

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 In these Conditions:

- "Buyer" means the person who accepts a written quotation of Primayer for the sale of the Goods or whose Written order for the Goods is accepted by Primayer
- "Conditions" means the standard terms and conditions of sale set out in this document
- "Contract" means the contract for the purchase and sale of the Goods
- "Goods" means the goods (including any instalment of the goods or any parts for them) which Primayer is to supply in accordance with these Conditions
- "Primayer" means Primayer Limited (registered in England and Wales) under number 2959100
- "Writing" includes, facsimile transmission and comparable means of communication, but not electronic mail and Written shall be construed accordingly.

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

### 2 BASIS OF THE SALE

- 2.1 Primayer shall sell and the Buyer shall purchase the Goods in accordance with any Written quotation of Primayer accepted by the Buyer, or any Written order of the Buyer which is accepted by Primayer, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Primayer.
- 2.3 Primayer's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Primayer in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by Primayer or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Primayer is followed or acted upon entirely at the Buyer's own risk, and accordingly Primayer shall not be liable for any such advice or recommendation which is not so confirmed.

### 3 ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Primayer unless and until confirmed in Writing by the Primayer's authorised representative.
- 3.2 The Buyer shall be responsible to Primayer for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Primayer any necessary information relating to the Goods within a sufficient time to enable Primayer to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Goods shall be those set out in Primayer's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Primayer).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by Primayer in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Primayer against all loss, damages, costs and expenses awarded against or incurred by Primayer in connection with or paid or agreed to be paid by Primayer in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Primayer's use of the Buyer's specification.
- 3.5 Primayer reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to Primayer's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by Primayer may be cancelled by the Buyer except with the agreement in Writing of Primayer and on terms that the Buyer shall indemnify Primayer in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Primayer as a result of cancellation.

### 4 PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the Primayer's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Primayer's published price list current at the date of acceptance of the order. All prices quoted are valid

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- for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Primayer without giving notice.
- 4.2 Primayer reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Primayer which is due to any factor beyond the control of Primayer, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Primayer adequate information or instructions.
- 4.3 Unless otherwise agreed in Writing between the Buyer and Primayer, all prices are given by Primayer on an ex works basis, and where Primayer agrees to deliver the Goods otherwise than at Primayer's premises, the Buyer shall be liable to pay Primayer's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Primayer.

## 5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and Primayer, Primayer shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Primayer shall be entitled to invoice the Buyer for the price at any time after Primayer has notified the Buyer that the Goods are ready for collection or (as the case may be) Primayer has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of Primayer's invoice, and Primayer shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Primayer, Primayer shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Primayer) as Primayer may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above Barclays Bank PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Primayer's premises at any time after Primayer has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Primayer, by Primayer delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate and Primayer shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Primayer in Writing. The Goods may be delivered by Primayer in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Primayer to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If Primayer fails to deliver the Goods for any reason other than any cause beyond Primayer's reasonable control or the Buyer's fault, and Primayer is accordingly liable to the Buyer, Primayer's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give Primayer adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Primayer's fault) then, without prejudice to any other right or remedy available to Primayer, Primayer may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price obtainable and (after deducting storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

## 7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at Primayer's premises, at the time when Primayer notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods delivered otherwise than at Primayer's premises, at the time of delivery or, if the Buyer wrongfully fails

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to take delivery of the Goods, the time when Primayer has tendered delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until Primayer has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Primayer to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Primayer's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Primayer's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence), Primayer shall be entitled at any time to require the Buyer to deliver up the Goods to Primayer and, if the Buyer fails to do so, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Primayer, but if the Buyer does so all moneys owing by the Buyer to Primayer shall (without prejudice to any other right or remedy of Primayer) forthwith become due and payable.

## 8 WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below Primayer warrants the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for 1 year from delivery.
- 8.2 The above warranty is given by Primayer subject to the following conditions:
- 8.2.1 Primayer shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 Primayer 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 Primayer's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without Primayer's approval;
- 8.2.3 Primayer 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;
- 8.2.4 the above warranty does not extend to parts or equipment not manufactured by Primayer, in respect of which the Buyer shall only be entitled to the benefit the warranty as is given by the manufacturer to Primayer.
- 8.3 Any claim by the Buyer 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 Buyer) be notified to Primayer within 7 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 Buyer does not notify Primayer accordingly, the Buyer shall not be entitled to reject the Goods and Primayer shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Primayer in accordance with these Conditions, Primayer shall be entitled to replace the Goods (or the part in question) free of charge or, at Primayer's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but Primayer shall have no further liability to the Buyer.
- 8.5 Except in respect of death or personal injury caused by Primayer's negligence, Primayer shall not be liable to the Buyer 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 any indirect, special or Consequential Loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Primayer, 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 Buyer, and the entire liability of Primayer under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions. For the purposes of this condition 8.5, "Consequential Loss" means any loss of anticipated profits, damage to reputation or goodwill, loss of expected future business, damages, costs or expenses payable to any third party or any other indirect losses.
- 8.6 Primayer shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Primayer's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Primayer's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Primayer's reasonable control:
- 8.6.1 act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.6.2 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary

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- or local authority; import or export regulations or embargoes;
- 8.6.3 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Primayer or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 8.7 Where a Primayer product is specified to include a five year battery life this refers to the design life under one typical operating regime. The battery life is not warranted.

## 9 INSOLVENCY OF BUYER

- 9.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or Primayer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to Primayer, Primayer shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10 EXPORT TERMS

- 10.1 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2 Where Goods are supplied for export, the provisions of clause 10 shall (subject to any special terms agreed in writing between the Buyer and Primayer) apply notwithstanding any other provision of these Conditions.
- 10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 10.4 Unless otherwise agreed in Writing, the Goods shall be delivered ex-works to the air or sea port of shipment [and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979].
- 10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Primayer's premises before shipment. Primayer shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 10.6 Payment of all amounts due to Primayer shall be made by irrevocable letter of credit opened by the Buyer in favour of Primayer and confirmed by a bank acceptable to Primayer or, if Primayer has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Primayer of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of Primayer at such branch of HSBC Bank in England as may be specified in the bill of exchange.

## 11 GENERAL

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or place of business.
- 11.2 No waiver by Primayer of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 11.4 The parties acknowledge that it is not their intention that any third party shall be entitled to enforce any term of this agreement which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 11.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

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