

## **TERMS AND CONDITIONS OF PURCHASE**

All orders placed by the Scott Bader shall be governed exclusively by the terms and conditions set forth below (the "Terms and Conditions"). No other terms, conditions, or provisions, whether contained in any purchase order, confirmation, or other communication from the Seller, shall apply or take precedence, regardless of whether such documents are acknowledged or accepted by Scott Bader or implied by trade, custom, practice or course of dealing. These terms shall prevail over any conflicting, additional, or different terms proposed by the Seller. These standard terms and conditions of purchase are issued by Scott Bader as buyer to the Seller in respect of the Products and/or Services.

### **1. DEFINITIONS**

"Acceptable Quality Levels" means the acceptable quality levels for industry standard inspection and any additional quality requirements communicated to the Seller by Scott Bader;

"Affiliate" means, in relation to a body corporate, any entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, such body corporate, 'control' for this purpose meaning the ability to direct the affairs of another person whether by virtue of the ownership of shares, by contract or otherwise;

"Applicable Law" means all laws, statutes, regulations, ordinances, rules, codes, treaties, directives, orders, judgments, decrees, and other legal requirements of any governmental or regulatory authority that are applicable to the parties, this Agreement, or the performance of their respective obligations under it, in any jurisdiction.

"Business Day" means a day, other than a Saturday, Sunday or public holiday in the country of Scott Bader's registered address;

"Business Hours" means the period from 0900 to 1700 on any Business Day;

"Contract" means the Seller's acceptance (by way of an order confirmation) of the Purchase Order, Manufacturing Specification (if applicable), Special Conditions (if applicable) and the Terms and Conditions set out herein;

"Delivery" means when the Seller has made the Products available to Scott Bader at the place / location address or with the carrier agreed upon in accordance with the Incoterms (as defined in the Incoterms in force on the date the Contract is concluded) set out in the Contract and "Delivered" and "Deliver" shall be construed accordingly;

"Delivery Note" means the note that shall accompany the Products and shall give full details, including but not limited to, order number, date of order, number of packages, and if part-delivery is applicable, the number of deliveries etc.;

"Intellectual Property" means any patent, rights to inventions, utility model, registered design, copyright and related right, database right, design right, topography right, trade mark, service mark, trade, business and domain name, right in goodwill or to sue for passing off, unfair competition right, right in computer software, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection whatsoever in any part of the world;

"Manufacturing Specification" means the manufacturing specification agreed in writing between Scott Bader and the Seller referred to in, incorporated into or annexed to the Purchase Order (where applicable);

"Price" means the price payable for the Products and/or Services as stated in the Purchase Order, and unless otherwise agreed in writing, shall be inclusive of value added tax or any similar tax, and inclusive of all other charges;

"Products" means all goods sold pursuant to these Terms and Conditions, whether raw materials, processed materials or fabricated products;

"Purchase Order" means Scott Bader's written instruction to purchase the Products and/or Services, including any applicable Special Conditions and incorporating these Terms and Conditions by reference;

"Seller" means the person, firm or company identified on Scott Bader's Purchase Order;

"Services" means any service supplied by the Seller pursuant to these Terms and Conditions; and

"Special Conditions" means any further conditions as applicable to, and set out in the Purchase Order.

### **2. PURCHASE ORDERS AND SPECIFICATIONS**

2.1 Scott Bader may issue to the Seller an enquiry at any time in writing regarding the purchase of specific Products or Services. On the basis of such a request, the Seller may provide an indicative quotation and a Manufacturing Specification (where applicable) to Scott Bader.

2.2 Scott Bader may issue a Purchase Order based on the Seller's indicative quotation and Manufacturing Specification. The Seller must provide written confirmation of the order.

2.3 Scott Bader shall accept no responsibility for any order that is not issued in line with Scott Bader's standard Purchase Order format, unless otherwise agreed in writing.

2.4 The properties of specimens and samples provided by the Seller to Scott Bader are binding, and the quantity, quality and description of the sample Products shall conform with those set out in the order confirmation and the Manufacturing Specification, unless otherwise agreed in writing.

2.5 No order confirmation may be cancelled by the Seller except with the agreement in writing of Scott Bader and on terms that the Seller shall indemnify Scott Bader in full against all loss (including loss of profit) costs (including the costs of all labour and materials).

2.6 Scott Bader has the right to cancel any unfulfilled Purchase Order upon giving Seller at least fourteen (14) days written notice. If Scott Bader elects to cancel any Purchase Order, Scott Bader shall have the option to take any Product, work or other items included in the Purchase Order whether finished, unfinished, or in process, upon such terms as Scott Bader and Seller may negotiate.

