

Sil-Mid Limited

PO1 - Terms and Conditions of Sale



Issue 2

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1. Our Contract with You

1.1 Your order constitutes an offer by you to purchase Goods in accordance with these terms and conditions (Conditions). Your order may be placed through our website (silmid.com) or by telephone, email, post or fax or in accordance with clause 1.2 below. Where you are a consumer, you must confirm any telephone order by email.

1.2 Where we have agreed to enter into a vendor-managed inventory arrangement with you, an order will be deemed to be placed by you when our personnel or systems determine that additional replenishment stock is required in accordance with agreed minimum and maximum quantities. Where we have agreed to enter into a consignment stock arrangement with you, an order will be deemed to be placed when our personnel or systems determine that you have withdrawn the relevant stock from our agreed storage location at your premises.

1.3 Please ensure that you read these Conditions carefully and check that the details of any order and these Conditions are complete and accurate before you submit your order.

1.4 Your order shall only be deemed to be accepted when we issue a written acknowledgement of the order (Order Acknowledgement) at which point and on which date a formal and binding contract between you and us (being Sil-Mid Limited registered in England and Wales with Company Number 01460851) shall come into existence in accordance with these Conditions (Contract). For the avoidance of doubt, we shall not be required to accept orders which you place and any acceptance shall be at our sole discretion.

1.5 Where you are a consumer, you agree that it is a condition of the Contract that you are no less than 18 years of age.

1.6 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.7 Any quotation given by us shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.

The following clauses 1.8 and 1.9 only apply if you are a business customer

1.8 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

1.9 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations contained in any documents forwarded to you or published on our 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 have any contractual force except where expressly provided in these Conditions or expressly incorporated in our Order Acknowledgement.

2. Delivery of Goods

2.1 We shall deliver the Goods to the address set out in the Contract (or as otherwise agreed by us) (Delivery Location). Where you are a business customer we shall deliver the Goods FCA (Incoterms 2010) unless agreed otherwise.

2.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by an Event Beyond Our Control (as defined below) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

2.4 If you fail to accept or take delivery of the Goods within 7 days of us notifying you that the Goods are ready, then except where such failure or delay is caused by you suffering an event similar to an Event Beyond Our Control or by our failure to comply with our obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am 7 days following the day on which we notified you that the Goods were ready; and
- (b) we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).

2.5 Where you are a business customer and we are required to re-deliver Goods we shall be entitled to charge you any additional delivery and administration charges we incur.

2.6 If 14 days after we notified you that the Goods were ready for delivery you have not accepted or taken delivery of them, we may resell or otherwise dispose of (or destroy, in the case of expired Goods) part or all of the Goods and may charge you for any shortfall below the price of the Goods in addition to any other losses we suffer.

2.7 You shall not be entitled to reject the Goods if we deliver up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from you that the wrong quantity of Goods was delivered provided that where we deliver less than the quantity of Goods ordered you inform us of such discrepancy within 48 hours of delivery (if you are a business customer) or within a reasonable period after delivery (if you are a consumer). Any discrepancy in the number of packages delivered must be notified to us immediately after delivery. Discrepancies can be notified to us using our online discrepancy form on our website (or by completing the discrepancy form on the back of your delivery note and faxing/emailing it back to us on 01675 432870 or info@silmid.com).

2.8 We 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 you to cancel any other instalment.

The following clause 2.9 only applies where you are a business customer

2.9 If we fail to deliver the Goods our liability shall be limited 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. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an Event Beyond Our Control, your failure to provide us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

3. Quality of Goods

3.1 You shall be entitled to the benefit of any guarantee or warranty provided from the manufacturer of the relevant Goods to the extent we can enforce or assign such guarantee or warranty. Where you are a business customer and you believe any Goods to be defective, please follow the processes set out at clause 9 below.

