

PROVIMI LTD – STANDARD TERMS AND CONDITIONS OF SALE

- 1 DEFINITIONS**
In these Conditions
- 1.1 "The Company" means Provimi Limited whose registered office is at Dalton Airfield Industrial Estate, Dalton, Thirsk, North Yorkshire YO7 3HE, United Kingdom
1.2 "Buyer" means the person who buys or agrees to buy the Goods from the Company.
1.3 "Goods" means the products which the Buyer agrees to buy from the Company.
1.4 "Price" means the price for the Goods excluding VAT.
1.5 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company.
1.6 "Contract" means the contract for the purchase and sale of the Goods.
- 2 BASIS OF SALE**
- 2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by Buyer or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Buyer and the Company.
2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods and the Buyer is referred solely in this respect to the Company's published specifications, specifications of Goods as set out in the Company's written quotations and literature.
2.4 Each order or acceptance of a quotation for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions and acceptance by the Buyer of these Conditions. The Contract is formed when any order is accepted by the Company.
2.5 Subject to any express reservation, any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.
2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
2.7 The Buyer may not cancel the Contract but the Company may cancel the Contract at any time prior to delivery.
2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
2.9 The Goods as sold by the Company to the Buyer, either on its own, mixed with another product, resold or further processed; are not intended for human consumption.
- 3 THE GOODS**
- 3.1 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and the sale of the Goods is not a sale by sample.
- 4 PRICE**
- 4.1 The price of the Goods shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company's published price list ruling at the date of delivery. The price is exclusive of VAT, duties, taxes and other charges which shall be due at the rate ruling on the date of the Company's invoice.
4.2 The Company may by giving notice to the Buyer at any time before delivery increase the price for the goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, war or action of any British or Foreign government or nationalized industry); any significant increase in the costs of labour, materials or other costs of manufacture; any change in delivery dates, quantities or specifications of the Goods which is requested by the Buyer; or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
4.3 The Company reserves the right to require payment at any time and the Goods are sold subject to this express condition.
- 5 PAYMENT**
- 5.1 The company may invoice the Buyer for the Goods on or at any time after delivery and subject to condition 5.4, payment is due in pounds sterling within 28 days from the date of invoice unless otherwise agreed in writing between the Buyer and the Company.
5.2 Time for payment will be of the essence.
5.3 No payment will be deemed to have been received until the Company has received cleared funds.
5.4 All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.
5.5 All payments to be made by the Buyer under the Contract will be made in full without set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim of any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
5.6 The Company may appropriate any payment made by the Buyer to the Company to such of the invoices for the Goods as the Company thinks fit, despite any purported appropriation by the Buyer.
5.7 In the event that the Buyer fails to make payment of any invoice within its due date for payment then the Company shall be entitled to (without limitation):
5.7.1 charge interest on such invoice from the date of the invoice until the date of payment of the invoice at a rate of 5% above the base rate from time to time in force at Barclays Bank Plc and such interest shall accrue at such rate after as well as before judgment;
5.7.2 charge additional interest in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 at such rates and for such times as may be permitted under the Act;
5.7.3 suspend or cancel deliveries of any Goods due to the Buyer;
5.7.4 appropriate any payment made by the Buyer to such of the Goods (or any other Goods supplied under any other Contract with the Buyer) as the Company may in its sole discretion think fit;
5.8 For the avoidance of doubt, the rights and remedies of the Company in Condition 5.7 above are cumulative, not exclusive, and the exercise of one thereof shall not deprive the Company of the right to exercise others.
- 5.9 The Company shall be entitled to exercise the remedies in Condition 5.7 above notwithstanding that risk and / or title to the Goods may not have passed to the Buyer.
5.10 The Company shall in respect of all unpaid debts due from the Buyer under any contract with the Company have a general lien on all the goods and property of the Buyer in its possession (although such goods or some of them may have been paid for) and shall after the expiration of 14 days written notice to the Buyer be entitled to dispose of such goods and property as it deems and apply the proceeds towards such debts.
- 6 DELIVERY**
- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
6.2 Any dates quoted for delivery of the Goods are approximate only and the Company will use reasonable endeavours to deliver each of the Buyer's orders within the time agreed but if no time is agreed then within a reasonable time. Time for delivery of the Goods shall not be of the essence of the Contract unless previously agreed by the Company. If despite the Company's endeavours the Company is unable for any reason to fulfil any delivery on the specified date the Company will not be deemed to be in breach of the Contract nor will the Company have any liability to the Buyer for direct, indirect or consequential loss (each term to include without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery.
