

# Carboline (U.K.) Ltd GENERAL TERMS AND CONDITIONS OF SALE

Effective January 1, 2021

**General Terms:** These terms and conditions ("Terms and Conditions") herein written shall govern the sale of products to buyer ("Buyer") and shall supersede all previous communications, agreements or contracts, and no term, condition or trade custom in conflict or inconsistent herewith shall be binding upon seller ("Seller") unless agreed to in writing. All orders are subject to acceptance by Seller in the form of a written acknowledgment from Seller's registered address or commencement of performance. Seller's failure to enforce any right it may have under the Terms and Conditions shall not be construed as a waiver thereof, nor shall such failure or failures be deemed to establish any custom, usage, course of dealing or course of performance. The failure of Seller to exercise any rights resulting from Buyer's default or otherwise shall not be deemed a waiver of such right or any other right. These Terms and Conditions may be enforced at any time, in whole or in part. Any provision hereof which is prohibited or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability in any other jurisdiction. All products supplied by the Seller are supplied on the following terms and conditions to the exclusion of all other terms and conditions including any variation of those terms and conditions which the Buyer may seek to impose whether or not the Buyer's conditions are contained in any other acceptance or counter offer made by the Buyer. [Variations shall not have effect unless expressly accepted by a Director of the Seller in writing.

**Payment:** Products may require full or partial payment in advance or upon delivery, or may require other security for payment or performance, or may impose such other credit or payment terms as Seller deems appropriate in its sole discretion. Prices are subject to change without notice and the price for the product shall be the prices in effect at the time of shipment. Prices are exclusive of VAT (unless otherwise stated) which shall be Buyer's responsibility. All made-to-order or non-stock materials will be invoiced on the total batch yield within ten percent (10%) which may exceed quantity ordered. Payment terms are Net 30 days unless otherwise specified. Sums not paid when due shall bear interest at a rate of 1.5% per month, or the maximum rate permitted by law, whichever is less. Buyer may not withhold or set-off payment for products delivered for any reason whatsoever. Seller reserves the right, among other remedies, either to terminate the sale or to suspend future deliveries upon failure of Buyer to make any payment pursuant to these Terms and Conditions or any other contract between the parties hereto. Buyer shall reimburse Seller in full for all damages, costs and expenses, including reasonable legal fees, which Seller incurs with respect to Buyer's breach of these Terms and Conditions or any collection efforts by Seller to recover past due amounts from Buyer.

**Security Interest:** If applicable, until all amounts due have been paid in full, Seller hereby reserves the right at any time to demand security payment before continuing with or delivering any products or retain a security interest in the Product and without limitation, the right to take possession of the product without legal process and the right to require Buyer to make the product available to the Seller at a place reasonably convenient to both parties. At Seller's request, Buyer shall execute any financing statement or statements submitted by Seller in order that Seller's security interest in the Product may be perfected.

**Credit Terms:** If applicable, credit terms are subject to Seller's continuing approval of Buyer's credit, and if, in Seller's sole judgment, Buyer's credit or financial standing is impaired so as to cause Seller to deem itself insecure, Seller may withdraw the extension of credit and require other payment terms. Buyer agrees to submit such financial information, from time to time, as may be reasonably requested by Seller for the establishment and/or continuation of credit terms.

**Changes:** Any request to change any order with respect to quantity or packaging must be communicated in writing prior to shipment. If such changes result in increased cost or time to complete the manufacture of the product(s) or if there is a decrease in the quantity requested which invalidates any discounts offered by Seller, then the price and timing of the original order shall be adjusted accordingly. Buyer agrees to pay any increased costs associated with the changes. Once orders have been accepted by Seller, no changes with respect to specifications will be made or allowed unless they are requested and accepted in writing and the resulting new price and delivery time are agreed upon by both Parties in writing. Additional costs for changes, including any costs for additional engineering, will be reflected in the new price. Cancellations are subject to cancellation charges which are determined in the sole discretion of the Seller.

**Shipments/Freight Costs:** In these Terms and Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless

the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms and Conditions, but if there is any conflict between the provisions of Incoterms and the rest of these Terms and Conditions, these Terms and Conditions shall prevail. All shipments are either FCA or FOB shipping point, unless specifically noted as freight allowed. A minimum charge may be applicable for orders. Shipping and/or delivery dates are estimates only and Seller shall not be liable for any delay or discrepancy in the shipping or delivery of products. Seller reserves the right to make deliveries in installments. Delay in delivery of one installment shall not entitle Buyer to cancel other installments. Any applicable freight costs will be added to the invoice unless customer specifies collect on purchase order.

Where the products are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and Seller) apply notwithstanding any other provision of these Terms and Conditions.

Buyer shall be responsible for complying with any legislation or regulations governing the importation of the products into the country of destination and for the payment of any duties on them.

