



## **TERMS & CONDITIONS OF SALE**

### 1. Interpretation

1.1 In these Terms:

"Buyer" means the person who accepts the seller's written quotation for the sale of the Goods; "Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms; "Seller" means PH EUROPE LIMITED (registered in England under number 3181526); "Contract" means the contract for the sale and purchase of the Goods; "Terms" means the terms and conditions herein stated. "Writing", and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

### 2. Basis of the sale

2.1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's quotation (if accepted by the Buyer), subject to these Terms, which shall govern the Contract to the exclusion of any other terms 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.

2.1.2 Only these terms shall apply to transactions between the Seller and the Buyer. Any conditions or terms emanating from the Buyer's documents are sent by the Buyer and received by the Seller on the understanding that they appear on the Buyer's documents because they are printed thereon but have no legal effect whatsoever and the Buyer waives any rights which the Buyer might have to rely on such conditions.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Seller 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 the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.



3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer).

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation.

#### 4. Price of the goods

4.1 The contract price of the Goods shall be the Seller's confirmed quoted price. Unless otherwise stated prices are quoted subject to final confirmation by the Seller and, may be altered by the Seller prior to an agreed sale without giving notice to the Buyer.

4.2 The Seller 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 the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), 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 the Seller adequate information or instructions.

4.3 Except as otherwise stated in the Seller's quotation and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller'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 the Seller.

#### 5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may 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 the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller 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 on request.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:



5.4.1 cancel the contract or any other current Contract or suspend any further deliveries to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of two per cent per month 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 to the place for delivery which is agreed by the Seller, by the Seller delivering the Goods to that place, unless otherwise agreed.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller 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 the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms 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, unless agreed in writing between both parties.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or 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 at the time of delivery to the agreed location or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller 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 the Seller 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 the Seller'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 the Seller's property, but the Buyer may 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 and have not been resold or been subject to a process), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on 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 the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

#### 8. Warranties and liability

8.1 Subject to the following provisions, the Seller warrants that it has used all reasonable endeavours to procure that the Goods will correspond with their specification at the time of delivery.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working conditions, failure to follow any instructions given by the Seller or on its behalf (whether oral or in Writing) or misuse of the Goods;

8.2.3 the Seller 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 Goods not processed or manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the supplier to the Seller.

8.3 The Buyer acknowledges that the Seller acts as broker to source and procure delivery of the Goods notwithstanding that the Contract for the supply is made between the Buyer and the Seller and therefore no warranty is given in respect of any defect in materials save that the Seller shall upon request assign the benefit of the guarantees and warranties that it may obtain from the source where in its power so to do and in any event will otherwise assist the Buyer to obtain the full benefit of its rights and remedies as against such source provided the Buyer does not also seek the same remedy against the Seller.

8.4 Within three days of delivery the Buyer is to retain samples of the Goods delivered and to analyse them for the purpose of quality control.

8.5 No claim may be made by the Buyer in respect of defects in the quality or condition of the Goods if the Goods in question have been subjected to any process or mixed with other Goods at which time the Goods shall be deemed acceptable to the Buyer and satisfactory in every way.

8.6.1 A 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 must (whether or not delivery is refused by the Buyer) be notified to the Seller within seven 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 the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller 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.

8.6.2 In any event the Buyer shall lose the right to claim for any defect in or failure of the Goods to correspond to specification if he has not given notice to the Seller within a period of one month from the date of delivery of the relevant Goods.

8.7 Except in respect of death or personal injury caused by the Seller's negligence the Seller 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation (including loss of plant time) whatsoever (whether caused by the negligence of the Seller, 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 the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.8 The Seller 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 the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.

## 9. Representations

All representations furnished by the Seller in respect of the Goods whether or not in writing are furnished only on the basis that they will not form part of the Contract or be relied upon by the Buyer for any purpose. The Buyer is aware that the Seller is not an expert in the properties of the materials comprising the Goods which are supplied in fulfilment of the Buyer's Order nor is the Seller an adviser thereon as suitable for any particular purpose but is merely providing the Goods to the Buyer's specification which the Buyer instructs the Seller upon and to the material specification and method required by the Buyer.

## 10. Insolvency of buyer

10.1 This clause 10 applies if:

10.1.1 the Buyer makes a 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

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may 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.

## 11. Contract terms

For the purposes of the Unfair Contract Terms Act 1977 the parties hereto acknowledge that the Terms and Conditions hereof are reasonable as between two commercial parties of independent bargaining strengths. The Buyer acknowledges that the Seller is not expert in the properties of Goods in respect of which the Buyer has required nor is the Seller required to advise in connection herewith.

## 12. General

12.1 The Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any associated company provided that any act or omission of any such other company shall be deemed to be the act or omission of the Seller.



12.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.3 No waiver by the Seller 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.

12.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

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.