

Terms and Conditions



1 Interpretation

- 1.1 In these Conditions, unless the context otherwise requires:
 - 1.1.1 "the Company" means Pemsa UK Limited of Unit 2, Hunslet Trading Estate, Severn Road, Leeds, LS10 1BL;
 - 1.1.2 "the Customer" means the person, firm or corporation with whom the Company contracts for the sale of the Goods upon these Conditions;
 - 1.1.3 "the Goods" means the goods (including any instalments of the goods or any part of them) which the Company is to manufacture and supply to the Customer in accordance with the Contract;
 - 1.1.4 "the Contract" means the contract for the sale and purchase of the Goods by the Customer;
 - 1.1.5 "Business day" means any day other than Saturday, Sunday or a bank or public holiday.

2 Limitation of Contract

- 2.1 All orders accepted by the Company shall be based upon these Conditions which shall override and take the place of any other terms or conditions produced or referred to by the Customer.
- 2.2 If the Customer places an order with which the Company wishes to proceed, an order confirmation (the "Confirmation") will be sent to the Customer containing details of the order. The Confirmation in conjunction with these Conditions shall form the basis of the contract between the Company and the Client. In the event of any conflict or inconsistency between these Conditions and the terms of the Confirmation, the terms of the Confirmation shall prevail. No variations shall be binding unless agreed in writing between authorised representatives of the Company and the Customer.
- 2.3 All representations, whether written or oral, made prior to the acceptance of the Customer's order by the Company are expressly excluded from the Contract, unless otherwise agreed in writing by both parties.
- 2.4 No variation of or addition to these Conditions shall be binding unless agreed in writing between an authorised representative of the Company and the Customer, and no order placed may be cancelled, deferred or varied without the written agreement of an authorised representative of the Company.

3 Prices

- 3.1 All prices quoted, price lists or estimates (whether written or oral) issued by the Company from time to time shall not bind the Company and the price charged may be adjusted to take account of any fluctuations in VAT, government duties or in the cost of manufacture unless the price was stated to be fixed and the Customer has complied in all respects with the terms and conditions specified by the Company subject to which the price was stated to be fixed.
- 3.2 Where Goods are to be delivered to a destination outside the United Kingdom, prices unless expressly stated to be otherwise, are ex-works.
- 3.3 All prices quoted are exclusive of VAT and will be subject to VAT at the rate in force at the time.

4 Cancellation

- 4.1 The Customer may cancel an order once accepted, however, cancellation of the order by the Customer for whatever reason shall entitle the Company to recover for any loss of profit and all costs, charges and expenses incurred by the Company in respect of the order up to the date of receipt by the Company of written notification of cancellation from the Customer.

5 Acceptance

- 5.1 The Company routinely inspects any Goods supplied to the Customer. If the Customer requests any bespoke or specialist testing the additional costs or expenses if any, incurred by the Company shall be charged to the Customer in addition to the price.
- 5.2 In the event that the Customer requires the testing to be carried out in its' presence or before a representative then the Customer shall attend at the Company's premises upon the Company giving notice of availability of the Goods for testing within 7 days of the date of the notice. If the Customer does not attend or if within 14 days of the Customer having attended the Customer does not notify the Company that the Goods do not accord with the Contract specifying reasons, then the Customer shall be deemed to have accepted that the Goods are in accordance with the Contract and shall not be entitled to reject them or to claim damages or compensation from the Company on the grounds of anything which the testing revealed or would have revealed if it had been carried out.
- 5.3 Irregardless of the above, the Customer shall inspect the Goods immediately upon their arrival at the delivery destination in order to ascertain:
 - 5.3.1 that the number of items and packages and the quantities are as specified and the Goods are as described in the Company's delivery note;
 - 5.3.2 whether the Goods have been damaged in transit;
 - 5.3.3 that the Goods are those specified in the Customer's order stated on the Company's Delivery Note. Any discrepancy between the Goods delivered and those described in the Company's delivery note and any damage to the Goods in transit must be notified to the Company in writing within three Business Days of receipt of the Goods. In the case of Goods damaged in transit, the Customer shall retain the damaged Goods for a period of one month from the date of receipt by the Customer during which period the Customer will permit the Company and its representatives to examine the Goods and any damage to them incurred in transit. In the case of non-delivery of the Goods the Customer must notify the Company in writing within 10 Business Days of the receipt by the Customer of the Company's delivery note.
- 5.4 The Customer shall be deemed to have accepted the Goods as being in accordance with the Contract unless within 10 Business Days of receipt of the Goods the Customer notifies the Company in writing of any defect in materials or workmanship or failure to comply with designs, drawings, specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon such inspection and testing as it is reasonable for the Customer to undertake within such 10 Business Days.
- 5.5 Where the Goods are not manufactured by the Company, are delivered direct to the Customer by, or collected by the Customer from the manufacturer, the Company shall not be liable for any loss or damage to the Goods whatsoever and whensoever occurring.

