

P W HALL LIMITED

TERMS AND CONDITIONS OF SALE

All contracts for the sale of goods by P W Hall Limited are subject to the following terms and conditions.

1. Definitions and Interpretation

1.1 In these Conditions

- “Company”** means P W Hall Limited a company incorporated in Scotland and having its registered office at Woodilee Industrial Estate, Kirkintilloch, Glasgow, G66 3UR.
- “Conditions”** means these terms and conditions including any special terms and conditions agreed in writing between the Company and the Customer;
- “Confidential Information”** means any information of a confidential nature or which is denoted by the Company as confidential including (without limitation) technical know-how, inventions or processes and information relating to the Company’s business and any Specification;
- “Contract”** means the contract for the supply and purchase of the Goods between the Company and the Customer of which these Conditions form part;
- “Customer”** means the company, institution or other party whose order for the Goods is accepted by the Company;
- “Delivery Address”** means the address of the Customer or whatever place the Customer reasonably requires delivery to be made as notified to the Company in writing to which the Company delivers the Goods;
- “Goods”** means the products sold by the Company pursuant to these Conditions;
- “Order”** means the Customer’s purchase order;
- “Price”** means the price of the Goods as may be intimated by the Company to the Customer in writing from time to time (subject to Condition 4);
- “Specification”** means the specification for the Goods (or any sample thereof) agreed between the company and the Customer (as may be amended from time to time); and
- “Working Day”** means any weekday on which the Scottish clearing banks (or a majority of them) are open for business in the City of Glasgow.

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

1.3 Reference to a Condition is to one of these Conditions.

2. Contract Terms

- 2.1 These conditions apply to all sales of Goods by the Company to the Customer and shall apply in place of and prevail over any terms and conditions contained or referred to in the Customer’s Order or in correspondence or implied by trade custom or practice or in any course of dealing.
- 2.2 No variation of or derogation from these Conditions shall be binding unless specifically accepted in writing by a director signing on behalf of the Company.

2.3 The Company reserves the right to amend accidental errors and/or omissions in quotations, tenders or invoices.

3. Orders

The Company reserves the right to accept or refuse an Order, whether or not such Order is placed as a result of a quotation furnished by the Company.

4. Prices

4.1 The Company reserves the right to increase the Price after acceptance of any Order to take account of any increase in the costs of raw materials, labour, transport or any other matter having an effect on costs provided that it notifies the Customer of any such increase within five (5) Working Days of receipt of the relevant Order.

4.2 The Price is exclusive of any applicable value added tax (or any other similar tax or taxes) which shall be charged to the Customer in addition, in accordance with regulations from time to time in force. The Price is also exclusive of any import or export duties or any other additional duties, bank charges, special packaging, transportation and insurance all of which shall be the responsibility of and for the account of the Customer.

5. Payment

5.1 The Company shall issue an invoice to the Customer (“the Invoice”) in respect of Goods delivered and the Customer shall make payment to the Company in terms of the Invoice within 20 days from the end of the month of issue of the Invoice.

5.2 THE TIME OF PAYMENT SHALL BE OF THE ESSENCE OF THE CONTRACT

5.3 If, on expiry of the payment period referred to at Condition 5.1, the Customer has failed to make payment of all sums due in terms of the Invoice, the Company shall (without prejudice to any other remedy available to the Company) be entitled to:-

5.3.1. withhold any further deliveries to the Customer;

5.3.2 treat the Contract as repudiated.

5.4 Any sums received from the Customer may at the Company’s discretion be allocated to any debt due by the Customer to the Company.

5.5 If the Customer does not pay by the due date the Company shall be entitled, without prejudice to any other right or remedy it may have, to charge the Customer interest on the amount unpaid from the due date until payment is made in full at the rate of 3% above the base lending rate of The Royal Bank of Scotland plc in force from time to time at that time.

