

PALLETTOWER (G.B.) LIMITED - TERMS AND CONDITIONS OF PURCHASE

1. **DEFINITIONS**
- 1.1 In these Conditions (unless the context otherwise requires):
- 1.1.1 **"the Buyer"** Pallettower (G.B.) Limited (registered number: 00908180)
 - 1.1.2 **"the Contract"** the contract between the Buyer and the Seller for the sale and purchase of the Goods and/or the supply of the Services formed in accordance with Condition 3 and consisting of the Order (including the Specification), the Acknowledgement (as defined in Condition 3.1) and these Conditions
 - 1.1.3 **"Delivery"** delivery of an Order shall be completed on the completion of unloading of the Order at the delivery location specified in the Order and "Delivered" shall be construed accordingly
 - 1.1.4 **"the Goods"** the articles or things or any of them or any part of them described in the Order
 - 1.1.5 **"the Order"** the order placed by the Buyer for the supply of the Goods or the performance of the Services
 - 1.1.6 **"the Seller"** the person or persons to whom the Order is addressed
 - 1.1.7 **"the Services"** the services described in the Order to be supplied by the Seller to the Buyer
 - 1.1.8 **"the Specification"** the technical description (if any) of the Goods or the Services contained or referred to in the Order
- 1.2 All headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of the Contract.
- 1.3 Unless the context otherwise requires:
- 1.3.1 words in the singular shall include the plural and vice versa;
 - 1.3.2 references to any gender shall include the others;
 - 1.3.3 references to legal persons shall include natural persons and vice versa;
 - 1.3.4 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and
 - 1.3.5 any words following the words "include", "includes", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.
2. These Conditions shall be deemed to be incorporated into the Contract to the exclusion of all other terms and conditions and all previous oral and written representations. In the case of any inconsistency with any letter incorporating or referring to these Conditions or any acknowledgement of order, letter or form of contract sent by the Seller to the Buyer or any other communication between the Seller and the Buyer whatever may be their respective dates the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a person duly authorised on behalf of the Buyer.
3. **FORMATION**
- 3.1 Each Order for Goods or Services will be accepted by the Seller by returning the Buyer's standard acknowledgement of order form (the "Acknowledgement") within seven days of the date of the Order or within such other period as may be specified in the Order. The Contract is only formed when the Seller has served the Acknowledgement on the Buyer. No Contract will exist prior to the date of the Acknowledgement.
- 3.2 Delivery of the Goods or commencement of performance of the Services will be deemed conclusive evidence of the Seller's acceptance of these Conditions.
4. **GOODS AND SERVICES**
- 4.1 The Seller warrants and undertakes to the Buyer that the Goods:
- 4.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), and fit for any purpose held out by the Seller or made known to the Seller either in writing or orally at or prior to the Contract being formed;
 - 4.1.2 will be free from defects in design, material and workmanship for a period of not less than 12 months from the date such Goods are Delivered;
 - 4.1.3 will conform in every respect with any Specification, drawings, samples or descriptions provided by the Buyer or provided by the Seller and comply with the particulars stated in the Order and these Conditions;
 - 4.1.4 their design, construction and quality will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods or Services and their manufacture, packaging, sale, supply and performance;
 - 4.1.5 will be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 4.2 The Seller warrants to the Buyer that the Services:
- 4.2.1 will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the Contract;
 - 4.2.2 will be performed to such standards of quality generally observed in the industry for similar services and in accordance with all legal requirements and applicable standards.
- 4.3 Without prejudice to any other rights or remedies of the Buyer (whether express or implied), if the Seller breaches any terms of the Contract (including, without limitation, a failure or delay in Delivery) or the Buyer terminates the Contract in accordance with Condition 13 then whether or not the Goods have been accepted the Buyer may (but will not be obliged to):
- 4.3.1 cancel any or all remaining instalments or stages if the Contract has not already been terminated;
 - 4.3.2 refuse to accept any subsequent Delivery of the Goods or performance of the Services which the Seller attempts to make;
 - 4.3.3 recover from the Seller any additional expenditure reasonably incurred by the Buyer in obtaining the Goods or Services in substitution from another supplier;
 - 4.3.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods or perform the Services on the due date or at all.
