

1. INTERPRETATION

1.1 In these conditions, unless the context requires otherwise:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Buyer: the person, firm or company who has ordered or agreed to purchase goods from the Seller;

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Clause 15.4

Contract: the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;

Goods: means any goods (or any part of them) set out in the Order;

Order: the Buyer's order for the Goods, as set out in the Buyer's purchase order form, or in the Buyer's written acceptance of the Seller's quotation as the case may be;

Quotation: means any quotation given by the Seller in the respect of the Goods;

Seller: means Precon Products Ltd;

Specification: any specification for the Goods, including any related plans, drawings or diagrams that are agreed in writing by the Buyer and the Seller.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality.)

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provisions includes all subordinate legislation made under the statute or statutory provision.

1.5 A reference to writing or written includes email.

2. APPLICATION OF TERMS

2.1 These Conditions apply to all Quotations, Orders and Contracts for the sale of Goods by the Seller.

2.2 These Conditions apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. ORDERS

3.1 Each Order or acceptance of a Quotation for Goods will be deemed to be an offer by the Buyer to purchase Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

3.2 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of Order is issued by the Seller, at which point the Contract shall come into existence.

3.3 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

4. DESCRIPTION

4.1 The quantity and description of the Goods shall be as set out in the Seller's Quotation or acknowledgement of Order.

4.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This Clause 4.2 shall survive termination of the Contract.

4.3 All specifications and advertising issued by the Seller and any descriptions, samples or illustrations contained in the Seller's catalogues or brochures are published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract nor have any contractual force. This is not a sale by sample.

4.4. The Seller may make any change to the specification, design, materials or finishes of all Goods which are:

4.4.1. required to conform with any applicable safety, statutory or regulatory requirement; or

4.4.2. do not materially affect their quality or performance.

4.5 The Goods are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for its purposes. All warranties and representations express or implied, as to the quality or fitness for purpose of the Goods are hereby excluded to the fullest extent permitted by law. In particular, all Goods expressed to be second hand have previously been used by a third party. Accordingly, the Buyer agrees to take such second hand Goods in their current state after having satisfied themselves as to their quality and fitness for the purpose for which the Buyer requires them.

4.6 A Quotation for the Goods given by the Seller shall not constitute an offer. A Quotation shall only be valid for a period of 15 Business Days from its issue.

5. PRICE AND PAYMENT

5.1. Unless otherwise agreed in advance in writing, the price for the Goods will be the price set out by the Seller in the Quotation.

5.2. The price of the Goods is exclusive of any costs of packing and carriage, which shall be invoiced to the Buyer.

5.3. The price of the Goods also excludes amounts in (i) respect of value added tax (VAT) which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice and (ii) any other applicable sales tax or duty which will be added to the price of the Goods.

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5.4. Payment shall be due in pounds sterling at the time an Order is placed unless expressly agreed in writing by the Seller. If the Seller subsequently invoices the Buyer for the Goods then payment shall be due within 30 days from end of month (unless otherwise agreed in writing by the Seller).

5.5. The Buyer shall make all payments due under the contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5.6. If any sum payable under the contract is not paid when due then, without prejudice to the Seller's other rights under these Conditions, that sum will bear interest from the due date until payment is made in full at 4 per cent per annum over Bank of England base rate from time to time.

5.7. Title to the Goods will not pass to the Buyer until payment of the price of the Goods in full.

5.8. The Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6. DELIVERY

6.1. Delivery of the Goods will be made ex-works as defined in INCOTERMS 2020.

6.2. The Seller will use its reasonable endeavours to deliver goods by the agreed delivery dates or if no dates are stated, within a reasonable time.

6.3. All delivery dates are estimates only and time of delivery is not of the essence.

6.4. The seller shall be entitled to decide the method of carriage. The Buyer shall pay for all charges, costs, and expenses incurred by the Seller for carriage.

6.5. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

6.6. The Seller shall not be liable for late delivery or non-delivery owing to any circumstance beyond its reasonable control (including any delay, act or omission of a third party carrier used by the Seller) and delivery of any goods shall be suspended for so long as such circumstance lasts.

6.7. The Buyer will inspect the Goods immediately upon receipt and will notify the seller in writing of any shortages, defects in the Goods or any other complaint in respect of them within 3 Business Days from the date of delivery (a "Notification").

6.8. If no such Notification is received, the Buyer is deemed to have accepted delivery and waived any remedy under these Conditions.

6.9. Where the Buyer notifies the Seller of non-delivery, defects, shortages, the Seller's only liability shall be at its sole option as soon as reasonably practical to repair, replace defective goods, make good any shortages or to refund the Buyer the purchase price paid for the Goods.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

7.2 Title to the Goods shall not pass to the Buyer until:
(a) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Clause 7.4

7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

(a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in Clause 12.1(b) to 12.1(d); and
(e) give the Seller such information relating to the Goods as the Seller may require from time to time.

7.4 Subject to Clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the buyer resells the Goods before that time:

(a) it does so as principal and not as the Seller's agent; and

(b) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Clause 12.1(b) to Clause 12.1(d), then, without limiting any other right or remedy the Seller may have:

(a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the seller may at any time:

(i) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the goods are stored in order to recover them.

8. IMPORT LICENSES

8.1. The Buyer is responsible for obtaining, at its own costs, such import licenses and other consents in relation to the Goods as are required from time to time and, if required by the Seller, the Buyer shall make those licenses and consents available for the Seller prior to the relevant shipment.

9. WARRANTY

9.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

10. LIMITATION OF LIABILITY

10.1 References to liability in this Clause 10 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in this Clause 10 shall limit the Buyer's payment obligations under this agreement.

