

Terms and Conditions of Sale

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1. Application

These Conditions shall apply in place of and prevail over any terms or conditions contained or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by a Director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished. For the avoidance of doubt each accepted order for goods between the Seller and the

Buyer shall form a separate contract "Contract" incorporating these Conditions.

2. Quotations And Acceptance

2.1. Acceptance by the Seller of an order from the Buyer is confirmation of the Buyer's irrevocable order and may only be modified by the Buyer in the event of error in interpretation of quantities or products by the Seller and the Seller reserves the right to withdraw or revise the quotation at any time prior to the supply of the goods.

2.2. The Buyer shall advise the Seller of any such error within 7 days of the date of the acceptance document.

3. Prices

3.1. The prices payable for the goods shall be those shown on the invoice which shall be based upon the Seller's list price for the goods ex works notified to the Buyer (unless such prices are inconsistent with prices formally quoted in respect of the contract).

3.2. Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price.

4. Terms of Payment

4.1. All goods shall be invoiced and paid for in Pounds Sterling unless otherwise agreed in writing by the Seller. Payment shall be made by such means as the Seller may from time to time direct.

4.2. Payment of invoices shall, unless otherwise agreed in writing, be made in full without any deduction or set-off (unless the Buyer has an undisputed liquidated claim against the Seller in an amount equal to the deduction) within 30 days of the date of delivery of the Products.

4.3. Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.

4.4. Interest shall be payable on overdue accounts at the rate of 2% above the base rate from time to time of the Royal Bank of Scotland Plc from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement.

5. Delivery

5.1. In any case where goods are sold ex-works or on the basis of any other international trade term the meaning of such term contained in Incoterms as revised from time to time shall apply except where inconsistent with any of the provisions contained in these Conditions.

5.2. Delivery dates mentioned in any quotation or elsewhere are approximate only and may not be made of the essence by notice. Such dates are not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates.

5.3. Delivery shall be at the premises of the Seller notified to the Buyer unless otherwise stipulated or agreed by the Seller. Unless the Buyer instructs otherwise the Seller will arrange carriage and insurance to the Buyer's premises at the Buyer's risk and the Buyer shall reimburse to the Seller all sums expended by it in this connection upon payment by the Buyer for the goods in question.

5.4. If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract or fails to take any action necessary on its part for delivery or shipment of the goods the Seller shall be entitled to store the goods in such manner as it deems fit at the cost of the Buyer, to dispose of the goods as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure, or to terminate the contract with immediate effect.

5.5. Unless otherwise expressly agreed the Seller may effect delivery in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract. In the event of payment not being made in accordance with the terms herein the Seller may suspend delivery of all or any of the instalments.

6. Risk

Notwithstanding Condition 5 and Condition 7 risk shall pass on delivery to the Buyer, its agent or representative (including third party carrier) at the premises of the Seller.

7. Title

7.1. Notwithstanding delivery and the passing of risk, property in all or any goods supplied by the Seller shall remain in the Seller until the Seller receives payment in full (in cash or cleared funds) by or on behalf of the Buyer of all sums in respect of:

7.1.1 the goods; and

7.1.2 all other sums which are or which become due to the Seller from the Buyer on any account. Property in the goods shall pass to the Buyer at the time when such payment is received from the Buyer by the Seller (and not earlier).

7.2. Until property in the goods passes to the Buyer, the Buyer shall:

7.2.1 be the bailee of the goods on a fiduciary basis for the Seller;

7.2.2 store the goods (at no cost to the Seller) securely safely and separately from the Buyer's own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Seller;

7.2.3 not to destroy, deface or obscure any identifying mark or packaging on or relating to the goods and ensure that the goods can be identified by reference to corresponding invoice numbers.

7.2.4 maintain the goods in satisfactory conditions and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

7.3 The Seller's consent to the Buyer's possession of the goods and any right the Buyer shall have to possession of the goods shall cease if any sum in respect of the goods is not paid to the Seller by or on behalf of the Buyer on or before the date when it is due.

7.4. The Buyer grants to the Seller its agents and employees an irrevocable licence at any time to enter upon any premises where the goods are stored or where the Seller reasonably believes them to be stored for the purpose of inspecting or, where the Buyer's right to possession has terminated, of recovering them.

7.5. Notwithstanding the provisions of this Condition 7 the Buyer may sell the goods, before title has passed to it solely on the following conditions:

7.5.1 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such sale; and

7.5.2 any sale shall be effected in the normal course of the Buyer's business at full market value.

