

1.0 INTERPRETATION

1.1 In these Conditions:

“CONDITIONS”: the standard terms and conditions of sale set out in this document, Halyard's Product Return and Order Cancellation Policy (HMI 223) and Warranty Policy (WP001) (all as amended from Halyard from time to time) and any special terms and conditions agreed in writing;

“CONTRACT”: the contract for the purchase and sale of the Goods;

“CUSTOMER”: the person, firm or company who purchase the Goods from Halyard;

“GOODS”: the goods specified overleaf (including any instalment of the goods or any parts for them) or as otherwise sold to the Customer by Halyard;

“HALYARD”: Halyard M & I Limited (registered number 1444615) whose registered office is at 86 Cobham Road, Ferndown Industrial Estate, Wimborne, Dorset BH21 7PQ

2.0 BASIS OF SALE

2.1 Halyard shall sell and the Customer shall purchase the Goods in accordance with any Halyard written quotation accepted by the Customer, or any written order of the Customer accepted by Halyard, subject always to these Conditions which shall govern the purchase and sale of the Goods to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. No variation shall be binding unless agreed in writing by Halyard.

2.2 Halyard's directors, employees or agents are not authorised to give any advice or make any representations concerning the Goods unless the same is confirmed by Halyard in writing. The Customer shall not rely on, nor shall Halyard be liable for, any such advice or representations which are not so confirmed.

2.3 Halyard may correct, without any liability on its part, 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 it.

3.0 ORDERS AND SPECIFICATIONS

3.1 The Customer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by it to Halyard and for giving Halyard any necessary information relating to the Goods within a sufficient time to enable Halyard to comply with these Conditions.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in Halyard's quotation (if accepted by the Customer) or the Customer's order (if accepted by Halyard).

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by Halyard in accordance with a Customer-submitted specification, the Customer shall indemnify Halyard against all loss, damages, costs and expenses awarded against or incurred by Halyard in connection with any claim for infringement of any third party's intellectual property rights arising from its use of that specification.

3.4 Halyard may make any changes in the specification of the Goods to conform with any applicable statutory or regulatory requirements or which do not materially affect their quality or performance.

3.5 No order which has been accepted by Halyard may be cancelled by the Customer except in accordance with Halyard's product Return and Order Cancellation Policy, a copy of which can be found at www.halyard.eu.com or provided upon request.

3.6 On placement of an export order for ex-works collection, the Customer is required to sign a declaration to confirm that evidence of removal will be provided post shipment. If the Customer does not sign a declaration they will be required to pay a VAT deposit equivalent to the VAT due on the total order value. If the Customer fails to provide the evidence requested within the time limit specified by Halyard, the Customer shall be liable to pay the VAT due based on the total order value.

4.0 PRICE OF THE GOODS

4.1 The price of the Goods shall be as set out in the most recent Halyard quotation or, if no price has been quoted, the price set out in the Halyard's published price list in force as at the date of delivery. All prices quoted are valid for 30 days only (unless otherwise agreed in writing) or until earlier acceptance by the Customer, after which time they may be altered by Halyard, without giving notice. No Goods shall be supplied on a sale or return or on approval basis.

4.2 Halyard may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost to Halyard which is due to any factor beyond its reasonable control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Halyard adequate information or instructions.

4.3 Except as otherwise stated in writing, all prices are given by Halyard on an ex works basis, and where Halyard agrees to deliver the Goods otherwise than at its premises, the Customer shall be liable to pay Halyard's charges for transport, packaging and insurance.

4.4 Where Goods are sold for export from the United Kingdom, the Customer shall be responsible for complying with any applicable legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties.

5.0 TERMS OF PAYMENT

- 5.1 Halyard shall not be bound to deliver the Goods until the Customer has paid for them. Where, however, Halyard has agreed in writing to give credit to a Customer (which may be subject to the payment of a deposit prior to delivery), payment of the price (or the balance thereof, if applicable) and VAT shall be due on the last working day of the month following the end of the month in which the Goods were delivered, unless otherwise agreed in writing with the Customer. Time for payment shall be of the essence. The price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
- 5.2 Halyard may require payment of all amounts due to it to be made by irrevocable letter of credit opened by the Customer in favour of Halyard and confirmed by a bank acceptable to Halyard and the Customer shall reimburse Halyard for all bank charges so incurred, together with the costs of carriage and any insurance, which shall be due on the date for payment of the price.
- 5.3 If the Customer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to it, Halyard shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Customer;
 - 5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and Halyard) as Halyard may think fit (notwithstanding any purported appropriation by the Customer); and
 - 5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, as per the Late Payment of Commercial Debts (Interest) Act 1998.

6.0 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at Halyard's premises or, if some other place for delivery is agreed, by Halyard despatching the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and Halyard shall not be liable for any delay in delivery of the Goods however caused and time for delivery shall not be of the essence.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Halyard to deliver any one or more of the instalments in accordance with these Conditions shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4 If Halyard fails to deliver the Goods for any reason other than any cause beyond its reasonable control or the Customer's fault, and Halyard is accordingly liable to the Customer, its liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Customer fails to take delivery of the Goods or fails to give Halyard adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Halyard's fault) then, without prejudice to any other right or remedy available to it, Halyard may:
- 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7.0 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 7.1.1 in the case of Goods to be delivered at Halyard's premises, at the time when Halyard notifies the Customer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Halyard's premises, at the time of despatch.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Halyard has received in cleared funds payment in full of the price of the Goods and any other sums owed to Halyard for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Halyard's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Halyard's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), Halyard shall be entitled at any time to require the Customer to deliver up the Goods to it and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored to repossess the Goods.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Halyard, but if the Customer does so all moneys owing by the Customer to Halyard shall (without prejudice to any other right or remedy of Halyard) forthwith become due and payable.
- 7.6 Halyard shall be entitled to a general lien on all the Customer's goods in Halyard's possession (including goods of the Customer which have been paid for) for the unpaid price of all goods sold by Halyard to the Customer under this or any other Contract.