- 4.4 Without prejudice to any other remedies of the Buyer, the Seller shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from the date of Delivery where such defect is due to faulty design, the Seller's erroneous instructions as to use or erroneous data or is due to inadequate or faulty materials or workmanship, or is due to any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of Delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. If any Services are found to have been performed defectively within 12 months of the date of their performance the Seller shall forthwith upon notice re-perform the same.
- 4.5 The Buyer will not be deemed to have accepted the Goods until it has had a reasonable period to inspect them following Delivery. The Buyer will also have the right to reject the Goods as though they had not been accepted, for a reasonable period after any latent defect in the Goods has become apparent.
- 4.6 Without prejudice to any other of its rights the Buyer may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with any of its obligations under the Contract.
- 4.7 The Buyer shall when giving notice of rejection specify the reason therefor and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall at the Buyer's option:
- 4.7.1 replace such rejected Goods with goods which are in all respects in accordance with the Contract or credit the Buyer with the invoice price thereof and reimburse the Buyer all freight and handling costs reasonably incurred by the Buyer and/or for which the Buyer is liable in respect of the Goods;
 - 4.7.2 reimburse the Buyer all freight and handling costs reasonably incurred by the Buyer in the implementation of a stock recovery, recall or market withdrawal of the Goods in any part of the world.
- 4.8 **The Seller acknowledges that precise conformity of the Goods and/or Services with the Contract is of the essence of the Contract and the Buyer will be entitled to reject the Goods or terminate the Contract under Condition 13.1.1, if the Goods or Services are not in conformity with the Contract, however slight the breach may be. Any breach of this Condition is deemed a material breach which is not capable of remedy under Condition 13.1.1.**
- 4.9 The Buyer may at any time make changes in writing relating to the Order, including changes in the drawings or Specification, method of shipment, quantities, packing or time or place of Delivery. If such changes result in an increase in cost sell or time required for performance of the Contract an equitable adjustment will be made to the price. Delivery schedule or both. Any such claim or adjustment must be approved by the Buyer in writing before the Seller proceeds with such changes.
5. **INSPECTION TESTING AND SAMPLES**
- 5.1 If so required by the Buyer the Seller shall submit samples of the Goods for the Buyer's approval before the bulk of the Order is Delivered. Such samples should be marked for identification by the Seller and will be retained by the Buyer until the Goods have been Delivered.
- 5.2 The Buyer shall be entitled to inspect and test the Goods during manufacture, processing or storage. If the Buyer exercises this right, the Seller shall provide or shall procure the provision of all such facilities as may reasonably be required by the Buyer therefor.
- 5.3 **If as a result of any inspection or test under Condition 5.2 the Buyer is of the reasonable opinion that the Goods or the Seller do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply it may inform the Seller accordingly and the Seller shall promptly take such steps as may be necessary to ensure such compliance. Without prejudice to any other rights of the Buyer under the Contract, any failure by the Seller to comply with this obligation will be deemed a material breach which is not capable of remedy entitling the Buyer to terminate the Contract under Condition 13.**
- 5.4 Notwithstanding any such inspection or test the Seller will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Seller's obligations under the Contract.
6. **PRICE**
- 6.1 The price for the Goods and/or Services will be the price stated in the Order, together with VAT (where applicable).
7. **DELIVERY**
- 7.1 The Goods shall be Delivered by the Seller properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport and at the time and to the place or places and in the manner specified in the Contract or as subsequently agreed in writing by the parties. No charge shall be made by the Seller in respect of carriage unless the Buyer has expressly agreed otherwise in writing.
- 7.2 Unless otherwise agreed by the Buyer in writing, it shall have no obligation to pay for or return packing cases, skids, pallets, drums or other articles used for packing the Goods whether or not re-usable.
- 7.3 **Time for Delivery of the Goods and performance of the Services will be of the essence and if the Goods are not Delivered or the Services not performed at or within the time specified in the Contract the Buyer shall be entitled to terminate the Contract forthwith, but without prejudice to any of its other rights.**
- 7.4 Any Goods or Services supplied under the Contract earlier than the due date for Delivery or performance will not be accepted or paid for by the Buyer unless the Buyer notifies the Seller in writing of its intention to accept and pay for the same.