3.2 Where you are a consumer and we sell Goods to you that do not comply with the requirements of the Consumer Rights Act 2015, you may have additional rights of refund or replacement in accordance with the time limits and provisions of that Act. If any of the Goods are defective please contact us to arrange their return. We will be able to provide a more efficient returns service to you if you follow the processes set out at clause 9 but you do not have to.

4. Title and risk

4.1 The risk in the Goods shall pass to you on completion of delivery.

4.2 Title to the Goods shall not pass to you until the earlier of:

- (a) us receiving payment from you in full (in cash or clear funds) for: -
 - (i) *the Goods; and*
 - (ii) *any other goods that we have supplied to you in respect of which payment has become due,*

- (b) you reselling or using the Goods, in which case title to the Goods shall pass to you at the time specified in clause 4.4.

4.3 Until title to the Goods has passed to you, you shall:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 7.1(b) to clause 7.1(e); and
- (e) give us such information relating to the Goods as we may require from time to time.

4.4 Subject to clause 4.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

- (a) you do so as principal and not as our agent; and
- (b) title to the Goods shall pass from us to you immediately before the time at which resale or use by you occurs.

4.5 If before title to the Goods passes to you, you become subject to any of the events listed in clause 7.1(b) to clause 7.1(e), then, without limiting any other right or remedy we may have:

- (a) your right to resell the Goods or use them in the ordinary course of your business ceases immediately; and
- (b) we may at any time:
 - (i) *require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and*
 - (ii) *if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.*

5. Charges and payment

5.1 The price for the Goods shall be the price set out in the Contract. The costs and charges of transport, packaging and insurance shall be as set out in the Contract or as otherwise notified to you at or before the time of your order.

5.2 We reserve the right to increase the price of the Goods, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods to us that is due to:

- (a) a manifestly incorrect price being displayed on our website or in any catalogue or quotation;
- (b) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (c) any request by you to change the delivery date(s), quantities or types of Goods ordered; or
- (d) any delay caused by any of your instructions in respect of the Goods or your failure to give us adequate or accurate information or instructions in respect of the Goods.

5.3 Where you are a consumer only and we increase the price of the Goods pursuant to clause 5.2 then you shall be entitled to terminate the relevant Contract within 7 days of us notifying you of such price increase. We shall be entitled to invoice you on or at any time after receipt of your order (or deemed order in the case of vendor-managed inventory or consignment stock arrangements).

5.4 Where at our sole discretion we agree to give you credit terms (which we shall be entitled to revoke at any time), you shall pay each invoice submitted by us:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by us, and

time for payment shall be of the essence of the Contract.

5.5 Where you are a business customer only, all amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

5.6 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time (or where you are a business customer, at such higher rate as prescribed by the Late Payment of Commercial Debts (Interest) Act 1998) together with an administration fee of £50 per overdue invoice. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

5.7 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

5.8 You warrant that any credit or debit card you use to make a purchase from us is your own card or your business's card, that you are authorised to use it, and that there are sufficient funds or credit facilities to cover the cost of any Goods you order from us. We reserve the right to obtain validation of your credit or debit card details before providing you with any Goods.

6. Limitation of liability

6.1 Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;

