

1 GENERAL

1.1 In the Terms, unless the context shall otherwise require, the following words and expressions shall have the following meanings:-

“**Buyer**” means any person, firm, entity, company, corporation or any other body or legal person, purchasing Goods from the Supplier;

“**Contract**” means a legally binding contract between the Supplier and the Buyer for the sale and purchase of the Goods constituted by either (i) the Quotation or (ii) the Online Order and Online Confirmation, and in each case, subject to the Terms;

“**Goods**” means each and every product, article or thing and any part thereof supplied or to be supplied by the Supplier to the Buyer (including any instalment of the goods or any part thereof);

“**Online Confirmation**” means confirmation in writing (which includes by email) by the Supplier of acceptance of the Buyer’s Online Order to be issued prior to the supply of the Goods to the Buyer;

“**Online Order**” means an order for Goods made by the Buyer through the Supplier’s Website by completion of the staged ordering process set out therein through submission of forms and following a series of hypertext links as directed on the Supplier’s Website;

“**Quotation**” means a quotation for the sale of Goods issued by the Supplier (either verbally or in writing) to the Buyer subject to the Terms;

“**Supplier**” means DIATECH SCOTLAND (Company number SC355888);

“**Supplier’s Website**” means the website published by the Supplier on the World Wide Web of the Internet with the uniform resource locator <http://www.diatechuk.com>, or such other uniform resource locator from which the Supplier may offer Goods for sale from time to time; and

“**Terms**” means the terms and conditions of sale set out in this document.

A reference to writing or written in the Terms includes faxes and emails.
1.2 The Supplier offers Goods for sale subject to the Terms which shall apply to and be incorporated into all contracts made by the Supplier for the sale of Goods to the exclusion of any other terms and conditions. Any written, printed or standard terms or conditions contained in any document emanating from the Buyer shall have no legal effect whatsoever and the Buyer waives any right he may otherwise have to rely on such terms or conditions. However in the case of consumer transactions, the Terms do not affect the consumer’s statutory rights.

1.3 No employee, contractor, agent or any other person working for the Supplier has authority to modify, amend or exclude any of the Terms, to sell or enter into an agreement to sell otherwise than subject exclusively to the Terms or to make any representation or warranty (save as provided herein) without the express authority in writing of a director of the Supplier and no modification, amendment or exclusion of the Terms or any part thereof shall be binding on the Supplier unless otherwise agreed in writing by a director of the Supplier.

1.4 The Buyer undertakes to ensure that the installation and or use of the Goods will be in compliance with all applicable requirements of statute, statutory rule or order, regulation or other instrument having force of law, relevant standard or Code of Practice, in particular the Health and Safety at Works Acts 1974, and the Abrasive Wheels Regulations 1970.

1.5 The Supplier reserves, at its sole discretion, the absolute right to refuse any order and any event of so doing shall incur no liability for the Supplier whatsoever, however caused.

2 QUOTATIONS, ONLINE ORDERS AND BASIS OF THE SALE

2.1 Notwithstanding 1.3 above, any Quotation issued (which may or may not constitute an offer to sell), is not of the essence of the Contract, but nevertheless remains subject to the Terms.

2.2 A Quotation must be accepted by the Buyer in writing or verbally in order to constitute a Contract.

2.3 The Buyer acknowledges that the website text, price lists, list of items for sale or other sales literature published on the Supplier’s Website constitute an invitation to treat and may not be construed by the Buyer as any offer or binding obligation upon the Supplier to sell any goods or items to the Buyer.

2.4 An Online Order shall not be deemed to be accepted by the Supplier unless and until the Online Confirmation has been issued to the Buyer.

2.5 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of the Online Order submitted by the Buyer, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms. The Supplier shall incur no liability resulting from inaccurate information being supplied by the Buyer.

2.6 The Supplier shall sell and the Buyer shall purchase the Goods in accordance with the Quotation or Online Order and Online Confirmation (as the case may be), subject to the Terms, which shall constitute and govern the Contract to the exclusion of any other terms subject to which any such Quotation or Online Order and Online Confirmation (as the case may be) is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.7 No variation to the Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Supplier.

2.8 The Supplier’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in the Terms affects the liability of either party for fraudulent misrepresentation.

2.9 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.10 Any typographical, clerical or other error or omission in any sales literature, Quotation or Online Confirmation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3 ORDERS AND SPECIFICATION

3.1 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Quotation or Online Confirmation.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Supplier on demand from and against any and all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier’s use of the Buyer’s specification.

