

## TERMS AND CONDITIONS OF SALE

### Application and Entire Agreement

1. These Terms and Conditions will apply to the purchase of the goods detailed in our Sales Order (“SO”) (“Goods”) by the buyer (“you”, “your”, or “Customer”) from Obsidia Group (UK) Ltd., a company registered in England and Wales with company number 08292669, whose registered office is at Unit 1, Corporate House, Aurillac Way, Retford, Nottinghamshire, United Kingdom, DN22 7PX (“we”, “us”, “our”, or “Supplier”).
2. These Terms and Conditions will be deemed to have been accepted by you when you accept them, or when you send an Order, or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between us and you.
3. These Terms and Conditions and the SO (together, the “Contract”, or the “Agreement”) apply to the sale of any Goods between us and you, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
4. These Terms and Conditions shall remain effective until such time as we may replace them with an updated version. We reserve the right to add to, amend, remove, replace, or otherwise alter in any way whatsoever, any or all of these Terms and Conditions. Updated Terms and Conditions shall only apply to Orders placed on or after the effective date of those Terms and Conditions. Only the version of the Terms and Conditions which are, or were, effective at the time an Order is placed shall apply to that Order, and that Contract shall not be retrospectively altered by the release of updated Terms and Conditions as described above. The most recent version of our Terms and Conditions can be found at [www.obsidia-distribution.co.uk/terms-and-conditions](http://www.obsidia-distribution.co.uk/terms-and-conditions).
5. These Terms and Conditions are effective from 1<sup>st</sup> November 2023.

### Interpretation

6. A "business day" means any day other than a Saturday, Sunday or bank holiday in England.
7. A “day”, or “daily” means all calendar days.
8. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
9. Words imparting the singular include the plural and vice-versa.

## **Goods**

10. The description of the Goods is set out in our sales documentation. In placing an Order, you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.
11. We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

## **Price**

12. The price (Price) of the Goods is the price agreed on the SO.
13. If the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we can increase the Price prior to delivery.
14. Any increase in the Price under the clause above will only take place after we have told you about it. You may choose to remove any Goods affected by the increase from your Order by notifying us prior to shipment.
15. You may, from time to time, be offered discounts. Any and all discounts will be at our sole discretion and are given on a per order basis and shall not generate a future right to any such discount.
16. The Price is exclusive of fees for postage and packaging, and other such preparation or costs.
17. The Price is exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

## **Orders**

18. Orders may be placed by you communicating your offer to purchase the Goods from us, and us accepting your offer by issuing a SO.
19. All offers shall be deemed to be made subject to these Terms and Conditions.
20. We will make every effort to secure the Goods as soon as possible, however this cannot be guaranteed. Goods are not fully secured until invoiced and we reserve the right to continue to offer the Goods for general sale until this time.

21. Any quantities referred to in the SO will be interpreted as a request for a quantity of certain Goods, up to and including the quantity shown, and shall not create an obligation for us to provide the exact quantity shown on the SO. In situations where we are unable to provide the maximum quantity of Goods shown on the SO, the total Price shall be adjusted on a pro-rata basis calculated using the unit cost to reflect the quantity which we are able to fulfil.
22. Our minimum order value is £400 for domestic orders, or £500 for international orders, unless otherwise agreed between us. For orders placed in different currencies, an equivalent amount in the payment currency will be used. This shall be calculated using the rate displayed on [www.xe.com](http://www.xe.com), as amended from time to time.

### **Cancellation and Alteration**

23. Details of the Goods as described in the clause above and set out in our sales documentation are subject to alteration without notice and are not a contractual offer to sell the Goods which is capable of acceptance.
24. Upon receiving the SO, you must review it and ensure that the information contained is correct as soon as possible. Should you notice any errors, you must notify us immediately.
25. In the event that any obvious errors are made in the SO we can, at our sole discretion, take any action necessary to correct the error.
26. Either of us can cancel the order for any reason prior to our acceptance (or rejection) of your offer.

### **Payment**

27. We will provide an invoice for your records, in accordance with the relevant UK requirements, for the Price either:
  - a. On or at any time after payment is made; or
  - b. On or at any time after shipment of the Goods; or
  - c. Where the Goods are to be collected by you, at any time after we have notified you that the Goods are ready for collection.whichever occurs first.
28. You must pay the Price within 7 days of the date of our SO, or otherwise according to any Credit agreed between us.

