

## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

### 1. Definitions and interpretation

1.1 In these Conditions, the following definitions apply:

<b>"Conditions"</b>	the terms and conditions set out in this document as amended from time to time;
<b>"Contract"</b>	each contract between the Supplier and the Customer for the sale and purchase of the Goods which incorporates these Conditions;
<b>"Customer"</b>	the person or firm who purchases the Goods from the Supplier;
<b>"Customer Requirements"</b>	any requirements for the Goods per line item (including those relating to the purpose for which the Goods will be used or resold by the Customer) that are agreed in writing by the Customer and the Supplier at the time of the Contract;
<b>"Delivery"</b>	the point at which the Supplier makes the Goods available for collection from the Delivery Location;
<b>"Delivery Location"</b>	the Supplier's premises at Milverton, Somerset TA4 1ND or such other location as may be advised by the Supplier;
<b>"Ex-Works"</b>	means that the Supplier fulfils its obligations in respect of each Contract upon Delivery. Where appropriate Incoterms 2020 shall apply;
<b>"Force Majeure Event"</b>	any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable;
<b>"Goods"</b>	the goods (or any part of them) set out in the Order and supplied to the Customer in accordance with these Conditions;
<b>"Industry Recognised Standards"</b>	those relevant industry standards in respect of certain Goods as set out on the Supplier's Website or as specified in the Order Acknowledgement;
<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off,

rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Order"**

the Customer's order for the Goods;

**"Order  
Acknowledgement"**

the Supplier's written acceptance of an Order;

**"Specification"**

unless otherwise agreed in writing by the parties, any specification for the Goods that is provided by the Supplier, based on EU Pharmacopeia Version 7, section 5.1.8 Microbial Quality Of Herbal Medical Products for Oral Use, Category A: "Herbal medicinal products containing herbal drugs, with or without excipients, intended for the preparation of infusions and decoctions using boiling water, for example, herbal teas, with or without flavourings";

**"Supplier"**

The Organic Herb Trading Company Limited, a company registered in England and Wales with company number 03768887 whose registered office is at Milverton, Somerset, TA4 1ND;

**"Supplier's Website"**

the website URL <http://www.organicherbtrading.com>; and

**Working Days**

Monday to Friday (inclusive) other than bank holidays in England and Wales.

1.2 In these Conditions, the following rules apply:

1.2.1 any phrase introduced by the words **including**, **includes**, **in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words; and

1.2.2 reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it.

## **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 trade, custom, practice or course of dealing.

2.2 Each 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 Customer Requirements are complete and accurate.

2.3 Each Order (including any Customer Requirements) shall only be deemed to be accepted when the Supplier issues an Order Acknowledgement, at which point the Contract shall come into existence. Once the Contract comes into existence, the Customer shall not cancel or vary the Order (including the Customer Requirements) without the Supplier's express written consent.

2.4 Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's literature are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

### **3. Goods**

3.1 The Supplier will make available to the Customer, on request, current Specifications for all relevant Goods. The Supplier reserves the right to re-issue updated Specifications at any time. Typically this may be to incorporate amendments (for example, to state a new country of origin) or as a result of updates to relevant regulations or Industry Recognised Standards.

3.2 The Supplier holds organic certification to Industry Recognised Standards. The Customer acknowledges and agrees that this does not guarantee that the individual agricultural raw ingredients in the Goods are entirely free from pesticide residues.

3.3 The Customer acknowledges and agrees that the Goods are typically, although not always, organic and untreated agricultural raw ingredients which are not inert and are likely to contain levels of microbiological activity, which may vary across each batch and between batches. The Supplier routinely carries out testing of Goods by accredited laboratories to endeavour to maintain safe levels of microbiological activity in line with Industry Recognised Standards. Results of tests are available upon written request.

3.4 The Customer acknowledges and agrees that:

3.4.1 the Supplier's test results:

3.4.1.1 may not be entirely representative of the whole product batch due to the nature of the Goods as described in clauses 3.2 and 3.3; and

3.4.1.2 do not in themselves ensure that the Goods are safe for the Customer's intended use or resale use,

3.4.2 it does not rely solely upon such test results in respect of its use or resale of the Goods; and

3.4.3 it is fully responsible for its own testing of the Goods prior to using, mixing or selling the Goods and for having in place its own safety and quality control mechanisms in respect of its storage, processing and use (or its customers' use) of the Goods.

3.5 Subject at all times to clause 3.1, the Customer acknowledges and agrees that it is its sole responsibility to provide the Supplier with any required variation to the Specification for each individual raw ingredient Goods that it intends to purchase prior to placing an Order for those Goods and that any such variation must be agreed in writing by the Supplier for it to be applied to the Goods in that Order.

3.6 The Supplier shall not be responsible for the procurement of any licenses, consents or permissions required for the Customer's ownership, processing and/or resale of the Goods, including any testing of the Goods or products containing the Goods following Delivery.

