



## IMPORTERS & SUPPLIERS TO THE PET & AQUATIC TRADE

### TERMS AND CONDITIONS

All orders are placed with DEN Marketing under the following terms and conditions of trading.

#### DEFINITIONS

1. In these definitions, 'The Company' means DEN Marketing 'The Purchaser' means the person, firm or company entering into the contract with the Company and 'The Goods' means the goods the subject of the contract made between the Company and the Purchaser.

#### GENERAL

2. (a) These terms and conditions exclude any other inconsistent terms and conditions which a Purchaser might seek to impose. No variation of these terms and conditions is allowed, unless expressly permitted by a Director of the Company in writing.  
(b) No stipulation or representation made or attempted to be made at any time by either party to the contract or by any representative or person on behalf of such a party shall be held to vary, modify or contradict these terms to introduce a new term into the contract.

#### PRICE

3. (a) Prices quoted are based on current costs at the date of the printing of the Price List. The Company reserves the right at any time, prior to the delivery of the Goods to adjust the price to take account of any increase in the cost of the Goods, or any increase in labour charges or currency fluctuations affecting the cost of the goods.  
(b) The price includes delivery charges where the value of the Purchaser's order is in excess of £500.00 and where delivery takes place in accordance with the Company's normal delivery schedule. A delivery charge of £35.00 will be imposed for orders with a total value of less than £500.00. If the Purchaser requests a special delivery outside the Company's normal delivery schedule, then an additional delivery charge will be imposed upon the Purchaser.  
(c) Unless otherwise stated, the prices are exclusive of VAT and the Purchaser will pay VAT upon the goods at the rate in force at the date of invoice.  
(d) Goods are offered subject to stocks being available and the Company will only accept orders for goods in stock at the time of the order.

#### PAYMENTS

4. (a) All sums become due and payable under these terms and conditions not later than 30 days from the delivery of the Goods unless agreed in writing with the Company.  
(b) The Purchaser shall be entitled to a 2% discount upon the invoice price for the Goods if payment is received within 7 days of delivery.  
(c) Time for payment shall be of the essence.  
(d) The Company reserves the right to charge interest at 2 % per month on all overdue accounts.

#### DELIVERY

5. (a) All Goods ordered will be delivered to the Purchaser's address as provided by the Purchaser.  
(b) The time of delivery is not of the essence of the contract and the Company shall not be responsible for any delay in delivery of the Goods to the Purchaser.  
(c) The Company reserves the right to make delivery of the Goods by instalments and to tender a separate invoice for each instalment.  
(d) Any claim for non-delivery of a total order for Goods shall be made by telephone within 10 days of invoice date and confirmed by Recorded Delivery letter within 14 days of the invoice date.

#### CLAIMS

6. (a) The Purchaser shall inspect the Goods upon receipt and shall confirm on the carrier's note, or such other note as is appropriate, the number of cases supplied by the Company. If confirmation is received by the Company of the correct delivery of the number of cases no claim may be made against the Company for shortages in the number of cases supplied.  
(b) The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with and, in any event, will be under no liability if a complaint is not notified as follows to our West Hamdon office:  
i. Wrong box count: Notify driver immediately.  
ii. Mixed box shortage: Notify us in writing within three days.  
iii. Damaged product: Notify us in writing within three days.  
(c) In all cases where defects or shortages are complained of, the Company shall be under no liability in respect of the same unless an opportunity to inspect the Goods is supplied to the Company before any use is made of the goods or any alteration or modification is made by the Purchaser.  
(d) Subject to the above, the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability, however arising for such shortage or damage.

#### WARRANTY

7. (a) The Company agrees at its own cost and at its own option to repair or replace any of the Goods or parts thereof and to repair or rectify any defects in the works which in each case are proved to the Company to be faulty due to bad workmanship or materials providing in such case that such a fault is notified to the Company in writing within a period of 12 months from the date of delivery of the Goods.

#### LIABILITY

8. (a) Nothing in the clause shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from the Company's negligence.  
(b) Each of the sub-clauses in this clause is to be treated as separate and independent.  
(c) This clause only covers defects caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect. The Purchaser cannot claim the benefit of this clause unless he informs the Company of the relevant defect in writing within 7 working days of discovering it and he returns the Goods to the Company at his own expense.  
(d) In consideration for receiving benefit of this clause, the Purchaser agrees that no other terms express or implied, statutory or otherwise, shall form part of this contract (except where the Purchaser deals as a consumer within Section 12 of the Unfair Contract Terms Act 1977.)  
(e) The Company shall not be liable for any consequential or indirect loss suffered by the Purchaser whether this loss arises from breach of a duty in contract or loss in any other way. In the event of the Company being found liable for any loss or damage (notwithstanding the provisions of any of these conditions) the liability shall in no event exceed the contract price.