29. You must make payment even if delivery has not taken place and/or that the title in the Goods has not passed to you.
30. Payment will not be considered to have been made until cleared funds for the full amount due enter our account.
31. If you do not pay within the period set out above, we will suspend deliveries to you and, without limiting any of our other rights or remedies available in law, charge you a fixed sum at the rate described in s. 5A (2) of the Late Payment of Commercial Debts (Interest) Act 1998.
32. In addition to this sum, we will also charge interest at the rate of 8% per annum above the base rate of the Bank of England from time to time on the full amount outstanding, including any unpaid interest and late payment penalties, until you pay in full. This interest will be calculated daily and will continue to accrue until full payment is received.
33. Further, we may, at our sole discretion, take out a loan to cover any overdue amount owed to us. If we should decide to take this action you agree to indemnify us against any and all expenses, fees, interest, or other charges incurred in connection with this loan.
34. Time for payment will be of the essence of the Contract between us and you.
35. All payments must be made in the quoted currency unless otherwise agreed between us.
36. All payments must be made via bank transfer to the account given on the invoice unless otherwise agreed between us.
37. All fees related to sending/receiving payment are to be paid by their respective parties.
38. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding, except as required by law, and neither party is entitled to assert any credit, set-off, counterclaim, or any other monies owed against the other in order to justify withholding payment of any such amount in whole or in part.

### **Credit**

39. You may, from time to time, be offered Credit. Any and all Credit will be at our sole discretion and is provided on a per order basis and shall not generate a future right to any such Credit.
40. Notwithstanding any other term in this Agreement, we reserve the right to withdraw Credit at our sole discretion and without prior warning, and demand immediate payment of the outstanding balance.

## Delivery

41. Where no Credit has been provided, we will not ship the Goods until we have received payment in full.
42. We will arrange for the delivery of the Goods to the address specified in the SO, or to another location we agree in writing.
43. If you do not specify a delivery address, or if we both agree, you must collect the Goods from our premises.
44. We prefer to ship Goods to a building which you wholly control and have provided evidence of such control. Should you specify a building which you do not wholly control, or have not provided evidence of control, you will be liable for the Goods from the point at which the courier marks the consignment as delivered at the building you have specified. For the avoidance of doubt, you will be liable where the consignment is delivered to a reception desk, left in a communal area, or given to anyone onsite at any of the following types of addresses:
  - a. Flats
  - b. Student halls
  - c. Houses of multiple occupation
  - d. Workplaces
  - e. Shared addresses
  - f. Hotels
  - g. Caravan parks
  - h. Campsites

These are example scenarios only and are not intended to be exhaustive.

45. Subject to the specific terms of any special delivery service, delivery will take place on a business day and must be accepted at any time between 8 am to 8 pm.
46. Delivery terms are set out within the SO, along with an outline of which elements of the delivery process each party is responsible for. It is your responsibility to ensure that you fully understand, and are able to comply with, any obligations which are required of you in respect to the Delivery.
47. We may, from time to time, require additional information from you in order to complete Delivery of the goods. If such information is requested, either directly by us, or from the relevant logistics company, or other competent authority, it is your responsibility to ensure that this information is provided accurately and promptly.

48. If, following such a request, you fail to provide the required information within a required timeframe, we can charge you for any and all associated costs incurred by us as a result.
49. If we require export documentation to evidence why VAT was not collected on your invoice but are not able to obtain this ourselves (for example if you collect or a freight forwarder is used), it is your responsibility to provide this to us within 30 days of delivery. If appropriate documentation is not provided within this timeframe, you will become liable to pay VAT on the invoice. This amount will be due for payment immediately.
50. If you do not take delivery of the Goods we may, at our discretion and without prejudice to any other rights:
  - a. store or arrange for the storage of the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and/or
  - b. make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
  - c. after 10 business days, resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the Price of the Goods.
51. If redelivery is not possible as set out above, you must collect the Goods from our premises and will be notified of this. We may charge you for any and all associated costs including, but not limited to, storage and insurance.
52. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond our control or your failure to provide us with adequate delivery instructions, or any other instructions that are relevant to the supply of the Goods.
53. We may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment is a separate contract. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.

### **Inspection and Acceptance of Goods**

54. You must inspect the Goods on delivery or collection.
55. If you identify any damages or shortages, you must inform us in writing within 2 business days of delivery, providing full details and evidence at this time.
56. Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and, if required, have carried out an inspection.

57. Subject to your compliance with this clause and/or our agreement, you may return the Goods and we will, as appropriate and at our sole discretion, repair, replace, or refund the Goods or part of them.
58. Notwithstanding any other clause in this agreement, Goods may only be returned where we have given prior authorisation. Any Goods sent to us without our prior authorisation will be considered an unconditional gift.
59. We will be under no liability or further obligation in relation to the Goods if:
  - a. you fail to provide notice as set above; and/or
  - b. you make any further use of such Goods after giving notice under the clause above relating to damages and shortages; and/or
  - c. the defect arises because you did not follow our oral or written instructions including, but not limited to, the storage, treatment, transport, use and maintenance of the Goods; and/or
  - d. the defect arises from normal wear and tear of the Goods; and/or
  - e. the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by you, your employees, or agents, or any third parties.
60. You bear the risk and cost of returning the Goods.
61. Your unconditional acceptance of the Goods will be deemed to have taken place 2 business days after delivery of the Goods.

