



BLUESKY (UK) LTD TERMS & CONDITIONS OF SALE AND MANUFACTURE

1. These Conditions are the only conditions upon which Bluesky (UK) Ltd a company registered in England and Wales under company number 07763362, VAT number 804531850, and with its registered office at Horizon House, Estate Road Five, Grimsby, DN31 2TG (BlueSky) is prepared to deal with You and these Conditions shall apply to the sale or manufacture of goods by BlueSky to You, to the exclusion of all other terms and conditions. "You/Your" means any person, organisation or company who purchases goods and services, in the course of their business, from BlueSky. You should keep a copy of these terms and conditions for future reference.
2. ORDER PROCEDURE
 - 2.1. Any quotation issued by BlueSky is not an offer to sell the goods which are the subject of that quotation but, it is an invitation to You to treat. Any quotation issued by BlueSky may be withdrawn by BlueSky at any time on notice. Each order placed by You shall be an offer by You to purchase the relevant goods subject to these Conditions. No order will be deemed accepted by BlueSky unless and until BlueSky issues a written order confirmation or delivers the goods which are the subject of Your order (whichever happens first). Once an order has been accepted by BlueSky, it may only be cancelled with the consent of BlueSky in writing.
 - 2.2. If, for any reason beyond BlueSky's reasonable control, BlueSky has insufficient stock to deliver the goods You have ordered, BlueSky will notify You by email and set out details of any alternative goods that are available to You (which will be of a similar quality and of a similar specification as the Goods they replace).
 - 2.3. Where You are not willing to accept any alternative goods offered by BlueSky or if there are no reasonable alternatives available, BlueSky may cancel Your contract in respect of those goods by notifying You by email, at the email address You have provided, and BlueSky will credit Your account with any sum charged to You for those goods as soon as possible, but in any event within 30 days of the date Your order was placed.
3. PRICING
 - 3.1. The price specified by You for each order accepted by BlueSky shall be the price as specified in the relevant quotation issued by BlueSky or, if no such quotation was issued by BlueSky, shall be the price specified in BlueSky's list price for the goods in question at the date of delivery. Prices are exclusive of VAT and other applicable costs and charges (including, without limitation, the costs of packaging and delivering orders) all of which shall be payable by You in addition. Any prices stated on BlueSky's website may be subject to change so You must check the prices at the time You place Your order.
 - 3.2. BlueSky shall be entitled to make such adjustment to the price of orders as reasonably required from time to time to:

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- 3.2.1. reflect any increase to BlueSky in the cost of wages, raw materials, commodities, utilities, which are used in the manufacture of goods or provision of services;
- 3.2.2. reflect any request by You to change the delivery date(s), quantities or types of goods ordered, or the specification;
- 3.2.3. reflect any delay caused by any instructions of You or Your failure to give BlueSky adequate or accurate information or instructions; or
- 3.2.4. take account of any currency fluctuations between the date of the order in question and the date of delivery.

If You consider any such increase to be unreasonable You may within 7 days of receipt of such notice cancel any purchase orders for the goods affected by the price increase unless they have already been dispatched or delivered. You may not cancel any purchase orders where the goods have been made to Your specification.

- 3.3. The price for each order must be paid by You to BlueSky in cleared funds prior to the date of delivery unless BlueSky has agreed to grant You credit terms (which may be withdrawn or amended at any time by BlueSky on notice and which may be on such terms as BlueSky deems reasonable) in which case, BlueSky shall be entitled to invoice You on such terms as have been agreed by BlueSky. Time of payment shall be of the essence and without prejudice to any other rights or remedies available to BlueSky. BlueSky shall be entitled to suspend further deliveries under any or all of Your orders should any amount be overdue.
- 3.4. Unless BLUESKY agrees otherwise, goods that are ordered by BLUESKY specifically for You or Goods that are manufactured to Your specification (“Bespoke Goods”) must be paid for in full before delivery. If You cancel any order for bespoke goods, You agree to pay for such goods in full.
- 3.5. If You fail to make any payment due to BlueSky by the due date for payment, then You shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 3.6. You shall not be entitled to set-off against any amount payable by You to BlueSky whether under the contract or otherwise. BlueSky may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by You against any amount payable by BlueSky to You.
- 3.7. Any queries or disputes regarding any of BlueSky's invoices must be made within 7 days of the date of the invoice. After that date You will be deemed to have accepted that the sums stated on the invoice are payable and payment must be made in accordance with this clause 3.