6 Payment

- 6.1 The price for the Goods including any charges for packaging, freight, insurance or any other charge whatsoever must be paid upon presentation of a pro-forma invoice and

in any event prior to delivery. The Company reserves the right to refuse delivery if the price has not been so paid and shall not be liable for any loss caused to the Customer.

- 6.2 Where the Customer has been offered a credit account with the Company, unless otherwise agreed, payment for the Goods shall be made not later than the last day of the month following the month in which the Goods were despatched from the Company's premises. The time stipulated for payment shall be of the essence and failure to pay within the period specified shall entitle the company on the expiration of 14 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liability wholly or partly to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company.
- 6.3 Where Goods are delivered by instalments, the Customer shall pay for each instalment in accordance with the terms of this Condition.
- 6.4 The Company shall be entitled to interest (as well before as after a judgment) any part of the Contract price not paid by its due date from that date until actual payment at the rate of 4% per annum above HSBC Bank plc's base lending rate prevailing from time to time during such period.
- 6.5 Unless otherwise agreed in writing the Customer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Customer from the Company whether pursuant to the Contract or on any other account whatsoever.
- 6.6 Unless otherwise agreed in writing, all accounts shall be paid at the Company's registered office. Cheques and money orders shall be made payable to or to the order of the Company. Only the company's official receipt will be treated as valid.

7 Property and Title to the Goods

- 7.1 The Goods shall be at the risk of the Customer from the time at which they are loaded onto the vehicle on which they are to be delivered to the Customer whether such vehicle is the Customer's own vehicle or a third party's vehicle.
- 7.2 Notwithstanding section 7.1 the legal and beneficial ownership of the Goods shall remain with the Company until such time as the Customer shall have paid to the Company in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is due.
- 7.3 Until the title to and property in the Goods pass to the Customer the following provisions shall apply:
 - 7.3.1 The Customer shall hold the Goods solely as fiduciary agent and bailee for the Company and shall keep them separate from the Customer's own Goods or those of any third party and in a manner which makes them readily identifiable as the Goods of the Company.
 - 7.3.2 The Goods shall be properly stored, protected and insured and the Company shall be entitled to examine them in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so and to enter upon any premises owned or occupied or access to which is controlled by the Customer for that purpose;
 - 7.3.3 The Company may at any time without prior notice to the Customer (and provided the Goods are still in existence and have not been resold) repossess and resell the Goods if any of the events specified in section 13 occurs or if any sum due from the Customer to the Company under the Contract or on any other account or pursuant to any other contract is not paid on the due date for payment. For the purpose of exercising its rights under this subparagraph 7.3.3 the Company, its employees or agents together with any vehicles considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon and access to the Customer's premises and/or other locations where any of the Goods are situated.
- 7.4 Notwithstanding section 7.2 above the Customer may as principal in the ordinary course of business sell the Goods by bona fide sale at full market value; in which case:
 - 7.4.1 the Goods shall be deemed sold or used in the order delivered to the Customer.
 - 7.4.2 any resale by the Customer of the Goods in which property has not passed to the Customer shall (as between the Company and the Customer only) be treated as if made by the Customer as agent for the Company;
 - 7.4.3 the proceeds of sale of any Goods shall be held by the Customer in trust for the Company to the extent of all sums recoverable by the Company under section 7.2 above;
 - 7.4.4 the Customer shall keep any proceeds of sale as referred to in section 7.4.3 in a separate account and not mingled with other monies or paid into any overdrawn account and shall at all times be identifiable as the Company's money. In any event the Company shall have the right to trace such proceeds.
- 7.5 The Company may at any time appropriate to such indebtedness as it thinks fit sums received from the Customer notwithstanding any purported appropriation or designation by the Customer;
- 7.6 The rights and remedies conferred upon the Company by this section 7 are in addition to shall not in anyway prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

8 Delivery

- 8.1 Any date or time given by the Company to the Customer for the delivery of the Goods is approximate only and it is not of the essence of the Contract and such failure shall not constitute a breach of contract by the Company entitling the Customer to terminate the Contract and/or to claim damages against the Company and the Company shall be entitled to an extension of the time fixed for delivery which is reasonable in all the circumstances.
- 8.2 The Company may deliver the Product in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 8.3 Where the company is to make separate deliveries under a single order or where deliveries are to be made in instalments then failure to comply with any delivery date shall not be deemed to be a repudiation of the balance of the contract.
- 8.4 If the Company agrees that the Customer may collect the Goods, the Customer shall collect them within 3 days of being notified that they are ready for collection failing which the Company may despatch the Goods at the Customer's risk and expense or store them in which case the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk. If the Customer requests the Company to

delay despatch of the Goods and the Company agrees to do so the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk as from the date upon which the Goods are ready for despatch.

- 8.5 If the Company arrives at the Customer's desired delivery site on the delivery date and on attending the site is unable to affect delivery of the Product due to the Customer being unprepared or absent, or if the Customer fails to give the Company adequate delivery instructions at the time stated for delivery then, without limiting any other right or remedy available to the Company, the Company may store the Product until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and re-delivery.

