

TERMS AND CONDITIONS OF PURCHASE OF GOODS

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Anti-Bribery and Corruption Legislation: all applicable laws, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, the Bribery Act 2010 or any legislation or common law anywhere in the world creating offences in respect of bribery or fraudulent or corrupt acts;

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

Buyer: Lamotte Europe Limited incorporated and registered in England and Wales with company number 08364850 whose registered office is at Highdown House, 11 Highdown Road, Leamington Spa, CV31 1XT.

Commencement Date: has the meaning given in clause 2.3;

Conditions: these standard terms and conditions of purchase as amended from time to time in accordance with clause 12.9;

Contract: the contract between The Buyer and The Seller for the supply of Goods which is made up of these Conditions and any applicable Specification;

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

Delivery Date: the date specified in the Order or, if none is specified, within 30 days of the date of the Order;

Delivery Location: means the address at which the Seller shall deliver the Goods as specified in the Order;

Goods: the water testing kits (or any part of them) as described in the Seller's catalogue or on the Seller's website as updated from time to time;

Order: Buyer's order for the Goods;

Seller: as set out in the Order;

Specification: any description and/or specification for the Goods.

1.2 Interpretation:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes email.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Seller issuing a written acceptance of the Order; and
 - (b) the Seller doing any act consistent with fulfilling the Order,at which point the Contract shall come into existence (**Commencement Date**).

3. **SUPPLY OF GOODS**

- 3.1 The Seller warrants that on delivery and for a period of 24 months for electrical Goods, and 12 months for all other Goods, from the date of delivery (**Warranty Period**), the Goods shall:
 - 3.1.1 correspond with their description and any applicable Specification; and
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgement;
 - 3.1.3 be free from material defects in design, material and workmanship; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 If:

- (a) the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.1;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost.

the Seller shall, repair or replace the defective Goods, or refund the price of the defective Goods in full.

3.3 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4. **DELIVERY OF GOODS**

4.1 The Seller shall ensure that:

- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 prior to dispatch, the Buyer is provided with a booking in date for delivery of each consignment of the Goods (whether or not such date is the Delivery Date);
- 4.1.3 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Goods shall be:

- 4.2.1 delivered by the Seller on the Delivery Date to the Delivery Location during the Buyer's normal hours of business, or as instructed by the Buyer; or
- 4.2.2 as may be advised by the Seller at the time of the Order, collected by the Buyer from the Seller's location and such collection shall be within a reasonable timeframe.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 In accordance with 4.2.1, if the Seller:

- 4.4.1 delivers less than 95% of the quantity of Goods ordered, may reject the Goods;
- or

4.4.2 delivers more than 105% of the quantity of Goods ordered, the Buyer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Seller's risk and expense. If Seller delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, the Seller shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately.

4.6 Title and risk in the Goods shall pass to the Buyer on completion of delivery.

5. **BUYER'S REMEDIES**

5.1 If the Seller fails to deliver the Goods by the Delivery Date or has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, the Buyer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

5.1.1 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party;

5.1.2 to require a refund from the Seller of sums paid in advance for Goods that it has not delivered; and

5.1.3 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.

5.2 These Conditions shall extend to repaired or replacement goods supplied by the Seller.

5.3 The Buyer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

6. **CHARGES AND PAYMENT**

6.1 The price for the Goods:

6.1.1 shall be set out in the Order or in the Seller's published price list in force at the Commencement Date; and

6.1.2 be exclusive of amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

6.1.3 be inclusive of the costs of packaging, insurance and carriage of the Goods.

- 6.2 The Seller shall invoice the Buyer on or at any time after completion of delivery or collection of the Goods as applicable. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the date of the Order, the Buyer's order number, the Seller's VAT registration number and any supporting documents that the Buyer may reasonably require.
- 6.3 In consideration of the supply of Goods by the Seller, the Buyer shall pay the undisputed invoiced amounts within thirty (30) days following the end of the month unless otherwise agreed between the parties and where a correctly rendered invoice is received by the Buyer, to a bank account nominated in writing by the Seller.
- 6.4 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then the Buyer 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 6.4 will accrue each day at 2% a year above Barclays Bank base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.5 All amounts due under this agreement 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)..

7. **CONFIDENTIALITY**

- 7.1 Each party undertakes that it shall not at any time during the Contract and for a period of two (2) years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.2.
- 7.2 Each party may disclose the other party's confidential information:
- 7.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 7; and
 - 7.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 7.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

8. **COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

- 8.1 In performing its obligations under the Contract, the Seller shall comply with all applicable laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 (if applicable), Anti-Bribery and Corruption Legislation.

9. **TERMINATION**

9.1 The Buyer may terminate the Contract in whole or in part at any time before delivery of the Goods by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Contract if:

- (a) there is a change of control of the Seller which involves a competitor of the Buyer; or
- (b) the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 The Buyer may terminate the Contract in whole or in part for convenience by giving the Seller not less than thirty (30) days' written notice. If the Buyer terminates the Contract in accordance with this clause 9.2, the Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss and shall be in full and final settlement of termination.

9.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 9.3.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- 9.3.2 the other party 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), 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 9.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

10. **CONSEQUENCES OF TERMINATION**

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

10.2 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. **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one (1) month, the party not affected may terminate the Contract by giving one (1) week's written notice to the affected party.

12. **GENERAL**

12.1 **Assignment and other dealings.** Either party may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Contract provided that it gives prior written notice of such dealing to the other party.

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

12.3 **Notices.**

12.3.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address as set out in the Order.

12.3.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; 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 12.3.2, 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.

12.3.3 This clause 12.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant

provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 12.4 shall not affect the validity and enforceability of the rest of the Contract.

- 12.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 12.7 **Entire agreement.** 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.
- 12.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 12.10 **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.
- 12.11 **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.