- 7.5 All Goods must be accompanied by a detailed advice note stating the Buyer's purchase order number and giving full particulars of the Goods supplied (including all operations and safety instructions and warning notices and other information as may be necessary for their proper use, maintenance and repair) except when such Goods are sent directly to premises of the Buyer's customer when the advice note sent with the Goods should not show the Seller's name. A copy of the advice note must be sent to the Buyer on the day upon which the Goods are Delivered and an invoice stating the Buyer's purchase order number must be promptly delivered to the Buyer.
- 7.6 The Seller may not deliver the Goods by separate instalments or perform the Services in stages unless agreed in writing by the Buyer. If the Buyer does so agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Buyer will have the right, but not the obligation, to:
- 7.6.1 treat all the Contracts for the total Order as repudiated if the Seller fails to deliver or perform any instalment or stage; and
 - 7.6.2 reject any or all of the instalments for the total Order if the Buyer is entitled to reject any one instalment.
8. **STORAGE**
- 8.1 If for any reason the Buyer is unable to accept Delivery of the Goods at the time when the Goods are due and ready to be Delivered in accordance with Condition 7.1 the Seller shall at its own cost store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual Delivery.
9. **BUYER'S MATERIAL AND EQUIPMENT**
- 9.1 All drawings, specifications (including the Specification) and information (hereinafter together called "the Material") supplied to the Buyer by the Seller in connection with the Contract are confidential and the Seller and its officers and employees shall at any time disclose the Material to any third party without the Buyer's prior written consent.
- 9.2 All jigs, tools, moulds, patterns and other equipment (hereinafter called "the Equipment") supplied to the Seller by the Buyer or ordered by the Buyer from the Seller for the execution of the Contract and all Material shall be maintained in good condition by the Seller and the Seller shall indemnify the Buyer against all loss thereof or damage thereto whilst the same are in the Seller's possession or control.
- 9.3 The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for the Buyer and shall remain the Buyer's property at all times.
- 9.4 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any third party except

to the extent that any infringements arise from any Specification, drawings, samples or descriptions provided by the Buyer.

- 9.5 Where the Goods are designed, created or otherwise developed by or for the Seller in order to perform the Contract or for the Buyer, then all intellectual property rights therein or relating thereto throughout the world (including, without limitation, patents, copyrights, design rights, registered designs, trade marks, service marks and know-how and the rights to apply for any of the foregoing) ("the Intellectual Property Rights") shall belong to the Buyer absolutely. The Seller hereby assigns the Intellectual Property Rights to the Buyer with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Buyer.
- 9.6 The Seller shall at the Buyer's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as the Buyer may reasonably require to vest the legal title in, apply for, obtain and maintain in force in the Buyer's sole name (unless the Buyer otherwise directs) the Intellectual Property Rights;
- 9.6.1 to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights;
- 9.6.2 to bring or assist the Buyer in bringing or threatening any proceedings for infringement of any of the Intellectual Property Rights;
- 9.6.3 The Seller irrevocably undertakes that neither it nor any other person will assert against the Buyer or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this Condition "moral rights" shall have the meaning ascribed thereto by the Copyright, Designs and Patents Act 1988 (or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.
- 9.8 All containers, pallets and other packing materials supplied by the Buyer to the Seller shall be maintained in good condition and shall remain the Buyer's property at all times.
- 9.9 At the Buyer's request, the Seller shall promptly return the Material and the Equipment and the said containers, pallets and packing materials to the Buyer.
- 9.10 Without prejudice to the Seller's liability under the foregoing paragraphs of this Condition 9, the Seller shall maintain such insurance as the Buyer may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to the Buyer on demand either:
- 9.10.1 the policies of such insurances and the receipts for all premiums paid thereunder; or
 - 9.10.2 a current certificate of insurance from the insurers under such policies.
10. **PASSING OF PROPERTY**
- 10.1 Risk in and ownership of the Goods will pass to the Buyer on Delivery.
