

Badrilla Limited: Standard Terms and Conditions of Sale

1. INTERPRETATION

- 1.1 In these Terms:
- "business day" means a day other than a Saturday, Sunday or public holiday in England and Wales;
 - "Certificate of Analysis" means a written description of the specification of each Product together with a summary of the results of testing and analysis of the Product carried out by the Seller pursuant to clause 3.6;
 - "Contract" means the contract for the sale and purchase of the Products;
 - "Customer" means the person who accepts the Seller's written quotation for the sale of the Products or whose written order for the Products is accepted by the Seller;
 - "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
 - "Products" means the products (including any instalment of the Products) agreed in the Contract which the Seller is to supply in accordance with these Terms;
 - "Seller" means Badrilla Ltd. Registered in England (Reg. No. 4809467), of 15 Queen Square, Leeds West Yorkshire, LS2 8AJ, UK;
 - "Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Customer and the Seller from time to time; and
 - "writing" and any similar expression, includes facsimile transmission, e-mail and comparable means of communication.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 1.4 In these Terms, the words "include" or "including" shall be construed without limitation to the words following.
- 1.5 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Customer shall purchase the Products in accordance with the Seller's written quotation (if accepted by the Customer), or the Customer's order (if accepted in writing by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.
- 2.2 The Seller will only accept orders from educational, governmental and commercial organisations and institutions and in particular will not accept orders from consumers. By placing an order the Customer warrants to the Seller that it is not a consumer and acknowledges the right of the Seller to require references from or concerning the Customer before proceeding to fulfil the Contract.
- 2.3 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Customer and the Seller.

- 2.4 In entering into the Contract the Customer acknowledges that it does not do so on the basis of or in reliance upon any representation, warranty or other term which is not confirmed in writing by the Seller, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS, SPECIFICATIONS AND TECHNICAL INFORMATION

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2 The Customer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Seller any necessary information relating to the Products within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Products and any specification for them shall be as set out in the Seller's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Seller).
- 3.4 Technical and performance information, provided orally, in writing, or by electronic means by or on behalf of the Seller and including any descriptions or illustrations in brochures or publicity material is provided for guidance only and is subject to change and unless specifically incorporated in the Contract (in the manner provided in Clause 3.3) shall not form part of any specification or description of the Products.
- 3.5 If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with a specification submitted by the Customer, the Customer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Customer's specification.
- 3.6 Products are subjected by the Seller to a regime of testing and analysis which the Seller considers appropriate having regard to the nature of the Product and the use to which the Seller reasonably considers that it might be put. In the absence of manifest error, the results of any such testing and analysis conducted by the Seller shall be conclusive as to the nature of the Product concerned and its properties and shall take precedence over any results of any testing and analysis conducted by the Customer or any third party. A Certificate of Analysis shall be supplied to the Customer with each consignment of Products delivered.
- 3.7 The Seller reserves the right to make any changes in the specification of the Products which are required to conform with any applicable statutory or E.U. requirements or, where the Products are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.8 No order which has been accepted by the Seller may be cancelled by the Customer except with the agreement in writing of the Seller and on terms that the Customer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE PRODUCTS

- 4.1 The price of the Products shall be the Seller's written quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order.
- 4.2 The Seller reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated in the Seller's written quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Customer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller's premises, the Customer shall be liable to pay the Seller's charges for transport, packaging, insurance and export documentation (as appropriate).
- 4.4 The price is exclusive of any applicable value added tax or other tax or duty which the Customer shall be additionally liable to pay to the Seller.
- 4.5 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Customer and the Seller, the Seller may invoice the Customer for the sums due in respect of the Products on or at any time after delivery of the Products, unless the Products are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Products, in which event the Seller shall be entitled to invoice the Customer for the sums due at any time after the Seller has notified the Customer that the Products are ready for collection or (as the case may be) the Seller has tendered delivery of the Products.
- 5.2 Subject to Clause 5.3 the Customer shall pay the sums due on each invoice in the currency stated on the invoice (without any withholding, deduction or set off on any account whatsoever) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 The Seller reserves the right by notice in writing to the Customer to require payment in cleared funds in advance or on delivery of the Products.
- 5.4 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
- (a) cancel the Contract and any other contracts between the Customer and the Seller or suspend any further deliveries to the Customer under the Contract and under any other contracts between the Customer and the Seller or demand payment of all outstanding balances owing from the Customer to the Seller, whether then due or not;
 - (b) appropriate any payment made by the Customer to such of the Products (or the Products supplied under any other contract between the Customer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Customer);
 - (c) charge the Customer interest (both before and after any judgment) on the amount unpaid, in accordance with the Late Payments of Commercial Debts (Interest) Act 1998, until payment

in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

(d) charge the Customer for all costs and expenses, including legal costs, incurred in the collection of overdue amounts.