Where Seller agrees with Buyer that it will be responsible for delivering the products the products shall (unless agreed otherwise in writing between Seller and Buyer) be delivered FOB to the air or sea port of shipment and Seller shall be under no obligation to give notice under s.32(3) of the Sale of Goods Act 1979. The Buyer shall be responsible for arranging for testing and inspection of the products at Seller's premises before shipment. Seller shall have no liability for any claim in respect of any defect in the products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

The Buyer shall be liable for and shall indemnify and hold Seller harmless from any and all liability, loss, claims, damages and costs, which Seller may sustain or incur, arising out of or in any way connected with the Buyer's failure to comply with Terms and Conditions this clause (Shipments/Freight Costs and Sanctions Compliance).

**Field Service:** Any applicable field service, technical support, installation supervision, or related service shall be governed by a separate written agreement.

**Back Orders:** Seller reserves the right to cancel back orders.

**Return of Products:** Written authorisation is required from Seller prior to any return shipment, which may be granted or denied by Seller in its sole discretion. In certain circumstance no more than ten percent (10%) of any one item may be eligible for return. Custom colors, special orders, or limited-shelf-life materials are not returnable. Likewise, excess product due to Buyer's overestimate of requirements or need is not subject to return. The acceptance and fees associated with all U.K. returns will be based upon the Seller's Returned Goods Authorisation, as amended from time and which can be accessed at <https://ccrm.rpmsfa.com/Share/viewArticle.action?articleId=80488> and is incorporated herein by reference. Non-U.K. returns may have additional terms and conditions as designated by Seller. In the event any terms or conditions of any authorisation conflict with these Terms and Conditions, the Seller's returned goods authorisation shall prevail. Authorised returns must be shipped using the carrier selected by Seller and routed to the location of Seller's choice. Buyer is responsible for all freight charges. Returns must be shipped in their original unopened cartons

**Claims:** Claims resulting from losses, shortages or damage in transit must be acknowledged on the delivery papers at receipt. Buyer shall further promptly notify Seller of any delivery of any damaged product(s) purchased from Seller, or of any complaint whatsoever Buyer may have concerning delivery. Buyer's failure to give such notice and to note such damage constitutes a waiver of any claim against Seller relating to the damaged product. Any claim for any other cause not specifically set forth in these Terms and Conditions shall be deemed waived and released by Buyer unless made in writing within five (5) business days after Buyer's receipt of the product(s).

**Warranty:** Seller warrants it has title to and the right to sell the product and warrants that the materials purchased by Buyer are free of manufacturer's defects and further guarantees to replace any material which is determined by Seller, in its sole discretion, to be defective or not in conformity with Seller's most current published specifications. If applicable, additional warranty terms may be stated on the product label/data sheet and supersede the terms herein. No claims will be considered until the product in question has been inspected by a Seller representative. All claims for allegedly non-conforming or defective products shall be made by Buyer in writing within thirty (30) days of receipt of

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shipment of products, after which the products shall be deemed accepted for all purposes and Seller shall have no liability for same. **SELLER MAKES NO REPRESENTATION OR OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS** [and the Buyer shall satisfy himself in this respect and shall be totally responsible therefore]. The warranty set forth on the product label shall be void, and shall not apply to any products (i) which have been altered, modified or combined with any other materials other than materials as specified on the products' labeling, (ii) which have been subject to improper storage or handling, or (iii) which have been exposed to conditions beyond the operating constraints specified by Seller in its labeling. With the exception of the warranty terms set forth herein or, if applicable, on the Product label, it is Buyer's sole responsibility to test the Product to ensure that it is fit for the use intended by Buyer or any end user.

**Limited Liability: NOTHING IN THESE TERMS AND CONDITIONS SHALL EXCLUDE OR RESTRICT SELLER'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF SELLER OR FRAUDULENT MISREPRESENTATION. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES (INCLUDING, WITHOUT, LIMITATION LOST PROFITS OR BUSINESS INTERRUPTION LOSSES) AS A RESULT OF SUPPLYING PRODUCT TO CUSTOMERS OR OTHERS AND WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE.. SELLER'S EXCLUSIVE LIABILITY AND BUYER'S SOLE REMEDY IN THE EVENT OF A NON-CONFORMING PRODUCT SHALL BE [REPAIR] OR REPLACEMENT (AT SELLERS OPTION) OF THE DEFECTIVE PRODUCT WITH CONFORMING PRODUCT. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT AT ISSUE.**

**Time Limitation:** No claim or other legal action, regardless of form, may be brought by Buyer for any breach by Seller or any other claim relating to or arising out of the Product, after one year from the date of delivery of the Product, unless otherwise agreed to in writing by both Parties.