11. **PAYMENT**
- 11.1 Payment shall be made by the Buyer against a valid VAT invoice no later than 60 days after Delivery of the Goods or performance of the Services specified in the Contract or if Delivery is postponed at the Buyer's request as provided in Condition 8 within the same period after the end of such postponement.
- 11.2 If any sum under the Contract is not paid when due and is not the subject of a bona fide dispute between the parties then, without prejudice to the Seller's right under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over HSB Bank plc base rate from time to time. The Seller is not entitled to suspend deliveries or performance of the Goods or Services as a result of any sums being outstanding.
- 11.3 Without prejudice to any other right or remedy, the Buyer will be entitled but not obliged at any time or times to set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller (in either case however arising whether such liability is present or future, liquidated or unliquidated and irrespective of the currency).
12. **ASSIGNMENT AND SUB-CONTRACTING**
- 12.1 The Seller shall not without the Buyer's prior written consent assign, delegate, license, hold on trust, sub-contract or transfer the Contract or any of its rights or obligations thereunder to any other person, firm or company.
13. **TERMINATION**
- 13.1 If the Seller:
- 13.1.1 commits a material breach of the Contract which is not capable of being remedied; or
 - 13.1.2 commits a material breach of the Contract which is capable of being remedied but which the Seller fails to remedy within 30 days of a written notice setting out the breach and requiring it to be remedied being given by the Buyer, the Buyer may terminate the Contract immediately by giving written notice to the Seller.
- 13.2 The Buyer may terminate the Contract immediately by giving written notice to the Seller if the Seller becomes Insolvent.
- 13.3 The rights of termination set out in the Contract are in addition to and not in substitution for any rights of termination which may exist at common law.
- 13.4 The termination of the Contract however arising is without prejudice to the rights, duties and liabilities of either the Seller or the Buyer accrued prior to termination and the Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 13.5 In this Condition 13 "Insolvent" has the following meaning:
- 13.5.1 in the case of a party being a company or limited liability partnership where:
 - 13.5.1.1 It has a receiver, administrator or provisional liquidator appointed or passes a resolution for its winding-up or a court makes a winding up order in respect of it or it enters into any composition or arrangement with creditors or it ceases to carry on business or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 13.5.1.2 It has any disclaim, execution or other process levied or enforced on any of its property;
 - 13.5.1.3 It ceases to trade or appears in the reasonable opinion of the Buyer likely or is threatening to cease to trade;
 - 13.5.1.4 It has a change in its management and/or control as defined by section 416 Income and Corporation Taxes Act 1988; or
 - 13.5.1.5 the equivalent of any of the above occurs to the Seller in another jurisdiction to which the Seller is subject.
 - 13.5.2 in the case of a party being a partnership where it:
 - 13.5.2.1 proposes, makes or is subject to a partnership voluntary arrangement or composition with its creditors generally, or makes an application to a court of competent jurisdiction for protection from its creditors generally;
 - 13.5.2.2 has partners all of whom jointly present bankruptcy petitions as contemplated by Article 11 Insolvency Partnerships Order 1992;
 - 13.5.2.3 is subject to an order by a court of competent jurisdiction for its winding up;
 - 13.5.2.4 enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;
 - 13.5.2.5 has a receiver appointed over any of its assets or income;
 - 13.5.2.6 is unable to pay its debts within the meaning of sections 267 and 268 Insolvency Act 1986; or
 - 13.5.2.7 is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.
 - 13.5.3 in the case of a party being an individual where he has a receiver appointed or a court makes a bankruptcy order in respect of him or he enters into any composition or arrangement with creditors or ceases to carry on business or any steps or actions are taken in connection with any of these procedures.
14. **INDEMNITY**
- 14.1 The Seller shall indemnify the Buyer against all actions, suits, claims, demands, costs, charges, damages, liabilities, losses and expenses suffered or incurred by the Buyer and/or for which the Buyer may be liable to any third party due to, arising from or in connection with:
- 14.1.1 the negligent or willful acts or omissions of the Seller, its employees, agents or contractors;
 - 14.1.2 the breach (direct or indirect) of any provision of the Contract by the Seller;
 - 14.1.3 any defect in the workmanship, materials or design of the Goods or their packaging;
 - 14.1.4 any defective performance of the Services; or
 - 14.1.5 all infringement or alleged infringement of any Intellectual Property Rights for or relating to the Goods or the Services unless such infringement has occurred directly as a result of any specification supplied by the Buyer.