7.6. The Seller shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the Seller.

7.7 The Buyer's right to possession of the goods shall terminate immediately if:

7.7.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes 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 documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

7.7.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

7.7.3 the Buyer encumbers or in any way charges any of the goods.

8. Variations

The Seller shall supply the goods subject to availability and shall be deemed to have fulfilled its contractual obligations in respect of any delivery, even though the quantity may be less than the quantity specified in the quotation. In such event at the Seller's option:

8.1. the Buyer shall pay for the actual quantity delivered provided that, in the case of discrepancies between the quantity delivered and the quantity specified in the invoice, the Buyer notifies the Seller of a claim within 10 days of receipt of the goods; or

8.2. the Seller may make good any shortage or non-delivery.

9. Specifications And Information

9.1. Unless expressly agreed in writing by the Seller all descriptions, samples, drawings, designs, specifications and particulars or materials, colours, weights and dimensions submitted by the Seller are approximate, and the Seller shall have no liability in respect of any deviation therefrom.

9.2. All drawings, designs, specifications and information submitted by the Seller are confidential and shall not be disclosed to any third party without the Seller's written consent. All such drawings, designs, specifications and information and any copies made therefrom shall be returned to the Seller upon request.

10. Limitation Of Liability

10.1. The following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1. any breach of these terms and conditions; and

10.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

10.3. Nothing in these terms and conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

**THE FRANCHISEE'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF
CONDITIONS 10.4 AND 10.5**

10.4. Subject to conditions 10.2 and 10.3:

10.4.1. the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to the price paid by the Buyer for the item or items which have given rise to the liability and the price of any parts supplied by the Seller which have been rendered defective as a result of the failure of the item giving rise to the liability. Alternatively, the Seller at its option may replace or provide replacement parts for any goods found to be damaged or defective or rendered defective as stated above or give credit for the Contract price of such goods to the Buyer provided they have been returned to the Seller; and

10.4.2. the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any indirect or consequential loss or damage (whether for loss of business or otherwise), loss of profit, costs, expenses or other claims for consequential compensation whatsoever (whether or not caused by the negligence of the Seller, its employees, agents or sub-contractors) which arise out of or in connection with a Contract.

10.4.3. the Seller shall not be liable to the Buyer for defects in or damage to the goods caused by fair wear and tear, abnormal conditions of storage, fitting, installation, or use or any act, neglect or default of the Buyer or of any third party (including but not limited to use in circumstances and situations for which the goods are not suited) and

10.5. The Buyer shall indemnify the Seller against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with a Contract or goods supplied under a Contract brought or threatened to be brought against the Seller by any third party except to the extent the Seller is liable to the Buyer in accordance with these terms and conditions.

10.6. In respect of warranties: -

10.6.1. The Seller will use its reasonable endeavours to obtain for the Buyer the benefit of any undertakings warranties or indemnities which may be available from manufacturers of the goods.

10.6.2. Subject to Condition 10.3.1 and to the extent permissible in law, all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the goods are hereby excluded and the Seller shall be under no liability to the Buyer for any loss, damage or injury direct or indirect resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Seller its employees or agents.

10.7. The Seller's prices are determined on the basis of the limits of liability set out in this Condition.

11. Packaging

11.1. The Buyer shall meet the cost of any special packaging requested by the Buyer.

11.2. The Seller shall be entitled to invoice the Buyer for the cost of all pallets and other returnable packaging materials unless the same are returned to the Seller in good condition or replaced carriage paid within 60 days of the date of delivery.

12. Licence And Costs

If any licence or consent of any Government or other authority shall be required for the acquisition, import, carriage or use of the goods by the Buyer, the Buyer shall obtain such licence or consent at its own expense and if necessary produce evidence of the licence or consent to the Seller on demand. Failure so to do shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

13. Force Majeure

13.1. The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including but not limited to Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, goods, materials or of raw materials therefor by the Seller's normal source of supply or the manufacture of the goods, by the Seller's normal means of delivery of goods or by the Seller's normal route or means of delivery.

13.2. If due to such circumstances or events the Seller has insufficient stocks to meet all of its commitments the Seller may at its sole discretion apportion available stocks between its customers and the Buyer shall accept delivery thereof notwithstanding the terms of Condition 8.

14. Severance

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.

15. Choice Of Law

The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

16. Consumers

These terms and conditions are intended for sales between the Seller and another business and do not apply to sales made to consumers (as such term is defined in the Unfair Contract Terms Act 1977).

17. Company Registration

Pirtek (UK) Limited is registered with Companies House in London, United Kingdom. Company No. 2301810.