

# STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

## 1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

<b>Word</b>	<b>Meaning</b>
the Company:	<b>PROMAT UK LIMITED</b>
the Contract:	the Order and the Supplier's acceptance of the Order;
Goods:	any goods agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them);
Services	any service agreed in the contract to be purchased by the company from the supplier and anything created or produced as a result thereof;
Specification	means the requirements to which the Goods and/or Services supplied to the Company must conform as detailed on page 1 (and any subsequent pages) of the Order.
Order:	the Company's written instruction to supply the Goods, incorporating these Conditions;
Price:	means the sum exclusive of VAT, payable to the Supplier by the Company for the Goods as set out in Schedule 1
Supplier:	the person, firm or company who accepts the Company's Order.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions the headings will not affect the construction of these Conditions.

## 2. APPLICATION OF TERMS

- 2.1 These Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods by the Company from the Supplier shall be deemed to be an offer by the Company to purchase Goods subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all the Company's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.

## 3. ORDERS

- 3.1 Orders for the Goods shall be given by the Company to the Supplier in writing, or if given orally, shall be confirmed by the Company in writing not more than three days after the order is given by the Company. Actual delivery dates shall be agreed by the parties at the time of order.

## 4. QUALITY AND DEFECTS

- 4.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Supplier.
- 4.2 The Supplier warrants to the Company that the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended) and fit for the purpose made known to the Supplier at the time of placing the Order and will comply with all statutory and EC requirements and regulations relating to the Goods or to the sale of the Goods.
- 4.3 Without prejudice to all other rights and remedies of the Company in respect of the supply to it of the Goods which do not conform with the provisions of Conditions 4.1 and 4.2, the Supplier, shall at the Company's option, forthwith replace or repair, free of charge, within a period of 6 months from the date the Goods are delivered, any Goods which are proved to the reasonable satisfaction of the parties not to comply with the provisions of Conditions 4.1 and 4.2 due to defects in design, material or workmanship.
- 4.4 The Supplier shall indemnify and keep indemnified the Company against all losses, liabilities, claims, demands, suits, actions, damages, costs and expenses of whatsoever nature that may arise or occur as a result of the Goods not complying with the provisions of Conditions 4.1 and 4.2 or any other breach of this Agreement, provided that the Supplier's instructions as to the application and installation of the Goods have been followed.

- 4.5 If any claim is made against the Company arising out of or in respect of the sale by the Company of any Goods supplied under this Agreement, including any claim that the Goods infringe the Intellectual Property Rights of any person the Supplier shall indemnify the Company against all damages or other compensation awarded against the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim, and all legal and other expenses incurred by the Company in the defence or settlement of the claim.
- 4.6 The Supplier shall effect insurance against all insurable risks, the subject of the Supplier's indemnity in Conditions 4.4 and 4.5. Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Company on request.

## 5. DELIVERY

- 5.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Supplier shall off-load the Goods as directed by the Company.
- 5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 5.3 The Supplier shall invoice the Company upon, but separately from, despatch of the Goods to the Company
- 5.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Company in the Order, the Company shall only accept deliveries during normal business hours or warehouse hours as appropriate.
- 5.7 Where delivery is made to the Company's place of business or a site the Supplier's drivers shall conform to the reasonable instructions of the Company's authorised representative on the Company's place of business or on that site. No liability on the Company's part is accepted, however for any damage to the Supplier's vehicle howsoever occurring on the site.
- 5.8 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 5.8.1 cancel the Contract in whole or in part;
- 5.8.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 5.8.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
- 5.8.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 5.9 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Supplier at the cost of the Supplier.

5.10 Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

5.11 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

## 6. RISK/PROPERTY

6.1 The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

## 7. PRICE

7.1 Subject to the following provisions of this clause 7 the price for each type of the Goods shall be the Price.

7.2 Not less than three months before the first anniversary of the Commencement Date and each subsequent anniversary of the Commencement Date during the term of this Contract, the Company and the Supplier shall enter into discussions in good faith to agree the Price for the subsequent year. The parties shall take full account of any changes in exchange rate between the Euro and Sterling in the preceding 12 month period to the extent that the elements which comprise the Price are subject to such exchange rate whether actual or reasonably foreseeable changes in the Prices for that 12 month period. Pending agreement the Prices for the next year shall be the Price at the end of the preceding year.

7.3 The Price shall be inclusive of any cost of packaging, carriage and insurance of the Goods but exclusive of any Value Added Tax or other applicable sales tax or duty, which shall be added to the sum in question.

7.4 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.

7.5 The Company will accept no variation in the price or extra charges.

## 8. PAYMENT

8.1 The Company shall pay the Price within 60 days of the end of month of the invoice date, but time for payment shall not be of the essence of the Contract.

8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.

8.2 Payment by BACS (or other electronic payment system) shall be deemed made when initiated by Promat UK Limited. All prices shall be exclusive of VAT unless otherwise stated in the Order. If requested to do so by the Buyer, the Supplier shall accept payments of monies due by electronic funds transfer through BACS Ltd or other electronic payment means. The Supplier accepts electronic payments as good discharge of indebtedness under the Order.

## 9. CONFIDENTIALITY

- 9.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

## 10. THE COMPANY'S PROPERTY

- 10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

## 11. TERMINATION

- 11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 11.2.1 the Supplier commits a breach of any of the terms and conditions of the Contract;
  - 11.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier;
  - 11.2.3 the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier;
  - 11.2.4 the Supplier ceases or threatens to cease to carry on its business; or
  - 11.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to termination. The Conditions, which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination.

## 12. REMEDIES

- 12.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:
- 12.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 12.1.3 at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 12.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- 12.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- 12.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

## 13. ASSIGNMENT & SUB-CONTRACTING

- 13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 13.2 The supplier shall not sub-contract the contract or any part thereof without having first obtained the written permission of the Company which shall not be unreasonably withheld provided that this restriction shall not apply to sub-contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub-Contractor is named in the Contract
- 13.3 The supplier shall be responsible for the acts, defaults and omissions of its sub-Contractors, whether approval has been given to their appointment under this clause or not, as if they were his own and any consent given under this clause shall not relieve the supplier of any of his obligations under the Contract.
- 13.4 The Company may assign the Contract or any part of it to any person, firm or company.

## 14 COMPLIANCE

- 14.1 The Supplier and its personnel shall at all times comply with all laws including statutes, regulations and by-laws of local or other authorities. The Company shall allow the Supplier access to its premises as necessary for the delivery of the Goods and/or Services. The Company may refuse admission to the Supplier's personnel or require such personnel to leave its premises at any time. Whilst on the Company's premises, the Supplier shall abide by the Company's rules and regulations relating to the premises.

## 15 FORCE MAJEURE

- 15.1 The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 16 PUBLICITY

- 16.1 Neither party shall without written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the contract or use the other party's name in any format of promotion, publicity, marketing or advertising purpose

## 17 NO AGENCY

- 17.1 This order does not create a partnership between the Buyer and Supplier or make one party the agent of the other for any purpose.

## 18. GENERAL

- 18.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 18.4 Any notice to be given by the company or the supplier shall be sufficiently given if posted by first class letter post or delivered by hand to the other at the address set out in the contract. Every notice shall be deemed to have been received and given either forty-eight hours after posting or at the time of delivery.
- 18.5 any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 18.6 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.