

# CONDITIONS OF PURCHASE BY PIMSEAL LIMITED (THE CUSTOMER)

## 1 INTERPRETATION

### 1.1 Definitions:

“**Business Day**” a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

“**Conditions**” the terms and conditions set out in this document as amended from time to time in accordance with Clause 16.4.

“**Confidential Information**” any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its group, including but not limited to information relating to a party’s operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

“**Contract**” the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

“**Customer**” Pimseal Limited (registered in England and Wales with company number 02961405).

“**Customer IPRs**” all Intellectual Property Rights of which the Customer is the owner or licensee and which are disclosed, licensed or provided to the Supplier pursuant to the Contract.

“**Delivery Date**” the date specified in the Order, or, if none is specified, within 14 days of the date of the Order.

“**Delivery Location**” the address for delivery of Goods as set out in the Order.

“**Equipment**” the equipment, including Tooling, that is necessary for the manufacture or production of the Goods.

“**Goods**” the goods (or any part of them) set out in the Order.

“**Intellectual Property Rights**” patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Order**” the Customer’s order for the Goods, as set out the Customer’s purchase order form, the Customer’s written acceptance of the Supplier’s quotation, or overleaf, as the case may be.

“**Specification**” any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

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“**Supplier**” the person or firm from whom the Customer purchases the Goods.

“**Tooling**” tooling, dies, drills, moulds, presses, vessels, tools and machinery, and related items.

### 1.2 **Interpretation:**

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.3 A reference to **writing** or **written** includes emails.

## 2 **BASIS OF CONTRACT**

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

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

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

## 3 **THE GOODS**

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Specification;

3.1.2 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 Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery or, if longer, the shelf-life for the Goods set out in ISO2230 or any other applicable United Kingdom or international standard relevant to the Goods; and

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- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.6 The Supplier shall not, without the prior written consent of the Customer, make any change to the Specifications, formulations or composition of, or the production methods used to manufacture, the Goods.

## 4 DELIVERY

- 4.1 The Supplier shall ensure that:
  - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
  - 4.2.1 on the Delivery Date;
  - 4.2.2 at the Delivery Location; and
  - 4.2.3 during the Customer's normal business hours, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 If the Supplier:

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4.4.1 delivers less than 95.0% of the quantity of Goods ordered, the Customer may reject the Goods; or

4.4.2 delivers more than 105.0% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in Clause 6.

### 5 EQUIPMENT

5.1 To the extent that the Customer has supplied Equipment to the Supplier or paid for Equipment which is used in the manufacture of the Goods on the Customer's behalf, such Equipment shall be and shall remain the absolute property of the Customer and the Supplier may not part with possession of it, or make it available, to any third party and it shall ensure that any such Equipment is clearly marked as the Customer's property.

5.2 The Supplier shall, for the period it has possession or control of the Equipment:

5.2.1 have the sole risk of loss or damage to the Equipment;

5.2.2 ensure that the Equipment is kept secure and identified as the property of the Customer; and

5.2.3 maintain, with a reputable insurance company, insurance cover for any loss or damage to the Equipment for its full replacement cost, and shall have the Customer's interest noted on the policy.

5.3 Unless otherwise agreed by the Customer, the Supplier shall be responsible the costs of any repair or replacement of the Equipment.

### 6 REMEDIES

6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in Clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:

6.1.1 to terminate the Contract;

6.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

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- 6.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.2 If the Goods are not delivered on the Delivery Date the Customer may, at its option, claim or deduct 10.0% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50.0% of the total price of the Goods. If the Customer exercises its rights under this Clause 6.2, it shall not be entitled to any of the remedies set out in Clause 6.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 6.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.4 the Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

### 7 TITLE AND RISK

Title and risk in the Goods shall pass to the Customer on completion of delivery.

### 8 PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 8.2 The price of the Goods:
- 8.2.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 8.2.2 includes the costs of packaging, insurance and carriage of the Goods including any customs, handling, import and/export duties, unless otherwise agreed by the parties.
- 8.3 No extra charges shall be effective unless agreed in writing with the Customer.
- 8.4 The Supplier may invoice the Customer for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Customer's order number, the Supplier's VAT registration number, and any supporting documents that the Customer may reasonably require.
- 8.5 The Customer shall pay correctly rendered invoices within 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of

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4.0% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

- 8.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

### 9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Supplier acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.

- 9.2 The Customer acknowledges that all Intellectual Property Rights used for the manufacture of the Goods that originate from the Supplier shall remain the exclusive property of the Supplier (or, where applicable, the third party licensor from whom the Supplier derives the right to use them).

### 10 INDEMNITY

- 10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

- 10.1.1 the Supplier's breach, including but not limited to breaches of Clauses 3 and 4 of these Conditions, or negligent performance or non-performance of the Contract;

- 10.1.2 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- 10.1.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

- 10.1.4 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

- 10.2 This Clause 10 shall survive termination of the Contract.

### 11 INSURANCE

- 11.1 During the term of the Contract and for a period of two years thereafter, the Supplier shall maintain in force, with a reputable insurance company, the following insurance policies:

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11.1.1 product liability insurance with a limit of at least £10,000,000 for claims arising from a single event or series of related events in a single calendar year; and

11.1.2 public liability insurance with a limit of at least £10,000,000 per claim.

11.2 The Supplier shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### 12 COMPLIANCE WITH RELEVANT LAWS AND POLICIES

12.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations from time to time in force.

12.2 The Customer may immediately terminate the Contract for any breach of Clause 12.

### 13 TERMINATION

13.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

13.2.2 the Supplier 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;

13.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his 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;

13.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.5 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

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### 14 FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 10 Business Days, the party not affected may terminate this Contract by giving 5 Business Days' written notice to the affected party.

### 15 CONFIDENTIALITY

15.1 Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any Confidential Information, except as permitted by Clause 15.2.

15.2 Each party may disclose the other party's Confidential Information:

15.2.1 to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its Representatives to whom it discloses the other parties Confidential Information comply with this Clause 15; and

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

15.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

15.4 No party shall use any 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.

### 16 GENERAL

#### 16.1 Assignment and other dealings

16.1.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

16.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, 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 Customer.

16.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.



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- 16.3 **Entire agreement.** The 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.
- 16.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 16.5 **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.
- 16.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.7 **Notices.**
- 16.7.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 16.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 16.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Days after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 16.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.
- 16.8 **Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 16.9 **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.
- 16.10 **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 the Contract or its subject matter or formation.