

HENKEL LIMITED - Conditions of Sale

1. DEFINITIONS

- "Henkel" means Henkel Limited (registered in England under Company number 00215496) and its successors;
"Contract" means any contract between Henkel and the Customer for the supply of the Products, formed when Henkel accepts an order;
"Customer" means any person whose order for purchase of the Products is accepted by Henkel;
"Products" means Products which Henkel agrees to supply to the Customer.

2. GENERAL CONDITIONS

- 2.1 Subject to paragraph 4 Henkel shall sell and the Customer shall purchase the Products in accordance with any order of the Customer, which is accepted by Henkel. Each Contract shall be subject to these Conditions, which shall take effect to the exclusion of any other terms and conditions whatsoever of the Customer or otherwise. No addition, variation or waiver to these Conditions shall be binding unless accepted in writing by Henkel.
2.2 Samples supplied and advice or recommendations as to the storage, applications or use of the Products given by Henkel, its employees or agents to the Customer or its employees or agents are for guidance only and any such matter is followed or acted upon entirely at the Customer's own risk without liability to Henkel.

3. QUOTATIONS

- 3.1 Subject to paragraph 6.2 below, quotations issued by Henkel are merely invitations to order Products from Henkel and do not create a contract until accepted by Henkel in writing.
3.2 The price in a quotation shall be valid for a period of one month from the date of the quotation.

4. ORDERS

- 4.1 Henkel shall not be bound by any order submitted by the Customer unless and until accepted by Henkel in writing. Orders rejected by Henkel will normally be notified to the Customer within three days.
4.2 No terms or conditions of the Customer whether in its purchase order or otherwise except those of a quantitative and descriptive nature shall apply to the Contract.
4.3 The Customer shall indemnify Henkel on demand against all damages, costs and expenses incurred by Henkel resulting from any purported alteration or cancellation of the Contract by the Customer.

5. DESCRIPTIONS AND SPECIFICATION

- 5.1 If the Products are to be manufactured by Henkel in accordance with a specification or request of the Customer or should any change be made to the Products at the request of the Customer:
5.1.1 Henkel shall not be liable for the quality or performance of the Products; and
5.1.2 the Customer shall indemnify Henkel against all claims, losses, damages, costs and expenses arising from any resultant infringement of any third party's intellectual property or other rights or any other third party liability it incurs as a consequence.
5.2 Henkel may change any specification at any time. Henkel shall notify the Customer if any material change is made after Henkel has accepted the Customer's order where the Products are made to the Customer's specification.

6. PRICES

- 6.1 The price of the Products (the "Price") shall be Henkel's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in Henkel's published price list current at the date of the despatch of the order by Henkel. Prices shall be exclusive of value added tax and any other government duty or tax.
6.2 Henkel may by giving notice to the Customer at any time before delivery increase the Price to reflect any increase in its costs which is due to any factor beyond its reasonable control.
6.3 Prices include the cost of Henkel's standard packaging for Products. The cost of returnable containers and pallets may be charged to the Customer in addition to the price of the Products but credit will be given to the Customer (less expenses incurred) if they are returned undamaged to Henkel within a reasonable time. The cost of any additional packaging required by the Customer shall be borne by the Customer.
6.4 Returnable containers or any other returnable packaging shall not be used by the Customer other than for the Products.
6.5 Henkel may charge delivery costs where delivery is required other than on its standard terms.