6. Customer’s Material

When the parties agree that the Customer shall supply the Company free of charge with material to be compounded by the Company in the execution of an Order:-

6.1 the Customer shall ensure that any material supplied shall satisfy the following requirements namely, it shall be conform to the agreed quality and shall on delivery to the Company be in a fit state and condition for immediate use by the Company in executing the Order. The Company shall be entitled to reject any material which does not meet the requirements to the Company’s reasonable satisfaction;

6.2 the Company shall return to the Customer on completion of the Order any material supplied by the Customer in terms of this Condition which is surplus to requirements;

6.3 the Company shall not be liable for any loss or damage whatsoever sustained by the Customer as a result of a delay in delivery arising from the disruption or halting of the Company's production or processes of manufacture by reason of the non-availability, shortage, or a failure in the supply or replacement, of any such material;

6.4 the Customer shall not be entitled to reject any Goods incorporating any material supplied by the Customer to the company where the fault or defect in the Goods arises directly or indirectly from a fault or defect in any such material and the Company shall not be liable for any loss or damage direct or consequential sustained by the Customer as a result thereof.

7. Samples

In cases where an Order is placed following the supply of a sample by the Company, the placing of the Order will be deemed approval of the sample by the Customer and authority to execute the Order in conformity with the sample. In particular, the Customer will, by its acceptance of the sample, be deemed to be satisfied that it will meet any particular purpose or requirements.

8. Technical Advice

On request the Company shall endeavour to furnish such technical advice or assistance as it has available with reference to the use of the Goods and all such technical advice or assistance whether charged or given gratis shall impose on the Company no obligations or liability whatever for such advice or assistance given or results obtained and all such assistance is given or accepted at the Customer's sole risk.

9. Delivery

9.1 ANY DATES QUOTED BY THE COMPANY FOR DELIVERY REPRESENT THE COMPANY'S BEST ESTIMATE OF WHEN DELIVERY SHOULD BE POSSIBLE BUT SHALL NOT BIND THE COMPANY WHO SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OCCASIONED BY LATE DELIVERY OF ALL OR ANY OF THE GOODS. TIME OF DELIVERY SHALL NOT BE OF THE ESSENCE OF THE CONTRACT.

9.2 Delivery to, or collection by any carrier for carriage to, the Delivery Address shall be deemed to be delivery of the Goods and due performance of the Company's obligations.

9.3 If the Customer fails to give adequate instructions regarding delivery the Company may store the Goods and recover all costs thereby incurred from the Customer.

10. Risk and Title

10.1 Risk of damage, loss or destruction of the Goods shall pass to the Customer on delivery.

10.2 Notwithstanding delivery and the passing of risk, no title to the Goods shall pass to the Customer until the Company has received payment in full of the Price and of all other sums which may be due or outstanding by the Customer to the Company under the Contract or otherwise.

10.3 The Company shall not be liable for any shortage in delivery or any damage to the Goods in transit unless the Customer notifies the Company in writing within 7 days of the date of delivery of the relevant consignment of the Goods.

11. Warranties

11.1 Subject to the provisions of this Condition 11, the company warrants that:-

- (a) the Goods shall comply in all material respects with the Specification (as the same may be amended);
- (b) for a period of three months from the date of delivery of the Goods, the Goods shall be reasonably free from defects in material and method of manufacture.

11.2 While the Company may have assisted the Customer to select the Goods (or samples) based on information which the Customer has provided as regards the Customer's purpose for the Goods the Customer acknowledges that the ultimate responsibility for the selection of the Goods (or samples) to fit its particular purpose lies with the Customer and accordingly the Company gives no warranty (and none shall be implied) that the Goods (or any samples) are fit for any particular purpose.

11.3 In the event of the Customer making any claim for breach of any of the warranties contained in Condition 11.1 ("the Warranties"), the Customer must:-

- (a) reasonably satisfy the Company that the Goods have been properly stored and used and without prejudice to the generality of the foregoing, that any defect is not the direct or indirect result of carriage or use or application of any treatment or process whatsoever to the Goods by the Customer or any act, neglect or default to the Customer or of any third party.
- (b) allow the Company to inspect the Goods and/or any relevant containers and other packaging as and when reasonably required by the Company.

11.4 Except as provided in Condition 12, the sole and exclusive remedy of the Customer in the event any breach of the Warranties shall be to require the Company free of charge to the Customer to make good the defect by replacement PROVIDED ALWAYS that the Customer shall have

- (a) given the Company prompt notice of the defect and the circumstances in which it arose:
and
- (b) fulfilled the terms of Condition 11.3.