15. **FORCE MAJEURE**
- 15.1 The performance by the Buyer of any of its obligations under the Contract shall be deemed suspended if any of the following occur: strikes lock-outs or other industrial action whether of the Buyer's workforce or of any third party, accidents, war, terrorism or threat of terrorism, act of God, flood, fire, reduction in or unavailability of power or breakdown of plant or machinery, or any circumstances beyond the reasonable control of the Buyer. If the cause of such suspension shall continue for more than six months either party shall have the right to terminate the Contract upon giving not less than seven days' prior written notice to the other and the only liability of the Buyer shall be to pay the Seller for Goods received by the Buyer and Services performed for the Buyer prior to the date of such suspension.
16. **CANCELLATION**
- 16.1 **The Seller may not cancel the Contract. At any time prior to Delivery of the Goods or performance of the Services the Buyer may cancel the Contract by notice to the Seller if the Buyer has been notified by its customer for all or part of the Goods to which the Contract relates that such customer has cancelled its order for the same or if such customer is Insolvent (as defined in Condition 13.5), to be read as if the customer were a party) or the Buyer reasonably believes that such customer is likely to become Insolvent (as defined in Condition 13.5), or has a worsening credit rating, or is not paying the Buyer's invoices or the Buyer is unable to factor or invoice discount such customer's debts. In any of these events the Buyer shall have no liability whatsoever to the Seller in respect of the Contract (whether in respect of costs incurred by the Seller or loss by the Seller arising from cancellation of the Contract or otherwise).**
17. **LAW OF THE CONTRACT**
- 17.1 The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the parties agree to submit to the exclusive jurisdiction of the courts of England.
18. **MISCELLANEOUS**
- 18.1 Each right or remedy of the Buyer under any Contract is without prejudice to any other right or remedy of the Buyer under this or any other Contract.
- 18.2 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract but this will not affect any other provisions of the Contract which will remain in full force and effect.
- 18.3 No failure or delay by the Buyer to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 18.4 The Buyer may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 18.5 The Contract (including the Specification (if any)) contains all the terms which the Buyer and the Seller have agreed in relation to the Goods and Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and Services. The Seller acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Buyer which is not set out in the Contract or Specification. Nothing in this Condition 18.5 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
19. **NOTICES**
- 19.1 Unless stated otherwise in these Conditions, any notice given in connection with the Contract must be in writing and may be delivered by hand or sent by pre-paid first class or special delivery post or sent by facsimile transmission or e-mail to the Seller or the Buyer, as the case may be, at its address, e-mail address or facsimile number stated in the Acknowledgement or to either party's registered office.
- 19.2 Notices shall be deemed to have been received:
- 19.2.1 if sent by pre-paid first class or special delivery post 48 hours (excluding Saturdays, Sundays, bank and public holidays) after posting (exclusive of the day of posting);
 - 19.2.2 if delivered by hand, on the day of delivery;
 - 19.2.3 if sent by facsimile transmission, at the time of confirmation of completion of transmission by way of a transmission report;
 - 19.2.4 if sent by e-mail, at the time of sending provided that no automatic electronic notification informing the sender that the e-mail has not been delivered to the recipient or the recipient is out of office is received by the sender within 24 hours after sending the e-mail, provided that, where in the case of delivery by hand or transmission by facsimile or e-mail such delivery or transmission occurs after 4.00 pm on any day other than a Saturday or Sunday or a public or bank holiday in England ("Business Day"), service will be deemed to occur at 9.00 am on the next following Business Day.
- 19.3 Notices addressed to the Company shall be marked for the attention of the Managing Director.
- 19.4 Service by facsimile and e-mail is a valid means of service only where service of the original notice, demand or communication is not required.
- 19.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.