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4. DELIVERIES

- 4.1. BlueSky shall arrange for the delivery of each order to the delivery address that You specify on Your order and the costs of such delivery shall be payable by You in addition to the price of the goods. In the event that You fail to accept delivery of any goods at the first attempt then You shall also pay all additional costs and charges incurred by BlueSky in storing the relevant goods and attempting to redeliver them to You.
- 4.2. BlueSky shall use its reasonable endeavours to meet any delivery date/time requested by You although time of delivery shall not be of the essence and BlueSky shall not be liable to You for any loss, damage, costs or expenses incurred by You as a result of delivery of any order not taking place by any particular date/time nor shall You have any right to cancel or reject any order by virtue of delivery not taking place by any particular date/time. If the goods cannot be reasonably delivered to You, BlueSky will be entitled to terminate the contract.
- 4.3. Unless agreed otherwise in writing, if You request that any goods are delivered outside of the UK or if You choose to export any goods outside of the UK itself then You shall be the “exporter” of those goods within the meaning of any applicable law or regulation and will be solely responsible at Your own cost for compliance with all export control laws and regulations. You shall be solely responsible for obtaining any necessary import licenses or permits and for any and all customs duties, clearance charges, taxes, brokers fees and other amounts payable in connection with the importation of those goods into any territory outside of the UK.
- 4.4. Unless BlueSky agrees otherwise, BlueSky shall be entitled to select the basis on which it charges You for the goods. The goods are normally sold by the number of items (quantity) that take into account manufacturing tolerances of +/- 5% for packaging items and +/- 10% for products supplied as part of our end-to-end service offering.
- 4.5. The quantity of goods printed on BlueSky’s advice note shall be final unless you give BlueSky notice in writing of any disparity within 7 days of receiving the goods and You provide BlueSky with a reasonable opportunity to verify the quantity of the goods before You use or sell the goods.

5. CONSUMER RIGHTS

- 5.1. If You are contracting as a consumer, as defined by the Consumer Rights Act 2015 or such other relevant legislation, then, in addition to any rights You have for damaged or defective goods, You may cancel Your Contract at any time within fourteen days from the day after You received the goods. In this case, You will receive a full refund of the price paid for the goods in accordance with our refunds policy (set out in clause 6 below).

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5.2. To cancel a Contract in this way, You must inform BlueSky in writing. You must also return the Goods to BlueSky as soon as reasonably practicable, and at Your own cost. You have a legal obligation to take reasonable care of the Goods while they are in Your possession. If You fail to comply with this obligation, BlueSky may have a right of action against You for compensation.

6. REFUNDS

6.1. If You return goods to us: (a) Because You are a consumer and You have cancelled the Contract between us within the fourteen-day cooling-off period (see clause 5.1 above), BlueSky will process the refund due to You as soon as possible and, in any case, within 30 days of the day on which You gave BlueSky notice of cancellation. In this case, BlueSky will refund the price of the Goods in full, and any applicable delivery charges. However, You will be responsible for the cost of returning the item to us; or (b) Where BlueSky has agreed to give You a refund in any other circumstances, BlueSky will examine the returned Goods and will notify You of Your refund via e-mail within a reasonable period of time. BlueSky will deduct 20% of the cost of the returned goods to cover handling and re-stocking costs. BlueSky will usually process the refund due to You as soon as possible and, in any case, within 30 days of the day BlueSky confirmed to You via e-mail that You were entitled to a refund, subject to the Goods having been received back by BlueSky. BlueSky may make a deduction from the refund for any loss in value of the Goods supplied if the loss is the result of unnecessary handling by You. BlueSky will refund the price of defective Goods in full, any applicable delivery charges and any reasonable costs You incur in returning the item to us. Whether buying goods as a consumer or as a business, You will not be entitled to a refund in respect of bespoke goods ordered from BlueSky (this does not affect your statutory rights).

6.2. BLUESKY will usually refund any money received from You using the same method originally used by You to pay for Your purchase.

7. WARRANTY

7.1. Where You are purchasing Goods as a consumer, BlueSky warrants that the Goods will: (a) be of satisfactory quality; (b) be fit for the purpose for which goods of that type are commonly supplied; (c) correspond with the description and any specification for the Goods on BlueSky's website; (d) be free from minor defects; and (e) will be of a satisfactory safety standard and durability.

7.2. Where You are purchasing Goods as a business: (a) BlueSky warrants that, for a period of 90 days from the date of their delivery, the Goods will comply with the description and specification set out on BlueSky's website and will be free from material defects; and (b) except as expressly provided in these terms and conditions, all warranties conditions or other provisions implied by statute or common law are excluded to the fullest extent permitted by law and, in particular (but without limitation), BlueSky does not make any warranty that the Goods will be

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fit for any particular use or purpose and it is Your responsibility to ensure that the Goods meet Your requirements. Upon request, samples are available to enable You to satisfy Yourself that the Goods are fit for the intended purpose. The number of samples may be limited.