7. DELIVERY AND COLLECTION

- 7.1 Where delivery of the Products is to be made by the Customer collecting the Products at Henkel's premises the Customer shall agree the date and time of collection with Henkel's sales office at least 48 hours before collection.
7.2 Subject to paragraph 7.1 any dates quoted for delivery for Products are approximate only and Henkel shall not be liable for any delay in delivery of the Products. The Customer may not cancel a Contract by reason of such delay unless Henkel acknowledges in writing that the delay is unreasonable. Time for delivery is not of the essence. The Products may be delivered by Henkel in advance of any quoted delivery date upon giving reasonable notice to the Customer.
7.3 Henkel may deliver up to 10% more or 10% less than the quantity ordered and the quantity delivered shall be deemed to be the quantity ordered and the invoice price shall be adjusted pro rata.
7.4 The Customer shall ensure that vehicles and employees of Henkel or Henkel's carrier are given free and unhindered access to an appropriate entrance at the address for delivery of the Products.
7.5 The Customer shall arrange for the Products to be unloaded promptly at the delivery point at its own cost and the Customer shall be responsible for any delay or damage to the Products during unloading.
7.6 Henkel may charge the Customer for Products which the Customer fails to accept when delivery of the Products is duly tendered by Henkel.
7.7 The quantity of Products as determined by Henkel on dispatch shall be conclusive in determining the quantity supplied.
7.8 If the Customer fails to collect or take delivery of the Products or fails to give Henkel adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Henkel's fault) then without prejudice to any other right or remedy available to Henkel it may:
7.8.1 store the Products until actual delivery and charge the Customer its costs (including insurance) of storage; and/or
7.8.2 sell the Product at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.
7.9 Henkel shall not be liable (whether in contract tort or otherwise) under or in connection with the Contract:
7.9.1 for non-delivery unless written notice of the Customer's claim is received by Henkel within 21 days of the date of Henkel's invoice; or
7.9.2 for claims arising out of any loss or damage to the Products in transit unless the Customer notifies the carrier and Henkel in writing within 3 days of delivery.

8. INSPECTION

- 8.1 The Customer shall count the Products and check for superficial damage on delivery or collection.
8.2 Any short delivery or damage to the Products must be noted on the delivery note and notified to Henkel and the carrier in writing within three days of the delivery or collection of the Products concerned.

9. PROPERTY AND RISK

- 9.1 Until full payment has been received by Henkel from the Customer for the Products the subject of the Contract or any other contract for the time being between Henkel and the Customer:

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- 9.1.1 legal and beneficial ownership of the Products shall remain with Henkel;
- 9.1.2 the Customer shall hold the Products as Henkel's bailee and fiduciary agent, and shall keep the Products separate from those of the Customer and third parties properly stored, protected and insured and identified as Henkel's property;
- 9.1.3 the Customer may resell or use the Products in the ordinary course of its business (only), but Henkel shall be legally and beneficially entitled to the proceeds of sale and if requested by Henkel the Customer shall pay all such proceeds of sale into a separate account or otherwise shall ensure that they are kept by or on behalf of Henkel in a separate and identifiable form and are not mixed with any other monies. Forthwith on receipt of the proceeds of sale the Customer shall pay to Henkel any sums due to it;
- 9.1.4 Henkel may recover the Products at any time from the Customer (provided they are still in existence and have not been resold) and for that purpose Henkel its servants and agents are hereby irrevocably authorised to enter upon any land or building upon or in which the Products are situated.
- 9.2 The Customer may not pledge or in any way charge by way of security for any indebtedness any of the Products but if the Customer does so all monies payable by it to Henkel shall (without prejudice to any other right or remedy of Henkel) forthwith become due.
- 9.3 The Customer shall upon notice in writing being given to it by Henkel assign to Henkel all its rights against its customers in respect of any disposal under paragraph 9.1.3 above.
- 9.4 All risk including that of damage to or loss of the Products shall pass to the Customer:
- 9.4.1 in the case of Products to be collected by the Customer or its carrier at the earlier of the agreed time the Customer or carrier is to collect the Products or the time they are actually collected;
- 9.4.2 in the case of Products to be delivered to the Customer at the time of delivery but prior to unloading even if the Customer wrongfully fails to take delivery of the Products when Henkel had tendered delivery of the Products.

10. TESTING

Henkel is under no duty to provide the Customer with tailor-made Certificates of Analysis and/or Conformity or any other form of quality certification pursuant to an order; any quality checks or data that are produced by Henkel will not relieve the Customer of the responsibility to carry out its own quality checks nor do they confirm that the Products have certain properties or are suitable for any specific application.