6.3 The Company shall be entitled to deliver over or under the quantity of Goods ordered by the Buyer in accordance with the tolerances generally accepted within the industry without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
6.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
6.5 In cases where Goods are to be delivered by the Company to the Buyer or collected by the Buyer from the Company within a period defined in the Contract and where the Buyer cannot accept delivery or effect collection in the said period the Company may, at its discretion either store the Goods and take all reasonable steps to prevent their deterioration until their actual delivery or collection and the Buyer shall be liable to the Company for the cost (including insurance) of its so doing or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract. This provision shall be in addition to, not in substitution for, any other payment or damages for which the Buyer may become liable in respect of this failure to take delivery or collect at the appropriate time.
6.6 The Buyer shall inspect all Goods on delivery and shall notify the Company in writing within 3 working days of any shortages or of any damage and will mark on the carrier's receipt note details of any visible damage.
6.7 Claims based on non-delivery on short delivery must be made in writing within 3 working days of delivery (or in the case of non-delivery within 10 working days of the date of the invoice) and, where transportation has been carried out by a carrier other than the Company, claims must be notified to the carrier.
6.8 The Buyer will be deemed to have accepted the Goods if claims are not made in accordance with conditions 6.6 or 6.7.
- 7 TITLE AND RISK**
- 7.1 All risk of loss of and damage to the Goods shall pass to the Buyer immediately on collection or delivery.
7.2 Title to the Goods shall remain with the Company and shall not pass to the Buyer until the payment of the price and VAT (together with any other monies contracted to be paid) has been received by the Company by way of cash or cleared funds whereupon title shall pass to the Buyer.
7.3 Insofar as consignments of the Goods may be delivered to the Buyer prior to the time when title to such Goods has passed from the Company, the Buyer shall hold the same on a fiduciary basis as bailee for the Company and on such basis and until such time shall remain liable to account to the Company for the same or if the same shall be sold by the Buyer for that part of the proceeds of the sale thereof which is equivalent to the price at which the same were invoiced by the Company to the Buyer.
7.4 The Buyer shall have the right to sell any consignment or part thereof before payment for the same shall have been received by the Company provided that any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly. Any such sale shall be a sale of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings.
7.5 In the case of consignments of the Goods sold while the property is still vested in the Company the Company gives the Buyer the right to pass the property therein to its buyers in the normal course of its business.
7.6 The Company shall be entitled at any time until title to a consignment of the Goods has passed from the Company to re-take possession of such consignment from the Buyer and the Buyer undertakes to deliver the same to the Company or its duly authorised agent upon request, and the Company or its duly authorised agent shall have the right during normal business hours to enter upon the land or buildings of the Buyer to take possession of said consignment.
7.7 The Buyer shall store or otherwise denote consignments of the Goods in respect of which property remains with the Company in such a way that the same can be recognised as the property of the Company.
7.8 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
7.9 Where the Company recovers possession of a consignment of the Goods title in which has not yet passed to the Buyer such recovery of possession shall be without prejudice to the rights of the Company to sue for the purchase price under these conditions.
7.10 The rights of retention set out in the preceding sub-paragraphs of this condition shall attach to the Goods until payment in full has been made to the Company by the Buyer of any other sums due to the Company at the date of delivery of the Goods. The same rights shall remain in the seller where the Buyer uses the goods in his manufacturing process or incorporates the Goods with other products in respect of the goods so far as they are identifiable.
7.11 Without prejudice to the terms of the Contract being severable generally it is expressly agreed that each paragraph of this condition is severable.
- 8 WARRANTIES**
- 8.1 The Company warrants that the Goods will correspond to their specification at the time of delivery.
8.2 The above warranty is given by the Company subject to the following conditions:
- 8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any specification supplied by the Buyer;
8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval;
8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
8.2.4 the above warranty does not extend to materials not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given to the Company.
8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. The Company gives no warranty that the Goods shall be free from latent defects.
8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 3 working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Company accordingly the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
8.5 Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions the Company shall be entitled to replace the Goods free of charge or at the Company's sole discretion refund to the Buyer the price of the Goods but the Company shall have no further liability to the Buyer.