6. DELIVERY INSPECTION AND ACCEPTANCE

- 6.1 Delivery of the Products shall be made by the Seller delivering the Products to the place for delivery agreed in writing by the Seller.
- 6.2 Unless otherwise agreed in writing between the Customer and the Seller, where the Products are supplied for export from the United Kingdom, the Products shall be delivered FCA and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 6.3 Any dates quoted for delivery of the Products are approximate only and the Seller shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing.
- 6.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms 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.
- 6.5 If the Seller fails to deliver the Products (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Customer's fault, and the Seller is accordingly liable to the Customer, the Seller's liability shall be limited to refunding the monies paid by the Customer in respect of the Products not delivered.
- 6.6 If at the time stated for delivery the Customer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions or fails to obtain any consent, licence or authorisation which is required for the acquisition, transportation or use of the Products (the obtaining of which shall be the sole responsibility of the Customer), so as to enable delivery to be effected (otherwise than by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller (including its right to require payment in accordance with Clause 5.2), the Seller may:
- (a) store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Products 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 under the Contract or charge the Customer for any shortfall below the price under the Contract.

7. HEALTH AND SAFETY

- 7.1 Products must only be handled by competent, suitably trained personnel familiar with laboratory procedure and potential chemical hazards. The Customer shall be responsible for ensuring safe use of the Products and shall warn its employees and any person who might reasonably be expected to come into contact with the Products of all risks associated with the Products and shall issue appropriate instructions for the safe handling, use and disposal in accordance with all applicable laws, regulations and best practice of the Products and any packaging.
- 7.2 The Products are intended for laboratory research and development use only and unless the Seller has specifically so confirmed otherwise in writing and then only to the extent so confirmed are not to be used for any other purposes (including but not limited to use as or as components in drugs or diagnostics for human, animal or plant use, medical devices, food additives, household chemicals, agricultural or horticultural products or pesticides).

- 7.3 Any advice or recommendation given by the Seller or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Seller is followed or acted on entirely at the Customer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed in writing and nor for any failure on the part of the Customer to follow any such advice or recommendation which is so confirmed in writing by the Seller.

8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the Products shall pass to the Customer:
- (a) in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Customer that the Products are available for collection; or
 - (b) in the case of Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Products, the time when the Seller has tendered delivery of the Products.
- 8.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, the property in and title to the Products shall not pass to the Customer until the Seller has received in cash or cleared funds payment in full for the price of the Products and all other Products agreed to be sold by the Seller to the Customer for which payment is then due.
- 8.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Seller's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Customer may resell or use the Products in the ordinary course of its business.
- 8.4 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), the Seller may at any time require the Customer to deliver up the Products to the Seller and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Seller, but if the Customer does so all moneys owing by the Customer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

9. WARRANTIES AND LIABILITY

- 9.1 Subject to the following provisions, the Seller warrants that the Products will correspond in all material respects with their specification stated on the Certificate of Analysis at the time of delivery and in the case of Products with a shelf life or "use by" date as notified in writing, for the duration of the shelf life or until the "use by" date stated on the Certificate of Analysis PROVIDED THAT the Products have been stored and used as directed on the Certificate of Analysis.
- 9.2 The above warranty is given by the Seller subject to the following conditions:
- (a) the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Customer;
 - (b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, inappropriate storage, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Seller's written approval;

- (c) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;
- (d) the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 9.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4 No warranty or representation is given by the Seller:-
- (a) that the Products do not infringe any patent, copyright, design, trademark or other industrial or intellectual property right of any other person; and
 - (b) as to the suitability of the Products for any particular purpose or use under specific conditions whether or not the purpose of condition were communicated to the Seller.
- 9.5 A claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with the specification in the Certificate of Analysis shall (whether or not delivery is refused by the Customer) be notified in writing to the Seller within ten business days from the date of delivery. If delivery is not refused, and the Customer does not notify the Seller accordingly, the Customer shall not be entitled to reject the Products and the Seller shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.
- 9.6 Where a valid claim in respect of any of the Products which is based on a defect in the quality or condition of the Products or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may at the Seller's sole discretion replace the Products (or the part in question) free of charge or, refund to the Customer the price of the Products (or a proportionate part of the price) or allow the Customer credit for the invoice value of the Products concerned, in which case the Seller shall have no further liability to the Customer in respect thereof.
- 9.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Products, except as expressly provided in these Terms.
- 9.8 The Seller shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- (a) Act of God, explosion, flood, tempest, fire or accident;
 - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - (d) import or export regulations or embargoes;
 - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure or breakdown in machinery.

10. INSOLVENCY OF CUSTOMER

10.1 This clause 10 applies if:

- (a) the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a Seller) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (c) the Customer ceases, or threatens to cease, to carry on business;
- (d) anything analogous to any of the events specified in clauses 10.1(a) to 10.1(c) occurs in relation to the Customer under the laws of any applicable jurisdiction; or
- (e) the Seller 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 limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. NOTICES

11.1 Any notice or other communication to be given under these Terms must be in writing and may be delivered or sent by prepaid first class letter post, facsimile transmission or e-mail to the other party at its registered office or principal place of business or such other address as may be specified in the Contract.

11.2 Such notices or other communications shall be deemed served:

- (a) if delivered by first class pre-paid post (to an address within the UK), 2 business days after posting;
- (b) if delivered by registered pre-paid post (to a party outside the country of posting), 3 business days after posting; and
- (c) if given by facsimile or e-mail, at the time of transmission (provided that a confirming copy is set by first class pre-paid post to the other party within 1 business day of transmission).

12. GENERAL

12.1 The Seller reserves the right to sub-contract the performance of any or all of its obligations and to assign any or all of its rights hereunder.

12.2 These Terms, together with any terms agreed in writing between the parties from time to time, constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

12.3 No waiver by the Seller of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

- 12.5 A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 12.6 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.