

SCOTT BADER UK LIMITED TERMS AND CONDITIONS OF SALE

All contracts of sale of goods made by or on behalf of Scott Bader UK Limited (hereinafter called "the Seller") are subject to the following terms and conditions

1 DEFINITIONS

"Branded goods"	means the goods sold under a manufacturer's brand name (other than a brand name owned by the Seller);
"the Buyer"	means the person, firm, company or organisation agreeing to purchase goods pursuant to these conditions;
"the Contract"	means the contract for the sale and purchase of the goods;
"Delivery Point"	means the address for delivery of the Goods as described on the Buyer's order form, or any other address as may be agreed between the parties;
"Delivery Time"	means the date and time quoted or agreed to by the Seller, that the Goods shall be delivered to the Delivery Point;
"Description"	means the description of the Goods as set out in the Seller's current specification;
"Goods"	means all goods sold pursuant to these conditions, whether raw materials, processed materials of fabricated products, including Branded Goods;
"Price"	means the price for the Goods as delivered by condition 3.

2 BASIS OF SALE

The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted in writing by the Seller, subject to these conditions which shall govern the Contract to the exclusion of any other conditions. No variation of the terms of these conditions shall be binding upon the Seller unless made in writing and signed by an authorised representative of the Seller.

3. PRICES AND PAYMENT

3.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the order.

3.2 All prices quoted by the Seller are based on the full quantities specified by the Buyer and the Seller reserves the right to revise prices in the event of quantities being reduced for any cause.

3.3 The Seller reserves the right by giving notice to the Buyer at any time to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond its control including, but without limitation, any alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture, changes in delivery dates, quantities or specifications for the goods requested by the Buyer, changes to the normal route of or of the costs of carriage and transit, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

3.4 The Price shall be exclusive of any applicable value added tax and all charges in relation to loading, unloading, carriage and insurance or charges for returnable packaging for which the Buyer shall be additionally liable to the Seller.

3.5 The Buyer shall pay the Price for the Goods by electronic transfer into the Seller's specified account on the date specified in the Seller's acceptance of order form, or if no date is specified, within twenty days of the end of the calendar month in which the Seller's invoice was raised. In either case, such payment shall be made less any discount to which the Seller has previously agreed in writing but without any other deduction by way of set off, counterclaim, abatement or otherwise and notwithstanding that delivery may not have taken place and/or that the property in the goods has not passed to the Buyer. No payment shall be deemed to have been received until the Seller has received cleared funds. Time of payment of the Price shall be of the essence of the Contract.

3.6 Interest at the rate of 8 per cent per annum above the base rate from time to time of National Westminster Bank Plc shall be payable by the Buyer to the Seller from the date on which payment became due until the date of payment of the relevant outstanding balance.

4 DEFECTIVE DELIVERY

4.1 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 conclusive evidence proving the contrary.

4.2 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 Seller within 14 days of the date of the relevant invoice.

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

5 DELIVERY

5.1 Unless otherwise agreed in writing, delivery of the Goods shall be made by the Seller delivering the Goods to the Delivery Point.

5.2 The Delivery Time is estimated and cannot be guaranteed. Time for delivery shall not be of the essence and the Seller shall not be liable for any failure to meet any Delivery Time (even if caused by the Seller's negligence) nor shall it be liable for any consequential loss arising therefrom however caused.

5.3 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

5.3.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);

5.3.2 the Goods will be deemed to have been delivered; and

5.3.3 the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

5.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

5.5 The Seller may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments or treat the Contract as a whole as repudiated.

5.6 Where Goods are sold FAS (as defined in Incoterms 1990), in accordance with a written agreement under condition 5.1, the Buyer shall make all shipping arrangements and the Seller's responsibility shall cease at such time as the Goods are placed alongside the vessel so arranged for shipping.

6 PACKAGING

Disposal of any packaging shall be the responsibility of the Buyer. The Seller reserves the right to make an additional charge for any packaging specified as returnable and which is not so returned to the Seller within thirty days of delivery to the Buyer. The Buyer shall pay such additional charge within the period specified by the Seller from time to time.