### **3. DELIVERY**

3.1 All Products shall be delivered to us in accordance with the Incoterm stated in the Purchase Order, and in the absence of such Incoterm, all Products shall be delivered DDP. References to Incoterms are to Incoterms 2020 as published by the International Chamber of Commerce. In the event, Delivery is not delivered on the date specified in the Purchase Order, Scott Bader reserves the right to reject the delivery and require delivery on the date specified, or, if later, express delivery at the Seller's cost.

3.2 If the Seller delivers more or less than the quantity of Products ordered, and Scott Bader accepts the delivery, a pro rata adjustment shall be made to the invoice. If the Seller delivers less than 95% or more than 105% of the quantity of the Products ordered, Scott Bader may reject the Products or the excess Products.

3.3 The Seller shall not deliver in instalments without Scott Bader's prior written consent.

3.4 Scott Bader shall accept no responsibility for any Products delivered without a Delivery Note or any Delivery outside of Business Hours.

3.5 The Services shall be provided at times or intervals agreed between the Parties.

### **4. PACKAGING**

4.1 All products must be packed to reach the agreed delivery location in good condition without damage or degradation to the Products.

4.2 Products must be (i) packed; (ii) labelled; (iii) stored; (iv) handled; and (v) transported; in compliance with Applicable Law and any other standards communicated by Scott Bader.

4.3 Packaging shall be non-returnable. No further charges shall be allowed for packing, crating, freight etc., unless designated in the Purchase Order.

### **5. SERVICES**

5.1 The Seller shall perform the Services in accordance with good industry practice.

5.2 In its performance and delivery of the Services, the Seller shall:  
(a) observe all health and safety rules and regulations and any other security requirements that apply at any of the Scott Bader premises;

(b) be deemed to have visited the site and to have understood the nature and extent of the work on site and shall make no claims

- founded on its failure to do so. Scott Bader shall, on request of the Seller, grant such access as may be reasonable for this purpose.
- (c) make no delivery or commence any work on site before advising details to and obtaining the consent of Scott Bader;
  - (d) use reasonable due, skill, care and experience including without limitation in the selection of its personnel;
  - (e) cooperate with Scott Bader and comply with all reasonable instructions in accordance with the specifications agreed;
  - (f) use all reasonable endeavours to meet any agreed performance dates; and
  - (g) provide all equipment, tools, vehicles and such other items as required in respect of the Services.
- 6. QUALITY, INSPECTION AND DEFECTS**
- 6.1 The Products shall be of the best quality, material and workmanship and conform in all respects with the Purchase Order and Manufacturing Specification and be fit for any stated purpose held out by the Seller or made known to the Seller by Scott Bader expressly or by implication, and in this respect Scott Bader relies on the Seller's skill and Judgement.
- 6.2 Scott Bader's rights under these conditions are in addition to the statutory conditions implied in favour of Scott Bader by the Sale of Goods Act 1979.
- 6.3 At any time prior to delivery (and separately upon Delivery) of the Products to Scott Bader, Scott Bader shall have the right to inspect and test the Products and request proof of conformity of the Products and the Seller with Scott Bader's required standards.
- 6.4 If the results of such inspection or testing cause Scott Bader to be of the opinion that the Products do not conform or are unlikely to conform with the Purchase Order, Manufacturing Specification or Acceptable Quality Level, any other term or condition of the Contract, or the Products have been damaged in transit, Scott Bader shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition Scott Bader shall have the right to require and witness further testing and inspection.
- 6.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Products and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract. Scott Bader, at all times, reserves its rights to reject the Products as a result of any fault or defect or failure to comply with any term or condition of the Contract.
- 7. PAYMENT**
- 7.1 The Seller shall invoice Scott Bader promptly following Delivery or performance of the Services.
- 7.2 Unless otherwise stated in the Purchase Order, the Price quoted by the Seller shall be deemed to include, without limitation, of all taxes, duties, freight, insurance and packaging charges.
- 7.3 Scott Bader shall pay the Price on payment terms outlined within the Purchase Order. In the event that no payment terms are specified, the payment terms shall be sixty (60) Business Days from the end of the month from when the Seller's invoice is received by Scott Bader, but time for payment shall not be of the essence of the Contract.
- 7.4 Payment by Scott Bader does not constitute a waiver of any rights hereunder, without limitation, any right or prejudice, and Scott Bader reserves the right to set off any amount owing at any time from the Seller to Scott Bader against any amount payable by Scott Bader to the Seller.
- 7.5 Payment by Scott Bader shall be payable in the currency specified in the Purchase Order.
- 7.6 No variation in the Price nor extra charges shall be accepted by Scott Bader that have not been approved by Scott Bader via the formal Change Order Management process in condition 3 above.
- 7.7 Scott Bader will be entitled to set off any liability of Seller to Scott Bader against any liability of Scott Bader to Seller. For the avoidance of doubt, Scott Bader will be entitled to withhold payment in respect of Goods and/or Services and/or Deliverables that do not conform to or comply with the physical properties, technical specifications, descriptions, samples, formulation and/or recipe (if any) of the Goods or Services referred to in the Purchase Order or otherwise agreed to in writing between the parties, subject to notifying Seller.
- 7.8 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party

