

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.

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CONDITION 12 (Limit of Liability).

1. Definitions and Interpretation

1.1 In these Conditions

“Company”	means P W Hall Limited (company number SC170917) a company incorporated in Scotland and having its registered office at Woodilee Industrial Estate, Kirkintilloch, Glasgow, G66 3UR, UK;
“Conditions”	means these terms and conditions including any special terms and conditions agreed in writing between the Company and the Customer as amended from time to time in accordance with Condition 21.4;
“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;
“Customer Material”	means all materials in any form which are used for the execution of an Order upon the Customer's instruction to the Company, whether supplied by the Customer directly to the Company or supplied by a third party to the Company; and whether paid for directly by the Company or supplied to the Company free of charge;
“Delivery Address”	means the address of the Customer or the destination address as notified on the Acknowledgement;
“Goods”	means the products sold by the Company pursuant to these Conditions;
“Incoterm(s)”	means the Incoterms® 2010 rules by the International Chamber of Commerce as amended from time to time;
“Order”	means the Customer's purchase order or the Customer's written acceptance of the Company's offer, as the case may be;
“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 technical properties of the Goods agreed between the Company and the Customer which includes, but may not be limited to, the 'Product Data Sheet' for the Goods provided by the Company to the Customer and written statements issued by the Company to the Customer. Such Specification may be amended in writing 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.
- 1.4 Reference to writing or written includes emails.

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 imposed 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 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.3 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.
- 2.4 The Order shall only be deemed to be accepted when the Company issues a formal order acknowledgment to the Customer (“the **Acknowledgement**”), at which point the Contract shall come into existence.
- 2.5 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.
- 2.6 The Company reserves the right to amend accidental errors and/or omissions in quotations, tenders or invoices.

3. **Goods**

- 3.1 The Goods are described in the Specification.
- 3.2 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.3 The Order constitutes an acceptance by the Customer that the Specification is complete and accurate.

4. **Prices**

- 4.1 The Company reserves the right to increase the Price after acceptance of any Order or an Acknowledgement is issued to take account of any increase in the costs of the Goods that is due to:-
 - (a) any factor beyond the Company’s control (including foreign exchange fluctuations, increases in taxes and duties, increases in raw materials, labour, transport or any other matter having an effect on costs);

- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions;

provided that the Company notifies the Customer of any such increase up to five (5) Working Days before delivery of the Goods.

- 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.
- 4.3 Any additional duties including (but not limited to) any import or export duties, bank charges, special packaging, transportation and insurance shall be the responsibility of the Customer, unless otherwise expressed by the Company in writing.
- 4.4 In respect of Condition 4.3, should a specific Incoterm apply to the Order this will be notified to the Customer within the Acknowledgement.

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 per the payment terms noted on the Invoice. If no payment terms are so specified the Customer shall make payment to the Company 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:-
 - (a) withhold any further deliveries to the Customer; or
 - (b) treat the Contract as repudiated.
- 5.4 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding. Any sums received from the Customer may at the Company’s discretion, without prejudice to any other right or remedy it may have, 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 4% above the base lending rate of The Royal Bank of Scotland plc in force from time to time at that time.

6. Customer Material

- 6.1 When the Customer instructs the Company to use Customer Material in the execution of an Order the Customer Material supplied shall satisfy the following requirements:-
 - (a) it shall conform to the agreed quality and performance;
 - (b) it shall conform to the agreed quantity; and

- (c) it shall on delivery to the Company be in a fit state and condition for immediate use by the Company in executing the Order.
- 6.2** The Company shall be entitled to reject any Customer Material which does not meet the requirements set out at Condition 6.1.
- 6.3** Upon request, the Company shall return to the Customer on completion of the Order any Customer Material supplied by the Customer to the Company free of charge which is surplus to requirements.
- 6.4** 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 Customer Material.
- 6.5** The Company shall not be liable for any loss sustained by the Customer due to any reasonable manufacturing loss of any Customer Material supplied by the Customer to the Company free of charge.
- 6.6** The Customer shall not be entitled to reject any Goods incorporating any Customer Material where the fault or defect in the Goods arises directly or indirectly from a fault or defect or incorrect formulation of any such Customer Material and the Company shall not be liable for any loss or damage direct or consequential sustained by the Customer as a result thereof.
- 6.7** For the avoidance of doubt, any costs incurred by the Company in relation to the supply of Customer Material from a third party will be payable by the Customer, unless otherwise agreed between the parties in writing.

