



## TERMS AND CONDITIONS

### 1. Definitions

In these Conditions:

- "The Company" means PRAYBOURNE LIMITED (Trading as PULSAR®)
- "The Contract" means any contract or arrangement entered into by the Company and the Buyer for the supply of Goods.
- "The Buyer" means any company, firm, individual or agent thereof to whom the Company's acknowledgement of order, delivery note or invoice is addressed.
- "The Goods" means the products (including any parts or accessories), materials and/or services to be supplied by the Company.

### 2. Applicability of Conditions:

The company concludes contracts for the supply of Goods subject only to these Conditions. The Buyer accepts that these Conditions shall govern relations between itself and the Company to the exclusion of any other terms including. Without limitation, conditions and warranties written or oral express of implied even if contained in any of the Buyer's documents which purport to provide that the Buyer's own Terms shall prevail.

If the Buyer accepts any Goods delivered by the Company or if a binding agreement for the supply of such Goods is in existence, then the acceptance of delivery by the Buyer of such Goods shall be deemed to constitute acceptance of these Conditions and of the terms of any invoice rendered by the Company at or before the time when such Goods are delivered. No variation of qualification of these Conditions or of any quotation or contract arising here from shall be valid unless agreed in writing by a Director of the Company.

If any legislation is compulsorily applicable to any business undertaken, these terms and conditions shall as regards such business, be read as subject to such legislation and nothing shall herein be constructed as a surrender by the Company of any rights or immunities, whether as an increase of its responsibilities of liabilities under such legislation and if any part of these terms and conditions be repugnant to such legislation to any extent such parts as regards such business be void only to that extent but no further.

The Company does not give or imply any warranty that the goods sold do not infringe the Patent rights of a third party. If goods are manufactured to the Buyers instructions, the Buyer shall indemnify the Company in respect of all claims, damages, costs and expenses in respect of any alleged infringement and on discovery of such infringement the seller shall be at liberty to terminate the contract and receive payment of all goods supplied, manufactured or allocated to the Buyer even if not actually delivered to or collected by the Buyer.

No agent or employee of the Company has the right to vary these terms and conditions, save that should any variation be agreed to by the Company as its absolute discretion then such variation should be approved in writing by a Director of the Company

Unless specified on the contract no guarantee is given or implied as the quality, washing stability colour-fastness, wearability, or making up quality of the goods supplied, nor as to their fitness for any purpose expressed. The Buyer shall in no case to be taken to have relied upon the skill or expertise for the Company or its agents

Every effort will be made to carry out the contract but its due performance is subject to cancellation by the Company or to such variation as it finds necessary as a result of any act of God, War, Strike, Lockout or any dispute, flood, fire, drought, legislation or other causes (whether of the foregoing class or not) beyond the Company control. No responsibility is accepted by the Company for late deliveries

The construction, validity and performance of this contract shall be governed by the Laws of England and any legal proceedings in relation to such contract shall be submitted to the jurisdiction of the English Courts without prejudice to the Company's right to bring any such proceedings before the courts have jurisdiction in the place of residence and business.

### 3. Representations

The terms of the Contract consist only of those contained in these Terms and Conditions (and in the Company's advice note and any other documents expressly referred to in such advice notes.) The Buyer shall not be entitled to rely on any other representations. Statements or Warranties whatsoever unless specifically confirmed by the Company in writing to the individual Buyer.

The Company shall not be liable in respect of any claims by the Buyer arising out of any of the conditions, warranties and guarantees subject to which the goods are offered. As to all of which matters, the Customer shall satisfy him/herself.

### 4. Prices

- 4.1 Prices contained in the Company's price lists, catalogues, booklets, advertising matter or similar matter are for the general guidance only.
- 4.2 If between the date of the order of the Goods and the date of delivery of the Goods there is an increase in the cost of the Goods, packing, carriage, delivery, duty, tax and any other impost thereon (including a rise caused by the devaluation or revaluation of the currency) the price shall be adjusted by adding thereto the amount of any increase in such costs or levels whether or not such an increase was or should have been foreseeable by the Company.
- 4.3 If, however, it is expressly agreed in writing between the Company and the Buyer that the price of the Contract should be a fixed price and not subject to any variation either by rise or fall in the costs or levels referred to in (4.2) above such fixed price will be the price of the Contract. If delivery of the order or any part thereof is delayed at the Buyer's request the fixed Contract price of such proportion, there of as relates to the part delayed as aforesaid will be subject to the variation (if any) set out in (4.2) herein and will be adjusted accordingly.