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 clause will accrue each day at 3% 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%.

**8. PRODUCT AND SERVICE WARRANTIES**

- 8.1 The Seller warrants that: (a) the Products (i) comply with, and be manufactured, produced, marked, labeled, branded, sold, delivered and furnished in strict compliance with, all Applicable Laws (ii) comply with all specifications and all requirements set out in the Contract and all samples provided by or to Scott Bader: (iii) are of good and merchantable quality and fit for use for the particular purposes for which they are purchased by Scott Bader: (iv) are free from any defects; and (b) the Services provided will be performed in accordance with Applicable Laws and the requirements set out in the Contract. The Seller's warranties shall be applicable for a period of, whichever is later: 18 months from the first use or 24 months from the date of Delivery of the Products and/or performance of the Services.
- 8.2 In the provision of the Goods and the performance of the Services, the Seller warrants that it shall comply with the Supplier Partnership Manual available at [www.scottbader.com](http://www.scottbader.com).

**9. FURTHER WARRANTIES AND COMPLIANCE**

- 9.1 The Seller, at all times, represents and warrants that:
- (a) it has full and merchantable ownership to the Products and that they are sold clear of all defects in design, material, ownership, liens, taxes and encumbrances;
  - (b) it has, and shall maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
  - (c) it has complied with all applicable statutory requirements and all regulations relating to the use, production, manufacturing, repairing, pricing, transporting (including import), storage and delivery of the Products in all relevant jurisdictions where such activities have taken place;
  - (d) it shall observe all health and safety rules and regulations and any other security requirements that apply;
  - (e) time shall be of the essence in respect of the performance and Delivery of the Products and/or performance of the Services;
  - (f) it shall comply with all Applicable Laws, including but not limited to those related to environmental protection, tax compliance, employment, slavery, bribery and corruption, money laundering, financial crime, export controls, sanctions laws and data protection;
  - (g) it has declared to Scott Bader before the Contract any individual or personal relationships there may be between its representatives and representatives of Scott Bader;
  - (h) it does not itself, and does not use suppliers who, breach human rights or labour laws;
  - (i) it maintains policies and procedures as are reasonable to prevent the facilitation of tax evasion by its own representatives or by another person, and it shall inform Scott Bader if it becomes aware or has reason to believe that it, or any person associated with it, has received a request or demand from a third party to facilitate the evasion of tax; and
  - (j) it maintains insurance cover with reputable insurers in respect of public and product liability, employers liability, professional indemnity and such other classes as are appropriate to the circumstances of the relevant Purchase Order and in such amounts sufficient to cover Seller's obligations under the Contract as well as protect Scott Bader from risks and from any claims under any applicable worker's compensation and/or occupational safety and health acts.
- 9.2 The Seller shall ensure that any subcontractors or third parties engaged in connection with the Contract, including the suppliers of its materials, comply with the obligations at 9.1.

**10. FREE ISSUE MATERIALS**

- 10.1 In the event free issue materials are provided to the Seller for incorporation, such materials shall remain the property of Scott Bader, but shall be at the risk of the Seller whilst in the possession of the Seller. Such materials may only be used in accordance with a purchase order.

**11. PRODUCT RECALL**

11.1 Seller represents and warrants that, to the best of its knowledge, the goods supplied are not subject to any pending or existing product recalls. In the event of a recall initiated by the Seller, manufacturer, or any regulatory authority, Seller shall promptly notify Scott Bader and, at Scott Bader's option, either (a) replace the recalled goods at Seller's sole cost and expense, or (b) refund the purchase price in full. Seller shall also be responsible for all costs and losses incurred by Scott Bader as a result of such recall, including but not limited to transportation, storage, and disposal expenses.

11.2 If the recalled goods have already been incorporated into other products manufactured or sold by Scott Bader, Seller shall indemnify and hold harmless Scott Bader for all reasonable costs, expenses, and losses arising from the recall, including but not limited to the cost of recalling, repairing, or replacing affected finished goods, customer refunds, and any resulting damage to Scott Bader's brand or business operations.