- 9 LIMITATIONS OF LIABILITY**
- 9.1 In the event of any breach of the Company's express obligations under any of these Conditions the remedies of the Buyer will be limited to damages.
9.2 The Company does not exclude its liability (if any) to the Buyer:
9.2.1 for personal injury or death resulting from the Company's negligence;
9.2.2 under section 2(3) Consumer Protection Act 1987;
9.2.3 for any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or for fraud
9.3 Except as provided in Conditions 8 and 9.2, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or indirect and/or consequential loss (each term to include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
9.3.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company or on the part of the Company's employees, agents or sub-contractors;
9.3.2 any breach by the Company of any of the express or implied terms of the Contract or these Conditions;
9.3.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
9.3.4 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the Contract.
9.4 The Buyer acknowledges that the above provisions of this Condition 9 are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.
- 10 STANDARD PRODUCTS**
- 10.1 Certain additional substances, including drugs ("the Company's additions") are added to the Company's standard products in the cases indicated on the price list. The Company's additions are obtained by the Company from suppliers of good repute but except where the Buyer is dealing as a consumer the Company cannot accept responsibility for the Company's additions or efficacy.
- 11 CUSTOM MIXES**
- 11.1 Certain additional substances, including drugs ("the Buyer's additions") will be added by the Company as specified by the Buyer. The Company undertakes to obtain the Buyer's additions from suppliers of good repute but except where the Buyer is dealing with a consumer the Company cannot accept responsibility for the Buyer's additions or their efficacy. The Company cannot accept responsibility for any ingredients, their effectiveness, or the proportions thereof, which are supplied and mixed according to the Buyer's instructions. Prices of all custom mixes vary according to the price of the basic product plus the Buyer's additions. A mixing charge will also be made by the Company.
11.2 The Buyer will indemnify the Company from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct or consequential loss (each term to include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, Claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of using the Buyer's additions in accordance with instructions of the Buyer but not where the Company have recommended such additions.
- 12 FORCE MAJEURE**
- 12.1 The Company is not responsible for delay or inability to deliver due directly or indirectly to fire, strike, lockout, breakdown of machinery or accident of any kind either in its own works, works of raw material suppliers, or at ports, on railways, road transport, or waterways, war, loss, destruction or detention of ship, or of any other contingency of any kind whatsoever beyond the Company's control, and the seller shall not be liable to the Buyer for any loss or damage suffered in consequence.
- 13 TERMINATION**
- 13.1 The Company may by notice in writing served on the Buyer terminate the Contract forthwith if the Buyer:
13.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within 30 days service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with Condition 5 is a material breach of the terms of the Contract which is not capable of remedy;
13.1.2 becomes bankrupt, insolvent, makes any composition with his creditors, has receiver appointed under the Mental Health Act 1983 or dies;
13.1.3 has any restraint, execution or other process levied or enforced on any of its property;
13.1.4 ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease to trade;
13.1.5 has a change in its management and/or control; or
13.1.6 the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject;
or the Company reasonably anticipates that one of the above set of circumstances is about to occur.
13.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Company accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
13.3 The Company will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under Condition 13.1.1 until either the breach is remedied or the Contract terminates, whichever occurs first.
- 14 GENERAL**
- 14.1 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other contract.
14.2 If any condition of part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
14.3 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
14.4 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
14.5 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
14.6 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
14.7 The Contract and the specification contains all the terms which the Company and the Buyer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract or specification.
- 15 ARBITRATION**
- 15.1 Any dispute arising out of the Contract shall be referred to arbitration in accordance with the AIC Arbitration Rules of the UK Agricultural Industries Confederation and all parties whether members of such Association or not, shall by signing or accepting the Contract be deemed to have knowledge of such Rules and to have elected to be bound thereby.
- 16 NOTICES**
- 16.1 Any notice, invoice or other document which may be given by either party under these Conditions shall be deemed to have been duly given if left at or sent by post or facsimile transmission (confirmed by letter sent by post) to each party's registered office or any other address notified to each other in writing in accordance with this condition as an address to which notices, invoices and other documents may be sent. Any such communication shall be deemed to have been made to the other party (if by post) four (4) days from the date of posting (and in providing such service or delivery, it shall be sufficient to prove that such communication was properly addressed, stamped and put in the post), and if by facsimile transmission at the time of the transmission.
- 17 PROPER LAW**
- 17.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract and the Buyer and the Company submit to that jurisdiction.