11. QUALITY

- 11.1 Henkel warrants that on delivery the Products shall:
 - 11.1.1 conform with their technical specification;
 - 11.1.2 be free from material defects in design, material and workmanship; and
 - 11.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 11.2 In the event of any dispute as to the quality of the Products the Customer shall allow Henkel at any time on reasonable notice to carry out quality control tests on the Products whether or not the proprietary right in the Products has passed to the Customer.

12. TERMS OF PAYMENT

- 12.1 The Customer shall settle its account with Henkel by either (i) the date agreed between the Parties in writing; or (i) if no such date has been agreed by both Parties in writing, the twentieth day of the calendar month following the calendar month in which the Products are delivered to or collected by the Customer.
- 12.2 The Customer shall pay the Price in accordance with paragraph 12.1 notwithstanding that property in the Products has not passed to the Customer. The time of payment of the Price is of the essence of the Contract.
- 12.3 If the Customer fails to make any payment on the due date then without prejudice to its other rights Henkel may:
 - 12.3.1 cancel the Contract and/or suspend performance of the Contract (including any further deliveries to the Customer); and/or
 - 12.3.2 charge the Customer interest from the date payment is due on the amount unpaid at the rate of 2% per annum above the National Westminster Bank plc base rate from time to time calculated on a daily basis.
- 12.4 Henkel may appropriate any payment made by the Customer to such of the Products supplied under the Contract (or any other contract with the Customer) as Henkel may think fit (notwithstanding any purported appropriation by the Customer).
- 12.5 The Customer may not set off against or deduct from any payment due to Henkel from the Customer for any reason whatsoever.
- 12.6 Where Henkel agrees to supply Products in instalments each instalment shall be paid for in full and failure to pay for any instalment shall entitle Henkel to refuse to deliver any further instalment of the Products due under the Contract or any other contract with the Customer.
- 12.7 The Customer shall indemnify Henkel against all additional costs and expenses incurred by Henkel in recovering amounts due from the Customer or exercising its rights under this paragraph 12, including bank charges, legal costs and any administration fee incurred if Henkel refers a late/non payment dispute to its lawyers or collection agents.

13 INTELLECTUAL PROPERTY

- 13.1 The intellectual property rights, including but not limited patents, trade marks, registered design and copyright in the Products, any documents or other materials, and any data or other information provided by Henkel relating to the Products ("**Henkel IP**"), belong to Henkel. The Customer shall not infringe any Henkel IP.

14. CONFIDENTIALITY

All secret data and other confidential information of Henkel shall remain the sole and exclusive property of Henkel and shall not be used by the Customer or disclosed to any third party.

15. LIMITATION OF LIABILITY

- 15.1 All warranties or terms implied by statute or common law are excluded as far as possible.
- 15.2 Subject to paragraph 15.5 below, Henkel shall be under no liability to the Customer:
 - 15.2.1 for any defect in Products caused by the Customer or use of the Products in abnormal working conditions, failure to follow Henkel's instructions (whether oral or in writing), misuse or alteration or repair not approved by Henkel;
 - 15.2.2 if the total price for the Products is not paid by the due date for payment;
 - 15.2.3 for Products not manufactured by Henkel (although the Customer shall be entitled to the benefit of any assignable warranty or guarantee given by the manufacturer to Henkel).
- 15.3 In order to be valid, any claim from the Customer that Products are damaged, defective or not of merchantable quality must be received by Henkel within fourteen days of the delivery of the Products, and, if Henkel requires, be accompanied by a sample of the Products sent (with the return carriage paid by the Customer) to Henkel in the condition in which they were received by the Customer. Henkel will examine returned Products and if in its sole discretion, Henkel decides that the complaint is justified in whole or in part without creating any obligation to do so Henkel's may either:
 - 15.3.1 replace all or any of the Products; or
 - 15.3.2 accept the return of all or any of the Products, giving credit to the Customer for the Price paid by it for them; or
 - 15.3.3 make an allowance to the Customer equal to Henkel's calculation of the difference in the value of Products delivered and their Price.
- 15.4 Subject to paragraph 15.5:
- 15.4.1 Henkel's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to the Price paid under the Contract; and