## **12. HAZARDOUS GOODS**

Hazardous Goods must be marked by Seller with international danger symbols; accompanying documents must include declaration of the hazard and the name of the material in English. All information held by, or reasonably available to Seller, regarding any potential hazards, known or believed to exist, relating to the Products or in the performance of the Contract shall be promptly communicated to Scott Bader.

## **13. CONFIDENTIALITY**

13.1 Seller shall keep confidential and not disclose to any third party any non-public information received from Scott Bader, including but not limited to customers, products, formulations, specifications, processes, pricing, or any other technical or commercial information related to Scott Bader's business. Seller shall use such information solely for the purpose of fulfilling its obligations under the Contract and shall take all reasonable measures to protect its confidentiality including imposing the same obligations of confidentiality on any employees, agents or sub-contractors. This obligation shall survive the termination or completion of any purchase.

13.2 Each party shall comply with the (i) General Data Protection Regulation ((EU) 2016/679) ("GDPR") together with any national implementing laws, regulations and secondary legislation (as amended or updated from time to time) in the EU and in the UK, including the UK Data Protection Act 2018 ("DPA"); (ii) any successor legislation to the GDPR and the DPA; and (iii) any other directly applicable laws and regulations relating to data protection and/or privacy.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 Seller acknowledges that any and all of the Intellectual Property in drawings, concepts, samples or other materials that Scott Bader may provide to Seller in connection with the Contract shall remain the exclusive property of Scott Bader and Seller shall not during or at any time after the expiry or termination of the Contract in any way question or dispute the ownership of any such rights of Scott Bader.

14.2 Seller agrees that any new Intellectual Property that arises in connection with the Contract, or products belonging to Scott Bader, shall be owned absolutely by Scott Bader. Seller hereby assigns to Scott Bader with full title and guarantee all rights in and to any such new Intellectual Property for the full duration of such rights, wherever in the world enforceable, and shall procure such an assignment from any employee, consultant or any other party who is involved with the Contract. Seller agrees to execute (or procure that the employee, consultant or any other party it shall involve with the Contract executes) all documents and assignments and do all such things as may be necessary to perfect Scott Bader's title to the new Intellectual Property or to register Scott Bader as owner of all registrable rights.

14.3 Without prejudice to Conditions 14.1 and 14.2, Seller agrees that, if called on to do so by Scott Bader, it will, agree to execute such documents, perform such acts and cooperate in the provision of all necessary assistance and information reasonably required by Scott Bader for purposes of ensuring that any new Intellectual Property is absolutely assigned to and vested in it, provided always that Scott Bader shall reimburse Seller for any expenses reasonably incurred by it in such regard.

## **15. INDEMNITY**

15.1 The Seller shall indemnify, defend and hold harmless Scott Bader, its affiliates and each of their customers, officers, directors, employees and agents and successors and assigns (collectively the "Scott Bader Indemnitees") in full from and against any and all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by any of the Scott Bader Indemnitee as a result of or in connection with:

- (a) defective workmanship, quality or materials including a failure to meet the Acceptable Quality Levels or standards of reasonable skill and care;
- (b) an infringement or alleged infringement, including by any third party, of any Intellectual Property rights and/or information rights caused by the use, manufacture or supply of the Products and/or Services; and
- (c) any claim made against Scott Bader in respect of any liability, loss, damage, injury, cost or expense sustained by Scott Bader's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Products and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance or quality of the terms of the Contract by the Seller;
- (d) any breach of clause 9;
- (e) any acts or omissions of Seller or its employees, agents or representatives or any breach by Seller of any representation, warranty, covenant, agreement or obligation under the Contract.

## **16. LIMITATION OF LIABILITY**

16.1 Scott Bader's total aggregate liability (whether in contract, tort (including negligence) or otherwise, arising out of or connection with these Terms and Conditions shall not exceed the price paid or payable for the Product or Service which gives rise to the claim.

16.2 Scott Bader shall not in any circumstance be liable for any direct, indirect, special, punitive, incidental or consequential damages, including, without limitation, loss of profits, revenue, goodwill, anticipated profits or savings, or cost of capital.

## **17. RECORDS AND AUDIT**

Seller shall maintain complete and accurate records relating to the manufacture, testing, storage, and supply of the goods for a minimum of 7 years from the date of Delivery or from performance of the Services (if both, the later of the two). Scott Bader shall have the right, upon reasonable notice and during regular business hours, to audit and inspect Seller's facilities, records, and processes to verify compliance with the terms of this Contract, including applicable quality standards and regulatory requirements. Seller shall cooperate fully with any such audit and promptly address any deficiencies identified.

