

## Terms and Conditions of Sale

### 1. CONTRACTS

- a) In these terms and conditions "Company" means Caswell & Company Ltd. trading as Caswell Adhesives, "Buyer" means the company, firm or sole trader from whom an order is received, "Contract" means the contract between the Company and the Buyer for the sale and purchase of Goods and "Goods" means the goods (including any part or parts of them) to be supplied to the Buyer by the Company under the Contract.
- b) Any order accepted by the Company whether or not it is based on or results from any quotation or tender given by the Company is deemed to incorporate these terms and conditions to the exclusion of any standard terms and conditions contained or referred in any of the Buyer's documents (whether or not the Buyer's standard terms and conditions purport to prevail over these terms and conditions). Acceptance by or on behalf of the Buyer of any delivery or performance by the Company shall in any event be conclusive evidence of the Buyer's acceptance of these terms and conditions.
- c) An order constitutes an offer by the Buyer on (notwithstanding any other terms and conditions referred to by the Buyer) these terms and conditions. An order shall only be deemed to be accepted when the Company issues a written acknowledgement of order or on the Company doing any act consistent with fulfilling the order at which point, and on which date, the Contract shall come into existence. The Company shall be free to accept or refuse an order for any reason whatsoever.
- d) The Contract constitutes the entire agreement between the parties in respect of its subject matter. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- e) No variation or modification of or substitution for these terms and conditions (even if included in or referred to in the document placing the order) shall be binding on the Company unless specifically accepted by the Company in writing (for the avoidance of doubt, written acknowledgement of an order shall not constitute such acceptance). No servant, agent or representative of the Company, other than a director of the Company, has any authority to waive, vary, add to, omit or otherwise alter these terms and conditions or settle any dispute in respect of or relating to any Contract.
- f) No Contract shall constitute a sale by sample notwithstanding that any products may have been exhibited to or inspected by the Buyer.

### 2. PRICES

- a) The Company's prices are those quoted at the time of the Buyer's order.
- b) All prices quoted exclude:
  - i) VAT (which shall be charged at the rate prevailing on the invoice date where applicable);
  - ii) all other taxes and duties; and
  - iii) unless the Company agrees otherwise, carriage, insurance and packaging.

### 3. PAYMENT

- a) Unless remittance is required with order or the Company otherwise agrees, payment is due in full 30 days from the end of the month following the invoice date.
- b) If the invoice is not paid in full in cleared funds when due:
  - i) the Company reserves the right, without prejudice to any other remedy, to charge interest at the rate of 8% above HSBC base rate calculated on a daily basis until payment is made or, if greater, as determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
  - ii) all other invoices, whether or not they are due for payment, shall become immediately due and payable;
  - iii) the Company reserves the right, without prejudice to any other remedy, to apply amounts received in full in settlement of any interest on overdue debts then on debts due beginning with the oldest; and
  - iv) the Buyer shall also pay all legal and other costs incurred by the Company in recovering any amounts owing from the Buyer and such costs shall be due for payment immediately on invoice.
- c) If payment is not made in accordance with these terms and conditions or at any time the credit standing of the Buyer has (in the opinion of the Company) been impaired, the Company may, without prejudice to any other remedy, in its absolute discretion and without giving any reason therefor, refuse delivery of any Goods under the Contract until arrangements as to payment or credit have been established which are satisfactory to the Company.
- d) In addition to any other right the Company shall have a lien on all goods of the Buyer in the Company's possession (although such goods or some of them may have been paid for) for the unpaid price of any Goods sold and delivered to the Buyer by the Company under the same or any other contract.
- e) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deductions or withholding required by law).