7.3. Notwithstanding clause 7.2, You agree and accept that due to manufacturing processes, up to 2% of the goods supplied may not meet the warranties as set out in clause 7.2 and You accept that your sole remedy in respect of the same shall be a refund in respect of those goods that do not comply. Any refund given to you shall be subject to the provisions of clause 7.5.

7.4. BlueSky will endeavour to ensure that pictures of the Goods on BlueSky's website are as accurate as possible, but technical limitations and slight variations between the pictures and the Goods themselves must be expected.

7.5. If You have a valid claim in respect of any of the Goods which is based on any failure to meet the warranties set out in this clause 7, BlueSky shall be entitled to replace the Goods (or the faulty part in question) free of charge or, at BlueSky's sole discretion, refund to You the price of the Goods (or a proportionate part of the price). You must notify us of any problems with the Goods or their delivery as soon as You reasonably can and in any event no later than 7 working days unless otherwise agreed in writing by BlueSky.

7.6. The warranties in this clause are subject to the limitations on liability set out at clause 9.

8. WHERE BLUESKY MANUFACTURES OR PRODUCES GOODS TO YOUR SPECIFICATION

8.1. When BlueSky manufactures or produces any goods to Your specification, this clause 8 will apply. In the event of any conflict between this clause and the other clauses of this contract, clause 8 shall take priority.

8.2. When BlueSky manufactures goods specifically for You, You are responsible for ensuring that all information you provide to BlueSky is accurate and complete. BlueSky does not accept the return of any goods supplied to You if that return is due to incorrect information provided by You.

8.3. Proofs and/or samples of items to be manufactured specifically for You must be signed and accepted by You. BlueSky cannot guarantee colours of final products and specifications may alter slightly as part of the manufacturing process. BlueSky does not accept any responsibility for such variances, and You agree that BlueSky will not have any liability for those and that You will accept such goods made to your specification.

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- 8.4. When You have supplied BlueSky with stock or products for BlueSky to manufacture or process on Your behalf, BlueSky cannot accept responsibility for any loss or damage caused to Your stock or products whilst on BlueSky's premises. You should ensure that Your insurance covers any stock or products whilst on BlueSky's premises.
- 8.5. Where packaging is free issued to BlueSky by You, it is Your responsibility to ensure that all components are fully functional and compatible with each other. As the customer, You are responsible for the functionality and fit of any free issued components (either compatibility of the packaging itself, or compatibility of the packaging with formulation). Where BlueSky have developed the formulation as part of our end-to-end service, product formulation compatibility will have been addressed as part of the development process.

9. LIABILITY

- 9.1. Any concerns regarding the quality of goods supplied must be made to BlueSky in writing within 7 days of delivery. The goods or a sample must then be returned to BlueSky for analysis. If the quality of the goods is below the agreed standard BlueSky shall (at its discretion and as Your sole and exclusive remedy) either discount or replace the affected goods.
- 9.2. BlueSky has no liability regarding the observance of any legal regulations with regard to the processing of goods to Your specification and You must satisfy Yourself that the goods received are entirely fit for the purpose intended by You.
- 9.3. BlueSky shall have no liability to You for loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings or for any consequential, special or indirect loss or damage.
- 9.4. Nothing in the Contract restricts or limits BlueSky's or Your liability for death or personal injury resulting from negligence, for fraud or for any other liability which may not be excluded or restricted by law.
- 9.5. Where you are purchasing goods as a business, subject to clause 9.4 BlueSky's liability for all other losses arising under or in connection with the Contract or any collateral contract, whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty or otherwise shall be limited to the price of the Goods.
- 9.6. Where you are purchasing goods as a consumer, BlueSky will not be liable for any losses that were not foreseeable to both You and BlueSky when the contract was formed and that were not caused by any breach on BlueSky's part.

