

Wanzl Limited
Terms and Conditions of Sale

1. Interpretation

1.1 Definitions:

Brexit: the United Kingdom ceasing to be a member state of the European Union or any measures required to facilitate such cessation;

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

Conditions: the terms and Conditions set out in this document as amended from time to time in accordance with Condition 11.4.

Contract: the contract between Wanzl and the Customer for the sale and purchase of Goods in accordance with these Conditions.

Coronavirus: the outbreak and/or spread of the virus strain known as Severe Acute Respiratory Syndrome Coronavirus 2 (SARS) – CoV-2 and the disease known as Coronavirus Disease 2019 and any mutations thereof;

Coronavirus Delay: any delays in delivery of the Goods which is due to or connected with Coronavirus and/or the consequences of Coronavirus and/or any reasonable action, decision or exercise of power taken due to or in connection with Coronavirus;

Customer: the person or firm who purchases the Goods from Wanzl.

Delivery Location: has the meaning given in Condition 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

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

Order: the Customer's order for the Goods

Price: has the meaning given to it in Condition 7.

Quotation: any document issued from time to time by Wanzl and addressed to a Customer which sets out prices for the Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Wanzl.

Wanzl: Wanzl Limited whose registered office is Europa House, Heathcote Lane, Warwick CV34 6SP with company number 01403566. Where the terms "us" or "our" are used in these Conditions those terms should be taken as references to Wanzl.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) 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.
- (e) A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Wanzl issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Wanzl and any descriptions or illustrations contained in Wanzl's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A Quotation for the Goods given by Wanzl shall not constitute an offer. A Quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. Goods

- 3.1 The Goods are described in Wanzl's catalogue as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Wanzl against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Wanzl in connection with any claim made against Wanzl for actual or

alleged infringement of a third party's intellectual property rights arising out of or in connection with Wanzl's use of the Specification. This Condition 3.2 shall survive termination of the Contract.

- 3.3 Wanzl reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Buyer may not make any addition to or rework the Goods or remove any identification or data labels without the written consent of Wanzl which it may withhold at its discretion. The Customer will indemnify Wanzl for any losses suffered or costs incurred by reason of any breach of this Condition 3.4.

4. Delivery

- 4.1 Wanzl shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Wanzl reference numbers, 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
 - (b) if Wanzl requires the Customer to return any packaging materials to Wanzl, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Wanzl shall reasonably request. Returns of packaging materials shall be at Wanzl's expense.
- 4.2 Subject to Condition 4.3 Wanzl shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Wanzl notifies the Customer that the Goods are ready.
- 4.3 If it has been agreed that the Customer will collect the Goods, the Customer shall collect the Goods from Wanzl's premises designated in the Order or from such other location as may be advised by Wanzl prior to delivery (**Delivery Location**) within three Business Days of Wanzl notifying the Customer that the Goods are ready.
- 4.4 If Wanzl is delivering the Goods to the Customer delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5 If the Customer is collecting the Goods, delivery is completed on the loading of the Goods at the Delivery Location.
- 4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Wanzl shall not be liable for any delay in delivery of the Goods that is caused by:-

- (a) a Force Majeure Event; or
- (b) Coronavirus or Coronavirus Delay; or
- (c) the Customer's failure to provide Wanzl with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or
- (d) any delays in obtaining materials and/or goods to the United Kingdom from the European Union.

4.7 If Wanzl fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Wanzl shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Wanzl with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.8 If the Customer fails to take or accept delivery of the Goods (as the case may be) within three Business Days of Wanzl notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Wanzl's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Wanzl notified the Customer that the Goods were ready]; and
- (b) Wanzl shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.9 If ten Business Days after the day on which Wanzl notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them (as the case may be), Wanzl may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or] charge the Customer for any shortfall below the price of the Goods.

4.10 If Wanzl delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

4.11 Wanzl may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 Wanzl warrants that on delivery, and for a period of 180 days from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Wanzl.

5.2 Subject to Condition 5.3, if:

- (a) the Customer gives notice in writing to Wanzl during the warranty period within a that some or all of the Goods do not comply with the warranty set out in Condition 5.1;
- (b) Wanzl is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Wanzl) returns such Goods to Wanzl's place of business at the Customer's cost,

Wanzl shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Wanzl shall not be liable for the Goods' failure to comply with the warranty set out in Condition 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with Condition 5.2;
- (b) the defect arises because the Customer failed to follow Wanzl's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Wanzl following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Wanzl;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working Conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this Condition 5, Wanzl shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Wanzl.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Wanzl receives payment in full (in cash or cleared funds) for the Goods and any other goods that Wanzl has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Wanzl's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory Condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Wanzl immediately if it becomes subject to any of the events listed in Condition 9.2(b) to Condition 9.2(d); and
- (e) give Wanzl such information as Wanzl may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to Condition 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Wanzl receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Wanzl's agent; and
- (b) title to the Goods shall pass from Wanzl to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, Wanzl:

- (a) may by notice in writing, terminate the Customer's right under Condition 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so

promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

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 Wanzl's published price list in force as at the date of delivery.

7.2 Wanzl may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Wanzl's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Wanzl adequate or accurate information or instructions;
- (d) Coronavirus and Coronavirus Delay; or
- (e) Brexit or the consequences of Brexit.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Wanzl at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 Wanzl may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.5 The Customer shall pay each invoice submitted by Wanzl:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Wanzl and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Wanzl, and

time for payment shall be of the essence of the Contract.

7.6 If the Customer fails to make a payment due to Wanzl under the Contract by the due date, then, without limiting Wanzl's remedies under Condition 9 (Termination/ Cancellation), the Customer 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 Condition 7.6 will accrue each day at 4%

a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

- 8.1 Wanzl has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £[AMOUNT] per claim. Wanzl may have been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this Condition reflect the insurance cover Wanzl has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 8.2 The restrictions on liability in this Condition 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

- 8.4 Subject to Condition 8.3, Wanzl's total liability to the Customer shall not exceed the Price.

- 8.5 Subject to Condition 8.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

- 8.6 This Condition 8 shall survive termination of the Contract.

9. Termination/Cancellation

- 9.1 The Customer shall not be entitled to cancel a Contract for any reason.

- 9.2 Without limiting its other rights or remedies, Wanzl may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
 - (b) the Customer 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;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.3 Without limiting its other rights or remedies, Wanzl may suspend provision of the Goods under the Contract or any other contract between the Customer and Wanzl if the Customer becomes subject to any of the events listed in Condition 9.2(b) to Condition 9.2(d), or Wanzl reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.4 Without limiting its other rights or remedies, Wanzl may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.5 On termination of the Contract for any reason the Customer shall immediately pay to Wanzl all of Wanzl's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Wanzl shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.6 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.
- 9.7 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.

10. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

11. General

11.1 Assignment and other dealings.

- (a) Wanzl may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not 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 without the prior written consent of Wanzl.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or Wanzl of the other party, except as permitted by Condition 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives 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 or advisers to whom it discloses the other party's confidential information comply with this Condition 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) 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.

11.3 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of 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.
- 11.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 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 Condition 11.6 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.
- 11.7 Third party rights.** Unless it expressly states otherwise, 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.
- 11.8 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.
- 11.9 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 this Contract or its subject matter or formation.