10.3 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.4 Subject to Clause 10.3, the Seller's total liability to the Buyer shall not exceed cost of materials.

10.5 The caps on the Seller's liabilities shall be reduced by:

- (a) payment of an uncapped liability pursuant to clause 10.3;
- (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

10.6 (a) Subject to Clause 10.3, Clause 10.6(b) excludes specified types of loss.

(b) Types of loss wholly excluded:

- (i) Loss of profits.
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

10.7 The Seller has given commitments as to compliance of the Goods with relevant specifications in Clause 4. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

10.8 Unless the Buyer notifies the Seller that it intends to make a claim in respect of an event within the notice period as defined below, the Seller shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.9 This clause 10 shall survive termination of the Contract.

11. INTELLECTUAL PROPERTY

11.1 All patents, copyrights, design rights and trademarks, rights to confidence and all other intellectual property rights, whether registered or unregistered, in any part of the world, in or developed by the Seller in relation to the goods are and shall remain the property of the Seller.

11.2 The Buyer shall not remove or tamper with any trademarks or labels attached to the Goods.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clause 12.1(b) to Clause 12.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if they buyer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Seller may terminate the contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

12.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

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

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12.6 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. FORCE MAJEURE

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from any event beyond a party's reasonable control, including, but not limited to, for the avoidance of doubt epidemics, pandemics, quarantines or other forms of government intervention. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

14. COMMUNICATION

14.1 All notices shall be in writing, and sent by first class post or email to the address of the recipient stated in any quotation, order or acknowledgement of order.

14.2 Notices shall be deemed to be received if sent by first class post, on the second day following the day of posting, and if sent by email on day of transmission (if sent before 4.00pm).

15. GENERAL

15.1 Assignment and other dealings.

(a) The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

15.2 Confidentiality.

(a) Each party undertakes that it shall not at any time and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party, except as permitted by Clause 15.2(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 15.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15.3 Entire Agreement - 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. 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.

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

15.5 Waiver - No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 Severance - If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this Clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.8 Governing law - The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

15.9 Jurisdiction - Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

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16. BUYER DEALING AS CONSUMER

16.1 It is not intended that the Buyer will be acting as a consumer, and this Contract is intended for business customers. The Buyer is a business customer if it is buying Goods wholly or mainly for use in connection with its trade, business, craft or profession, even if the Buyer is an individual. If, however, the Buyer is acting as a consumer (but not otherwise) the following provisions of this clause 16 will apply.

16.2 If the Buyer is a consumer, and has bought online, by mail order, over the telephone or on their doorstep, the Buyer has a legal right to change their mind for most of the Goods. This allows the consumer Buyer to change their mind about the purchases and receive a refund of what they have paid for it, including the delivery costs. This is subject to some conditions, as set out below. For the avoidance of doubt, the right for a Buyer to change its mind does not apply to a Buyer buying in the cause of a business.

16.3 A consumer Buyer has 14 days to change their mind for online, telephone, mail order and doorstep sales only. The Buyer must pay the costs of return.

16.4 The consumer Buyer cannot change its mind about an order for digital products (after they have started to download or stream them); services, once they have been completed; products sealed for health protection or hygiene purposes, once these have been unsealed after the consumer Buyer has received them; sealed audio or sealed video recordings or sealed computer software, once these products are unsealed after the consumer Buyer has received them; Goods which are made to the consumer Buyer's specifications or are clearly personalised; and goods which become mixed inseparably with other items after their delivery. Such products shall include, without limitation:- Powder products and chemicals which have been unsealed and special ordered in products made to your specification or made to your order, perishable goods, and goods which have deteriorated or passed their sell by date before return.

16.5 If the consumer Buyer changes its mind about a product they must let the Seller know no later than 14 days after:

- (a) the day the Seller delivers the Goods. If the Goods are for regular delivery (for example, a subscription), the consumer Buyer can only change their mind after the first delivery. If the Goods are split into several deliveries over different days, the period runs from the day after the last delivery.
- (b) the day the Seller confirms it has accepted the consumer Buyer's order, if it is a service.
- (c) the day the Seller confirms it has accepted the Seller's order, if it is for digital content for download or streaming, although the consumer Buyer cannot change their mind about digital content once the Seller has started providing it.

16.6 The consumer Buyer has to return the Goods at their own cost within 14 days of telling the Seller that they have changed their mind. They should send the Goods back to the Seller, and keep a receipt or other evidence from the delivery service that proves the consumer Buyer has sent the Goods and when they sent it. If the consumer Buyer does not do this and the Seller does not receive the Goods at all or within a reasonable time the Seller will not refund the consumer Buyer the price.

16.7 The Seller will only refund standard delivery costs, not any extra paid by the consumer Buyer for express delivery or delivery at a particular time.

16.8 The consumer Buyer has to pay for services they received before they changed their mind.

16.9 The Seller can reduce the refund if the consumer Buyer has used or damaged a product. If the consumer Buyer handles the Goods in a way which would not be acceptable in-store, the Seller will reduce the refund to compensate it for its reduced value.

16.10 If the Goods are a service, digital content or goods that have not been delivered or that the Seller is collecting from the consumer Buyer, the Seller will refund the consumer Buyer as soon as possible and within 14 days of the consumer Buyer telling the Seller they have changed their mind. In the case of Goods which the consumer Buyer is sending back to the Seller, the Seller will refund the consumer Buyer within 14 days of receiving them back from the consumer Buyer (or receiving evidence that they have been sent to the Seller). The Seller will refund the consumer Buyer by the method the consumer Buyer used for payment, and will not charge a fee for the refund.