

CONDITIONS – TERMS OF SALE

1. General

The following terms represent the entire terms on which Primarc Marketing Limited ("the Seller") is willing to sell goods ("the Goods") & by ordering Goods from the Seller the Buyer agrees that the following terms represent the entire agreement between the Buyer & the Seller & that these terms shall apply to the exclusion of any previous terms & conditions supplied by the Seller, the Buyer's own terms & conditions, any pre-contractual statement or any other terms of whatsoever nature not contained below. No officer, employee or agent of the Seller (other than a Director) has authority to contract for the sale of Goods on any other terms, or to amend, vary or waive these terms, & a Director has authority to do so only in writing.

2. Time of Delivery

Any time of delivery stated by the Seller either on the face of this form or otherwise shall be treated as an estimate only. The Seller will use its reasonable endeavours to deliver by that time but gives no other undertaking as to the time of delivery.

3. Place of Delivery

The Goods shall be delivered to the Buyer at the place of delivery recorded on the face of this form or (if no such address is recorded there) at the premises of the Seller.

4. Price

The price which includes insurance for the benefit of the Seller shall be payable on or before delivery of the Goods. The time of payment shall be of the essence. In the event that payment is not made when due, the Seller may:-

- 4.1 cancel any contract to supply further goods or services
- 4.2 suspend deliveries of further goods or the supply of further services to the Buyer;
- 4.3 suspend any Credit Terms, in which case all sums payable to the Seller from the Buyer for goods & or services supplied shall become due & payable immediately; &
- 4.4 charge interest at 8% above the base rate of Lloyds TSB Bank Plc plus any costs of collection

5. Passing of Property

- 5.1 Property in the Goods shall pass to the Buyer on the occurrence of the last of the following events namely:
 - (a) payment in full of the price of the Goods sold hereby, &
 - (b) payment in full of every other sum owing by the Buyer to the Seller.
- 5.2 Until property shall have passed as aforesaid the Buyer shall hold the Goods as bailee for the Seller & shall keep them separately stored & identified as the property of the Seller.
- 5.3 In the event that the Buyer shall sell the Goods before property has passed as aforesaid, he shall do so as the agent of the Seller, the proceeds of any such sale shall be kept in a separate account identified as containing monies from the sale of the Sellers property & the Buyer shall account to the Seller for the whole of such proceeds.
- 5.4 Until property shall have passed as aforesaid the Seller shall be at liberty at any time: -
 - (a) by notice in writing to require the Buyer forthwith to return the Goods whereupon the Buyer shall cease to be in possession of them with the consent of the Seller;
 - (b) to retake possession of the Goods & for that purpose to enter on any premises where the Goods are or are reasonably believed by the Seller to be situated.
- 5.5 Notwithstanding the above the Goods are insured by the Seller whilst in transit & until delivered to the Buyer's door. The Buyer shall sign for the Goods as "delivered not checked" & shall advise the Seller in writing within 5 days of receipt of the Goods of any damage to them. Any damage not notified in writing within the said 5 days shall not be covered by the Sellers insurance & shall be at the risk of / to the account of the Buyer.

6. Fitness for Purpose

The Seller gives no warranty that the Goods are fit for the Buyers purpose or purposes. The Buyer warrants that he has satisfied himself that the Goods will be fit for every purpose which he requires them & that he does not rely on any skill or judgment of the Seller in that regard.

The Buyer further warrants that: -

- (a) he is aware that the Goods are supplied for the purpose for which they were manufactured, &
- (b) he has all the licenses that are required for their use, &
- (c) the Goods will be tested prior to use, &
- (d) the Goods will only be used by suitably qualified individuals, &
- (e) the Goods will be regularly serviced, tested, certified & inspected, &
- (f) the Goods will not in any way be adapted or altered, &
- (g) he will not give or imply any warranty to any person whom he may sell or let the Goods other than the foregoing & that he will notify that person of the requirements of the Seller as to license, test, use, service, inspection, certification, & adaptation as above & of any statutory authority of any state or country in which the Buyer or that person is resident or carrying on business.

Nothing in this clause affects the Buyer's rights under the Sale of Goods Act 1979

7. Acceptance

The Buyer shall inspect & test the Goods immediately upon delivery & shall within 5 days after delivery give notice in writing to the Seller of any respect in which he alleges that the Goods are not in accordance with the contract. If the Buyer shall not have given such notice within that time the Goods shall be deemed to be accepted in every respect in accordance with the contract.

8. Scope of Warranty

In the case of defective or faulty goods supplied by the Seller the Buyer's remedy against the Seller shall be limited to a period no longer than twelve months from the date of purchase. If any defect arises during this period the Seller reserves the right, at its option, to repair or replace the goods (or provide an equivalent item) or give credit to the value of the purchase price of the goods, provided that the goods have not been damaged or abused or improperly installed or operated. The seller accepts no responsibility for consequential loss. This warranty is subject to the return of the goods by the Buyer using prepaid freight within the twelve month warranty period. Manufacturer's original warranties will apply should the warranty exceed twelve months.

9. Liability

This clause shall apply to all claims by the Buyer against the Seller irrespective of whether such claims arise in contract or in tort & whether or not the Seller was negligent.

- (a) The Seller shall indemnify the Buyer against any claims arising from physical injury to or death of the Buyer's personnel &/or third parties, which is directly & wholly caused by the negligence of the Seller or its employees in the performance of its or their duties under this Agreement.
- (b) In the event that notice has been given pursuant to clause 7 above that the Goods (or part thereof) are not in accordance with the contract & the price of the Goods has been paid on or before the due date, the Seller shall replace or repair the Goods (or part thereof) at its own expense provided that the Buyer has within 30 days after the said notice caused the Goods (or part thereof) which are alleged to be defective to be returned, at the Buyers expense, to the Seller's premises or such other place as the Seller shall direct.
- (c) No other remedy than that provided for in sub-paragraph (b) above shall be available to the Buyer.
- (d) Without prejudice to the generality of the foregoing the Seller: -
 - (i) shall not be liable for damages in the nature of or arising from loss of profits, loss of user, loss of revenue, loss of hire or rental in respect of the Goods or any other goods, nor for damages arising from compensation payable by the Buyer to any other person, firm, corporation or organization whatsoever, &
 - (ii) except in relation to claims under sub-paragraph (a) above shall not be liable for any losses, damages, costs, claims, expenses or liabilities exceeding the purchase price of the Goods.

10. Force Majeure

The Seller shall be relieved of its obligations under this contract insofar as it is hindered in or prevented from performing them by any circumstances whatsoever.

11. Hold Harmless

The Buyer undertakes & agrees to indemnify & hold harmless the Seller against any & all actions, claims, proceedings, costs, losses, expenses, liabilities, including legal fees, whatsoever & howsoever caused or arising out of, connected with, or resulting from the Goods themselves or use of the Goods including without limitation the manufacture, selection, delivery, possession, use, operation, return or any & all damages or injuries caused thereby to anyone whatsoever.

12. Waiver & Invalidity

- (a) The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this contract by the other party shall not be deemed a waiver of that term, covenant, or condition nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
- (b) If any provision in this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in force without being impaired or invalidated in any way.

13. Arbitration

All disputes or differences which shall at any time arise between the parties whether during the term of this contract or afterwards touching or concerning this contract or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this contract shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

14. Applicable Law

This contract is given by & interpreted in accordance with English Law & the Buyer submits to the jurisdiction of the High Court of Justice in England, but the Seller may enforce the contract in any Court of competent jurisdiction.