

BRANDVIS LIMITED TERMS & CONDITIONS OF SALE

1. All goods (“Products”) supplied by Brandvis Limited (“Brandvis”) are supplied to the intending purchaser (the “Buyer”) on the following terms and conditions (the “Terms”) to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any PO, confirmation of order, specification or other document), unless expressly agreed by both parties in writing. The words “Order” and “PO” shall be synonymous for the purposes of these Terms.
2. The Buyer acknowledges that it has not relied on any statement, promise or representation made/given by or on behalf of Brandvis which is not set out in the Agreement. Nothing in this clause shall exclude/limit Brandvis’ liability for fraudulent misrepresentation.
3. Unless otherwise agreed by a Director of Brandvis in writing, the price for Products shall be the price set out in Brandvis’ quotation (the “Quotation”). Brandvis reserves the right to alter prices at any time by giving 30 days notice. Any such alterations shall exclude any POs for Products already submitted and accepted by Brandvis or in production.
4. Brandvis shall quote prices in the currency, US\$. At the request of the Buyer and/or at the discretion of Brandvis, Brandvis may quote prices in the currency, €. The Quotation will remain valid for a period of 4 weeks from the date of issuing same, after which date Brandvis may revise or withdraw it. If the agreed currency is the €, the Quotation will be based on the €/US\$ currency exchange rate prevailing on the opening of business on the London market on the first London business day of the month in which the Quotation is issued to the Buyer.
5. Brandvis shall also quote prices based on the Incoterm standard: Free-On-Board (“FOB”) Shanghai basis. All costs/charges to be discharged by Brandvis shall be added to/included in the Buyer’s invoice, based on FOB Shanghai shipping terms. The Buyer shall be responsible for discharging custom clearance, duties and VAT at port of entry, to the appropriate authority.
6. Orders for Products which are accepted by Brandvis are subject to availability and subject to these Terms. No orders for Products will be deemed accepted by Brandvis until a PO is furnished by the Buyer and a written acknowledgement accepting the PO is issued by Brandvis or (if earlier) Brandvis delivers the Products to the Buyer. Each PO for Products by the Buyer from Brandvis shall be deemed to be an offer by the Buyer to buy Products subject to these Terms.
7. All Quotations are given on the basis that no agreement shall come into existence until Brandvis despatches a written acknowledgement accepting the PO to the Buyer.
8. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by Brandvis shall be subject to correction without any liability on the part of Brandvis.
9. Subject to clause 10, the Buyer may not object to deviations in the quantity or Products delivered unless it has notified Brandvis of such objection within 24 hours of its receipt of the Products.
10. Brandvis reserves the right to deliver Products with a quantity differential of plus/minus 5% in which case the Buyer shall not be entitled to object or reject the Products or any of them by reason of the surplus or shortfall.
11. Any dates quoted for delivery of the Products are approximate only. In the event of delays caused by the Buyer, Brandvis may adjust any timetable or delivery schedule as is reasonably necessary. In addition, the Products may be delivered by Brandvis in advance of the approximate date quoted on giving reasonable notice.
12. All Products shall be delivered on a FOB Shanghai basis. However, Brandvis reserves the right to deliver in separate instalments, but such separate instalments should not be construed as separate agreements.
13. Brandvis shall issue a credit note to the Buyer if it has been established to Brandvis’ reasonable satisfaction that the Buyer’s complaint as to shortage was justified.
14. The Buyer assumes all risk and loss from the time the Products shall have been delivered (or deemed delivered) into the custody of the Buyer or its nominated third party, in accordance with the FOB (Shanghai) shipping terms. No Products shall be returned to Brandvis save with its consent, and Brandvis’ certificate as to the quality and conditions of the Products so returned shall be final and binding.
15. If for any reason the Buyer fails to accept delivery of any of the Products when they are presented for delivery, or Brandvis is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, risk in the Products shall pass to the Buyer, the Products shall be deemed to have been delivered; and Brandvis may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses.
16. Products despatched at the request of the Buyer to a third party (being anybody other than the Buyer) will be wholly at the Buyer’s risk.
17. To the fullest extent permitted by law, in no case shall Brandvis be liable for:
 - any adverse effects resulting from application of the Products to any process, operation or treatment unless specifically recommended or agreed to in writing by Brandvis; or
 - any expenditure incurred by the Buyer in respect of Products alleged to be defective; or
 - any economic loss (including loss of revenues, profits, agreements, business or anticipated savings), any consequential or indirect loss, any loss of goodwill or reputation, or damage of any kind to the Buyer (whether or not such losses were within the contemplation of the parties at the date of acceptance of the PO) or to any person to whom Products were supplied by the Buyer or to any employee, agent, licensee, invitee or customer of the Buyer howsoever caused; or
- any Products which have been processed in any way by the Buyer or damaged after the risk in the Products has passed to the Buyer.
- To the fullest extent permitted by law the maximum liability, if any, of Brandvis for any reason arising out of or in connection with this Agreement shall be limited to the amount of the purchase price payable with respect to the Products in dispute.
18. No condition is made or to be implied nor is any warranty given or implied as to the life or wear of any of the Products supplied or that they shall be suitable for any particular purpose or for use under any specific conditions even when such purpose or condition is made known to Brandvis (unless the same has been expressly agreed by Brandvis in writing) and no terms, conditions, guarantees, representations or understandings made to the Buyer by any of Brandvis’ salesmen, agents, employees or representatives shall be binding unless confirmed in writing by Brandvis.
19. Brandvis makes and gives no warranty, condition or representation in regard to the Products and excludes to the fullest extent permitted by law all warranties, conditions, terms, undertakings and obligations, express or implied by statute, law or otherwise (including for the avoidance of doubt correspondence with sample products or their description) except where expressly stated. It shall not be a condition of this Agreement that the Products supplied by Brandvis are fit for the purpose for which the Buyer wants them, whether or not this purpose has been made known to Brandvis. The Buyer accepts that prior to agreeing to purchase the Products supplied by Brandvis he has satisfied himself as to their fitness for his purpose and as to their merchantable quality in regard to the use for which he requires them and has not relied upon Brandvis’ skill, judgment or representations, if any, before so satisfying himself.
20. A PO which has been accepted by Brandvis may be cancelled by the Buyer only with the agreement in writing of Brandvis and the Buyer shall indemnify Brandvis in full against all loss (including loss of profit) costs, damages, charges and expenses incurred by Brandvis as a result of cancellation.
21. Given that Products are produced to the Buyer’s specification, Products cannot be returned once they have been manufactured or processed in any way. No Products are sold on an approval basis or “Sale or Return” basis. Brandvis will accept no charge for carriage and packing for the return of any Products, unless its