## **18. FORCE MAJEURE**

18.1 Neither party shall be liable for failure to fulfil its obligations under this Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, but not limited to, natural disasters, war or national emergency or security issues, acts of terrorism, riot, civil commotion, fire, explosion, flood, epidemic, imposition of sanctions, embargoes, or other government restrictions, lock-outs etc. ("**Force Majeure**"). The Seller shall, promptly, in all circumstances use best endeavours to arrange an alternative solution. In such circumstances Scott Bader reserves the right to defer the date of Delivery or Payment, and/or to cancel the Contract, delay or cancel the performance of the Services or reduce the volume of the Products ordered. If the event in question continues for a continuous period in excess of 15 Business Days, Scott Bader shall be entitled to give written notice to the Seller to terminate the Contract.

18.2 Shortage of labour, materials or utilities or delays by subcontractors shall not by themselves constitute Force Majeure unless they are caused by circumstances, which are Force Majeure circumstances within the meaning of this clause.

18.3 Costs arising from Force Majeure circumstances shall be borne by the party incurring such costs.

## **19. TERMINATION**

19.1 On or at any time after the occurrence of any of the events in Condition 19.2, Scott Bader may, at its sole discretion, stop any Products in transit, suspend further deliveries, cancel or suspend the provision of Services, and/or terminate any Contract with the Seller with immediate effect by written notice to the Seller.

19.2 The events are:

- (a) the Seller being in material breach of an obligation under the Contract;
- (b) the Seller passing a resolution for its winding up or a court of competent jurisdiction making an order for the Seller's winding up or dissolution;
- (c) the making of an administration order in relation to the Seller or the appointment of a receiver order, or an encumbrancer taking possession of or selling, any of the Seller's assets; or
- (d) the Seller making an arrangement or composition with its creditors generally or applying to a court of competent jurisdiction for the protection of its creditors.

19.3 The termination of a Contract for whatsoever reason, shall be without prejudice to the rights and duties of Scott Bader accrued prior to termination. The provisions of a Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **20. REMEDIES**

20.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any representation, misrepresentation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract.

20.2 Without prejudice to any other right or remedy which Scott Bader may have, if any Products or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract or otherwise, Scott Bader shall be entitled to avail itself of any one or more of the following remedies at its discretion, without liability, whether or not any part of the Products or Services have been accepted by Scott Bader:

- (a) to cancel the Contract in whole or in part;
- (b) to reject the Products (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Products so returned shall be paid immediately by the Seller;
- (c) at Scott Bader's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Products or to supply replacement Products and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Products but without any liability to the Seller;
- (e) to cancel the provision of Services with immediate effect;
- (f) recover from the Seller any expenditure reasonably incurred by Scott Bader in obtaining the Products in substitution from another supplier;
- (g) to carry out, at the Seller's expense, any work necessary to make the Products and/or Services comply with the Contract; and
- (h) to claim and recover such damages as may have been sustained in direct or indirect consequence of the Seller's breach or breaches of the Contract.

## **21. ASSIGNMENT**

21.1 The Seller may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Scott Bader's prior written consent. Scott Bader may assign all or any of its obligations under a Contract to any Affiliate of Scott Bader.

## **22. DELAY NOT A WAIVER**

22.1 No delay by either Scott Bader in enforcing any of these Terms and Conditions shall be deemed a waiver of that party's right subsequently to enforce such term and/or condition.

## **23. SUBCONTRACTING**

23.1 The Seller may not subcontract any or all of its rights or obligations under this Contract without the prior written consent of Scott Bader. If Scott Bader consents to any subcontracting by the Seller, the Seller shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

## **24. EXCLUSION OF THIRD PARTY RIGHTS**

24.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions nor any Contract made under them and no person other than the Seller and Scott Bader shall have any rights thereunder, nor shall these Terms and Condition or any Contract be enforceable under that act by any other person.

## **25. CONFLICT**

If there is an inconsistency between any of the provisions in the Terms and Conditions, the Manufacturing Specification, and the Purchase Order, the order of preference shall be as follows:

- (a) Manufacturing Specification
- (b) Purchase Order
- (c) Terms and Conditions

## **26. GOVERNING LAW AND JURISDICTION**

26.1 This Contract shall be governed by and construed in accordance with the laws of South Africa. The parties submit to the exclusive jurisdiction of the courts of South Africa, for the resolution of any disputes arising out of or in connection with this Contract.

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

26.3 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.