9 Warranty and Liability

Subject to the following provisions the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.

- 9.1 The above warranty is given by the Company subject to the following conditions:

9.1.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

9.1.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's approval;

9.1.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.1.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

- 9.2 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 9.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

- 9.4 Subject to section 6, a claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 9.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.

- 9.6 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

10 Force Majeure

- 10.1 The Company shall not be liable or be deemed to be in breach of these Conditions by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

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

10.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.1.4 import or export regulations or embargoes;

10.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

10.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.1.7 power failure or breakdown in machinery. In the event of the foregoing the Company may suspend further performance of the Contract for so long as it is so delayed or prevented and such suspension shall not constitute a breach of the Contract on the part of the Company. The Company shall inform the Customer in writing of any such suspension of performance of the Contract and if such suspension continues for more than 12 weeks either the Company or the Customer may by notice in writing to the other terminate the Contract but without prejudice to the Company's right to be paid in accordance with the Contract for any part of the Goods which may have been despatched to the Customer prior to the suspension of performance by the Company and to be reimbursed all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination where it is given by the Company and up to the date of receipt thereof by the Customer where it is given by the Customer.

11 Customers own Designs

11.1 The Customer shall be responsible for the accuracy of its own designs and drawings and other data supplied to the Company by the Customer its employees or agents notwithstanding that the Company may have examined, inspected, studied or commented to the Customer upon any such designs, drawings, specifications or other data.

11.2 If the Company is required in connection with the manufacture of the Goods to carry out any research or development work all intellectual property rights therein shall be the property of the Company and the Customer shall keep confidential all information disclosed by the Company to it concerning such research and development work and shall not exploit such information for its own purposes without the prior written consent of the Company provided that the foregoing provision shall not prevent the Customer from using the Goods for whatever purpose it may think fit.

12 Intellectual Property

12.1 The Customer warrants that any design or instruction furnished or given to the Company shall not be such as to cause the Company to infringe any letters patent registered designs or trademarks in the execution of the Customer's order. The Customer shall indemnify the Company against all claims actions and costs made or brought against the Company (whether in England or elsewhere) in respect of the infringement of any United Kingdom or foreign patent, trademark, trade name, registered design or similar right.

13 Breach of Contract by or Insolvency of the Customer

13.1 If any of the following events occurs or in the opinion of the Company is reasonably likely to occur:

13.1.1 the Customer commits any breach of the Contract; or

13.1.2 any distress or execution is levied upon any of the Goods or property of the Customer and is not paid out within 7 days; or

13.1.3 the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors generally or a petition is presented to make the Customer or any such partner bankrupt; or

13.1.4 the Customer (being a limited company) has an Administrative Receiver or a Receiver and Manager appointed of the whole or any part of its undertaking property or assets or a petition is presented or an order is made or a resolution is passed for the winding up of the Customer or for the appointment of an Administrator thereof the Company may without prejudice to any other rights or remedies it may have against the Customer suspend further performance of the Contract or by notice in writing to the Customer terminate the Contract as it thinks fit. Notwithstanding any such suspension or termination, the Customer shall pay the Company in accordance with the Contract for all Goods despatched by the Company up to that date and shall indemnify the Company against any loss, liability or expense incurred by the Company in connection with the Contract including (without prejudice to the generality of the foregoing) loss of profit, liabilities and expenses in connection with raw materials and tooling obtained or produced for the purposes of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract.

14 Notices

14.1 Any notice to be given pursuant to these Conditions shall in the case of a notice to the Company be sent to it at its registered office and shall in the case of a notice to the Customer be sent to the Customer at its registered office if the Customer is a Company and in any other case to the address of the Customer last known to the Company. Any such notice may be given by post, telex or facsimile transmission. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope and to prove service in the case of a notice given by telex or facsimile transmission it shall be sufficient to show that it was made to the correct telex or telephone number. Service shall be deemed to have been effected 24 hours after despatch by post telex or facsimile transmission.

15 General

15.1 If any clause or sub-clause of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other clauses or sub-clauses and the remainder of the provisions in question shall not be affected hereby.

15.2 The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

15.3 The Company may subcontract any or all of its obligations hereunder without the prior consent of the Customer.

15.4 Any concession granted to the Customer by the Company or any waiver by the Company of its rights under these Conditions in respect of any particular transaction or series of transactions shall not be deemed an agreement to confer the same concessions in respect of any further transactions.

15.5 This contract shall not bestow any rights on any third parties and to this end the Contracts (Rights of third Parties) Act 1999 is excluded to the fullest extent possible.

15.6 The law applicable to this contract is English law and the Customer and the Company hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

16 Returns

16.1 The Company is under no obligation to accept for return any unwanted or over-ordered goods.

16.2 Any surplus goods, for return, will only be considered providing that they do not exceed 10% of the invoice value.

16.3 All goods are subject to a two for one compensating order and inspection by the Company before being accepted for return.

16.4 Special order items and finishes, and goods from construction sites, will not be accepted



Please consult inside the document for further information on these certifications.