

# Ogden Fibres Limited

## Terms and Conditions of Sale

These are the terms and conditions on which Ogden Fibres Limited will do business with the Customer. Please read them carefully, particularly clause 4.1 (which specifies the quality of the Goods) and clause 8 (which limits Ogden Fibres Limited's liability).

**PLEASE NOTE THAT UNLESS SPECIFIED IN THE CONTRACT NOTE THE GOODS SOLD BY OGDEN FIBRES LIMITED ARE SUBSTANDARD AND ARE UNSUITABLE FOR CRITICAL APPLICATIONS. IF GOODS OF THIS QUALITY ARE NOT SUITABLE FOR YOUR PURPOSES THEN YOU SHOULD NOT PROCEED WITH YOUR ORDER.**

### 1 Definitions and Interpretation

1.1 In these terms and conditions the following words and phrases shall have the following meanings:-

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

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 11.8.

**Contract** means the contract between Ogden and the Customer for the supply of Goods in accordance with these Conditions.

**Contract Note** means an acknowledgement in writing including by email issued by Ogden to the Customer setting out the terms on which an Order is accepted in accordance with clause 2.

**Customer** means the person or firm who purchases the Goods from Ogden.

**Delivery Location** has the meaning set out in clause 3.2.

**Due Date** has the meaning set out in clause 6.5.1.

**Force Majeure Event** has the meaning given to it in clause 11.1.1.

**Goods** means any goods (or any part of them) agreed to be supplied to the Customer by Ogden as set out in the Contract Note.

**Ogden** means Ogden Fibres Limited.

**Order** means the Customer's order for the Goods including any Specification

**Specification** means the written description of the Goods as provided by the Customer and confirmed by Ogden in the Contract Note.

1.2 In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or a statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to statute or statutory provision includes any subordinate legislation made under that statute

or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## **2 Basis of Contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods from Ogden in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Ogden issues written acceptance of the Order by way of a Contract Note at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Ogden which is not set out in the Contract. Any samples issued by Ogden and any descriptions or illustrations contained in Ogden's website 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 or any other contract between Ogden and the Customer for the supply of the Goods.
- 2.4 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.
- 2.5 A quotation given by Ogden shall not constitute an offer. Ogden reserves the right to vary any quotation given at any time until Ogden issues a Contract Note.

## **3 Delivery of Goods**

- 3.1 Ogden shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the despatch of the Goods, all relevant Customer and Ogden reference numbers, the type of the Goods
- 3.2 Ogden will deliver the Goods to the location set out in the Contract Note or such other location as the parties may agree (**Delivery Location**) at any time after Ogden notifies the Customer that the Goods are ready.
- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery of Goods are approximate only, and the time of the delivery is not of the essence. Ogden shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Ogden with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If Ogden fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Ogden shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Ogden with adequate delivery instructions or any relevant instructions to the supply of the Goods.
- 3.6 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Ogden is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then (except where such failure or delay is caused by a Force Majeure Event):
  - 3.6.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Ogden's negligence);
  - 3.6.2 the Goods shall be deemed to have been delivered; and
  - 3.6.3 Ogden may store the Goods until delivery, whereupon the Customer shall be

liable for all related costs and expenses (including, without limitation, storage and insurance).

- 3.7 If 20 Business Days after Ogden notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, Ogden may resell or otherwise dispose of part or all of the Goods.
- 3.8 The Customer shall not be entitled to reject the Goods if Ogden delivers up to and including 10 per cent more or less than the quantity of Goods ordered but a pro rata adjustment shall be made to the Order invoice on receipt of written notice from the Customer that the wrong quantity of Goods was delivered.
- 3.9 Ogden 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.

**4 Quality of Goods: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 4.1 **UNLESS OTHERWISE STATED IN THE CONTRACT NOTE THE GOODS ARE SOLD ON THE BASIS THAT THEY ARE SUB-STANDARD AND THE GOODS ARE COMPRISED OF FIBRES THAT ARE UNSUITABLE FOR CRITICAL APPLICATIONS. THE CUSTOMER ACKNOWLEDGES THAT THE GOODS SHOULD NOT BE USED FOR CRITICAL APPLICATIONS.**
- 4.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**5 Title and Risk**