- (f) In the event of any claim being made against the Purchaser by reason of any matter referred to and in respect of which the Company is liable under these conditions, the Purchaser shall notify the Company in writing within 14 days of receipt by him of notice of such claim. In these circumstances, the Company may, on its selection, conduct all negotiations for the settlement of the said claim and any litigation that may arise therefrom. The Purchaser shall not unless, and until, the Company shall have failed to take over the conduct of such negotiations or litigation make any admission which might be prejudicial. The Purchaser shall, at the request of the Company, forward all available assistance for any such purpose. Notwithstanding the provisions of any other clause in this agreement if the Purchaser shall be default of its obligations under this sub-clause, the Company shall be under no liability to indemnify the Purchaser in respect of any such claims.

#### RETURNS

9. (a) Goods will not be accepted for return unless previous authorisation in writing has been provided by our area Sales Managers using the returns note procedure when they have had the opportunity of inspecting the goods in question. Our drivers will not recover Goods which have not been properly authorised and no credit will be provided. Official credit notes are only issued by our Head Office.  
(b) General Consumer Damages. A 2% allowance is given against the value of each sales invoice to reimburse customers for damaged product returned to themselves. This excludes all nutrifice food products.

#### RISK

10. The risk of any loss, damage to, or deterioration of the Goods from whatever cause arising shall be borne by the Purchaser from the date they are delivered to, or collected by, the Purchaser or its agent.

#### PROPERTY

11. (a) Notwithstanding the provisions of clause 10, property in the Goods will not pass to the Purchaser until the Company has received the purchase price of the Goods in full.  
(b) All Goods held by the Purchaser, property of which has not passed to the Purchaser by virtue of this clause, shall be held by the Purchaser on behalf of the Company as bailee.  
(c) If the Purchaser fails to make payment to the Company in accordance to the contract, servants or agents of the Company may (without prejudice to any of the Company's other rights) recover or resell the Goods and may enter upon the Purchaser's property for that purpose.  
(d) In addition and without prejudice to (a) above, title to Goods supplied by the Company remains vested in the Company until such time as there are no monies owing by the Purchaser to the Company on any account (whether due or not).  
(e) The Company shall, at any time, be entitled to appropriate any payment made by the Purchaser in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may, in its absolute discretion, think fit notwithstanding any purported appropriation to the contrary by the Purchaser.

#### CANCELLATION

12. (a) No cancellation by the Purchaser is permitted except where expressly agreed by a Director of the Company in writing.  
(b) The Purchaser will, in the event of agreed cancellation by the Company, indemnify the Company fully against all expenses incurred up to the time of such cancellation. A minimum charge of £50.00 will be made for the cancellation of any order.

#### TERMINATION

13. If the Purchaser shall make default in, or commit a breach of any of its obligations to the Company, or if any judgement shall be entered against the Purchaser or distress or execution shall be levied upon the Purchaser, his property or his assets, or if the Purchaser shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition of receiving order shall be presented or made against him, or if the Purchaser shall be a Limited Company and any resolution or petition to wind up such company or for the appointment of an administrator shall be passed or presented otherwise than for reconstruction or amalgamation or if an administrative receiver of the Purchaser's undertaking property or assets, or any part thereof shall be appointed, the Company shall have the right to determine any contract then subsisting and upon written notice of determination being posted to the Purchaser at the Purchaser's last known address, any subsisting contract shall be deemed to have been determined without prejudice to any claim or right the company might otherwise make or exercise.

#### FORCE MAJEURE

14. The Company shall not be under any liability whatsoever for the non-performance in whole or in part of its obligations under the contract due to causes beyond the control of either the Company or the Company's suppliers, including, but not limited to war, sabotage, insurrection, riot, or other act of civil disobedience, acts of government or any agency or sub-division thereof, government regulations, judicial actions, labour disputes, strikes embargoes, illness, accident, fire, explosion, flood, tempest or other Acts of God, delay in delivery to the Company or the Company's suppliers or shortage of labour, fuel, raw materials, machinery or technical failure. In such event, the Company may, without liability, cancel or vary the terms of this contract including, but not limited to, extending the time for performing the contract period at least equal to the time lost by reason of such event.

#### SALES PROMOTION DOCUMENTATION

15. Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Purchaser's general guidance only and the particulars contained shall not constitute representations by the Company and the Company shall not be bound by the same.

#### NOTICES

16. Any notice to be given under these terms and conditions shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at that party's last known address or such other address as that party may, from time to time, notify in writing and shall be deemed to have been served if sent by post within 48 hours after posting.

#### PROPER LAW

17. The contract shall be governed by and construed in accordance with English Law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English Courts.

#### HEADINGS

18. The headings of these conditions are for convenience only and shall have no effect on the interpretation of these terms and conditions.

Please print name: \_\_\_\_\_

Authorised signature: \_\_\_\_\_