

LABCOLD LIMITED
STANDARD CONDITION OF SALE

Labcold Limited contracts subject to the terms and conditions set out below, with the customer.

1 INTERPRETATION

1.1 In these conditions:

"the Customer"	means the company or individual non-consumer whose Order for the goods is accepted by the Company;
"Goods"	means the Goods (including any installation of the Goods or any part or parts of them) specified on the Order and which the Company is to supply (whether modified by the Company or in their original state of manufacture by the Company's own supplier) in accordance with these Conditions;
"the Company"	means Labcold Limited (registered in England and Wales under number 271055);
"the Premises"	means The Loddon Centre, Wade Road, Basingstoke, RG24 8FL
"the Conditions"	means the standard terms and conditions agreed in writing between the Customer and the Company as conditions of sale and purchase set out in this document and includes, any additional special terms and provided for in clause 2.3 below;
"the Contract"	means the contract for the sale and purchase of the Goods;
"Specification"	means the quantity, quality and description of the Goods as specified in the Order and agreed in writing by the Company or in any other specification of the Goods agreed in writing between the Company and the Customer from time to time (and includes any plans, drawings, designs, data or other information relating to the Goods);
"the Carrier"	means the Carrier which the Company (in its absolute discretion) engages for the delivery of the Goods to the Customer on such terms and conditions as the Company shall reasonably see fit;
"Delivery Address"	means the address stated in the Order;
"Normal Delivery Point"	means a ground floor offloading area with level unobstructed access, unless otherwise agreed by the Company in writing.
"Date of Delivery"	means the date stated in the Order and accepted by the Company in writing or other date as notified by the Company in writing;
"Order"	means the Customer's purchase order;
"Price"	means the price of the Goods (as stated in the Order or the Company's acceptance of it) plus the other costs referred to in clause 6.2 below.

2 BASIS OF SALE AND PURCHASE

- 2.1 The Order constitutes an offer by the Customer to purchase the Goods subject to the Conditions, and the Company accepts the order and contracts to sell the Goods at the Price on the Conditions (the Contract).
- 2.2 Should the Order contain other conditions, then the Order for the Goods is only accepted by the Company on the basis that the other conditions do not conflict with the Conditions or if there is any conflict that the Conditions take precedence and prevail.
- 2.3 No variation to the Order (save in respect of the price of the Goods under clause 6.3 below) or the Conditions shall be binding unless agreed in writing between the Company and the Customer.

3 WARRANTY

- 3.1 The Company warrants to the Customer that all Goods manufactured or modified by it shall:
- 3.1.1 be of satisfactory quality and reasonably fit for the purpose held out by the Company and;
- 3.1.2 will correspond to the Specification (if any);
- 3.2 The Company shall indemnify the Customer against any breach of the above warranty in relation to the Goods and subject to clause 3.3 below shall at the option of the Company repair or replace any Goods supplied, free of charge, if such Goods are returned to the Premises carriage paid within twelve months from the Date of Delivery.
- 3.2.1 Where Goods are sold to Customers in the UK only and it is impractical for the Customer to return the Goods to the Company for repair the Company will arrange for an engineer to attend on site at the Customer's premises subject to the Company having the right to charge the Customer for the cost of an engineer's attendance and any consequential expenses incurred at the Company's standard rate.
- 3.3 The above warranty is given by the Company subject to the following conditions:
- 3.3.1 the Company shall not be under any liability in respect of any defect in the Goods arising from any specification supplied by the Customer;
- 3.3.2 the Company shall not be under any liability in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, neglect, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Company's written approval;
- 3.3.3 the Company shall not be under any liability in respect of any defect in the Goods where the Goods have not been properly installed, maintained, and/or operated;
- 3.3.4 the Company shall not be under any liability under the above warranty if the price has not been paid by the due date for payment;
- 3.3.5 the above warranty does not extend to Goods sold by the Company, which are not manufactured or modified by it;