3.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements.

3.5 Subject to 11.1 below, no order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in writing of the Supplier and on terms that the Buyer shall indemnify the Supplier in full on demand from and against any and all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

4 PRICE

4.1 The price of Goods supplied shall be the price stated in the Quotation or Online Confirmation. Should no Quotation have been given by the Supplier or where no price is quoted in the Online Confirmation, the price payable for the Goods shall be that contained in the Supplier’s price list current at the time of despatch or in the Supplier’s website text on the Supplier’s Website current at the date and time of the Online Confirmation. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Supplier without giving notice to the Buyer.

4.2 The Supplier reserves the right to (i) make at any time such alterations to its price list for the Goods as it may deem fit; and (ii) by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions.

4.3 Unless otherwise agreed in writing in accordance with 1.3 above, all prices shall be deemed to be exclusive of Value Added Tax which shall be payable in addition by the Buyer at the rate prevailing at the tax point of sale.

4.4 The Supplier reserves the right to charge the Buyer the cost of delivery of the Goods.

5 PAYMENT

5.1 Time of payment is of the essence of the Contract.

5.2 Unless otherwise agreed in accordance with 1.3 above or unless the Buyer has a current credit account with the Supplier, the price of the Goods and any additional charges will be paid in sterling in full at the time of acceptance by the Buyer of the Quotation or at the point of submission of the Online Order (as the case may be), but if full payment is not made at this time, the Supplier shall have the right to require full payment at any time thereafter. Full payment must in any event be made by the Buyer no later than the date of delivery of the Goods.

5.3 Unless otherwise agreed in accordance with 1.3 above, payment for Goods supplied on a credit account which the Buyer has with the Supplier shall become due and payable not later than 30 days from the delivery of the Goods.

5.4 Without prejudice to any other rights of the Supplier, however arising, in the event that the Buyer fails to pay the price of any part thereof or any other sums due under the Contract in accordance therewith, the Supplier shall be entitled:

(i) to charge interest at the rate of 2% per month or part month, or at the rate of 4% per annum above the Royal Bank of Scotland base rate from time to time in force, whichever is the higher, on all sums payable by the Buyer from the date on which the sum became payable until payment in full has been received by the Supplier;

(ii) to refuse to make delivery of any Goods ordered by the Buyer, whether under the Contract or any other contract with the Supplier, without incurring any liability whatsoever to the Buyer, until payment is made in full of all sums due from the Buyer to the Supplier;

(iii) to recover all costs and expenses incurred by the Supplier in collection or recovery of sums due and the Buyer hereby agrees to indemnify the Supplier on demand in respect of all such costs and expenses;

(iv) to terminate (with or without notice) the Contract insofar as it remains unperformed, whereupon the Buyer shall be liable to pay to the Supplier all sums due at termination, plus the amount of any loss whatsoever sustained by the Supplier (in its sole determination) by reason of the said termination.

5.5 The Supplier shall be entitled to close or suspend any credit account which the Buyer has with the Supplier at any time in its sole discretion. In that event, the balance of the account shall be payable forthwith by the Buyer to the Supplier.

5.6 The Supplier shall be at any time entitled to appropriate any payment made by the Buyer in settlement of any debt of the Buyer as the Supplier in its absolute discretion deems fit, notwithstanding any purported appropriation to the contrary by the Buyer.

6 RISK

All Goods shall be at the Buyer’s risk from the time of delivery to the Buyer, save that if property passes to the Buyer prior to delivery, the Goods shall be at the Buyer’s risk from the time when property passes to the Buyer, in which case, a carrier shall be deemed to be agent of the Buyer.

7 TITLE TO GOODS

7.1 Notwithstanding delivery and the passing of risk in the Goods, until such time as the Buyer shall have paid the Supplier in full the price of and all additional charges in respect of Goods supplied under the Contract:-

(i) ownership of the Goods shall remain with the Supplier, and the Buyer shall hold the Goods in a fiduciary capacity only for the Supplier and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Supplier’s property, save that the Buyer may resell or use the Goods in the ordinary course of business; if the Buyer sells (or allows to be sold) the Goods, the proceeds of sale shall be held in a separate clearly identifiable account and the Buyer’s beneficial interest shall attach to the proceeds of sale and the Buyer shall have the right to trace such proceeds of sale.

