

HAMPSHIRE COSMETICS LIMITED - CONDITIONS OF SALE

1 INTERPRETATION

- 1.1 In these Conditions: "Acknowledgement" means HCL's acknowledgement of order; "Customer" means the Customer named in the Acknowledgment; "Customer Marks" means any name, trade or service mark or logo of the Customer to be used in relation to this Contract; "Customers Premises" means such premises as HCL are directed to deliver the Goods to; "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and HCL; "Contract" means the contract for the purchase and sale of the Goods; "Delivery" means delivery of the Goods in the manner set out in the Acknowledgment; "Free Issue Terms" means items supplied to HCL by or on behalf of the Customer for the purpose of the contract; "Goods" means the goods (including any part shipments) and services set out in the Quotation and Acknowledgement; "HCL" means Hampshire Cosmetics Limited, registered in England under number 2873670; "Intellectual Property Rights" means all intellectual and industrial property rights anywhere in the world, including, without limitation, any invention, patent, design or utility model rights, any copyright & trade marks, service marks, database rights, topography rights, commercial or confidential information, know how or trade secrets, & any other rights of a similar nature whether or not any of the same are registered, & the right to apply for any of them; "Order" means purchase order, letter of intent, product forecast for call off or any other document sent by the Customer offering to buy Goods set out in the Quotation; "Origination Costs" means the cost to market for the Goods incurred by HCL including but not limited to label origination, cutters, tooling, external laboratory testing, focus group testing; "Quotation" means HCL's quotation; "Services" means the services set out in the acknowledgement and/or quotation

2 QUOTATION AND ACKNOWLEDGMENT

- 2.1 Any Quotation given by HCL is an invitation to treat and is valid for a period of [30] days.
- 2.2 If the Customer wishes to order on the basis of a Quotation it must sign and return the Quotation to HCL. Any Order sent by the Customer will be deemed to be an offer to purchase the Goods on the terms set out in the Quotation.
- 2.3 HCL shall issue an Acknowledgment to the Customer. The Contract will only be formed upon issue of the Acknowledgment by HCL.
- 2.4 These Conditions together with the particulars set out in the Acknowledgment and Quotation shall govern the Contract and all other terms and conditions are excluded.
- 2.5 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and HCL.
- 2.6 All drawings, descriptive matter, specifications and advertising issued by HCL and any descriptions or illustrations contained in HCL's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, Acknowledgment, invoice or other document or information issued by HCL shall be subject to correction without any liability on the part of HCL.

3 ORDERS, SPECIFICATIONS AND DELIVERIES

- 3.1 The Customer shall be responsible to HCL for ensuring the accuracy of information (including any applicable specification) submitted by the Customer, and for giving HCL any necessary information relating to the Goods within a sufficient time to enable HCL to perform the Contract in accordance with its terms.
- 3.2 Subject to clauses 3.3 and 8.2 the quality and description of, and any specification for the Goods, shall be those set out in the Quotation.
- 3.3 The quantity of Goods shall be as set out in the Acknowledgment except that HCL shall be entitled to deliver and invoice for up to 10% more or 10% less Goods.
- 3.4 No order in respect of which an Acknowledgment has been issued by HCL may be cancelled by the Customer except with the written agreement of HCL and on terms that the Customer shall indemnify HCL in full against all loss (including loss of profit), costs (including origination costs, the cost of all labour and the costs of all materials ordered to produce the Goods), disposal costs (including costs of disposing of any Goods or materials), damages, charges and expenses incurred by HCL in the performance of the Contract or as a result of cancellation.