- agreement is obtained in writing in advance.
22. Unless agreed otherwise in advance in writing by Brandvis, payment is due and must be made on delivery. If the Buyer fails to pay Brandvis any sum due pursuant to the Agreement, the Buyer shall be liable to pay interest to Brandvis on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Allied Irish Bank, accruing on a daily basis until payment is made, whether before or after any judgment.
 23. Unless agreed otherwise in advance in writing by Brandvis, all payments are due by electronic bank transfer.
 24. Brandvis may at its sole discretion require payment in advance by the Buyer. Circumstances when this may be required by Brandvis include, but are not limited to, where there is a large Order of Products (as determined by Brandvis) and/or where specific components are to be used in the manufacturing of the Products, as stipulated by the Buyer.
 25. The Buyer shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Brandvis to the Buyer.
 26. The Products shall remain the sole and absolute property of Brandvis as legal and equitable owner until such time as the Buyer shall have paid in full to Brandvis the agreed price (in cleared funds) together with any delivery charges and other costs (the aggregate of which shall be referred to as the "Agreed Price").
 27. The Buyer acknowledges that he is in possession of the Products as bailee for Brandvis until such time as the Agreed Price is paid in full to Brandvis and that he is accountable to Brandvis until that time for the Products and any proceeds of sale representing the same.
 28. Subject to these terms, until such time as the Agreed Price of the Products is paid in full to Brandvis, the Buyer is entitled to sell on the Products during the normal course of the Buyer's business subject to the entire proceeds of sale being held by the Buyer on trust for Brandvis and shall not be mixed with any other monies or be paid into an overdrawn bank account but shall be at all times identifiable as monies of Brandvis, the Buyer to give particulars on request.
 29. Until such time as the Agreed Price of the Products is paid in full to Brandvis if the Buyer sells on the Products without receiving the proceeds of sale, the Buyer will within 7 days of being requested so to do by Brandvis assign to Brandvis all rights against the person or persons to whom he has supplied the Products subject to the right of the Buyer on payment in full of the said Agreed Price to require Brandvis to re-assign the same.
 30. Notwithstanding anything to the contrary in this Agreement until such a time as the Agreed Price of the Products is paid in full to Brandvis the Buyer's right to possession of the Products shall cease if the Buyer, does or fails to do any act the effect of which entitles a receiver to take possession of any of the assets of the Buyer or entitles any person to petition the winding-up of or the appointment of a liquidator or examiner (or officer having similar powers or of equivalent status) to the Buyer; and upon any such event listed in this paragraph (or any equivalent anywhere in the world) occurring Brandvis shall have the right to enter upon any premises where the Products are stored or where they are reasonably thought to be stored and repossess the same.
 31. The Buyer shall be liable for and shall indemnify Brandvis against all loss, damages and expenses suffered or incurred by Brandvis as a result of any breach of this Agreement by the Buyer. Brandvis reserves the right to cancel the Agreement and to hold the Buyer responsible for any loss caused thereby to Brandvis.
 32. The Buyer agrees to indemnify Brandvis against claims brought against Brandvis by any customer of the Buyer.
 33. Nothing contained in these Terms shall be construed as transferring any patent, utility model, trade mark, design or copyright or other intellectual property right (collectively referred to as "Intellectual Property Rights") in the Products to the Buyer (except insofar as they consist of the Buyer's and/or the customers' of the Buyer and/or either of their licensors' Intellectual Property Rights). All information concerning dimensions, drawings, designs, explanations, descriptions and illustrations submitted by Brandvis are to be considered as approximate only and are not binding. Brandvis will retain the exclusive ownership and all copyrights in respect of any drawings, designs and other documents produced by Brandvis. Brandvis' drawings, designs and other documents must not be made accessible to third parties without Brandvis' consent and shall be returned, if so requested.
 34. The Buyer warrants that it grants or has obtained any necessary permission for Brandvis to use all logos and/or brand names presented or submitted by the Buyer for the production of Products ordered by the Buyer.
 35. The Buyer is responsible for ensuring that the specifications contained in the PO placed are correct and accurate. Any variations to a PO shall not be binding unless confirmed in writing by Brandvis.
 36. Each right or remedy of Brandvis under the Agreement is without prejudice to any other right or remedy of Brandvis whether under the Agreement or not.
 37. Brandvis reserves the right to defer the date of delivery or to cancel a confirmed PO or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer or Brandvis) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Brandvis including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), order backlogs, production difficulties, delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to Brandvis to cancel the Order.
 38. If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
 39. Failure or delay by Brandvis in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.
 40. Any waiver by Brandvis of any breach of, or default under, any provision of the Agreement by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.
 41. This Agreement shall be construed in accordance with the laws of Ireland and shall be subject to the exclusive jurisdiction of the Courts of Ireland.