### 4. DELIVERY

- a) Unless the Company otherwise agrees in writing, delivery shall be ex the Company's works.
- b) Stated delivery times are business estimates only and the Company shall not be liable for any loss or damage suffered by the Buyer by reason of any failure to comply therewith, nor will any such delay entitle the Buyer to repudiate the Contract.
- c) If the Buyer fails to take delivery of any Goods when tendered or to provide adequate delivery instructions or to collect them when notified they are ready for collection the Company, at its discretion, may exercise any or all of the following rights, namely:
  - i) to store the Goods at the Buyer's risk;
  - ii) to require the Buyer to pay all storage, transportation, handling or other charges incurred by the Company as a result of such failure; and
  - iii) to require the Buyer to pay for the Goods as though delivery had taken place.
- d) The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate contract and, unless otherwise

agreed in writing, no failure by the Company in any one or more instalments shall entitle the Buyer to repudiate any contract for goods previously delivered or to refuse to accept any undelivered goods.

- e) The carrier and the Company must be advised in writing (otherwise than upon the carrier's documents):
  - i) within 5 days of receipt of invoice if the Goods covered by the invoice have not been delivered, or
  - ii) within 2 days of delivery if damage, pilferage or shortage is revealed upon receipt of the Goods.

If such advice is given the Company will use its reasonable endeavours to assist the Buyer in respect of proof of delivery of the Goods to the carrier in sound condition.

### 5. TITLE AND RISK

- a) The Goods shall be at the Buyer's risk from the time of delivery or, if earlier, when they are placed at the Buyer's disposal.
- b) Notwithstanding delivery, the Goods remain the absolute property of the Company until payment of all amounts invoiced by the Company to the Buyer in respect of the Goods and all other sums which are or become due from the Buyer on any account has been made.
- c) The Buyer acknowledges that until such time as payment has been made in full and cleared funds it is in possession of Goods solely as bailee for the Company and shall store the Goods separately from its own goods and in such a fashion as to be readily identifiable by the Company.
- d) In the circumstances where the Goods are delivered to an address specified by the Buyer the Company shall be entitled at any time until resale of the Goods immediately after giving notice of its intention to do so, to enter upon such premises with such transport as may be necessary and repossess any goods or products to which it has title hereunder.
- e) In the event of the Buyer selling or otherwise disposing of the Goods or such other goods as incorporate the Goods before he has paid all that is owing to the Company under the Contract then the Buyer shall hold all such money he receives as trustee for the Company in an account separate and identifiable from other monies of the Buyer until payment in discharge of the debt due from the Buyer to the Company.
- f) Until payment has been made in full by the Buyer the Company shall be entitled to require the Buyer at any time to assign to the Company all rights which the Buyer may have against any subsequent purchaser or transferee of the said goods.
- g) The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Buyer.
- h) The Company transfers to the Buyer only such title and rights of use as the Company has in the Goods and in the case of items provided by any third party shall transfer only such title and rights as that party has and has transferred to the Company.

### 6. DELAY IN SUPPLY (FORCE MAJEURE)

The Company shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Company's control. In such circumstances the Company may cancel or suspend the Contract without incurring any liability for any loss or damage thereby occasioned and may extend the period of delivery or may without any liability whatsoever suspend or cancel (either immediately or any time after suspension under this condition) any or all of its obligations then unperformed.