- 4.4 Unless otherwise stated prices do not include V.A.T. which will be chargeable at the date of despatch and/or performance of services as the case may be.
- 4.5 If in the reasonable opinion of the Company the credit rating of the Buyer becomes unsatisfactory prior to the delivery or if the Buyer fails to perform or observe any obligations on its part to be or until such obligations are duly performed or observed or by notice in writing to the Buyer unilaterally to cancel the Contract for the supply of goods.
- 4.6 If in the reasonable opinion of the Company the credit rating of the Buyer becomes unsatisfactory prior to the delivery or if the Buyer fails to perform or observe any obligations on its part to be or until such obligations are duly performed or observed or by notice in writing to the Buyer unilaterally to cancel the Contract for the supply of goods.
- 4.7 The Company reserves the right to alter prices and specifications without prior notice.

## 5. Delivery

- 5.1 Delivery will be effected by the Company at the Buyer's premises or to such other place as is mutually agreed. Any date for delivery of Goods as specified in the Buyer's order or otherwise quoted or agreed by the Company will be estimated by the Company as accurately as possible but is not guaranteed and in the event of any failure to meet such date the Company's sole obligation shall be to deliver the Goods within a reasonable period thereafter. The Goods shall be at the Buyer's risk on either entry on to the Buyer's premises or on being placed into custody on the Buyer's behalf and should be insured accordingly. The Company shall be entitled to make delivery by instalments and in such case each instalment shall be regarded as constituting a separate Contract to which these Conditions shall apply.
- 5.2 Notwithstanding the method of delivery, which shall be at the Company's discretion, the Buyer shall carefully examine the Goods on receipt of the same and shall give written notice of any short delivery or over delivery which must be received by the Company within 3 days of receipt of the Goods and in the case of any defects reasonable discoverable on careful examination written notice must be received by the Company within 10 days of receipt of the Goods. The Company shall be given a reasonable opportunity to examine any alleged defects. Goods shall not be returned by the Buyer without written authorisation and instructions from the Company nor will returned Goods be accepted if compliance is not made with such instructions.
- 5.3 In the event that the Company and the Buyer agree to transfer the Goods by a method other than delivery effected by the Company, then the risk of loss or damage of any kind in the Goods shall pass to the Buyer whichever of the following events occur earlier: -
  - 5.3.1 collection by or on behalf of the Buyer or by an independent carrier for despatch to be buyer.
  - 5.3.2 7 days from the date of notice given by the Company that the Goods are ready for collection of despatch.If the goods shall not have been collected by or on behalf of the Buyer or by an independent carrier for despatch to the Buyer within 7 days of the Company's written notice pursuant to sub-paragraph (5.3) (b) herein then the Company may at any time thereafter send to the Buyer a further notice notifying the Buyer of the Company's intention to sell the same after expiration of a period of not less than 7 days from the date of the notice.
- 5.4 If the Buyer neglects to serve notice under sub-paragraph (5.2) above of any over delivery, then the Company may at its option either repossess the excess Goods or invoice them and be paid forthwith by the Buyer for the excess Goods at the price ruling at the date of delivery.
- 5.5 The Buyer shall pay to the Company in addition to the purchase price for the Goods, charges properly incurred by the Company in connection with the carriage of Goods valued at £500 and more are supplied free of carriage if delivered to the United Kingdom mainland only. Some postcodes in remote parts of mainland UK may be subject to additional carriage costs which will be communicated with the Buyer for approval before despatch.

## 6 Payment

Unless expressly agreed in writing with the Buyer or stated on the face hereof payment shall be made for the Goods in full in sterling or at the option of the company, the Buyer's currency. Without any deduction of deferment on account of any disputes or cross claims whatsoever not later than 30 days following the date of the Company's invoice in respect of the Goods. Time for payment shall be of the essence. Where full payment is not received by the due date the Company shall be entitled to charge interest on the sum outstanding at the rate of 4% per month calculated on a daily basis but without prejudice to the Company's rights to receive payments on the due dates. The Company reserves the right to recover all legal fees in the event of extended non-payment of goods or services.