7.2 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier.

7.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Supplier may at any time require the Buyer to deliver up the Goods to the Supplier and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. For the avoidance of doubt, in such circumstances, the Supplier shall be entitled to repossess any Goods in which property has not yet passed to the Buyer under any Contract between the Buyer and the Supplier.

8 DELIVERY

8.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Supplier’s premises at any time after the Supplier has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.

8.2 Any delivery dates or times given are approximate only and are not of any contractual consequence and the Supplier shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates, nor shall time of delivery be of the essence of any Contract. The Goods may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Buyer.

8.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with the Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

- 8.4 If the Buyer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier may:-
(i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
(ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 8.5 Save where and to the extent that a prohibition against exclusion or restriction of obligations or liability applies, the Supplier shall not be liable for loss, whole or partial (and whether or not due to the negligence of the Supplier, its servants or agents), mis-delivery or shortage, patent defect or damage to Goods supplied, unless the Supplier is informed thereof by the Buyer's or consignees' signing and annotating the carrier's or consignor's delivery note to that effect and the Buyer subsequently reporting the same to the Supplier immediately by telephone, and further confirming such reports in writing to the Supplier within 3 days of receipt of the Goods.
- 9 LIABILITY AND INDEMNITY**
- 9.1 Save where and to the extent that a prohibition against exclusion or limitation of obligations applies, the Supplier, its employees, contractors, agents or any other person working for the Supplier shall be under no liability whatsoever to the Buyer, whether in contract, delict or otherwise, howsoever, whether or not resulting from any negligence of the Supplier, employees, contractors, agents or any other person working for the Supplier, including any liability for any inaccuracy in the Buyer's Online Order and any loss (or otherwise) that may arise therefrom, consequential injury, loss or damage of any nature whatsoever with the exception of liability for death or personal injury resulting from negligence for or arising out of advice, information or opinion or statement given or made by the Supplier, its employees, contractors, agents or any other person working for the Supplier, whether the same be oral or in writing, and all terms, warranties and other terms whether express or implied, statutory or otherwise inconsistent with this provision are hereby excluded. In particular and without prejudice to the generality of the foregoing, it is the responsibility of the Buyer to determine whether the Goods ordered are fit for any purpose from which they may be required, and all terms, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with these provisions are hereby excluded, save where and to the extent that such exclusion is prevented by law.
- 9.2.1.1 Any specifications; speed ratings; formulations; data; literature, statement as to content; suitability; performance or otherwise and descriptions and samples given by the Supplier in connection with Goods supplied are offered in good faith but are intended to be approximate only and shall be deemed not to constitute representations by the Supplier.
- 9.2.1.2 The Supplier shall not be liable for any expenditure, loss (including without limitation economic indirect and consequential loss) damage or injury (except for death or personal injury arising from negligence), arising out of any use or dealing with any Goods howsoever such expenditure, loss, damage or injury shall arise and whether from any defect in the Goods or otherwise.
- 9.3 A claim by the Buyer which is based on any defect or damage in the quality or condition of the Goods or their failure to correspond with the agreed specification for them shall (whether or not delivery is refused by the Buyer) be notified to the Supplier within fourteen days from the date of delivery or (where the defect, damage or failure was not apparent on reasonable inspection) within six months of the discovery of the defect, damage or failure. If delivery is not refused, and the Buyer does not notify the Supplier accordingly, the Buyer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect, damage or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.4 Where a valid claim in respect of any of the Goods which is based on a defect or damage in or to the quality or condition of the Goods or their failure to meet the agreed specification is notified to the Supplier in accordance with these Terms, the Supplier may replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Buyer.
- 9.6.1.1 The entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Goods.
- 9.6.1.2 The Buyer shall indemnify the Supplier on demand from and against any and all claims, costs, actions or demands whatsoever and howsoever arising made by any third party (including the Buyer's employees) whether direct or indirect relating to the Goods or the use thereof including without limitation those relating to the Goods or the use thereof arising as a result of the operation of the Consumer Protection Act 1987 and those arising out of manufacture or process according to instructions or designs of the Buyer.
- 10 FORCE MAJEURE**