- 3.3.6 in the case of such unmodified Goods sold by the Company the Customer shall only be entitled to the benefit of any warranty or guarantee that is given by their manufacturer to the Company and which also extends to the Customer PROVIDED THAT any legal costs or other expenses incurred by the Company in enforcing such warranty or guarantee on behalf of the Customer shall be payable by the Customer in any event;
- 3.3.7 any damages payable by the Company to the Customer arising from any breach of the Contract (howsoever caused) shall be limited in respect of any loss or damage to the Customer (including without prejudice to the generality of the foregoing any loss of profits or other consequential economic loss but excluding personal injury or death) to twice the Price paid for the Goods.
- 3.3.8 any modifications undertaken by the Customer without the Company's knowledge shall not be warranted for/will have the effect of invalidating the warranty.
- 3.4 The Customer is advised in accordance with the instruction manual to examine and test the Good before use and exercise special care in cases where their use and/or storage involves danger to persons and/or property.

4 SPECIFICATIONS

- 4.1 Catalogue illustrations and descriptions or proposed drawings shall not be regarded as binding until the Specification has been accepted and agreed in writing by the Company.
- 4.2 Shipping specifications, weights, outline drawings and dimensions given with price lists are approximate only.
- 4.3 The Company retains all intellectual property rights in respect of copyright, registered and unregistered design right, trademarks and patents in the Company's plans, drawings, designs, data or other information relating to the Goods including computer software and any such material appended to quotations or forwarded to Customers is for their personal use only. It may be neither copied in whole or in part nor made accessible to third parties without the Company's prior express written agreement.
- 4.4 If the Goods are to be modified in accordance with any Specification, the Customer shall indemnify the Company against all loss, damages and costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any copyright, design right, trade mark, patent or other industrial or intellectual property right of any other person or company which results from the Company's use of the Specification.
- 4.5 The Company reserve the right to make changes in the Specification to conform with any safety or other statutory requirements or with the Company's own standard practice provided that such changes do not materially affect the quality or performance of the Goods.
- 4.6 Specifications may be altered by the Customer, only with the prior written agreement of the Company and on the basis that the Customer shall indemnify the Company in full against loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and other expenses including administration expenses incurred by the Company as a result of such alteration.

5 ORDERS

- 5.1 Orders shall not be binding upon the Company until accepted in writing by the Company's authorised representative.
- 5.2 No Order shall be cancelled or altered without the prior written agreement of the Company which may require as a condition of giving its consent that the Customer shall indemnify it in full against all losses (including loss or profit), costs, (including the cost of labour and materials used), damages, charges and other expenses including administrative expenses incurred by it as a result of such cancellation or alteration.
- 5.3 Goods supplied are not returnable without the prior written agreement of the Company, which may require payment of a handling charge before accepting their return, the cost and risk of which return shall be the responsibility of the Customer.
- 5.4 Where Goods are modified to any specification, any plans, drawings and designs, data or other information supplied by the Customer may be retained by the Company in its absolute discretion.
- 5.5 Where modifications are undertaken by the Company (over and above the original agreement) the Company reserves the right to make an additional charge for this.

6 PRICE AND PAYMENT

- 6.1 The Company reserves the right to make adjustments in all prices advertised by it including price lists to cover variations in the cost of materials, labour, overheads and other charges.
- 6.2 The price of the Goods shall be as stated in the Order or the Company's acceptance of it (subject to clause 6.3 below) and, unless otherwise so stated, shall be exclusive of the following taxes and costs.
- 6.2.1 any applicable Value Added Tax (which shall be payable by the Customer subject to receipt of a VAT invoice); and
- 6.2.2 any duties, other applicable sales tax or duty, imposts or other levies other than Value Added Tax; and
- 6.2.3 the costs of packaging, carriage and insurance of the Goods; and
- 6.2.4 any installation costs, all of which taxes and costs together with the price of the Goods constitute the Price in the contract.
- 6.3 Every endeavour will be made to supply the Goods at their price at the time of placement of the Order but their price shall be subject to revision to that ruling at the date of delivery of the Goods from the Premises or the premises of suppliers of the Company.
- 6.4 The Company may require a deposit from a customer without an established credit line on receipt of the Order and until such time that payment of the deposit is received by the Company, the Order will not be processed.
- 6.5 The Company shall be entitled to invoice the Customer on or at any time after the despatch of the Goods from the Company's premises, and each invoice shall quote the number of the Order.
- 6.6 Unless otherwise stated in the Order or unless such other terms are agreed by both parties in writing the Customer shall make payment of the Price within 30 days from the date of the Company's invoice for the Order and any failure to make payment by that date shall entitle the Company to:
- 6.6.1 cancel the Contract or suspend any further deliveries to the Customer (in which event the Customer will be liable for any loss incurred by the Company);

