

## 1 Interpretation

### 1.1 In these Conditions

'**AUTHORISED REPRESENTATIVE**' means the individual authorised in writing by the relevant party to make decisions and representations on its behalf.

'**BUYER**' means a person who places an Order for the purchase of Goods on terms set out on the Quotation.

'**CONDITIONS**' means the standard terms and conditions of sale set out in this document and (unless the content otherwise requires) includes any special terms and conditions set out in the Quotation or otherwise agreed in writing between the Buyer and the Seller.

'**CONTRACT**' means the contract for the purchase and sale of the Goods.

'**GOODS**' means the goods (including any instalment of the goods), which the Seller is to supply in accordance with these Conditions.

'**LEGAL REQUIREMENTS**' means all legal requirements and obligations relating to use, storage, movement, sale, export and import of the Goods which apply to the Goods in whatever jurisdiction they are present.

'**ORDER**' means an order placed by the Buyer subject to the terms of the Quotation.

'**QUOTATION**' means the quotation supplied by the Seller setting out full details of the Goods they propose to supply to the Buyer including but not limited to price and quantity of the Goods. Where no specific quotation has been provided the price listed in the Seller's published price list, current at the date of the order, will be valid.

'**SELLER**' means Primetake Ltd.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 A reference in writing or written includes by letter, fax or e-mail.

1.5 Any obligation in the Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.

## 2 The Sale

2.1 The Seller shall put together a Quotation setting out all relevant information relating to the sale of the Goods. If the Buyer wishes to purchase the Goods in accordance with such Quotation they shall place an Order.

2.2 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Quotation, which is accepted by the Buyer on placing an Order. These Conditions and the Quotation shall govern the Contract to the exclusion of any other terms and conditions which the Buyer seeks to impose in their Order or otherwise.

2.3 The Buyer's order shall be deemed acceptable unless the Seller notifies the Buyer within Seven days of the order's receipt.

2.4 Each Order shall be deemed to be a separate offer by the Buyer to purchase the Goods subject to these Conditions which the Seller shall be free to accept or decline at its absolute discretion.

2.5 No variation to these Conditions shall be binding unless agreed in writing between the Authorised Representatives of the Buyer and the Seller.

2.6 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller or any Authorised Representative in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, waives any claim for breach of, any such representations, which are not so confirmed in writing by the Seller.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 Order and Specification

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, price, quality and description and any specification for the Goods shall be as set out in the Quotation.

3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.4 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing by the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4 Prices

4.1 The price of the Goods shall be as set out in the Quotation, where no price has been quoted (or a quoted price no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Order, unless otherwise stated all prices quoted are valid for 60 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods, which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.4 Where the Seller undertakes any involvement in the delivery of the Goods, the cost of such delivery will apply as set out in the Quotation.

## 5 Terms of Payment

5.1 Unless the Seller has agreed to grant credit terms to the Buyer, payment in full shall be made by the Buyer in accordance with the Quotation and the invoice.

5.2 If either credit terms have been agreed or the Seller has accepted the Order for the goods without payment or on payment of a deposit only then (subject to any special terms agreed in writing between the Buyer and the Seller) the Seller shall be entitled to invoice the Buyer for the price of the Goods less deposit paid on the Contract ('the Price') on or at any time after the Goods are made available for collection by the Buyer or where the seller is involved in the delivery of the Goods on or at any time after delivery (or attempted delivery) of the Goods.

5.3 Unless clause 5.1 applies the Buyer shall pay the price within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller shall be entitled to:

5.4.1 Cancel the Contract or suspend any further deliveries to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above The Bank of Scotland base rate, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 The Seller may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Buyer against any amount payable by it to the Buyer.