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until Ogden has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
  - 5.2.2 all other sums which are due to Ogden from the Customer on any account.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as Ogden's bailee;
  - 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Ogden's property;
  - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Ogden's behalf from the date of delivery;
  - 5.3.5 notify Ogden immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.12; and
  - 5.3.6 give Ogden such information relating to the Goods as Ogden may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.12, or Ogden reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Ogden may have, Ogden may at any time require the Customer to deliver up the Goods. If the Customer fails to do so promptly, Ogden may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6 Charges and Payment

- 6.1 The price for the Goods shall be the price set out in the Contract Note. The price of the Goods is (unless otherwise stated in writing) exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 6.2 The price of the Goods is exclusive of VAT.
- 6.3 Where specified in the Contract Note, the price of the Goods shall be secured by:
- 6.3.1 an irrevocable letter of credit satisfactory to Ogden, established by the Customer in favour of Ogden within 21 days of the date of the conclusion of the Contract and confirmed by a United Kingdom bank acceptable to Ogden. The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) to Ogden and shall be valid for six months; or
  - 6.3.2 cash against documents established by the Customer in favour of Ogden within 21 days of the date of the conclusion of the Contract and confirmed by a United Kingdom bank acceptable to Ogden.
- The Customer shall ensure that Ogden shall be entitled to immediate cash payment on presentation to such United Kingdom bank of the documents set out in the Contract Note.
- 6.4 Ogden reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Ogden that is due to:
- 6.4.1 any factor beyond the control of Ogden (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 6.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or
  - 6.4.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Ogden adequate or accurate information or instructions in respect of the Goods.
- 6.5 Ogden shall invoice the Customer on or at any time after completion of delivery.
- 6.6 The Customer shall pay each invoice submitted by Ogden in the currency specified in the Contract Note:
- 6.6.1 within the period specified in the Contract Note or if no such period is specified within 30 days of the date of the invoice (**the Due Date**); and
  - 6.6.2 in full and in cleared funds to a bank account nominated in writing by Ogden, and time for payment shall be of the essence of the Contract.
- 6.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Ogden on the Due Date, Ogden may charge interest on such sum from the Due Date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Ogden in order to justify withholding payment of any such amount in whole or in part. Ogden may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Ogden to the Customer.

## 7 Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

**8 Limitation Of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude Ogden's liability for:

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 8.1.2 fraud or fraudulent misrepresentation;
- 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 8.1.4 defective products under the Consumer Protection Act 1987.

8.2 Subject to clause 8.1:

- 8.2.1 Ogden shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by Ogden, its employees, agents or subcontractors); and
- 8.2.2 Ogden's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Ogden, its employees, agents or subcontractors shall not exceed the price paid by the Customer under the Contract plus damages limited to 50% of the same amount for any additional costs directly reasonably and necessarily incurred by the Customer in obtaining alternative products.

8.3 This clause 8 shall survive termination of the Contract.

**9 Termination**

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 9.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- 9.1.2 the other party 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 123 of the Insolvency Act 1986 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 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 9.1.3 the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of

that other party;

- 9.1.4 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 9.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 9.1.6 a creditor or encumbrancer of the other party 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;
- 9.1.7 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 other party (being a company);
- 9.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 9.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 9.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.2 to clause 9.1.12 (inclusive);
- 9.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 9.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, Ogden may terminate the Contract:

- 9.2.1 by giving the Customer 1 months' written notice;
- 9.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date.

9.3 Without limiting its other rights or remedies, Ogden shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Customer and Ogden if:

- 9.3.1 the Customer fails to pay any amount due under this Contract on the Due Date; or
- 9.3.2 the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.12, or Ogden reasonably believes that the Customer is about to become subject to any of them.

## **10 Consequences of Termination**

On termination of the Contract for any reason:

- 10.1 the Customer shall immediately pay to Ogden all of Ogden's outstanding unpaid invoices and interest calculated in accordance with clause 6.6;
- 10.2 the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then Ogden may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 10.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

10.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **11 General**

### **11.1 Force majeure:**

11.1.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Ogden including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.1.2 Ogden shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.1.3 If the Force Majeure Event prevents Ogden from providing any of the Goods for more than 30 days, Ogden shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### **11.2 Assignment and subcontracting:**

11.2.1 Ogden may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

11.2.2 The Customer shall not, without the prior written consent of Ogden, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### **11.3 Notices:**

11.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

11.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

11.3.3 This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### **11.4 Waiver and cumulative remedies:**

11.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

11.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Ogden.

11.9 Governing law and jurisdiction: 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.