## 7 Property in Goods

- 7.1 Notwithstanding any agreed terms of payment, neither legal nor beneficial title to the Goods will pass to the Buyer until:
  - 7.1.1 the Buyer has paid to the Company all sums due and payable from the Buyer under this Contract and any other contract between the Buyer and the Company: or
  - 7.1.2 the Company serves on the Buyer notice in writing to that effect whichever shall happen first.
- 7.2 The buyer hereby licences the Company, its servants and agents to enter upon any premises of the Buyer for the purpose of either satisfying itself that Condition 7.3 below is being complied with by the Buyer and/or, if the Company has terminated the Buyer's right of resale pursuant to Condition 7.5 below or in the event of determination or repudiation of the contract (howsoever occurring), for the purposes of recovering any Goods in respect of which property has not passed to the Buyer.
- 7.3 Until title to the goods has passed to the Buyer, the Buyer shall possess the Goods as a bailee of the Company the terms of the bailment being modified by this Contract and the Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.
- 7.4 Notwithstanding that title has not passed and subject to Condition 7.5 the Buyer may resell the goods in the ordinary course of business as mercantile agent buy only on terms that title to the goods shall not pass to the purchaser until the Buyer as mercantile agent has received payment in full of all moneys owing from the purchaser. Such resale shall give rise to no obligation whatsoever whether contractual or otherwise by the company. Until such payment is made the Company reserves the right to recover payment for the Goods from the purchaser in accordance with the provisions of sub-section 12(3) of the Factors Act 1889. The Buyer shall keep accurate records of the Goods resold and shall include in those records details of the price of any resale, the identity and address of the purchaser and the date the resale price was paid, if at all.
- 7.5 The Buyer's rights of resale may be terminated by the Company upon oral or written notice to the Buyer immediately if the Buyer defaults in payment of any sum when due (or fails to pay any instalment in which case the whole outstanding balance shall immediately become due) and shall automatically cease if a receiver is appointed over any of the assets of the Buyer, or any person shall become entitled to levy distress in respect of any assets situated at the premises of the Buyer, or a judgement is entered against the buyer and

is not paid out within seven days, or a petition is presented for an administration order in respect of the Buyer, or a petition is presented or notice is given of a resolution to wind up the Buyer or the Buyer is or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 of if the Buyer is prohibited from trading. The Buyer shall immediately notify the Company on the occurrence of any of the events described above.

- 7.6 The Buyer shall not be entitled to pledge or grant any security in any way for any indebtedness over or in respect of any of the Goods which remain the property of the Company.
- 7.7 Notwithstanding the provisions of Conditions 7(4), (5) and (6), the Company shall, if it retakes the Goods and resells them, account to the Buyer for the balance (if any) as determined pursuant to Condition 7(8)
- 7.8 The balance in respect of which the Company shall account to the Buyer in the circumstances specified in Condition 7(7) shall be the proceeds of sale of the Goods less:
  - 7.8.1 the expenses of resale; and
  - 7.8.2 the sum owing from the Buyer to the Company.

## 8 Compatibility

Under EC Directive 89/656/EEC the responsibility for establishing the suitability of any of the Company's products for the intended purpose and its subsequent selection and use shall rest upon the Buyer and, subject to Condition 9, the Company shall not be liable for any loss or damage whether consequential or otherwise. The company in compliance with the requirements of EC Directive 89/686/EEC as amended will make available to the Buyer such relevant data as is necessary to assist the correct selection of products supplied by the Company, and the Buyer shall not rely on representations made by the Company or on behalf of the Company. The buyer shall be responsible for ensuring that the goods are used in accordance with any instructions issued by the Company. Unless otherwise agreed with the Buyer in writing, all descriptions, specifications and other data concerning the Goods contained in the Company's catalogues, brochures, price lists or other published matter is approximate and for guidance only and do not form part of any contract.