### 7. WARRANTY

- a) The Company warrants that the Goods shall at the time of delivery:
  - i) correspond to the published specifications of the Company when used for purposes and with the materials detailed in such specifications or as the Company otherwise agrees in writing. In the absence of any published specifications applicable to the Goods the Company warrants that the Goods shall at the time of delivery be of normal industrial quality; and
  - ii) comply with UK and EU law and regulation.
- b) If any of the Goods do not conform to the warranty in condition 7 (a), the Company will, as its option:
  - i) Replace the Goods found not to conform to the warranty;
  - ii) Bring the Goods into conformity with the published specifications of the Company or (as the case may be) normal industrial quality, or
  - iii) Take back Goods found not to conform to the warranty and allow credit for their invoice value.
- c) The liability of the Company under condition 7 (b) is conditional upon:
  - i) The Buyer giving written notice to the Company of the alleged defect in the Goods, such notice to be received by the Company within 14 days of the time when the buyer discovers or ought to have discovered the alleged defect and in any event, within 2 months of delivery of the Goods;
  - ii) The Buyer providing the Company with such information as the Company may require in relation to the Goods (including, without limitation batch numbers);
  - iii) The Buyer affording the Company a reasonable opportunity to inspect the Goods; and
  - iv) The Buyer making no further use of the Goods that are alleged to be defective after the time at which the Buyer discovers or ought to have discovered the alleged defect.
- d) No liability (except as provided under condition 8 below) is accepted for loss or damage arising from:
  - i) any failure by the Buyer to comply with any of the terms for storage of goods as specified in any label or technical information supplied by the Company in the specifications of the Company or otherwise;
  - ii) any failure by the Buyer to comply strictly with condition 7 (f) below; or
  - iii) any other incorrect or inappropriate use of the Goods.
- e) Save as provided in condition 7 (a) all conditions and warranties, express or implied (whether by statute, common-law or otherwise) as to the condition, quality or fitness for any purpose of the Goods are hereby expressly excluded.
- f) All Goods are offered on the basis that the Buyer has taken all reasonable measures to confirm that, the Goods, to the extent complying with the Company's warranties in condition 7 (a), are suitable for the production methods, use with particular goods or materials and for the particular purpose or use under specific conditions (in each case whether or not known to the Company) for which they have been acquired from the

Company. The Buyer shall be deemed to have relied upon its own judgement and the Company disclaims all liability in this regard.

#### 8. LIABILITY

- a) Without prejudice to the Company's liability under and in accordance with condition 7, but subject to condition 8 (b), the following limitations of liability shall apply:
  - i) the Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with any Contract for the supply of Goods;
  - ii) in particular, the Company shall in no circumstances have any liability for any economic loss (whether direct or indirect), including but not limited to wasted time or expenditure, loss of profits, production, business revenue or goodwill and any indirect, special or consequential loss, damage, costs or expenses; and
  - iii) the Company's liability to the Buyer shall in no circumstances exceed the Company's price for the Goods.
- b) Nothing in these terms and conditions shall operate so as to exclude the Company's liability for:
  - i) death or personal injury resulting from its negligence or the negligence of its employees whilst acting in the course of their employment;
  - ii) fraud or fraudulent misrepresentation on the part of the Company or any of its employees whilst acting in the course of their employment; or
  - iii) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- c) Subject to condition 8 (b) the Buyer shall indemnify the Company against any claim in respect of the Goods by any third party.

#### 9. RETURN OF GOODS

In no circumstances shall any of the Goods be returned to the Company in accordance with these terms and conditions without the Company's prior written consent.

#### 10. TERMINATION

If the Buyer shall fail to make any payment when it becomes due or shall enter into any composition or arrangement with its creditors or if being an incorporated company it shall have a receiver appointed or shall pass a resolution for winding up or a court shall make an order to that effect, or if not being an incorporated company has a receiving order made against it, or if there shall be any breach by the Buyer of any of the terms and conditions hereof or the Company has reasonable cause to suspect that all or any of the foregoing are likely to occur the Company may, without prejudice to its other rights and remedies, suspend its performance or (whether or not such performance has previously been suspended) terminate such Contract. On termination of the Contract the Buyer must immediately pay to the Company all outstanding unpaid invoices and interest.

#### 11. FROST

Many adhesives are subject to damage by frost. It is the Buyer's responsibility to identify risk of frost and to request any delay in delivery pending the frost lifting. Subject to the Buyer defraying any costs incurred by the Company in storage or wasted delivery costs, the Company (if it agrees with the Buyer's assessment of the frost position) will comply with such a request. Without prejudice to the foregoing, if in the Company's opinion frosty weather would cause damage to any Goods if despatched at that time the Company may delay despatch of the Goods until the weather conditions have improved and the Buyer shall defray any costs incurred by the Company in storage or wasted delivery costs. If, notwithstanding the Company's decision not to despatch the Goods, the Buyer instructs the Company to despatch the Goods the Company may in its absolute discretion decide whether to comply with such request but shall in no circumstances have any responsibility to the Buyer for any damage caused or resulting from frost in transit. The Company does not accept any responsibility for damage to the Goods which occurs on the Buyer's premises in frosty weather and the Buyer shall have sole responsibility for ensuring that the Goods are properly stored when on the Buyer's premises.