- 6.6.2 charge interest on the amount overdue at an annual rate of 4% above the HSBC Bank plc Base Rate then in force for every month or part thereof until paid in full; and
- 6.6.3 transfer or allocate or direct any payment made by the Customer (for goods and/or services supplied under any other Contract between the Company and the Customer) as the Company in its absolute discretion may think fit.
- 6.7 Discounts are given subject to agreed payment terms being honoured. In the case of overdue accounts, discounts will be removed. All discounts are made at the absolute discretion of the Company and may be withdrawn at any time.
- 6.8 Where cases and containers charged in addition to the price of the Goods in accordance with clause 6.2.3 above are returned to the Company at the Premises in good condition carriage paid within 30 days of the date of actual delivery of the Goods a credit note equal to two thirds of their charge will be issued subject to full payment for the Goods such credit note to be redeemable against any future orders for goods within twelve months.
- 7 INSOLVENCY OF CUSTOMER**
- If the Customer being an individual is adjudicated bankrupt or an interim receiver of his property is appointed or being a company goes into liquidation whether compulsory or voluntary (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes a voluntary arrangement with its creditors or an administration order is made in respect of it or an administrative receiver of it is appointed then the Company may (without prejudice to the Conditions) suspend any further deliveries and/or determine the Contract, and if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 8 DELIVERY**
- 8.1 The Goods shall be delivered by the Carrier to the Delivery Address at the Normal Delivery Point on the Date of Delivery or within the period stated in the Order and accepted by the Company in writing, in either case during the Customer's usual business hours.
- 8.2 Every reasonable endeavour will be made to deliver the Goods ordered on the Date of Delivery or within the period stated in the Order, but neither the Company nor the Customer shall be liable to the other or 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 beyond that parties reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either parties reasonable control;
- 8.2.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.2.2 war or threat of war, sabotage, insurrection, civil disturbance, or riot;
- 8.2.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.2.4 import or exports regulations or embargoes;
- 8.2.5 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either the Company or the Customer or of a third party);
- 8.2.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.2.7 power failure or breakdown in machinery.
- 8.3 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions before the Date of Delivery, then without prejudice, to any other right or remedy available to the Company, the Company may:
- 8.3.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 8.3.2 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 or charge the Customer for any shortfall below the Price.
- 8.4 Time for delivery of the Goods or their installation is not to be, nor to be capable of being made of the essence of the Contract.
- 8.5 Acceptance of the Goods:
- 8.5.1 On signature, by the Customer or an agent of the customer, for the Goods upon delivery at the Delivery Address, the Goods are deemed to be accepted as correct and in good condition. Subject to 8.5.2, the Company shall not be deemed to be in breach of the Contract or damage to the Goods reported subsequent to being signed for that would have been apparent upon visual inspection of the Goods upon delivery.
- 8.5.2 The Customer shall, within 3 days of the date of actual delivery of the Goods, notify the Company in writing of any defect by reason of which the Customer alleges that the Goods delivered are not in accordance with the Order or Specification and retain the allegedly defective goods and their packaging for inspection.
- 8.6 If the Customer fails to receive the Goods within 7 days of an advice/despatch note and/or invoice sent to it by the Company the Customer must give the Company immediate written notice thereof.
- 8.7 If the Customer fails to comply with clause 8.5 and 8.6 above (or either of them) then, the Goods shall be conclusively presumed to be in all respects in accordance with the Order or Specification and accordingly, the Customer shall be deemed to have accepted the delivery of the Goods and the Company shall have no liability to the Customer with respect to that delivery.
- 9 TITLE AND RISK**
- 9.1 Risk of damage to or loss of the Goods shall pass to the Customer in the case of Goods delivered at the Customers premises (or those of its forwarding agents in the case of Goods for Export) at the time of delivery, or if the Customer wrongfully fails to take delivery of the Goods at the time when the Company has tendered delivery of the Goods in accordance with clause 8 hereof.
