

1. General

- (a) These terms and conditions (Terms and Conditions) shall apply to sales by J. A. Lumley & Son Ltd to the buyer (Buyer) of any goods which are to be supplied to destinations within the Republic of Ireland and other destinations within the EU. No variation or purported variation (including in particular any terms and conditions on any contract or order form of the Buyer), whether before or after the making of the contract, shall have effect unless expressly agreed to in writing by J. A. Lumley & Son Ltd.
- (b) There shall be no contract between J. A. Lumley & Son Ltd and the Buyer until the Buyer's order is accepted by J. A. Lumley & Son Ltd.
- (c) These Terms and Conditions contain all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. No party shall rely on any representation, arrangement, understanding or agreement (whether oral or written) not expressly set out or referred to in these Terms and Conditions.
- (d) A person will be regarded as a Buyer for the purpose of these Terms and Conditions only if such person has completed J. A. Lumley & Son Ltd's New Account Registration Form to the satisfaction of J. A. Lumley & Son Ltd and that person's order is accepted by or on behalf of J. A. Lumley & Son Ltd.
- (e) These Terms and Conditions and any contract governed hereby shall apply to and bind the successors and permitted assigns of J. A. Lumley & Son Ltd and the successors and permitted assigns or the administrators or executor of the Buyer (pursuant to clause 7) as the case may be.
- (f) THE CONTRACTUAL RIGHTS WHICH THE BUYER ENJOYS BY VIRTUE OF SECTIONS 12, 13, 14 AND 15 OF THE SALE OF GOODS ACT, 1893 (AS AMENDED) ARE IN NO WAY PREJUDICED BY ANYTHING CONTAINED IN THESE TERMS AND CONDITIONS SAVE THAT SUCH PROVISIONS ARE FULLY EXCLUDED IF THE BUYER IS NOT DEALING AS CONSUMER OR IN THE CASE OF AN INTERNATIONAL SALE OF GOODS TO THE EXTENT PERMITTED BY LAW. ALL OTHER TERMS WHETHER IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE ARE FULLY EXCLUDED TO THE EXTENT PERMITTED BY LAW.
- (g) Each order for goods placed by the Buyer hereunder will constitute a separate contract, and any default by J. A. Lumley & Son Ltd in relation to any order will not entitle the Buyer to treat any other contract subject to the Terms and Conditions as terminated.
- (h) The Buyer indemnifies J. A. Lumley & Son Ltd and shall keep J. A. Lumley & Son Ltd indemnified against any costs, expenses, amounts, damages or liabilities suffered by J. A. Lumley & Son Ltd as a result of the application of any foreign laws whatsoever to the goods supplied after their delivery in accordance with clause 3 including but not limited to any taxes, duties or charges which may be imposed in any jurisdiction.
- (i) Words and expressions defined in the Sale of Goods Act, 1893 and 1990 shall, when used in these Terms and Conditions, save where the context otherwise requires, bear the same meanings as therein.

