party shall without the prior written consent of the other party use (other than in the performance of the Contract) or disclose to any other person any confidential information of the other party, except where disclosure of confidential information is required by law, court order or any legal or regulatory authority, to comply with the rules of any relevant stock exchange, or for disclosure to a party's professional advisors, acting in their capacity as such.
- 11.2 We do not store credit card details nor do we share customer details with any third parties.

12 **ENTIRE AGREEMENT**

- 12.1 These Terms, together with those set out in the Contract, and the other documents entered into pursuant to the Contract, constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in these terms and the Contract.
- 12.2 Each of Keenpac and the Buyer acknowledges and agrees that:
- 12.2.1 in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Contract or not) which is not expressly set out in these terms and/or the Contract; and
- 12.2.2 the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Contract shall be for breach of contract under the terms of the Contract.

12.3 Nothing in this clause 12 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

13 **GENERAL**

- 13.1 Keenpac shall not be liable in any way for loss, damage or expense arising directly or indirectly from any failure or delay in performing any obligation under the Contract caused by the actions or omissions of the Buyer, its employees, agents, contractors or other third parties providing goods to Buyer or by any circumstance beyond Keenpac's reasonable control, which shall include without limitation vandalism, accident, breakdown or damage to machinery or equipment, fire, flood, severe weather conditions, strike, lock-out or other industrial disputes (whether or not involving employees of Keenpac) or shortage of materials at the market rates existing when the relevant Contract is made. If such circumstance continues for more than a period of 30 days Keenpac shall be entitled at its discretion to perform, suspend performance of, and/or terminate the Contract.
- 13.2 No variation of these Terms or any Contract shall be effective unless it is made in writing and signed by both parties.
- 13.3 Keenpac may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract.
- 13.4 The Buyer shall not assign, transfer, charge or deal in any other manner with any of its rights or obligations under the Contract, or purport to do so, or sub-contract any or all of its obligations under the Contract without the prior written consent of Keenpac in its absolute discretion.
- 13.5 Any notice given under this agreement shall be in writing (but excluding fax transmission and electronic mail), in English, and may be served by leaving it at, or by sending it by pre-paid first class post or recorded delivery to, the intended recipient's address. The address of a party for service of notices is the address set out in the Contract or such other address as a party may designate by notice given in accordance with this clause. A notice is deemed to be received when left at the recipient's address or, if sent by pre-paid first class post or recorded delivery, 48 hours from the date of posting. If such deemed receipt is not within business hours (being between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business hours next commence.
- 13.6 Any failure or delay to exercise by a party to exercise a right or remedy arising in connection with the Contract shall not constitute a waiver of such right or remedy.
- 13.7 If any provision of these Terms or the Contract is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms or the Contract and the remainder of the provision in question shall not be affected thereby.
- 13.8 These Terms and the Contract and any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with these Terms and the Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales for the determination of all disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Agreement.