- 9.2 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 the Company has received in cash or cleared funds (or in the case of Goods for Export payment by the means specified in clause 11.4 hereof) the Price of the Goods and payment for all other goods agreed to be sold by the Company to the Customer for which payment is due.
- 9.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailiff, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. During this time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 9.4 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), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company 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 and repossess the Goods.
- 9.5 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 the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10 INSTALLATION**
- 10.1 With respect to orders which include delivery and installation by the Company of Goods the following supplementary conditions will apply:
- 10.1.1 laying of foundations, clearing of site, structural alterations, drilling of walls and floors and all other builders and joiners work in preparing or making good the site and also the running and fixing of service connections for gas, electricity, water, drainage and steam shall be the responsibility of the Customer;
- 10.1.2 unless otherwise specifically stated in the Order all expenses relating to all skilled and unskilled labour from the commencement of the installation to the attending to of post-completion matters in connection with such installation shall be an additional charge to be included in the Price;
- 10.1.3 the Customer shall provide water, drainage, light, power and suitable lifting tackle for installation purposes (including all materials, equipment and instruments required for any preliminary working or tests of the Goods);
- 10.1.4 all Goods after delivery by the Company are at the Customer's risk and must be paid for notwithstanding the destruction thereof of any damage thereto however caused whilst such goods are on the Customer's premises whether prior to or after installation.
- 10.1.5 the health and safety of the Company's personnel whilst at the Customer's premises shall be the responsibility of the Customer.
- 11 GOODS FOR EXPORT**
- In the case of Goods for Export the following supplementary conditions will apply and references in the Conditions to the Customer and the Customer's premises shall where the context so requires include reference to its forwarding agents and their premises in the United Kingdom.
- 11.1 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Premises before delivery by the Carrier to its forwarding agents in the United Kingdom ("the delivery"). After the delivery the Customer is deemed to have accepted the Goods and the Company shall have no liability for any claim in respect of any defect in the Goods which would have been apparent from inspection and shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 11.2 The Company shall not be responsible for any loss or damage to the Goods whilst in transit after the delivery.
- 11.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods in the country of destination and for the payment of any duties thereon.
- 11.4 Payment of the Price shall be made by cash in advance or irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in England acceptable to the Company actual payment being made by such bank to the Company 60 days after receipt by it from the Company of proof of the delivery. Payment on account terms may also be accepted where agreed by both parties in writing.
- 11.5 The Customer undertakes not to offer the Goods for resale in the United Kingdom and Northern Ireland or in any other country notified by the Company to the Customer at or before the time the Order is placed, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.
- 12 NOTICE**
- Any Notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the Notice.
- 13 ENTIRE AGREEMENT**
- 13.1 The Conditions set out the entire agreement and understanding between the parties in respect of the Contract and the Customer acknowledges that he has not entered into the Contract in reliance upon any representation warranty or undertaking of the Company, which is not set out or referred to in the Conditions.
- 13.2 The Customer irrevocably and unconditionally waives any right to claim for damages and/or to rescind the Contract for any misrepresentation whether or not contained in the Contract or for breach of any warranty not contained or referred to in the Contract unless otherwise agreed by the Company in writing
- 14 VALIDITY**
- 14.1 If any of the Conditions is adjudged by any Court of competent jurisdiction to be void or unenforceable but would be valid if part of the wording thereof was deleted then the said Condition shall apply within the jurisdiction of that Court with such modifications as may be necessary to make it valid and effective.
- 14.2 Notwithstanding Clause 14.1 above the Contract shall continue in full force and effect subject to any such modification in accordance with clause 14.1 above.
- 15 LAW**
- This Contract shall be governed by and construed in all respects in accordance with the laws of England and the parties hereto submit to the jurisdiction of the English Courts.