4 PRICE OF THE GOODS

- 4.1 The price of the Goods shall be as set out in the Quotation and confirmed on the Acknowledgment.
- 4.2 All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by HCL without giving notice to the Customer. All prices exclude the cost of transportation and delivery to the Customers premises.
- 4.3 HCL reserves the right, by notice given at any time before delivery, to vary the price of the Goods to reflect any increase or decrease in the total cost of the Goods to HCL arising from:
- 4.3.1 any cause beyond HCL's control (including without limitation, foreign exchange fluctuation, alteration of duties, significant increases in costs of labour, materials or other costs of manufacture); or
- 4.3.2 any change in delivery dates, quantities or other matters affecting Goods from that set out in the Acknowledgment and or Quotation which is requested by the Customer; or
- 4.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give HCL adequate information or instructions; or
- 4.3.4 any delay caused by delay in receipt of Free Issue Items from the Customer
- 4.4 The price is exclusive of any applicable value added tax or other statutory duties, which the Customer shall be additionally liable to pay to HCL.
- 4.5 All Origination Costs for the Goods will be invoiced as incurred and be payable by the Customer whether or not they have been set out on the Quotation and/or Acknowledgment.
- 4.6 The cost of pallets and returnable containers may be charged to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided they or an equivalent are returned undamaged to HCL within six weeks from the date of the invoice.
- 4.7 HCL reserve the right to charge a standard HCL rate per pallet per week for Customer owned components held for more than 3 months from date of receipt.
- 4.8 Surplus specific raw materials and components which have had to be purchased to meet minimum purchase requirements above that required for each order will be invoiced to the Customer when the goods of that type have ceased to be manufactured or when no such goods have been manufactured for the Customer by HCL for a period of more than 3 months.

5 TERMS OF PAYMENT

- 5.1 Payment shall be made by the Customer to HCL irrespective of the date of delivery on the thirtieth day following the date of the invoice.
- 5.2 In the event of late payment by the Customer, HCL shall be entitled to take any or all of the following actions:
- 5.2.1 charge interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;
- 5.2.2 suspend all further deliveries of Goods to the Customer under this Contract or any other contract with the Customer;
- 5.2.3 suspend any services being provided to the Customer under this Contract or any other contract with the Customer;
- 5.2.4 cancel the Contract and charge the Customer for all loss (including loss of profit), costs (including the cost of all labour and materials used and disposal of the Goods), damages, charges and expenses incurred by HCL in the performance of the Contract or as a result of cancellation;
- 5.2.5 apply any monies received from the Customer whether under this Contract or any other contract towards payment of the outstanding amount.

6 DELIVERY

- 6.1 Any dates specified by HCL for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. HCL shall not be liable for any loss or damage occurring through any failure or inability to meet such estimated dates. The Goods may be delivered by HCL in advance of the estimated delivery date on giving reasonable notice to the Customer.
- 6.2 Where HCL has agreed to deliver the Goods in instalments:
- 6.2.1 each delivery shall constitute a separate contract and failure by HCL to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Customer in respect of any one or more instalments, shall not entitle the Customer to treat the Contract as a whole as repudiated;
- 6.2.2 HCL shall invoice the Customer for the Goods in each delivery;
- 6.2.3 HCL shall be entitled to invoice for all remaining Goods whether delivered or not at the expiry of 3 months from the date of manufacture.
- 6.3 If for any reason on the date for delivery the Customer fails to take delivery of any of the Goods or where Goods are to be delivered in instalments and Goods remain undelivered at the end of a period of 3 months following date of manufacture:
- 6.3.1 risk in the Goods will immediately pass to the Customer;
- 6.3.2 the Goods will be deemed to have been delivered;

- 6.3.3 HCL may store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses;

- 6.3.4 if the Customer has not paid for the Goods, upon giving 3 months notice to the Customer HCL may sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract;

- 6.3.5 if the Customer has paid for the Goods upon giving 3 months notice HCL may sell the Goods at the best price readily obtainable and account to the Customer (after deduction of all costs incurred) for any excess over the price under the Contract.

7 RISK AND OWNERSHIP

- 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 HCL's premises, at the time when HCL 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 HCL's premises, at the time of delivery or,
- 7.1.3 if the Customer wrongfully refuses delivery then at the time when HCL has tendered delivery of the Goods.
- 7.2 The Customer retains the risk for all components or materials supplied to HCL other than by way of sale, and such items shall be insured by the Customer at all times and against all risks.
- 7.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Customer until HCL has received in cash or cleared funds payment in full of the price of the Goods and all other goods and services agreed to be sold by HCL to the Customer for which payment is due.
- 7.4 Until such time as the ownership of the Goods passes to the Customer, the Customer shall hold the Goods as HCL'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 HCL's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to HCL 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.
- 7.5 Until such time as ownership of the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), HCL shall be entitled at any time to require the Customer to deliver the Goods to HCL 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.
- 7.6 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 HCL, but if the Customer does so then all the moneys owing by the Customer to HCL shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8 WARRANTIES AND LIABILITY