8.0 WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out in this clause 8 and Halyard's Warranty Policy (WP001), Halyard warrants that the Goods will correspond substantially with their specification at the time of delivery and will be materially free from defects and workmanship for the applicable warranty period for the Goods as set out in WP001. A copy of WP001 can be found at www.halyard.eu.com or provided upon request. Please also refer to Halyard's Product Return and Order Cancellation Policy (HMI 223) as applicable, a copy of which can be found at www.halyard.eu.com or provided upon request.
- 8.2 Halyard's Warranty Policy is given by Halyard subject to the following conditions:
- 8.2.1 Halyard shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions (for the avoidance of doubt, abnormal working conditions includes use of the Goods for racing or competition or any kind of towing);
 - 8.2.2 Halyard shall be under no liability in respect of any defect arising from failure to follow Halyard's instructions (whether oral or in writing and it is a condition of the warranty that the Customer must notify Halyard immediately if written instructions are not received), or misuse or alteration or repair of the Goods without Halyard's approval and it is recommended that an appropriately qualified and competent person is employed by the Customer to install the Goods;
 - 8.2.3 Halyard shall be under no liability under its Warranty Policy (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 Where the Warranty Policy extends to parts, materials or equipment not manufactured by Halyard, the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Halyard.
- 8.3 Except as provided in this Clause 8, Halyard shall have no further liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 8.1. 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. These Conditions shall apply to any repaired or replacement Goods supplied by Halyard.
- 8.4 Without prejudice to clause 8.5, Halyard's entire liability as a result of any act or omission by it, its employees, agents or sub-contractors shall be limited to the price of the Goods. Halyard shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or Halyard had been advised of the possibility of the Customer incurring the same.
- 8.5 Except as expressly provided in this Contract all warranties and conditions, whether implied by statute or otherwise are excluded from this Contract, provided that nothing in this Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by Halyard's negligence or affect the statutory rights of a Customer dealing as a consumer.
- 8.6 Halyard shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was due to any cause beyond Halyard's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Halyard's reasonable control:
- 8.6.1 Act of God, explosion, flood, tempest, fire or accident, epidemic or pandemic;
 - 8.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.6.4 import or export regulations or embargoes;
 - 8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Halyard or of a third party);
 - 8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.6.7 power failure or breakdown in machinery.

9.0 INTELLECTUAL PROPERTY RIGHTS

- 9.1 No right or licence is granted under this Contract to the Customer under any patent, trademark, registered design or other intellectual property right except the right to use or resell the Goods.

10.0 TERMINATION

- 10.1 Without limiting its other rights or remedies, Halyard may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 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 7 days of the Customer being notified in writing to do so;
 - 10.1.2 if the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 10.1.3 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.1.4 an incumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - 10.1.5 the Customer ceases, or threatens to cease, to carry on business; or
 - 10.1.6 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.

- 10.2 Without limiting its other rights or remedies, Halyard may suspend provision of the Goods under the Contract or any other contract between the Customer and Halyard if the Customer becomes subject to any of the events listed in clause 10.1.3 to clause 10.1.6, or Halyard 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.
- 10.3 On termination of the Contract for any reason the Customer shall immediately pay to Halyard all of Halyard's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Halyard shall submit an invoice, which shall be payable by the Customer immediately on receipt. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect

11.0 GENERAL

- 11.1 Halyard may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any part of its rights and obligations under this Contract without the Customer's consent.
- 11.2 Any notice required or permitted to be given under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 11.3 No waiver by Halyard of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.5 The 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
- 11.6 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.
- 11.7 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. 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 the Contract or its subject matter or formation.

12.0 DATA PROTECTION NOTICES TO PARTNERSHIP AND SOLE TRADER DEBTORS

- 12.1 We may transfer information about you to our bankers, in order for them to provide their services to us and other customers of theirs and to help them to (a) obtain credit insurance (b) undertake credit control (c) undertake assessment and analysis (including credit scoring, market, product and statistical analysis) (d) securitise debts and (e) protect their interests.
- 12.2 We or our bankers may make credit reference agency searches in respect of your business and its principals. Please note that credit reference agencies make a record of searches which may be used to prevent fraud or money laundering or by other subscribers to make credit decisions about you;
- 12.3 Our Bankers may give information about you and your indebtedness to the following for the purposes stated;
- a) any other divisions or associated companies of theirs - for the business purposes of such divisions or companies;
 - b) our or their insurers - to quote for and issue any credit policy or to deal with any claims;
 - c) any advisors acting on our or their behalf - so the advisors can carry out their services;
 - d) any business to whom your indebtedness or our financing arrangements with them may be transferred - to facilitate such transfer;
 - e) to any person to whom they have a duty of disclosure or to whom the law permits disclosure.
- 12.4 Our bankers may make decisions about you solely using an automated decision making process, such as credit scoring: however, they will tell us (and in turn we will tell you) if they make a significant decision only using such a process. Through us you can then request a review of their decision using other means;
- 12.5 Our bankers may monitor and/or record your phone calls to them for training and/or security purposes.
- 12.6 We will provide you with details of our bankers on request, including a contact telephone number from where you can obtain details of the credit reference agencies used by them and any third parties to whom information is transferred.