	(c) any matter in respect of which it would be unlawful for us to exclude or restrict liability.		
6.2	This clause 6 shall survive termination of the Contract.	9.2	We cannot accept liability for packages damaged during transit. It is your responsibility to pack the Goods adequately to prevent damage.
6.3	<u>The following clause 6.3 only applies if you are a consumer</u> If we fail to comply with the Contract, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Contract or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into the Contract.	9.3	Proof of postage is not proof of delivery and you are therefore strongly advised to send your package by recorded delivery, registered post or courier, and to insure the Goods for their full value.
6.4	<u>The following clauses 6.4 and 6.5 only apply if you are a business customer</u> Subject to clause 6.1:	9.4	On receipt of the returned Goods, we will inspect them to identify the defect you have notified to us. If following our inspection, the Goods are found to be in good order without defect, we will return them to you and you shall reimburse our delivery charges in doing so. Unless the defect would not be immediately apparent, we will not accept the return of any defective Goods not notified to us within 14 days of delivery.
	(a) we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and	9.5	We may (exceptionally and at our sole discretion) agree to accept the return of unwanted Goods. You must first obtain an RMA number from us and any such Goods must be returned within 14 days of delivery in perfect re-saleable condition. We shall be entitled to apply a handling fee of 15% of the price of the Goods or £20 (whichever is the greater) and provide any refund in the form of a credit note. Any refund shall not include the original delivery charges.
	(b) our total liability to you 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, shall in no circumstances exceed the price paid under the Contract.	10.	Events Beyond our Control
6.5	The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.	10.1	For the purposes of this Contract, an Event Beyond Our Control means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes, 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 third party suppliers or subcontractors.
7.	Termination	10.2	We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of an Event Beyond Our Control.
7.1	Without limiting our other rights or remedies we may terminate the Contract with immediate effect by giving written notice to you if:	10.3	If you are a consumer you may terminate the Contract if an Event Outside Our Control takes place and you no longer wish us to provide the Goods.
	(a) you commit a material breach of your obligations under this Contract and (if such breach is remediable) fail to remedy that breach within 7 days after receipt of notice in writing to do so;	10.4	If the Event Beyond Our Control prevents us from providing any of the Goods for more than 4 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.
	(b) you are (or are deemed to be or we reasonably believe you are about to become) insolvent, bankrupt or suffer an event analogous thereto or are otherwise unable to pay your debts;	11.	General
	(c) you suspend or threaten to suspend, or cease or threaten to cease to carry on, all or a substantial part of your business;	11.1	For training and quality purposes we may record or monitor all inbound and outbound telephone calls and electronic traffic.
	(d) where you are a business, a change of control occurs in relation to you (within the meaning of section 1124 of the Corporation Tax Act 2010); or	11.2	Assignment and other dealings:
	(e) your financial position deteriorates to such an extent that in our opinion your capability adequately to fulfil your obligations under the Contract has been placed in jeopardy.		(a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our 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.
7.2	Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.		(b) You shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of your rights or obligations under the Contract.
7.3	Without limiting our other rights or remedies, we may suspend all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay any amount due under this Contract on the due date for payment, you become subject to any of the events listed in clause 7.1(b) to clause 7.1(e), or we reasonably believe that you are about to become subject to any of them.	11.3	Notices:
7.4	On termination of the Contract for any reason:		(a) Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or by e-mail to info@silmid.com.
	(a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;		(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; 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 or e-mail, one business day after transmission.
	(b) you shall return any property belonging to us (including but not limited to any stock held at your premises on a consignment basis). If you fail to do so, then we may enter your premises and take possession of it. Until our property has been returned, you shall be solely responsible for its safe keeping and will not use it for any purpose not connected with this Contract;		(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
	(c) 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	11.4	If any provision or part-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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
	(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.	11.5	A waiver of any right under the Contract or law 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 prevent or restrict its 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.
7.5	Where you are a business customer and you terminate the Contract without our prior written consent and for any reason other than for our breach of the Contract then you shall indemnify us in full against all loss (including but not limited to any direct, indirect or consequential losses and loss of profit), costs and expenses incurred by us as a result of the termination.	11.6	Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
8.	Consumer's rights to cancel (i.e. Terminate) and applicable refund	11.7	A person who is not a party to the Contract shall not have any rights to enforce its terms.
	<u>This clause 8 only applies if you are a consumer</u>	11.8	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 agreed in writing and signed by us.
8.1	Where we agree at our sole discretion to allow you to terminate a Contract for Goods or where you choose to terminate because we are affected by an Event Outside Our Control or we increase the price of the Goods in accordance with clause 5.3, we will refund to you any payment made in advance for Goods that have not been delivered to you (including any applicable delivery charges).	11.9	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, English law, and subject to clause 11.10 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
8.2	Where the Contract is a distance contract or an off-premises contract (in both cases, as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) you may have additional rights to cancel the Contract. Please see Schedule 1 for full details of those rights and how you may exercise them.	11.10	LCIA Arbitration: Where you are a business customer, at our option any disputes arising out of or in connection with the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under LCIA Rules, which rules are deemed to be incorporated by reference to this clause. The number of arbitrators shall be one. The seat or legal place of arbitration shall be London and the language of arbitral proceedings shall be English.
9.	Return of goods by business customers		
	<u>This clause 9 only applies if you are a business customer</u>		
9.1	If you believe any Goods to be defective, please complete our online discrepancy form on our website (or complete the discrepancy form on the back of your delivery note and fax/email it back to us on 01675 432870 or info@silmid.com) within 14 days of delivery. Provided we are able to enforce a warranty or guarantee from the relevant manufacturer, we shall provide you with a Return Materials Authorisation ("RMA") number. Returned goods will not be accepted without an RMA Number. Do not write directly on the manufacturer's packaging. Please write the RMA number on an address label and attach it to the returned package. Any defacement of the manufacturer's packaging or damage		