## 6 Delivery

6.1 Delivery of the Goods can be made by the Seller making the Goods available for collection from the Seller's premises or as otherwise specified in the Quotation. The delivery of goods can be provided by the Seller to the Buyer at additional cost. This costing will be documented on the quotation.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the goods is made by the Seller in bulk, the Seller reserves the right to deliver more or less than the quantity ordered and the quantity so delivered shall be deemed to be quantity ordered.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate LOT and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's control or the Buyer's fault act or omission, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to a refund of the price paid for the Goods in relation to which delivery so failed.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage: or

6.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due. Until such time as the property in the Goods passes to the Buyer the Seller shall: Hold the Goods as the Seller's fiduciary agent and bailee; Store such Goods separately from all goods so that they remain really identifiable as the Seller's property; Store in a protective and high security environment in strict compliance with the Legal Requirements. Not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; Maintain such Goods in a brand new condition and keep them insured on the Seller's behalf for their full price against all risk. The Buyer shall, if required by the Seller, notify the Seller of the terms of such insurance and obtain an endorsement of the Seller's interest on such policy. The Buyer shall not do (or omit to do) anything which may in any way effect or negate such insurance policy.

7.4 Until title has passed to the Buyer, the Buyer shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible, and account to the Seller for any insurance proceeds in relation to the Goods, and shall keep all such proceeds of sale or insurance separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold,) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Buyer undertakes to give the Seller all necessary assistance required to enable such repossession.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 Use of the Goods

8.1 Any advice or recommendation given by the Seller or its employees or agents as to the storage, application or use of the Goods, which is not officially and formally confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

8.2 If the Buyer purchases any Products which are components capable of being used with other third party products (or other products of the Seller) the Seller makes no warranty about the compatibility of the Products with such third party products (or other Seller products) and the Buyer shall use and combine the Products with such third party products (or other Seller products) entirely at their own risk. Such Products will, if used correctly, comply with any warranty provided in the Quotation but as soon as the Products are used together with or alongside any third party products (or other Seller products) such warranty may, at the Seller's sole discretion, cease to apply.

## 9 Legal Requirements

9.1 At any stage during the Contract process the Seller may request (and the Buyer shall promptly provide) whatever information, certification or action the Seller requires to enable them to satisfy themselves that the Buyer and any related third party are compliant with all applicable Legal Requirements.

9.2 If required by Legal Requirements the Seller may disclose to any relevant officials or third parties the identity of the Buyer and full information about each Order placed by the Buyer.

9.3 The Buyer shall give the Seller all information and assistance they require in relation to this clause 9 and in relation to compliance with Legal Requirements in general.

9.4 The Seller reserves the right to cancel any Contract, at whatever stage it has reached, if they consider, in their sole discretion that there is any issue regarding the Goods or the Buyer in connection with the Legal Requirements.

## 10 Warranties

10.1 In relation to all Goods sold by the Seller the Seller shall give the Warranty as detailed in the Quotation or otherwise communicated to the Buyer by the Seller in writing.

10.2 The Warranty shall be given or lieu of all other warranties, conditions, or other terms expressed or implied whether by statute, common law or otherwise which are, to the fullest extent permitted by law excluded from each Contract.

10.3 The Seller makes no warranty as to the fitness of the Goods for any particular purpose and it is the sole responsibility of the Buyer to determine whether or not the Goods set out on the Quotation are appropriate for the purpose they are required.

## 11 Liability

11.1 In cases of claims for defective material or workmanship the Seller's liability is limited to the replacement or repair of such material. The right to replacement or repair of such parts or goods determined to be defective shall constitute the sole and exclusive remedy of the Buyer hereunder. At the absolute discretion of the Seller, the Seller may elect to repay to the buyer the price of such material paid by the Buyer to the Seller in lieu of any obligation to replace or repair.

11.2 Nothing in these Conditions, shall limit or exclude the liability of either party for:

11.2.1 Death or personal injury resulting from such party's negligence;

11.2.2 Fraudulent misrepresentation;

11.2.3 Breach of terms applied by S.12 Sale of Goods Act 1979;

11.2.4 (in relation to consumers) defective products arising under the Consumer Protection Act 1987.

11.3 Each party acknowledge and agree that the allocation of risk and liability contained in their Conditions is reasonable in all circumstances having regard to the price of the Goods, the nature of these Conditions and of the Goods and the ability of the Buyer to rely on its own acts, omissions, behaviour, insurance arrangements and other resources to minimise, bear or recover any loss and/or damage incurred.

11.4 Save as provided in clause 10.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall not in relation to any Contract exceed the price paid by the Buyer in relation to such Contract.