7. Samples or Trial Orders

- 7.1** In cases where an Order is placed following the supply of a sample or a trial order by the Company, the placing of the Order will be deemed approval of the sample or the trial order by the Customer and authority to execute the Order in conformity with the sample or the trial order. In particular, the Customer will, by its acceptance of the sample or the trial order, be deemed to be satisfied that it will meet any particular purpose or requirements.
- 7.2** Upon receipt of a sample or a trial order and prior to placing an Order the Customer shall be required to undertake all testing necessary to ensure the sample or the trial order will be fit for purpose. The Order constitutes an acceptance by the Customer that such testing has been carried out.
- 7.3** The Company reserves the right to charge the Customer for a sample or trial orders. Such charges shall be notified to the Customer and agreed in advance of production.

8. Technical Advice

On request, the Company shall endeavour to furnish such technical advice (whether written or verbal) or assistance as it has available with reference to the use of the Goods. All such technical advice or assistance, whether charged or given gratis, shall impose on the Company no obligations or liability whatsoever for such advice or assistance given or results obtained, and all such advice and 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 (FOR ANY REASON) OF ALL OR ANY OF THE GOODS.

TIME OF DELIVERY SHALL NOT BE OF THE ESSENCE OF THE CONTRACT.

9.2 Delivery is completed in the following ways:-

- (a) for UK sales, where the Company has arranged delivery, upon the unloading of the Goods at the Delivery Address;
- (b) for export sales, where the Company has arranged delivery per an Incoterm (which will be notified to the Customer within the Acknowledgement), upon the unloading of the Goods at the Delivery Address; or
- (c) where the Customer has arranged collection of the Goods by any carrier for carriage to the Delivery Address, upon the loading of the Goods at the Company's premises.

9.3 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event (in terms of Condition 15) or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

9.4 If the Customer fails to accept delivery of the Goods or fails to give adequate instructions regarding delivery, then:

- (a) delivery of the Goods will be deemed to have been completed at 9am on the third Working Day after the day on which the Company attempted delivery; and
- (b) the Company may store the Goods and recover all costs and expenses (including insurance) thereby incurred from the Customer.

9.5 If seven (7) Working Days after the day on which the Company attempted delivery of the Goods the Customer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods, and after accounting for reasonable storage and selling costs charge the Customer for any shortfall.

9.6 If the Company delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them. In these circumstances a pro rata adjustment shall be made to the Invoice.

9.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

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 5 Working 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 on delivery and for a period of 3 months from the date of delivery (“**warranty period**”):-

- (a) the Goods shall comply in all material respects with the Specification (as the same may be amended); and
- (b) 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. The Customer shall be required to undertake all testing necessary to ensure the Goods and any sample will be fit for 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) give notice in writing to the Company within the warranty period that some or all of the Goods do not comply with the Warranties;
- (b) 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; and
- (c) 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 of any breach of the Warranties shall be to require the Company, free of charge to the Customer, to make good the defect by replacement of the Goods 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.

11.5 The Company shall not be liable for the Goods’ failure to comply with the Warranties in any of the following events:

- (a) the Customer makes any further use of the Goods after giving notice in accordance with Condition 11.3(a);
- (b) the defect arises because the Customer has failed to follow the Company’s instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Company following any design or specification supplied by the Customer or due to the Company's use of a Customer Material;
- (d) the Customer alters the Goods without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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 or excluded 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 a sum no greater than the Price paid by the Customer to the Company under the relevant Order for the Goods in respect of which the liability arose.

12.3 Subject to Condition 12.2 above, the Company shall under no circumstances whatsoever be liable to the Customer in respect of:-

- (a) any indirect, special or consequential loss;
- (b) loss of profits, loss of revenue or loss of business;
- (c) loss of use, production, contracts, data or management time;
- (d) loss of anticipated savings, goodwill or reputation; or
- (e) 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 drawings, 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

18.1 Without prejudice to any other rights the Company shall be entitled at its option to do any or all of the following:- (i) to suspend further deliveries, (ii) treat the Contract as repudiated and (iii) repossess the Goods, in the event that:-

- (a) the Customer becomes bankrupt;
- (b) the Customer signs a trust deed;
- (c) the Customer makes a voluntary arrangement with creditors;
- (d) the Customer becomes subject to an administration order;
- (e) the Customer goes into liquidation whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation);
- (f) an encumbrancer takes possession of or a receiver, administrator or administrative receiver is appointed in respect of any of the Customer's assets;
- (g) any creditor takes any steps to take possession of any of the Customer's assets;
- (h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (i) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

18.2 Without prejudice to any other rights or remedy it may have, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

18.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

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 otherwise 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 without the prior consent of the Company in writing. The Company shall be entitled to assign its rights or obligations under the Contract at any time.

21. General

21.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing (which shall not include email) and sent recorded delivery or registered mail addressed to the party at its registered office or 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.

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.

21.4 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21.5 No one other than a party to this Contract shall have any right to enforce any of its terms.

22. Entire Agreement

22.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

23. 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.

December 2018