## 9 Limitation

- 9.1 The company's liabilities arising in connection with the sale of Goods to the Buyer shall be limited to:
  - 9.1.1 any liability which the Company may have for death or personal injury resulting from the Company's negligence;
  - 9.1.2 any liability for breach of the obligations arising under section 12 of the Sale of Goods Act 1979 (as amended); and
  - 9.1.3 the Contract price of the Goods in question or, in the case of a constituent part of any goods proving to be defective, the cost of manufacture of such part.
- 9.2 The Company shall in no circumstances be liable for any consequential or special loss or damage or claim by the Buyer howsoever such loss, damage or claim may be caused and whether such liability arises in contract or in tort or by reason of any misrepresentation including without limitation, delay, detention, loss of production, loss of profit, loss of time, charges or liability to third parties.

## 10 Partial completion

In the case of partial completion of an order the Company shall be entitled to a quantum meruit in respect of all work done by it without prejudice to its rights should non-completion be occasioned by the Buyer.

### Indemnity

In the event of any claim of any kind being made against the Company in connection with any Goods delivered by it (apart from a claim under Condition 9(1) set out above) the Buyer shall indemnify the Company against such claim by whomsoever including the Buyer such claim shall be made and whatever are the grounds of such claim.

### Storage

If the Buyer refuses or fails to provide forwarding instructions or to take delivery of Goods tendered in accordance with these Conditions, the company shall be entitled to demand immediate payment for such Goods. The Company shall be entitled to store or arrange storage of any such Goods at the risk and cost of the Buyer.

### Force Majeure

The company shall be relieved from any liability under any Contract if and to the extent that it may become unable to carry out all or any of its obligations as a result of any event or matter beyond its reasonable control. By way of illustration and not of limitation, the following are considered as events beyond the reasonable control of the Company: Strike, lock-out or other industrial dispute, public disorder, riot, revolution, mobilisation, hostilities, war (whether or not formally declared), epidemic, fire, earthquake, storm, flood and other acts of God, official regulations, orders, requirements or acts of any government or administrative authority, transportation difficulties, working difficulties, machine breakdowns, failure of supplies or other causes. Where there is any shortage of goods, materials, energy or labour the Company will endeavour to allocate available resources fairly between one Buyer and another. The Company's decision as to any such allocation shall be final and insofar as such allocation results in the shortfall or delay in the supply to the Buyer of goods or other non-performance of these Conditions such shortfall, delay or non-performance shall be deemed to arise from matters beyond the control of the Company and the Company shall be relieved from liability accordingly.

### Import or Export Licences and other Formalities

The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Goods. The Company shall, following request from the Buyer, supply all documents reasonably required by the Buyer for this purpose.

### Intellectual Property

- 10.1 All Goods sold in retail packaging may be resold by the Buyer only in the packaging supplied by the Company and in no case, may any trade mark other than those applied by the Company be marked on or applied in relation to the Goods.
- 10.2 No right or licence is granted under this Contract to the Buyer under and patent, copyright, registered design or other intellectual property right except the right to use or, subject to these Conditions, resell the Goods.

## 11 Returns

- 11.1 The Company will not accept any garments returned after 7 days from date of delivery unless agreed in writing with the Buyer.
- 11.2 All goods returned must be accompanied by an authorised returns document, issued by the Company.
- 11.3 All goods returned must include the original packaging and swing tags and be in a re-saleable condition.
- 11.4 Failure to comply with 11.2 & 11.3 may result in the return of goods being rejected. The Company will not be held responsible for any consequential loss of a result of this action.

11.5 Discounted goods will not be accepted.

11.6 A 20% restocking charge will apply.

11.7 We are unable to accept garments branded by the buyer or its associates.

11.8 The Company shall not be liable for any claim in respect of branded garments.

## **12 Notices**

Unless otherwise provided in writing any written communication or notice under the contract shall be made or given by sending the same by ordinary prepaid first class letter post in the case of the Company to its current address and in the case of the Buyer to its last known address and if so sent shall be deemed to be made or given two days after the date when posted.

## **13 Laws and Interpretations**

The contract shall be governed by English Law and the Buyer shall submit to the non-exclusive jurisdiction of the English Courts. If any of these conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject or by any rule of law it shall be void or unenforceable to that extent and no further.

## **14 Scottish Law Retention of Title**

Title of Goods shall not pass to the Buyer until Goods have been paid for in full.