11.5 The Seller shall not, in any event be liable for loss of profits; loss of contracts; loss of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss, damage to or corruption of data; or any indirect or consequential loss, and such liability is excluded whether it is foreseeable, know, foreseen or otherwise. For the avoidance of doubt, the exclusions set out in this clause apply, whether such losses are direct, indirect, consequential or otherwise.

11.6 The Seller shall not have any liability to the Buyer in relation to the Goods where such liability relates in any way (and whether directly or indirectly) to a failure by the Buyer or any third party to strictly comply with the set specification and comply with all Legal Requirements.

11.7 The Seller shall not be liable to the buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Sellers obligations in relation to the Goods if the delay or failure was due to any cause beyond the Sellers reasonable control. Without limiting the foregoing the following shall be regarded as causes beyond the Sellers reasonable control;

11.7.1 Act of God, explosion, flood, tempest, fire or accident;

11.7.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

11.7.3 Acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

11.7.4 Import or export regulations or embargoes;

11.7.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Seller or of third party);

11.7.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

11.8 Power failure or breakdown in machinery.

11.9 The Seller shall not be liable to the buyer in respect of any defect where the Buyer provides specifications for the Goods and the Goods are supplied in accordance with these specifications.

11.10 The Seller shall not be liable to the Buyer in any instance of defect where the goods are utilised alongside or incorporated in any additional product and it is the duty of the Buyer to inspect the goods or materials before use.

## 12 Intellectual Property Rights

12.1 If any claim is made against the Buyer that the goods infringe or that their use or resale infringes the patent, copyright, design, trade mark, or other industrial or intellectual property rights or any other person, the Buyer acknowledges that:

12.2 The Seller shall be given full control over the proceedings or negotiations in connection with any such claim;

12.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

12.4 The Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement,

12.5 Without prejudice to any duty of the Buyer at common law shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to settle mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

12.6 The Seller (or where applicable their licensor) owns all intellectual property rights in the Goods and the Buyer agrees that it shall not copy or reverse engineer such Goods or any part of them in any way whatsoever.

12.7 Nothing on these conditions assigns any intellectual property rights in the Goods to the Buyer.

## 13 Indemnity

13.1 The Buyer shall indemnify the Seller in relation to any losses, claims, expenses (including legal costs) or damages which they may suffer as a result of any, claim by any third party which is in any way caused by a failure of the Buyer (or any third party related to, or who purchase Goods from, the Buyer) to strictly comply with the Legal Requirements.

## 14 Termination

This clause applies if:

14.1 The Buyer makes any voluntary arrangement with his creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

14.2 An encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Buyer ; or

14.3 The Buyer ceases, or threatens to cease, to carry on business; or

14.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

14.5 The Buyer is in breach of any of these Conditions.

If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract and any other Contract, with the Buyer or suspend any further deliveries under the Contract (or Contracts,) without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.

## 15 Export terms

15.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms as defined by 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 conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

15.2 Where the goods are supplied for export from the United Kingdom, the provisions of clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply not withstanding any other provision of these conditions.

15.3 The Buyer shall be responsible for complying with all Legal Requirements, and any legislation or regulations governing the importation, exportation or sale of the Goods into the country of destination and for the payment of any duties. Unless otherwise agreed in writing between the Buyer and the Seller, the goods shall be ex- works.

15.4 seller shall be responsible for the undertaking of testing and inspection of goods, in accordance with the sellers specification, before shipment.

The Buyer can arrange for testing and inspection of the goods, using the Buyers specifications, if agreed to by the seller. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damages during transit.

## 16 General

16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that the other party at its registered office or principle place of business (in the case of notice to be given to the Buyer) at the address shown on the quotation as the address to which the Goods shall be made under Condition 6.1 or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

16.2 No waiver by the Seller or any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

16.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Conditions.

16.5 The Contract shall be governed by the laws of England and any disputes in relation to a Contract will be subject to exclusive jurisdiction of English Courts.

## 17 Sub-contracting

17.1 The seller may assign the contract, whole or any part thereof, to any person, firm or company.