



Oberalp UK Limited

Terms and Conditions for the Sale of Goods

The customer's attention is drawn in particular to the provisions of *clause 10*.

1. INTERPRETATION

1.1 Definitions:

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

Business Hours: the period from 9:00am to 5:00pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 14.3

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

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

Delivery Location: has the meaning given in clause 4.11.

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 the Supplier's Sales Literature from time to time.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

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

Supplier: Oberalp UK Limited (registered in England and Wales with company number 03151610).

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 legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

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 as outlined by an Order Confirmation sent to the customer from the supplier, confirming the status of the order and any particulars relating to delivery dates, the number of deliveries etc.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, in the form of an Order Confirmation File, at which point and on which date 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 or advertising produced by the Supplier and any illustrations contained in its 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.

3. GOODS

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY

- 4.1 The Supplier 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 it has been communicated and agreed upon that the goods will be released for shipping.
- 4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location. It remains the responsibility of the customer, upon receipt of delivered goods, to notify the supplier, **within 7 working days**, any missing or damaged goods, or goods not representative of the original order or agreed call-off list.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier 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.
- 4.5 Once the customer has been notified by the supplier that goods are ready to be released, it is the responsibility of the customer to respond to such notification within **5 business days**, either to agree to the release of goods or to make any desired changes such as a partial call off, postponement in shipping. Failure to acknowledge such notification and to respond accordingly, will prompt the supplier to release all goods on the call-off.
- 4.6 If the Customer fails to accept delivery of the Goods within 2 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (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 the supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until actual delivery takes place, and may at its discretion charge the Customer for all related costs and expenses (including insurance).
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 The Supplier warrants that on delivery the Goods shall:

- (a) conform with their description and any applicable Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

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

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full with a credit note.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.1(b);
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (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 their description and any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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

6. SALES AND SERVICE

- 6.1 The Customer shall maintain its store locations, display rooms and service departments in a clean and suitable condition at all times.
- 6.2 The Supplier shall have the right at all reasonable times, during Business Hours to inspect the Customer's stores, display room, and service departments to determine compliance with this agreement.
- 6.3 The Customer shall use its best efforts to reasonably promote demand for and sale of the Supplier's products and will maintain adequate facilities and knowledgeable and friendly sales personnel for this purpose.
- 6.4 The Customer agrees that all persons employed or engaged by it shall:
- (a) acquaint themselves with materials and clinics as provided by the Supplier;
 - (b) shall be familiar and competent with the Supplier's products and;
 - (c) shall have the knowledge and training necessary to properly advise consumers for proper use and post-sale service to promote maximum effective marketing of the Supplier's products, customer safety and satisfaction, and protection against product liability and other claims.
- 6.5 The Customer warrants that its sales staff shall have the knowledge and training necessary to properly advise consumers of all skill levels from beginners to experts, about the proper use and post-sale service of the Supplier's products by:
- (a) acquainting themselves with any materials and clinics as provided by the Supplier;
 - (b) undertaking any training necessary to properly advise consumers for proper use and post-sale service to promote maximum effective marketing of the Supplier's products, customer safety and satisfaction, and protection against product liability and other claims

7. INTELLECTUAL PROPERTY

- 7.1 The Supplier grants a non-exclusive licence to the Customer to use its trademarks, trade names, copyrighted images, logos, and distinctive advertising marks (collectively, the "Marks") while the Customer sells the Supplier's products, provided that (1) the Marks are used solely in connection with the advertisement, promotion and sale of the Supplier's products; (2) the Marks are not modified in any way; and (3) the Customer uses these Marks in accordance with all applicable instructions and guidelines from the Supplier, specifically including, but not limited to, the Guidelines. Any use of any Marks in violation of this section or the Guidelines may at the sole discretion of the Supplier result in termination of this licence of this Agreement.

7.2 Any and all of the Oberalp trademarks in Retailer's advertising or in Retailer's store(s) shall be used in strict accordance with Oberalp's Trademark and Intellectual Property Guidelines

8. TITLE AND RISK

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

8.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (cash or cleared funds) for the goods and any other goods that the Supplier has shipped to the Customer, in which case the title to the goods shall pass at the time of payment of all such sums.

8.3 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 the Supplier'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) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

8.4 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

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

8.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right 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.

9. PRICE AND PAYMENT

- 9.1 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 the Supplier's published price list in force as at the date of delivery.
- 9.2 The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 9.3 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, unless there is an agreement between both parties for pre-payment prior to shipping goods.
- 9.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within the payment terms agreed
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
 - (c) time for payment shall be of the essence of the Contract.
- 9.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, 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 clause 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%.
- 9.6 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 and deductions owed through credit notes that have been raised).

10. LIMITATION OF LIABILITY

- 10.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 10.2 References to liability in this clause include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

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

10.4 Subject to clause 10.3, 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.

10.5 This clause 10 shall survive termination of the Contract.

11. COSTS

11.1 The Customer must pay on demand and on a full indemnity basis the costs and expenses of the Supplier including any solicitors' or other professionals' costs and expenses (whether incurred before or after the termination of this agreement) in connection with or in contemplation of, the enforcement of the terms of this agreement.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Supplier 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 30 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.

12.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or the Supplier 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.

12.3 Without limiting its other rights or remedies, the Supplier 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.

12.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest, any other sums due, and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.6 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.

13. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for two months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

14. GENERAL

14.1 Assignment and other dealings.

- (a) The Supplier 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 the Supplier.

14.2 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on 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.

14.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 **Waiver.**

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

14.5 **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 clause 14.5 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.

14.6 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the addresses nominated by the parties from time to time.
- (b) Any notice shall be deemed to have been received
 - (i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.7 **Third party rights.**

- (a) 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.

14.8 **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.

14.9 **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 the Contract or its subject matter or formation.