Schedule 1 – Distance and Off-premises Contracts (Cancellation Rights)

1. This Schedule 1 applies only where you are a consumer and the Contract is a distance contract or an off-premises contract (in both cases, as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) (Consumer Contracts Regulations).
2. In general terms, the Contract will be a distance contract where it is concluded using an organised distance-selling method such as telephone, mail order or a website and it will be an off-premises contract where it is concluded away from our usual business premises. However this list is not exhaustive and these general descriptions will not always apply – the definitions in the Consumer Contracts Regulations will always apply in preference to the general descriptions given in this paragraph.
3. You have the right to cancel the Contract within 14 days without giving any reason.
4. The cancellation period will expire after 14 days from the day on which you acquire, or a third party indicated by you (other than the carrier) acquires, physical possession of the relevant Goods.
5. To exercise the right to cancel, you must inform us of your decision to cancel the Contract by a clear statement (e.g. a letter sent by post, fax or e-mail to info@silmid.com). You may use the model cancellation form attached at Schedule 2, but you do not have to. Our contact details are set out on the Order Acknowledgement.
6. To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.
7. Where you are a consumer, we are under a legal duty to supply Goods that are in conformity with this Contract. As a consumer, you have legal rights in relation to Goods that are faulty or not as described

EFFECTS OF CANCELLATION

8. If you cancel the Contract, we will reimburse to you all payments received from you, including the cost of delivery of any Goods (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).
9. We may make a deduction from the reimbursement for loss in value of any Goods supplied, if the loss is the result of unnecessary handling by you. You are only liable for any diminished value of the Goods resulting from the handling other than that which is necessary to establish the nature, characteristics and functioning of the Goods. If you break the seal on any sealed Goods or, in the case of tinned Goods, you open the tin, then we may make a deduction of 100% of the price of the Goods.
10. We will make the reimbursement without undue delay, and not later than: –
 - (a) 14 days after the day we receive back from you any Goods supplied, or
 - (b) (if earlier) 14 days after the day you provide evidence that you have returned the Goods.
11. We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.
12. Unless we have agreed to collect the Goods, you shall send them back or hand them over to us without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation of the Contract to us. The deadline is met if you send back the Goods before the period of 14 days has expired.
13. Unless we agree otherwise, you will have to bear the direct cost of returning the Goods.

Sil-Mid Limited

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Schedule 2 – Model Cancellation Form

(Complete and return this form only if you wish to cancel your order)

To: SIL-MID LIMITED

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods,

Ordered on [*/received on [*]:

Name of customer(s):

Address of customer(s):

Signature of customer(s) (only if this form is notified on paper):

Date:

[*] Delete as appropriate

Document Control

Owner	Director of Sales
Reviewer	Managing Director

Version Control

Reason for Change	Date Updated
Revised and updated to take into account legislation changes	28/11/2014
Added to BMS no changes	05/01/2014
Reviewed in QBR	28/04/2015
Updated to Issue 2 (SH)	18/10/2017