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10. RETENTION OF TITLE

- 10.1. Risk of loss or damage to the goods supplied shall pass from BlueSky to You at the point of delivery. You must inspect the goods as soon as possible following delivery and notify BlueSky in writing of any damage to the goods caused in transit within 3 days of the date of delivery. If no such notification is provided, then the goods in question shall be deemed to have been delivered in an undamaged condition.
- 10.2. Title to the goods supplied shall not pass to You unless and until BlueSky has received in cleared funds from You all sums due to it in respect of the goods supplied and all other sums due from You to BlueSky on any account whatsoever.
- 10.3. Until title of goods has passed to You, You must:
- 10.3.1. hold those goods on a fiduciary basis as BlueSky's bailee;
 - 10.3.2. store those goods separately from any other goods in a way which makes them readily identifiable as BlueSky's property;
 - 10.3.3. maintain those goods in a satisfactory condition and insure the goods on BlueSky's behalf for the price payable from the date of delivery and hold any proceeds of insurance on trust for BlueSky and not mix those proceeds with any other money or pay them into any overdrawn bank account;
 - 10.3.4. not remove or deface or obscure any identifying mark or packaging on or relating to the goods.
- 10.4. If before title to the Goods passes to You, You become subject to any of the events listed in clause 11.2, or BlueSky reasonably believes that any such event is about to happen and notifies You accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another goods, and without limiting any other right or remedy BlueSky may have, BlueSky may at any time require You to deliver up the Goods and, if You fail to do so promptly, enter any of Your premises or of any third party where the Goods are stored in order to recover them.

11. TERMINATION

- 11.1. You become subject to any of the events listed in clause 11.2 or BlueSky reasonably believes that You are about to become subject to any of them and notifies You accordingly, then, without limiting any other right or remedy available to BlueSky, BlueSky may cancel or suspend all further deliveries under the Contract or under any other contract without incurring any liability to You, and all outstanding sums shall become immediately due.
- 11.2. For the purposes of clause 11.1 the relevant events are:
- 11.2.1. You suspend, or threatens to suspend, payment of Your debts, or are unable to pay Your debts as they fall due or admit inability to pay Your debts, or (being

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a company or limited liability partnership) is deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay Your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply;

- 11.2.2. You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enters into any compromise or arrangement with Your creditors;
- 11.2.3. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up, other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of Your Company;
- 11.2.4. (being an individual) You are the subject of a bankruptcy petition or order;
- 11.2.5. Your creditor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days;
- 11.2.6. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You and the holder of a qualifying charge over Your assets has become entitled to appoint or has appointed an administrative receiver;

11.3. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. USE OF PERSONAL DATA

12.1. BlueSky will use the personal information You provide to BlueSky:

- 12.1.1. to supply the goods You have ordered to You and
- 12.1.2. to process your payment for the goods you have ordered

12.2. BlueSky may pass Your personal information to credit reference agencies in order to provide credit facilities to you.

12.3. BlueSky may pass Your details to any third parties in accordance with BlueSky's privacy policy which may be found on BlueSky's website.

13. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a force majeure event. A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our

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reasonable control and includes in particular (without limitation) the following: (a) strikes, lock-outs or other industrial action; (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; (c) fire, explosion, storm, flood, earthquake, subsidence, or other natural disaster; (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; (e) impossibility of the use of public or private telecommunications networks; (f) the acts, decrees, legislation, regulations or restrictions of any government; and (g) pandemic or epidemic.

14. GENERAL

14.1. Where You are purchasing goods as a business, these terms and conditions and any document expressly referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to the subject matter of any Contract. BlueSky and the Customer each acknowledge that, in entering into a Contract, neither of us relies on, or will have any remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the documents referred to in them. Where You are purchasing Goods as a consumer, BlueSky intends to rely upon these terms and conditions and any document expressly referred to in them in relation to the subject matter of any Contract. While BlueSky accepts responsibility for statements and representations made by BlueSky's duly authorised agents, please make sure You ask for any variations from these terms and conditions to be confirmed in writing.

14.2. You may not assign, novate or sub-contract any of Your rights or obligations under these Conditions without the prior written consent of BlueSky.

14.3. A person who is not party to these terms and conditions or a Contract shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

14.4. All notices given by You to BlueSky must be given to BlueSky at the contact details set out at the top of these terms and conditions. BlueSky may give notice to You at either the e-mail or postal address you provide to BlueSky when placing an order. Notice will be deemed received and properly served, 24 hours after an e-mail is sent, or 3 days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

14.5. If any court or competent authority decides that any of the provisions of these terms and conditions or any provisions of a Contract are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

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- 14.6. If BlueSky fails, at any time during the term of a Contract, to insist upon strict performance of any of Your obligations under the Contract or any of these terms and conditions, or if BlueSky fails to exercise any of the rights or remedies to which BlueSky is entitled under the Contract, this will not constitute a waiver of such rights or remedies and will not relieve You from compliance with such obligations. A waiver by BlueSky of any default will not constitute a waiver of any subsequent default.
- 14.7. These Conditions and the supply of goods or provision of services by BlueSky shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the non-exclusive jurisdiction of the English courts.

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