## **Risk and Title**

62. The risk in the Goods will pass to you on completion of delivery, or upon your collection.
63. Notwithstanding any Credit which may have been provided, Title to the Goods will not pass to you until we have received payment in full (in cash or cleared funds) for:
  - a. the Goods and/or
  - b. any other goods or services that we have supplied to you in respect of which payment has become due.
64. Until title to the Goods has passed to you, you must:
  - a. Hold the Goods on a fiduciary basis as our bailee; and/or
  - b. Store the goods separately and not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods; and/or
  - c. Keep the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery.

65. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or those of any third party where the Goods are stored in order to recover them.
66. If we should need to take any action to recover the Goods, or any monies owed, we may recover from you any and all costs incurred as a result.

### **Termination**

67. We can terminate the sale of Goods under the Contract where:
- a. you commit a material breach of your obligations under these Terms and Conditions;
  - b. you are, or become, or in our reasonable opinion are about to become, the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
  - c. you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
  - d. you convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in s.14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

### **Limitation of Liability**

68. Our liability under the Contract, and in breach of statutory duty, and in tort, for misrepresentation or otherwise will be limited to this section.
69. Subject to the above clauses on Inspection and Acceptance and Risk and Title, all warranties, conditions, or other terms implied by statute or common law (save for those implied by

Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

70. If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods.
71. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.
72. We will not be liable (whether caused by our employees, agents or otherwise) in connection with the Goods, for:
  - a. any indirect, special, or consequential loss, damage, costs, or expenses; and/or
  - b. any loss of profits, loss of anticipated profits, loss of business, loss of data, loss of reputation or goodwill, business interruption, or other third-party claims; and/or
  - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  - d. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  - e. any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
73. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

## **Communications**

74. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
75. Notices will be deemed to have been duly given:
  - a. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - b. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - c. on the fifth business day following mailing, if mailed by national ordinary mail; or
  - d. on the tenth business day following mailing, if mailed by airmail.

76. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

### **Data Protection**

77. When providing the Goods to the Buyer, the Seller may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Buyer.

78. The parties agree that where such processing of personal data takes place, the Buyer shall be 'data controller' and the Seller shall be the 'data processor' as defined in the UK General Data Protection Regulation (GDPR) as may be amended, extended and/or re-enacted from time to time.

79. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.

80. The Seller shall only Process Personal Data to the extent reasonably required to enable it to provide the Goods as mentioned in these terms and conditions or as requested by and agreed with the Buyer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.

81. The Seller shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.

82. The Seller shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Seller on behalf of the Buyer. Further information about the Seller's approach to data protection is specified in its Privacy Policy, which can be found at <http://www.obsidia-distribution.co.uk/privacy-policy>. For any enquiries or complaints regarding data privacy, you can e-mail: [data.protection@obsidia-group.uk](mailto:data.protection@obsidia-group.uk)

### **Confidential Information**

83. You acknowledge that, in the course of negotiations relating to this Agreement, you may become aware of information which we consider to be confidential or trade secrets ("Confidential Information"), such as operating practices, pricing, discounts, offers, and stock

levels. Therefore, you agree to keep all information absolutely confidential and protect its release from the public, competitors, customers, or other businesses. If you are in any doubt as to whether particular information is confidential or not, you should not disclose the information, and seek our prior written approval in any event.

84. You agree and acknowledge that Confidential Information is of a proprietary and confidential nature. It is agreed that any disclosure of Confidential Information to a third party in breach of this Agreement cannot reasonably or adequately be accounted for in monetary damages. Such a disclosure would cause irreparable injury to us, severely affect our goodwill and the effective and successful conduct of our business and will constitute a material breach of this Agreement.
85. If, at any time, you believe that Confidential Information may have been disclosed improperly, you must immediately notify us and co-operate fully with any requests we may have to help us mitigate any potential damage caused as a result.
86. Obligations to ensure and protect the confidentiality of the Confidential Information will survive the expiration or termination of this Agreement, as the case may be, and will continue indefinitely.

#### **Force Majeure**

87. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, or governmental action.

#### **No Waiver**

88. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

#### **Severability**

89. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, it is the parties' intent that such

provision be changed in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

#### **Law and Jurisdiction**

90. This Agreement shall be governed by and interpreted according to the law of England and Wales.

91. All disputes arising under the Agreement, including non-contractual disputes or claims, shall be subject to the exclusive jurisdiction of the English and Welsh courts.