12. Limit of Liability

12.1 Neither party's liability to the other for any death or personal injury caused by the negligence of that party or its employees shall be limited in any way.

12.2 Subject to Condition 12.1 above, the Company's entire liability to the Customer in respect of any loss or damage arising from any breach of the Warranties or any other contractual obligations under this Agreement or for any representation, statement, tortious or delictual act including negligence shall be limited to the sum of one million pounds (£1,000,000) Sterling in respect of any claim or series of claims arising from a common cause in any period of twelve (12) months.

12.3 Subject to Clause 12.2 above, the Company shall not be liable to the Customer in respect of any indirect, special or consequential loss, loss of profits, loss of revenue, loss of business, loss of use, loss of production, contracts, data, management time, anticipated savings, goodwill, reputation or for any indirect economic or financial loss whatsoever and howsoever suffered whether or not caused by or resulting from its negligence or the negligence of its employees, agents, suppliers, representatives or resulting from any breach of its statutory duties or any breach of its obligations under this Agreement.

13. Exclusions

Apart from the express Warranties given in these Conditions all representations, warranties, and conditions express or implied, statutory or otherwise are expressly excluded save to the extent to which any such may not lawfully be excluded.

14. Customer Containers

In the event that the Customer wishes to collect or receive the Goods in a container or containers other than those provided or made available by the Company, the Company may refuse to supply the Goods where it considers such container(s) to be unsuitable. Subject to Condition 12, the Company shall not be liable for any loss and damage arising from any defect in the Goods resulting directly or indirectly from the use of containers(s) not provided or made available by the Company.

15. Force Majeure

The Company shall not be liable or responsible for any loss or damage caused by delay in the performance, or unnecessary non-performance, of any of its obligations hereunder including (but not limited to) delayed delivery or non-delivery where the same is occasioned by any cause whatsoever that is beyond the Company's reasonable control including but not limited to an Act of God, trade disputes, strikes, lock-outs, governmental or parliamentary restriction, difficulties in obtaining raw materials or labour, breakdown of machinery, war, civil disturbance, flood, storm, fire or accident.

16. Drawings and Specification

All drawing, Specifications, item description, and literature prepared by or on behalf of the Company and any copyright therein or in any part thereof are the exclusive property of the Company.

17. Packaging

Disposal of any packaging shall be the responsibility of the Customer. The Company reserves the right to make an additional charge for any packaging specified as returnable and which is not returned to the Company within 30 days of delivery to the Customer. The Customer shall pay such additional charge upon receipt of the Company's invoice within the period specified at Condition 5.1.

18. Termination

In the event that the Customer becomes bankrupt: signs a trust deed; makes a voluntary arrangement with creditors: becomes subject to an administration order or goes into liquidation whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation); an encumbrancer takes possession of or a receiver, administrator or administrative receiver is appointed in respect of any of its assets or any creditor takes any steps to take possession thereof, then the Company, without prejudice to any other rights, shall be entitled at its option to do any or all of the following namely to suspend further deliveries, treat the Contract as repudiated and repossess the Goods.

19. Non-cancellation

The Customer acknowledges that it shall not have any right to cancel a Contract. In the event that the Customer wishes to amend the Specification, the quantity of the Goods to be purchased, the time of delivery or other wise vary the Contract, it shall give written notice to the Company who shall promptly confirm whether it will accept the variation and if so with what effect on the Price. The Customer shall then confirm the variation in writing to the Company within three days of notification by the Company of its acceptance of the variation. In the event that it fails to do so, the Contract shall remain in full force and effect as if the Customer had not sought to vary the same.

20. Assignment

The Customer shall have no right to assign its rights or obligations under the Contract to any person without the prior consent of the Company in writing. The Company shall be entitled to assign its rights or obligations under the Contract to any holding company.

21. General

21.1 Any notice or communication required or permitted to be given by either party to the other under these Conditions shall be in writing and sent recorded delivery or registered mail addressed to the party at its registered office of principal place of business or such other address as may at the relevant time have been notified in accordance with this provision, to the party giving the notice or communication.

21.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

22. Choice of law

The Contract shall be governed by and construed in accordance with Scots law and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

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