**Availability:** Certain products may not be available in your area due local regulations.

**Force Majeure:** Seller shall not be liable for any failure or delay in performance with respect to delivery or otherwise, if such failure or delay is due to an act of God, war, civil disturbance, riot, labor difficulties, factory capacity, fire, other casualty, accident, inability to obtain containers or raw materials, supplier's failure or inability to perform, governmental acts or restrictions, including shutdowns and inability to perform due to epidemics, pandemics, or any other cause of any kind whatsoever beyond the reasonable control of Seller. Seller shall have the right at its option and without liability to apportion its supply of product among its customers, including its affiliated divisions and companies, in such a manner as Seller, in its sole discretion, believes equitable. In no event shall Seller be obligated to purchase products from others in order to enable it to deliver products to Buyer.

**Indemnity:** Buyer shall assume full responsibility for the use of the products and shall defend, indemnify and hold harmless Seller and its respective affiliates, officers, directors, shareholders, employees, agents and representatives from and against any and all losses, liabilities, claims, damages, demands, costs and expenses (including without limitation attorneys' fees and court costs) arising out of or relating to same.

**Governing Law:** All sales are governed by the laws of the country, state, province, or territory of Seller's registered office address, without application of conflict of law principles and Buyer irrevocably and unconditionally submits to the exclusive jurisdiction of the courts in the country, of the location of the Seller's registered office address.

**Compliance with Instructions:** Buyer shall comply with all applicable instructions furnished by Seller relating to the installation and use of the product(s) and Buyer agrees not to misuse, modify or misapply such product in any manner. Seller shall not be liable for Buyer's failure to apply or use the product in accordance with such instructions. Buyer agrees to indemnify and hold Seller harmless from any and all claims, costs, liability, damages and expenses, including legal fees, against or incurred by Seller due to injuries to persons or property in connection with Buyer's application or use of the product(s). Buyer acknowledges receipt of and familiarity with Seller's labeling and literature concerning the product(s) and will forward such information to its employees who handle, process or sell such product(s) and to customers of such product(s), where applicable.

**Compliance with Applicable Law:** Buyer shall comply with all applicable laws and regulations, including but not limited to, the Bribery Act 2010, [the anti money laundering provisions of the Proceeds of Crime Act 2002] and United Kingdom

export control laws.. Buyer shall not sell, export, re-export, transmit, divert or otherwise transfer any goods or products into or through Cuba, Iran, Sudan, Syria, North Korea, Crimea or any other prohibited jurisdiction, or with or to any party listed on any United States Government or European Union blocked-persons list, as amended from time to time.

**Compliance with Applicable Policies:** Buyer shall comply with all applicable Seller policies including but not limited to Seller's Values & Expectations of 168 which can be accessed at the following URL

<https://www.rpminc.com/pdf/CodeGuidelines.pdf> and Seller's Distributor Code of Conduct which can be accessed at the following URL

<https://www.rpminc.com/distributors-and-applicators-code-of-conduct/>.

**License:** Nothing in these Terms and Conditions is intended or shall be construed to grant any license or other permission by Seller to Buyer to use any trademarks, trade names, copyrighted materials, patents or other intellectual property rights or interest of Seller at any time. In the event the Parties have entered into a separate License Agreement, that agreement is hereby incorporated by reference and made part hereof, to the extent applicable. If any inconsistency shall exist between these Terms and Conditions and the separate License Agreement, the terms of the License Agreement shall prevail.

**Entire Agreement:** These Terms and Conditions represent the entire agreement between the parties hereto, and there are no understandings, representations, or warranties of any kind except those expressly set forth herein.

#### **Insolvency of Buyer**

If Buyer being a company shall pass a resolution or suffer an order of a court to be made for its winding up or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or makes any voluntary arrangement with its creditors or becomes subject to an administration order or an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the assets or property of Buyer or being an individual or partnership shall suspend payment or propose to enter into any composition with creditors or becomes bankrupt or in either case becomes unable to pay its debts (or have no reasonable prospect of so doing) or threatens to cease to carry on business then without prejudice to any other right or remedy available to Seller, Seller shall be entitled to treat the Terms and Conditions as repudiated or suspend any further deliveries or recover the possession of any products for which payment in full has not been received without liability to the Buyer and if products have been delivered but not paid for the price of those products shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **Health and Safety at Work**

Seller gives notice to Buyer that information and product literature is available concerning the conditions necessary to ensure that the products supplied under these Terms and Conditions will be safe and without risk to health when used, handled, processed, stored or transported by a person at work. The Buyer should immediately contact Seller if he is not in possession of such information or literature.

#### **Rights of Third Parties**

The parties do not intend that any term of the Terms and Conditions will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

#### **Assignment**

The Buyer shall not assign or transfer or purport to assign and transfer any Terms and Conditions to which these conditions apply or the benefit thereof to any other person whatsoever.

**Carboline (U.K.) Limited**

**Hays Galleria**

**1 Hays Lane**

**London**

**SE1 2RD**