

CONDITIONS - TERMS OF SALE

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO CLAUSES 6 AND 9.

Interpretation

In these Conditions:

"**Buyer**" means the entity that is responsible for buying the Goods as stated in the Purchase Order; "**Conditions**" means the standard terms and conditions of sale set out in this document, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties; "**Contract**" means the contract for the sale of the Goods in accordance with these Conditions; "**Purchase Order**" means the Buyer's purchase order; "**Specification**" includes any plans, drawings, data or other information relating to the Goods.

1. General

- 1.1 The following terms and conditions represent the entire terms and conditions on which Primarc Marketing Limited ("the Seller") is willing to sell goods ("the Goods") and by ordering Goods from the Seller the Buyer agrees that the following terms and conditions represent the entire agreement between the Buyer and the Seller and that these terms and conditions shall apply to the exclusion of any previous terms and conditions supplied by the Seller, the Buyer's own terms and conditions, any pre-contractual statement, any terms and conditions implied by trade, custom, practice or course of dealing or any other terms and conditions 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 and conditions, or to amend, vary or waive these terms and conditions, and a Director has authority to do so only in writing.
- 1.2 The Purchase Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer shall ensure that the terms and conditions of the Purchase Order and any relevant Specification are complete and accurate.
- 1.3 The Purchase Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Purchase Order, at which point the Contract shall come into existence.
- 1.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Goods.
- 1.5 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Calendar Days from its date of issue, unless otherwise advised by the Seller in writing.

2. Time of Delivery

- 2.1 Any time of delivery stated by the Seller shall be treated as an estimate only and the time of delivery is not of the essence. The Seller will use its reasonable endeavours to deliver by that time.

3. Place of Delivery

- 3.1 The Goods shall be delivered to the Buyer at the place of delivery recorded on the Buyers Purchase Order or (if no such address is recorded there) at the premises of the Seller.
- 3.2 If the Buyer fails to accept delivery of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by the Seller's failure to comply with its obligations under the Contract:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Seller notified the Buyer that the Goods were ready; and
 - (b) the Seller shall store the Goods until delivery actually takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 3.3 If 10 Business Days after the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods.
- 3.4 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4. Price

- 4.1 The price of the Goods shall be the price set out in the Seller's quotation.
- 4.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Buyer when it pays for the Goods.
- 4.3 The price which includes insurance for the benefit of the Seller shall become 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 or the Buyer became subject to any of the events listed in clause 10, the Seller may:-
 - (a) cancel any contract to supply further goods or services
 - (b) suspend deliveries of further goods or the supply of further services to the Buyer;
 - (c) suspend any Credit Terms, in which case all sums payable to the Seller from the Buyer for goods and or services supplied shall become due and payable immediately; and
 - (d) charge interest at 8% above the base rate of Lloyds TSB Bank Plc from time to time plus any costs of collection. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

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, and
 - (b) payment in full of every other sum owing by the Buyer to the Seller.

All prices are ex works High Wycombe, exclude VAT and are subject to change without notice.

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- 5.2 Until property shall have passed as aforesaid the Buyer shall hold the Goods as bailee for the Seller and shall keep them separately stored and identified as the property of the Seller, shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- 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 Seller's property and 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 and 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 and until delivered in accordance with clause 3.1. The Buyer shall sign for the Goods as "delivered not checked" and shall advise the Seller in writing within 7 Working days of receipt of the Goods of any damage to them. Any damage not notified in writing within the said 7 Working days shall not be covered by the Seller's insurance and shall be at the risk of / to the account of the Buyer.

6. Fitness for Purpose

- 6.1 The Seller gives no warranty that the Goods are fit for the Buyer's purpose or purposes. The Buyer warrants that he has satisfied himself that the Goods will be fit for every purpose which he requires them and 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, and
 - (b) he has all the licenses that are required for their use, and
 - (c) the Goods will be tested prior to use, and
 - (d) the Goods will only be used by suitably qualified individuals, and
 - (e) the Goods will be regularly serviced, tested, certified and inspected, and
 - (f) the Goods will not in any way be adapted or altered, and
 - (g) he will not give or imply any warranty to any person whom he may sell or let the Goods other than the foregoing and that he will notify that person of the requirements of the Seller as to license, test, use, service, inspection, certification, and adaptation as above and of any statutory authority of any state or country in which the Buyer or that person is resident or carrying on business.
- 6.2 Nothing in this clause affects the Buyer's rights under the Sale of Goods Act 1979.
- 6.3 Except as set out in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

7. Acceptance

The Buyer shall inspect and test the Goods immediately upon delivery and shall within 7 Working 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, maintained, stored or operated or altered or repaired by the Buyer without the written consent of the Seller or the defect arises as a result of fair wear and tear, wilful damage or negligence. 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 (including negligence) breach of statutory duty or otherwise and whether or not the Seller was negligent.

- (a) Nothing in these Conditions shall exclude the Seller's liability for any claims arising from:-
 - (i) physical injury to or death of the Buyer's personnel and/or third parties, which is directly and wholly caused by the negligence of the Seller or its employees, agents or subcontractors in the performance of its or their duties under the Contract.
 - (ii) fraud or fraudulent misrepresentation; or
 - (iii) breach of the terms and conditions implied by section 12 of the Sale of Goods Act 1979; or
 - (iv) defective products under the Consumer Protection Act 1987.
- (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 Seller shall replace or repair the Goods (or part thereof) or provide an equivalent item at its own expense or give credit to the value of the purchase price as provided in clause 8.
- (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 or any other indirect or consequential loss 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, and
 - (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. Buyer's Insolvency

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10.1 The Seller shall be entitled to terminate the Contract without liability to the Buyer by giving notice to the Buyer at any time if:

- (a) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Buyer makes any voluntary arrangement with all or any class of its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) is the subject of a bankruptcy petition or order or (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company) or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company) (otherwise than for the purpose of solvent amalgamation or reconstruction); or
- (c) an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
- (d) the Buyer ceases, or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Buyer does anything improper to influence the Seller to enter into any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010; or
- (f) the Seller reasonably believes that any of the events mentioned above is about to occur in relation to Buyer and notifies the Buyer immediately.

11. Force Majeure

The Seller shall be relieved of its obligations under the Contract insofar as it is hindered in or prevented from performing them by any circumstances beyond its reasonable control.

12. Third Party Rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

13. Hold Harmless

The Buyer undertakes and agrees to indemnify and hold harmless the Seller against any and all actions, claims, proceedings, costs, losses, expenses, liabilities, including legal fees, whatsoever and 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 and all damages or injuries caused thereby to anyone whatsoever.

14. Waiver and Invalidity

- (a) The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of the 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 the 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.

15. Arbitration

All disputes or differences which shall at any time arise between the parties whether during the term of the Contract or afterwards touching or concerning the 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 the 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.

16. Applicable Law

The Contract is governed by and interpreted in accordance with English Law and 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.

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