2. Transfer of Ownership

- (a) The property in any goods supplied by J. A. Lumley & Son Ltd to the buyer shall remain in J. A. Lumley & Son Ltd until J. A. Lumley & Son Ltd has received payment in full for all sums due and owing on any account by the Buyer.
- (b) If the Buyer sells or otherwise disposes of the goods supplied before payment in full as aforesaid has been made to J. A. Lumley & Son Ltd the Buyer shall in such case hold all monies received from such sale or disposal on trust for J. A. Lumley & Son Ltd, which monies shall belong to J. A. Lumley & Son Ltd absolutely, and shall on request furnish J. A. Lumley & Son Ltd with the names and addresses of the persons to whom such disposals have been made together with all necessary particulars to enable J. A. Lumley & Son Ltd to recover any outstanding sums due from such persons.
- (c) So long as the property in the goods supplied shall remain in J. A. Lumley & Son Ltd, the Buyer shall hold the goods as bailee for J. A. Lumley & Son Ltd and shall store the goods supplied so as to clearly show them to be the property of J. A. Lumley & Son Ltd, and J. A. Lumley & Son Ltd shall have the right, without prejudice to the rights of the Buyer to sell or otherwise dispose of the good supplied, to retake possession of the goods supplied (and for that purpose the Buyer grants to J. A. Lumley & Son Ltd, its agents or representatives a licence to enter upon any premises owned, occupied or controlled by the Buyer and the Buyer indemnifies J. A. Lumley & Son Ltd and shall keep J. A. Lumley & Son Ltd indemnified fully against all claims, costs, expenses, damages or amounts suffered by J. A. Lumley & Son Ltd for breach of any rights of third parties in so doing).
- (d) Nothing in this clause shall confer any right upon the Buyer to return the goods supplied to J. A. Lumley & Son Ltd other than under Clause 6. J. A. Lumley & Son Ltd may maintain an action for the price of the goods supplied together with VAT and any other applicable taxes and duties and any costs referred to in clauses 5(a) and (b) notwithstanding that property in the goods supplied shall not have vested in the Buyer.

3. Delivery

- (a) Subject to these Terms and Conditions, delivery shall in accordance with one of the following terms as agreed between the parties and as defined in the Incoterms 2000 (as may be amended or replaced from time to time) unless otherwise agreed in writing by J. A. Lumley & Son Ltd:
- (i) Cost Insurance and Freight (CIF) for goods delivered by or on behalf of J. A. Lumley & Son Ltd to Buyers (not covered by 3(a)(ii) below) in the Republic of Ireland, subject to the payment of excise duty, VAT and any other applicable taxes or duties by the Buyer.
- (ii) Cost Insurance and Freight (CIF) for goods delivered by or on behalf of J. A. Lumley & Son Ltd to Buyers who have a Revenue approved bond in the Republic of Ireland, subject to the payment of excise duty, VAT and any other applicable taxes or duties by the Buyer;
- (iii) Ex Works (EXW) for goods collected from J. A. Lumley & Son Ltd's premises or premises of third parties acting on behalf of or under an agreement with J. A. Lumley & Son Ltd by Buyers who have a Revenue approved bond in the Republic of Ireland, subject to the payment of excise duty, VAT and any other applicable taxes or duties by the Buyer; and
- (iv) Delivery Duty Unpaid (DDU) for goods delivered by or on behalf of J. A. Lumley & Son Ltd to Buyers outside of the Republic of Ireland in the EU, subject to the payment of all foreign and domestic excise duty, import and export duties, charges and taxes, VAT and any other applicable taxes or duties by the Buyer; and
- (v) Cost and Freight (CFR) for goods delivered to Buyers outside of the Republic of Ireland in the EU, subject to the payment of all foreign and domestic excise duty, import and export duties, charges and taxes, VAT and any other applicable taxes or duties by the Buyer.
- (b) Any times quoted for delivery are estimates only and J. A. Lumley & Son Ltd shall not be liable for failure to deliver within the time frame quoted.
- (c) The Buyer shall be deemed to have accepted the goods delivered by the signing of the delivery docket, bill of lading or other equivalent document and such delivery docket, bill of lading or equivalent document duly signed by or on behalf of the Buyer and this shall be conclusive as to the type and quantity of goods delivered. Signature for this purpose means any form of signature by or on behalf of the Buyer, including but not limited to electronic signature.
- (d) J. A. Lumley & Son Ltd shall be entitled to make partial deliveries or deliveries by instalments and the Terms and Conditions shall apply to each such partial delivery or delivery by instalment.