7 WARRANTIES

Goods (whether or not they are Branded Goods) are sold with the benefit of the following warranties:

- that they will in all material respects comply with the Description;
- that they will be of satisfactory quality and, if used or applied strictly in accordance with any directions for use given and with appropriate skill and expertise, be fit for the purpose for which they were expressly supplied, and in the case of Branded Goods this shall mean any purpose recommended by the relevant manufacturers in their current publications subject to any general or specific limitations or disclaimers given by them or the Seller.

8 LIABILITY

The warranties contained in condition 7 are given subject to the following conditions:

8.1 The Seller shall not be liable for a breach of any of the warranties above unless:

8.1.1 the Buyer gives written notice of the defect to the Seller, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and

8.1.2 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's place of business at the Buyer's expense for the examination to take place there.

8.2 The Seller shall not be liable for a breach of any of the warranties above if:

8.2.1 The Buyer makes any further use of such Goods after giving such notice; or

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

8.2.3 the Buyer alters or repairs such Goods without the written consent of the Seller.

8.3 Subject to conditions 8.1 and 8.2, if any of the Goods do not conform with any of the warranties in condition 7 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 its own expense, return the Goods or the part of such Goods which is defective to the Seller.

8.4 If the Seller complies with condition 8.3 it shall have no further liability for a breach of any of the warranties in condition 7 in respect of such Goods.

8.5 Save as set out in this condition 8, the Seller shall have no liability to the Buyer whatsoever and all conditions, warranties and representations, express or implied by statute, common law or otherwise in relation to the Goods are hereby expressly excluded. In particular, and without prejudice to the generality of the foregoing, the Seller shall not be liable to the Buyer for any consequential loss or damage.

8.6 In any case, the Seller's liability shall not exceed a total of £100,000 in respect of any one claim.

8.7 For the avoidance of doubt, nothing in this condition 8 shall operate to exclude any implied condition concerning the Seller's title in and the right to sell the goods or to exclude or limit any liability on the part of the Seller for damages in respect of personal injury or death resulting from its negligence or for fraudulent misrepresentation.

9 RISK/TITLE

9.1 The Goods are at the risk of the Buyer from the time of delivery.

9.2 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:

9.2.1 the Goods; and

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

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

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

9.3.2 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;

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

9.3.4 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 request the Buyer shall produce the policy of insurance to the Seller; and

9.3.5 hold the proceeds of the insurance referred to in condition 9.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

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

9.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

9.4.2 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.

9.5 The Buyer's right to possession of the Goods shall terminate immediately if:

9.5.1 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its 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 and/or 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; or

9.5.2 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/perform any of his/its obligations 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; or

9.5.3 the Buyer encumbers or in any way charges any of the Goods.

9.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

9.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any vehicles or 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.

9.8 The Seller shall not be responsible for and the Buyer will indemnify the Seller against liability in respect of damage caused to such vehicles or premises in such inspection, repossession and removal being damage not reasonably practicable to avoid.

10 DEFAULT

10.1 If:

10.1.1 any sum (whether in respect of the Goods or otherwise howsoever) is not paid to the Seller by or on behalf of the Buyer on or before the date when it is due; or

10.1.2 the Buyer, not being a company, applies for an interim order or proposes a voluntary arrangement with the Buyer's creditors under Part VIII of the Insolvency Act 1986 or does or fails to do anything which would entitle a petition for a bankruptcy order to be presented; or

10.1.3 the Buyer, being a company, does or fails to do anything which would entitle any person to appoint a receiver of the whole or any part of the Buyer's assets or which would entitle any person to present a petition for an administration order or for the winding up of the Buyer; or

10.1.4 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.5 the Seller reasonably believes that any of the events mentioned above, or any event that may have a substantially similar effect, is about to occur in relation to the Buyer and notifies the Buyer accordingly.

Then the Seller may (without prejudice to any of its other rights hereunder) suspend further performance of its obligations to the Buyer for such time (not exceeding six months) as the Seller shall in its absolute discretion determine or (whether or not notice of such suspension shall have been given) treat the Contract as wrongfully repudiated by the Buyer (without prejudice to the rights of the Seller in respect of such repudiation) and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any other agreement or understanding to the contrary.

11 LAW

11.1 The Contract shall be governed exclusively by the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the Courts of England and Wales.

12 FORCE MAJEURE

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond its reasonable control.