3.7 The Customer acknowledges and agrees that due to the nature of the Goods there may be fluctuations in the availability of the Goods which are outside the control of the Supplier, for example due to seasonal shortages. If Goods are not available to fulfil an Order the Supplier shall inform the Customer of this as soon as reasonably practicable.

3.8 It is the Customer's sole responsibility at all times to ensure that the Goods are suitable and/or appropriate for the purposes intended by it, including storage, any processing or mixing with other materials and their final use.

3.9 The Customer acknowledges that, unless otherwise indicated by the Supplier either orally or in writing, upon Delivery and at all material times thereafter all Goods must be stored by it in airtight opaque containers in a cool place and out of direct sunlight.

#### **4. Delivery**

4.1 The Supplier shall ensure that each consignment of the Goods is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the batch code number of the Goods where relevant) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Unless otherwise agreed in writing by the parties, Delivery shall be Ex-Works.

4.3 The Customer shall collect the Goods from the Delivery Location within five Working Days of the Supplier notifying the Customer that the Goods are ready.

4.4 The Customer shall ensure that each consignment of Goods is signed for by an authorised representative.

4.5 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 that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with any information or instructions that are relevant to the supply of the Goods, for example, a product forecast.

4.6 If the Customer fails to accept Delivery of the Goods within five Working Days of Delivery 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, the Supplier shall store the Goods and charge the Customer for all related costs and expenses (including insurance) and, after a reasonable period of time thereafter, may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

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:

- 5.1.1 meet the Industry Recognised Standards; and
- 5.1.2 conform with their description and any applicable Specification.

5.2 Subject to condition 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery, in any event being no more than 14 days after Delivery, that batch-specific Goods do not comply with condition 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining batch-specific Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns batch-specific Goods to the Supplier's place of business at the Customer's cost,

then the Supplier shall, at its sole discretion, replace the defective Goods or refund the price of the Order in full.

5.3 The Supplier shall not be liable for any Goods' failure to comply with condition 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's written instructions as to the storage or use of the Goods or (if there are none) industry best practice regarding the same;

5.3.3 the defect arises as a result of the Supplier following any Customer Requirements;

5.3.4 the defect arises as a result of wilful damage, negligence, or abnormal storage or conditions; or

5.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 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.

5.5 These Conditions shall apply to any replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 Risk in the Goods shall pass to the Customer upon Delivery of such Goods.

6.2 Title to the Goods shall pass to the Customer upon the Supplier receiving payment in full (in cleared funds) for the Goods unless otherwise agreed in writing by the parties.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods for which it has not paid separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery; and

6.3.4 permit or procure permission for the Supplier, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this condition 6.3 and/or recover the Goods.

## **7. Intellectual Property**

The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Supplier or (as the case may be) the third party rights owner.

## **8. Price and payment**

8.1 The price of the Goods shall be the price set out in the Order Acknowledgement, or, if no price is quoted, the price set out in the Supplier's published price list in force on the date of Delivery.

8.2 The Supplier may, by giving notice to the Customer at any time before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other costs);

8.2.2 any request by the Customer to change the Delivery date(s), quantities or types of Goods ordered, or the Customer Requirements; or

8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of:

8.3.1 the costs and charges of packaging, insurance and transport of the Goods; and

8.3.2 amounts in respect of value added tax ("**VAT**"), which the Customer shall pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.

8.4 The Supplier may invoice the Customer for the Goods on or at any time after the Supplier issues an Order Acknowledgement.

8.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

8.6 The Supplier reserves the right to delay Delivery of Goods until it has received payment in full of any outstanding invoices.

8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England'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. The Customer shall pay the interest together with the overdue amount. The Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) the Supplier will or may incur or suffer in recovering any unpaid and overdue sums.

## **9. Termination and suspension**

9.1 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 is declared or becomes insolvent or suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

9.2 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 fails to pay any amount due under this Contract on the due date for payment.

9.3 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.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **10. Limitation of liability**

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation; or

10.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to condition 10.1:

10.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

10.2.1.1 any indirect, special, consequential or pure economic loss or damage;

10.2.1.2 any damage to plant, equipment or machinery used in the Customer's processing or use of the Goods;

10.2.1.3 any loss of profits, anticipated profits, revenue or business opportunities; or

10.2.1.4 damage to goodwill

(in each case arising as a direct or indirect result of the relevant claim); and

10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with a Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price of the Goods which are the subject of the claim.

## **11. 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.

## **12. General**

12.1 Neither party may assign, transfer, mortgage, charge, subcontract, 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 other party, such consent not to be unreasonably withheld or delayed.

12.2 The Contract (incorporating these Conditions) 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.

The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

12.3 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 in writing and signed by the Supplier.

12.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 If any 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 shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

12.6 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand personally or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) and shall be deemed to have been received, if delivered by hand personally, at the time that the delivery is signed for or, if sent by a signed-for next working day delivery service, at the time recorded by the delivery service. This condition 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.

12.7 No one other than a party to the Contract shall have any right to enforce any of its terms.

12.8 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Supplier and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).