

Terms and Conditions



1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Business Day: a day (other than a Saturday, Sunday or public holiday when banks in Belfast are open for business).

Buyer: the person, firm or company who purchases the Goods from the Company.

Contract Price: the value of the Goods as agreed between the Company and the Buyer.

Company: Devenish Nutrition Limited (company number NI003138) whose registered office is situated at Ground Floor, Lagan House, 19 Clarendon Road, Belfast, BT13BG.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them) together with the Materials.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Materials: all documents, information and materials provided by the Company relating to the Goods.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or reenactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 14 days from the day on which the quotation is given by the Company to any prospective Buyer.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the address specified by the Buyer (Delivery Location).

4.2 The Company portages a door-to-door delivery service and will deliver the Goods via a freight company to the threshold of the address specified by the Buyer. Whilst drivers may, on request, assist in bringing the Goods beyond the threshold to a specified location, the Company accepts no responsibility or liability for any damages beyond the threshold point. Drivers may refuse to give such assistance where there are health and safety risks or otherwise or where there is no suitable access to the desired location or otherwise. In this circumstance the Company will deliver the Goods to the threshold or, if requested and where possible, to the nearest point to the desired location. The Company accepts no responsibility or liability if there is a problem with access to the desired location.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 Each instalment shall be a separate Contract and no cancellation or termination of

anyone Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.8 The Buyer shall not be entitled to reject the Goods if the Company delivers up to and including 10% more or less than the quantity of Goods ordered.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.4 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

6.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 11.2, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7. PRICE

7.1 Unless otherwise agreed by the Company, the price for the Goods shall be the price set out in the Company's purchase order with each respective Buyer.

7.2 The price for the Goods shall be exclusive of any value added tax.

7.3 Unless otherwise agreed between the Company and the Buyer, all costs or charges in relation to packaging, loading, unloading, carriage and insurance shall be paid by the Buyer in addition when it is due to pay for the Goods.

8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods shall be paid in the currency quoted by the Company within 30 days of date of invoice unless otherwise

agreed between the Buyer and the Company.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless otherwise agreed with the Company or the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% over the LIBOR rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of merchandisable quality.

9.3 The Company shall not be liable for a breach of warranty in condition 9.2 unless:

(a) the Buyer gives written notice of the defect to the Company, within 5 days of delivery of the Goods; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

(c) The Buyer has followed the complaints procedure of Devenish Nutrition is followed (available on www.devenishnutrition.com) including where appropriate the delivery of a sample of the defective product.

9.4 The Company shall not be liable for a breach of the warranty in condition 9.2 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) normal practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company.

9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranty in condition 9.2 the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or

omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence;
- (b) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (c) defective products under the Consumer Protection Act 1987;
- (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (e) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.

11. BUYER'S INSOLVENCY OR INCAPACITY

11.1 If the Buyer becomes subject to any of the events listed in clause 11.2, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of the Goods delivered to the Buyer shall become immediately due.

11.2 For the purposes of clause 11.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 103 of the Insolvency (Northern Ireland) Order 1989, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 242 of the Insolvency (Northern Ireland) Order 1989, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (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 the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within 14 days;
- (f) (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 the Customer;

(g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(h) (inclusive);

(j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

(k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3 Termination of the Contract, however arising, 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. ASSIGNMENT

12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. INTELLECTUAL PROPERTY

13.1 The Buyer agrees and acknowledges that the Company reserves all rights of ownership in relation to the Intellectual Property of the Goods supplied by the Company and ownership of any and all Intellectual Property shall not pass to the Buyer by virtue of the sale of any Goods to the Buyer.

13.2 The Buyer shall not use any or all of the Intellectual Property of the Company and shall not permit a third party to do so.

14. FORCE MAJEURE

14.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative

body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 This 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 laws of Northern Ireland, and the parties submit to the exclusive jurisdiction of the courts of Northern Ireland.

16. COMMUNICATIONS

16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial, fax or e-mail.

16.2 A notice or other communication shall be deemed to have been received:

- (a) if delivered personally, when left at the address referred to in clause 16.1;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Business Day after posting;
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if sent by fax or e-mail, one Business Day after transmission.

16.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Devenish Nutrition Limited

Lagan House
19 Clarendon Road
Belfast BT1 3BG
Northern Ireland

T | +44 (0)28 9075 5566
F | +44 (0)28 9023 0817
E | info@devenishnutrition.com
www.devenishnutrition.com

Company Reg. No: N.I.3138 | V.A.T. Reg. No: GB 714 7792 13



FAMQs