#### 12. PACKAGES AND PALLETS

All packages for which a deposit is charged by the Company are returnable to the Company and credit at current rates will be given if the packages are returned (carriage paid) in good condition within 3 months of the original invoice date unless otherwise agreed by the Company in writing. Written advice of the return of empty packages should be sent to the Company on the day of despatch. Other packages are not returnable and the Company cannot accept responsibility for loss, damage or cost of carriage in the event of return.

#### 13. QUANTITY AND TOLERANCES

The Company reserves the right to deliver against any order an excess or deficiency up to 10% by weight or volume ordered and invoice the Buyer at the contractual rate for the Goods actually delivered and the Buyer shall not refuse to accept delivery by reason of such difference in quantity.

#### 14. INTELLECTUAL PROPERTY RIGHTS

- a) Nothing contained in any contract whether express or implied shall be deemed to confer any rights upon the Buyer to apply any trade mark owned by the Company to any other goods the Buyer supplies to its customers.
- b) The Buyer warrants that any instructions furnished or given by the Buyer shall not be such as will cause the Company to infringe any patent, registered design or copyright, trademark or rights of confidentiality in execution of the Buyer's order and the Buyer will indemnify and keep indemnified the Company against all or any such claims and against all costs, damages and expenses incurred by or recovered against the Company in respect of any such claims.

#### 15. TESTS

- a) Where the Company agrees in writing to permit the Buyer to be present at the time that the Company conducts any tests on the Goods at the Company's premises the following conditions shall apply:
  - i) all tests shall be undertaken in accordance with the Company's usual procedures and in accordance with all health and safety law and regulation; and

- ii) agree a mutually convenient time and date for any such tests to take place. The Company shall not be liable for any delay in the despatch of the Goods resulting from the Company and the Buyer being unable to find a mutually convenient time and date for any such tests or inspection.

#### 16. INTERNATIONAL SALES

- a) Where any Goods are to be supplied by the Company for export from the UK, unless otherwise agreed in writing by the Company, the goods shall be supplied and delivered ex the Company's works in the UK.
- b) Trade terms referred to by the Company shall, to the extent consistent with these terms and conditions, be as defined in the edition of the "Incoterms" then current.
- c) The Buyer shall be responsible for obtaining any necessary import or export licences. The failure to obtain such a licence shall not entitle the Buyer to claim that the Contract is frustrated or otherwise avoided if regulations in force at the time the Contract was made or subsequent thereto called or call for such a licence to be obtained.
- d) The Goods are, unless the Company agrees otherwise in writing, marked to coincide with the labelling requirements in the UK and the EU.

#### 17. GENERAL

- a) The Buyer shall treat the Contract and all information of a confidential nature which it acquires thereunder as confidential.
- b) The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Buyer without the Company's prior written consent.
- c) No right is granted to any third party to enforce any rights relating to the Contract.
- d) If any provision or part provision of the Contract is or becomes invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the rest of the Contract.
- e) No failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will be construed as a waiver of any of its rights under the Contract.
- f) The Buyer warrants that, when purchasing the Goods from the Company, it is acting for purposes relating to its trade, business, craft or profession, whether acting personally or through another person acting in its name or on its behalf.
- g) Conditions which expressly or by implication have effect after termination or expiry of the Contract shall continue in full force and effect.
- h) The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts.

#### NOTE OF CAUTION

BUYERS ARE RECOMMENDED TO TAKE THE USUAL PRECAUTIONS IN HANDLING ADHESIVES AND CHEMICALS OF THIS TYPE IN RESPECT OF ADEQUATE VENTILATION, AVOIDANCE OF EXCESSIVE CONTACT WITH THE SKIN AND TO OBSERVE THE LOCAL REGULATIONS REGARDING THE USE OF HIGHLY FLAMMABLE MATERIALS, IF APPLICABLE.

Issued: August 2022

**Caswell and Company Ltd trading as Caswell Adhesives**

Registered in England

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