- 15.4.2 Henkel shall not be liable to the Customer for any indirect or consequential loss or damage or for any loss of profit, loss of business or depletion of goodwill.
- 15.5 Nothing in these Conditions excludes or limits the liability of Henkel for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, for breach of the terms implied by section 12 of the Sale of Goods Act 1979, for defective products under the Consumer Protection Act 1987, or for anything that cannot be excluded at law.
- 16. FORCE MAJEURE**
Henkel shall not be liable for any failure to fulfil any obligation if it is prevented from or delayed in so doing by any cause beyond its reasonable control including, without limit, strikes, fuel shortages, blockades, act of god, fire, flood, extremes of weather, infrastructure failures, shortage or unavailability of utilities or raw materials, terrorism, act of war, sub-contractor default or plant breakdown. In the event of any such failure Henkel may defer or determine the Contract or any part of it or any other contract with the Customer without any liability to the Customer and without prejudice to its other rights.
- 17. INDEMNITY**
The Customer shall indemnify Henkel in respect of all damage, injury or loss occurring to any person or property and against all claims, charges or expenses in connection therewith arising from the condition or use of the Products in so far as any such damage, injury or loss shall have been occasioned partly or wholly by any act or omission of the Customer, its servants agents or employees or by any breach by the Customer of its obligations to Henkel.
- 18. TERMINATION**
18.1 Henkel may terminate the Contract and any other contracts with the Customer if the Customer:
18.1.1 fails to pay on the due date any sum due to Henkel under the Contract or any other contract;
18.1.2 is in breach of the Contract or any other contract with Henkel and (if remediable) fails to remedy the breach within 30 days of notice from Henkel requiring the breach to be remedied;
18.1.3 (being an individual) dies, becomes bankrupt, or enters into a composition or arrangement for the benefit of its creditors, or (being a company) enters into receivership or a composition or arrangement for the benefit of its creditors or has an administrator, examiner or receiver appointed over all or any of its assets or goes into liquidation either voluntary or compulsory (unless as part of a bona fide scheme of reconstruction or amalgamation); or
18.1.4 ceases or threatens to cease to carry on its business.
18.2 No forbearance or indulgence shown or granted by Henkel to the Customer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of Henkel against the Customer or be taken as admitting any liability whatsoever or a waiver of any of these Conditions or any liability under them.
18.3 If Henkel terminates under paragraph 18.1 above, the Customer shall forthwith pay Henkel all sums due to it under the Contract and any other contract and Henkel may immediately repossess all Products in the possession of or under the control of the Customer, its servant or agents (and enter upon any premise belonging to or under the control of the Customer for such purposes).
- 19. ANTI-BRIBERY AND PREVENTION OF CORRUPTION**
19.1 The Customer shall:
19.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 (the "Bribery Act");
19.1.2 have and shall maintain in place its own anti-bribery and anti-corruption policies and procedures, including adequate procedures under the Bribery Act and will enforce them where appropriate;
19.1.3 ensure that all persons associated with the Customer or other persons who are performing the Contract comply with this paragraph 19.
19.2 For the purposes of this paragraph 19, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) and 8 of the Bribery Act. Any subcontractor of the Customer shall be treated as a person associated with the Customer.
- 20. MISCELLANEOUS**
20.1 Henkel is the holding company in a group of companies and may perform any of its obligations or exercise any of its rights under a Contract by itself or through any other member of its group provided that any act or omission of such other member shall be deemed to be the act or omission of Henkel.
20.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the time be notified to the party giving notice.
20.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
20.4 These Conditions shall be governed by and construed in all respects (including in relation to non-contractual disputes or claims) in accordance with the laws of England and the parties hereby submit themselves to the exclusive jurisdiction of the English Courts.
20.5 These Conditions shall where applicable survive termination of the Contract.
20.6 The Customer shall not assign any benefit under the Contract without the written consent of Henkel, which may if given be on such terms as to guarantee or indemnify or otherwise as Henkel thinks fit.