- If the Supplier is prevented, hindered or delayed, whether directly or indirectly, from making delivery of the Goods or any part thereof or from otherwise performing any of its obligations under the Terms by reason of an Act or Acts of God, war, embargo, riot, strike, lock-out, trade dispute, fire, breakdown, inclement weather, interruption of transport, government action, delay in delivery or non-delivery to the Supplier of any Goods or materials or by any other cause whatsoever (whether or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever whether in contract, delict or otherwise howsoever to the Buyer and shall be entitled at its option, to be notified in writing to the Buyer, either to cancel the Contract or, without any liability, to extend the time of such performance by a period equivalent to that during which performance has been prevented, hindered or delayed as aforesaid.
- 11 CANCELLATION**
- 11.1 Subject to 11.2 below, within 14 days of the day after the day of delivery of the Goods to the Buyer, the Buyer shall be entitled to cancel the Contract, return the Goods and receive a full refund provided that the Goods have not been used in any way, are in the same good condition in which they were received by the Buyer and are returned to the Supplier. In such event, the Buyer shall be responsible for the costs of returning the Goods and shall indemnify the Supplier promptly on demand from and against all and any such costs. If the Supplier collects the Goods, the Supplier retains the right to charge the Buyer for any direct costs associated with the return of the Goods. No additional re-stocking charge or administrative charge will be added in accordance with Distance Selling Regulations. The Supplier's customer service centre can be contacted for an accurate cost of returning goods as costs may vary depending on product specification and location. For more information on the Buyer's right to withdraw from its purchase within the fourteen working day cooling-off period, the Buyer should please visit the Department of Trade and Industry's website at: <http://www.dti.gov.uk/consumers/buying-selling/distance-selling/index.html>
- 11.2 Subject to 11.1 above, any refunds to the Buyer are entirely at the discretion of the Supplier and in the event that the Supplier, in their sole discretion, grant a refund to the Buyer, any costs incurred in procuring that refund shall be borne by the Buyer.
- 11.3 (Except for any cancellation made pursuant to and in accordance with 11.1 above) the Supplier may in its sole discretion accept or reject the cancellation of any order once such order has been accepted by the Supplier. (Except for any cancellation made pursuant to and in accordance with 11.1 above) the Supplier will in no circumstances accept the cancellation of an order for Goods which are specially made or obtained once such an order has been accepted by the Supplier nor will an allowance be made in respect of such Goods where they are subsequently returned.
- 11.4 (Except for any cancellation made pursuant to and in accordance with 11.1 above) the Supplier may in its sole discretion accept or reject the return of any Goods which have been incorrectly ordered. (Except for any cancellation made pursuant to and in accordance with 11.1 above) in the event that the Supplier decides to accept the return of such Goods, such acceptance shall be upon such terms as the Supplier may determine (in its sole discretion) and in particular the Supplier reserves the right to charge for the carriage and handling of such Goods. Any return of Goods by the Buyer pursuant to these Terms shall in all cases be accompanied by a duly completed Return Merchandise Authorisation Form of the Seller (which form shall be made available by the Supplier to the Buyer at the Buyer's request).
- 11.5 The Supplier may (without limitation of any other right or remedy available to the Supplier) cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, in the event that any of the following occur:-
(i) the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986);
(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;
(iii) the Buyer ceases, or threatens to cease, to carry on business; or
(iv) the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12 NON-WAIVER OR RIGHTS**
- No time given or concession made on the part of the Supplier shall be construed as a waiver of any of its rights or remedies, nor shall it be considered as a waiver of any subsequent breach of the same or any other provision of the Terms.
- 13 CONFIDENTIALITY**
- The Buyer and the Supplier shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third-party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods and the Contract.
- 14 GENERAL**
- 14.1 In the event of the invalidity (by virtue of an order from a Court of competent jurisdiction) of any of the Terms or any part thereof at any time, the same shall not affect the validity or enforceability of the remaining provisions of the Terms which shall remain in full force and effect.
- 14.2 The Terms shall be interpreted without reference to their headings which are for reference purposes only.
- 14.3 The Contract shall be deemed to have been made in Scotland and shall be governed by Scots law.
- 14.4 Any claim or dispute arising in any way out of or in connection with the Contract or the supply of Goods shall be subject to the exclusive jurisdiction of the Scottish courts.
- 14.5 Eligibility for a "No Quibble" return is for Diatech branded products only and subject to the conditions set out in section 11. Items considered faulty, within 18 months of the day after the date of delivery, will be uplifted by the Supplier for inspection. Genuinely faulty goods will be replaced. Claiming for faulty goods does not meet conditions for a full refund if the item shows any evidence of deliberate damage or misuse.