4. Risk of Loss or Damage

- (a) Notwithstanding that the property in the goods may not have passed to the Buyer, the Buyer shall carry all risk of loss of and damage to the goods from the time any of the following occurs:
- (i) the goods are collected by the Buyer; or
- (ii) the goods are delivered to a carrier for subsequent delivery to the Buyer; or
- (iii) delivery of the goods to the stipulated place of delivery.
- Section 32(2) of the Sale of Goods Act, 1893 shall not apply.
- (b) From when the risk of loss of and damage to the goods supplied commences to be carried by the Buyer until J. A. Lumley & Son Ltd is paid in full for the goods supplied, the Buyer shall:
- (i) indemnify and keep indemnified J. A. Lumley & Son Ltd against all loss of and damage to the goods supplied and against any reduction in the re-sale value thereof below the price to be paid therefore by the Buyer;
- (ii) insure and keep insured the goods in an amount which is at least equal to the price of the goods supplied together with VAT and any applicable taxes or duties to be paid by the Buyer and any other costs to be paid by the Buyer in accordance with these Terms and Conditions; and
- (iii) hold upon trust for J. A. Lumley & Son Ltd absolutely all proceeds of such insurance.

5. Prices and Terms of Payment

- (a) Unless otherwise agreed in writing, all prices shall be as specified in J. A. Lumley & Son Ltd's relevant price list as published from time to time. If the Buyer is required by the laws of any jurisdiction to withhold or deduct any amounts the Buyer shall pay to J. A. Lumley & Son Ltd such additional amounts as shall result in the receipt by J. A. Lumley & Son Ltd of the full amount stated in the invoice. The Buyer indemnifies J. A. Lumley & Son Ltd and shall keep J. A. Lumley & Son Ltd indemnified against all costs, expenses, damages, liabilities or amounts to be paid by the Buyer pursuant to clause 3.
- (b) J. A. Lumley & Son Ltd reserves the right at any time prior to deliver of the goods to adjust the price to take account of any increase in the costs to it of materials, labour services, and any applicable taxes or duties or of any currency differences or fluctuations which increase the costs to it of goods supplied to the Buyer under these Terms and Conditions.
- (c) Payment by the Buyer to the Company for the goods supplied shall be made at J. A. Lumley & Son Ltd's bank or at such other institution as may be designated by J. A. Lumley & Son Ltd. Such payment shall be made in such currency as is directed by J. A. Lumley & Son Ltd either by direct debit, cheque, bankers draft, cash or foreign bank notes at a value on the date of presentation to the bank or institution or electronic bank transfer. If the Buyer attempts to make a payment and, for whatever reason, payment is refused or held to be unacceptable by the bank or other institution, the Buyer shall:
- (i) be liable to pay any resulting bank or other charges incurred by J. A. Lumley & Son Ltd; and
- (ii) not be regarded as having made payment, and the provisions of clause 5(h) shall apply if full payment is not made by the due date.
- (d) Credit terms are available to the Buyer at the discretion of J. A. Lumley & Son Ltd in accordance with the current price list.

- (e) A discount for early settlement at the current rate from time to time may at the discretion of J. A. Lumley & Son Ltd be given to the Buyer provided payment is made before the due date.
- (f) Quantity discounts may at the discretion of J. A. Lumley & Son Ltd be given to the Buyer at the current rate from time to time provided payment is made by the due date, J. A. Lumley & Son Ltd shall review on an annual basis the provision of any such discount.
- (g) J. A. Lumley & Son Ltd reserves the right to operate deliveries with a minimum quantity requirement.
- (h) J. A. Lumley & Son Ltd currently operates a direct debit payment system. Discounts may at the discretion of J. A. Lumley & Son Ltd be given to the Buyer at the current rate from time to time provided the direct debit remains valid and is not revoked by the Buyer. If J. A. Lumley & Son Ltd ceases to operate a direct debit payment system and designates that payments be made in a different manner pursuant to clause 5(c), the Buyer shall no longer be entitled to the discounts it enjoyed while the direct debit payment system was in operation.
- (i) In the event that full payment for goods supplied is not made by the Buyer by the due date, J. A. Lumley & Son Ltd shall be entitled to disallow any allowance, discount or rebate given in respect of the goods and to charge the Buyer interest on such late payment in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2002. The Buyer shall be obliged to pay the full amount due to J. A. Lumley & Son Ltd in respect of the goods supplied excluding the amount of any allowance, discount or rebate on such goods, together with interest in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2002.
- (j) Nothing in this clause shall be taken as limiting J. A. Lumley & Son Ltd's rights under clause 7.