- 8.1 The Company warrants that (subject to the other provisions of these Conditions) the Goods will correspond with their specification at the time of delivery.
- 8.2 Whilst HCL will take all reasonable steps to meet the due specifications set out in the Quotation there may be slight variations in texture and colour of the delicate nature of HCL's products, and the variable characteristics of basic raw materials and dyes which are available to HCL and the Customer shall not be entitled to treat such variations as a breach of the Contract or the warranty given in Clause 8.1.
- 8.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 The Company shall not be liable for a breach of the warranty in condition 8.1:
- 8.4.1 Where delivery is at the Customers premises if the defect has not been notified to HCL within 3 days of delivery;
- 8.4.2 Where delivery is at HCL's premises if the defect is not notified to HCL within 5 days of delivery;
- 8.4.3 Where the alleged breach is that an incorrect quantity of Goods has been delivered if the details of the alleged breach are not notified to HCL within 2 days of delivery together with the information required by HCL to identify the alleged breach including the advice note number, case number and condition of packaging.
- 8.4.4 if the defect arises because the Customer failed to follow HCL's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 8.5 HCL shall not be liable for a breach of the warranty in condition 8.1 where the alleged breach concerns the physical and chemical stability of Goods delivered unless
- 8.5.1 the Customer can show that Goods have at all times after delivery been stored in an appropriate environment, that prevents physical damage, contamination, deterioration, misidentification or loss; and
- 8.5.2 the breach is notified to HCL within one year from the date of delivery if at HCL's premises or in the case of Goods delivered by HCL at the Customers Premises without using any third party for carriage, within one year from the date of delivery.
- 8.6 HCL shall not be liable for:
- (a) failure to perform any obligation of this Contract if such failure was caused by circumstances beyond HCL's control; or
- (b) any delay howsoever caused in performing any obligation hereunder.
- 8.7 Subject to conditions 8.4 and 8.5 if any of the Goods do not conform with the warranty in condition 8.1 HCL's liability shall be limited (at HCL's option) to the replacement of such Goods (or the defective part) or the refund of the price of such Goods.
- 8.8 If HCL so requests, the Customer shall, at HCL's expense, return the Goods or the defective part to HCL. Any Goods replaced will belong to HCL.
- 8.9 Subject to condition 7.5:
- 8.9.1 HCL shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.10 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.

9 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 9.1 The parties agree that formulae, recipes and ingredients (and details as to their sourcing) for the Goods and details concerning pricing, customer and volumes supplied are confidential information and will not be used by the recipient except for regulatory purposes or as required to further the purposes of the Contract.
- 9.2 Unless expressly agreed in writing no dealings under the Contract shall result in any transfer of any Intellectual Property Rights from one party to the other.
- 9.3 The Customer warrants that it has the right to authorise HCL to manufacture and supply the Goods to the Customer's specification.
- 9.4 In the event that any claim is made against the Customer that Goods specified and supplied by HCL infringe the Intellectual Property Right of any third party or have caused personal injury and such claim does not relate only to some element of the Goods specified by the Customer or incorporated after the Goods were delivered to the Customer then the Customer shall:
- 9.4.1 immediately inform HCL and provide it with all information and co-operation;
- 9.4.2 at its request (and in return for a secured indemnity against costs) give full conduct of the matter to HCL.

10 INSOLVENCY OF CUSTOMER

- 10.1 This clause applies if:
- 10.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any property or assets of the Customer, or
- 10.1.3 HCL reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, HCL shall be entitled to cancel the Contract or suspend any further delivery under the Contract without any liability to the Customer and all invoices shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 GENERAL

- 11.1 Unless otherwise agreed in writing, the Contract shall in all respects be construed, and operate as an English contract, and in conformity with English law and the parties grant exclusive jurisdiction to the English courts in relation to these Conditions and the Contract and the Goods and also in any matter directly, or indirectly arising out of them, or connected with them.
- 11.2 If any of these provisions is held not to be valid, but would be valid if part of the wording were deleted or modified then such provision shall apply with such modifications as may be necessary to make it enforceable.