6. Liability and Remedies for Defects

- (a) Save where otherwise provided for in these Terms and Conditions, all warranties including collateral warranties, conditions and representations, express or implied, statutory or otherwise, including those relating to the quality or fitness for any particular purpose of the goods supplied are hereby excluded to the extent permitted by law and J. A. Lumley & Son Ltd shall not be liable in contract, tort or otherwise for any loss of profit or interest charges or loss of reputation, arising out of or in connection with the goods supplied or sold or any defect in them or from any other cause whether or not any such matter amounts to a fundamental breach of a fundamental term of the contract.
- (b) If the provisions of clause 6(a) above are found in any particular case not to be applicable and by reason of any defect in the goods supplied there shall be a breach of any implied condition or warranty, J. A. Lumley & Son Ltd may, at its option, either repair or replace the goods supplied or issue credit to the Buyer, provided that:
- (i) J. A. Lumley & Son Ltd is notified in writing within 7 days of the discovery of any such defects by the Buyer in any event not later than 10 days after delivery;
- (ii) the relevant goods supplied are returned to J. A. Lumley & Son Ltd at the cost of the Buyer where J. A. Lumley & Son Ltd does not accept liability, and at the cost of J. A. Lumley & Son Ltd where J. A. Lumley & Son Ltd does not accept liability for the defect in the goods supplied under this clause (b);
- (iii) an examination of such goods supplied by J. A. Lumley & Son Ltd shall disclose to its satisfaction that the defect existed at the time of delivery of the goods, and in particular that the goods shall not have been affected by misuse, neglect, accident, improper storage, installation or handling or by repair or alteration not effected by J. A. Lumley & Son Ltd; and
- (iv) the Buyer shall pay to J. A. Lumley & Son Ltd the cost (as stated by J. A. Lumley & Son Ltd) of any examination of the goods supplied as a result of which J. A. Lumley & Son Ltd does not accept liability for the defect in the goods supplied.
- (c) J. A. Lumley & Son Ltd's liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of or in connection with or resulting from the sale, delivery or use of the goods shall in no case exceed the price paid by the Buyer to J. A. Lumley & Son Ltd for the goods which give rise to the claim, plus expenses of customs, taxes, freight and insurance incurred by the Buyer in connection with the purchase of the goods supplied. In no event shall J. A. Lumley & Son Ltd be liable for any loss of profits, or other special or consequential damages suffered by the Buyer, including interest charges, arising out of or in connection with or resulting from the sale, delivery or use of the goods supplied. Nothing contained in this clause shall be implication create any liability or obligation on the part of J. A. Lumley & Son Ltd, or affect or diminish any disclaimer of liability elsewhere contained in these Terms and Conditions.
- (d) If the exclusions contained in these Terms and Conditions are held for any reason not to be applicable and J. A. Lumley & Son Ltd is found liable in any way in respect of goods supplied by J. A. Lumley & Son Ltd to the Buyer, J. A. Lumley & Son Ltd's liability under these Terms and Conditions shall be limited to a period of one year from the date of delivery of the goods by J. A. Lumley & Son Ltd in accordance with these Terms and Conditions.

7. Default by Buyer

- If the Buyer
- (i) fails to comply with any term (including stipulations as to payment) of these Terms and Conditions.
- (ii) commits an act of bankruptcy, makes an arrangement or composition with creditors or suffers any distress or execution; or
- (iii) resolves or is ordered to be wound up or has a receiver, examiner, liquidator or similar or analogous person appointed
- then the Buyer shall immediately inform J. A. Lumley & Son Ltd of such event and in any such event J. A. Lumley & Son Ltd shall have the right (without prejudice to any other remedies) to cancel any uncompleted order and withhold or suspend delivery of further goods, and to demand payment forthwith of all sums due by the Buyer to J. A. Lumley & Son Ltd and/or the return of any goods supplied for which payment has not yet been received. In the event that J. A. Lumley & Son Ltd exercises any rights it may have to stop goods in transit because of the Buyer's financial condition as referred to in this Clause 7, J. A. Lumley & Son Ltd may at its option resell such goods by a public or private sale without notice to the Buyer and without affecting J. A. Lumley & Son Ltd's rights to hold the Buyer liable for any loss or damage caused by a breach of contract by the Buyer.

8. Change in Control or Legal Personality

If there is a change in control of the Buyer or if there is a change in the legal personality, status or identity of the Buyer, the Buyer shall forthwith inform J. A. Lumley & Son Ltd. If the Buyer is an individual and seeks to commence trading through a company or other legal person, such company or other legal person shall not constitute the Buyer for the purpose of these Terms and Conditions until it has completed a NARF to the satisfaction of J. A. Lumley & Son Ltd and the Buyer shall notify J. A. Lumley & Son Ltd of such intention in writing as soon as possible and in any event prior to the commencement of trading by the company or other legal person.

9. Force Majeure

J. A. Lumley & Son Ltd shall not be under any liability of whatever kind for non performance in whole or in part of its obligations under these Terms and Conditions due directly or indirectly by reason of any causes beyond the control of J. A. Lumley & Son Ltd or beyond the control of J. A. Lumley & Son Ltd's suppliers including, but not limited to, acts of any Government or agency thereof, Government regulations, judicial actions, strike, lockout, harbour disturbance, labour dispute, government action, sabotage, insurrection, embargoes, riot or other act of civil disobedience, armed conflict, accident, fire explosion, flood, tempest, unavailability, breakdown or delay in transportation, delay in delivery to J. A. Lumley & Son Ltd or J. A. Lumley & Son Ltd's suppliers or shortage of labour, fuel, raw materials or machinery or technical failure or act of God or any other matter whatsoever beyond the control of J. A. Lumley & Son Ltd. In such event, J. A. Lumley & Son Ltd may, without liability, cancel or vary the terms of contract including, but not limited to, extending the time for performing the contract for a period at least equal to the time lost by reason of such causes.

10. Assignment

The Buyer shall not assign or transfer to any other person any contract which is subject to these Terms and Conditions or the benefit of any condition, warranty or guarantee or other term or condition (express or implied) forming any part of these Terms and Conditions without the prior written consent of J. A. Lumley & Son Ltd. J. A. Lumley & Son Ltd may assign or transfer to any other person any contract or the benefit of any condition, warranty or guarantee or other term or condition (express or implied) forming any part of these Terms and Conditions without the consent of the Buyer.

11. Headings

The headings of these Terms and Conditions are for convenience only and shall have no effect on the interpretation thereof.

12. Severability

All the terms and provisions of these Terms and Conditions are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of these Terms and Conditions, and the enforceability, legality and validity of the remainder of these Terms and Conditions will not be affected, provided that, in any case where as a result of the operation of this clause the rights or obligations of a party are materially altered to the detriment of that party, that party may terminate this Agreement within 30 days from the date of the relevant decision of the relevant court, regulatory authority or other competent authority.

13. Governing Law

These Terms and Conditions and the applicable contracts which are subject to these Terms and Conditions shall be governed and construed in all respects in accordance with the laws of the Republic of Ireland and the Irish courts shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with these Terms and Conditions or the applicable contracts which are subject to these Terms and Conditions and the Buyer irrevocably waives and irrevocably agrees to waive any objection which it may have now or subsequently to the laying of the venue of any proceedings in the Irish courts and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgement in any proceedings brought in the Irish courts will be conclusive and binding upon the Buyer and may be enforced in the courts of any jurisdiction.