

## PROTEAM UK LIMITED - TERMS OF SALE

### 1. DEFINITIONS

In these Terms of Sale the following meanings shall apply:

"We" and "Us" means **PROTEAM UK LIMITED**. "You" means the person seeking to purchase Goods from Us. "the Goods" means the goods or where the context permits the services to be supplied by Us. "Company Signatory" means a person authorised by Us. "the Terms" means the terms set out in this document and any special terms agreed in writing between a Company Signatory and You. "the Contract" means the contract for the supply of Goods incorporating these Terms. "Consumer" means any natural person acting for purposes outside their trade, business or profession. "the Defect" means the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.

### 2. THE CONTRACT

**2.1** All orders are accepted by Us only under these Terms and they may not be altered other than with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded.

**2.2** Quotations are invitations to treat only.

**2.3** Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all costs claims losses or expenses incurred as a result of that cancellation.

**2.4** You shall be responsible to Us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to Us by You and for giving Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract in accordance with its Terms.

#### 2.5

**2.5.1** It is Your responsibility to be fully conversant with the nature and performance of the Goods.

**2.5.2** Without prejudice to Clause 2.5.4 of these Terms while We take every precaution in the preparation of our catalogues technical circulars price lists and other literature these documents are for your general guidance only and statements included in these documents (in the absence of fraud on our part) shall not constitute representations by Us and We shall not be bound by them.

**2.5.3** If You require advice including Health and Safety information in relation to the Goods a specific request for advice should be made and any advice given in writing by a Company Signatory in response to such a request shall amount to a representation and We shall be liable accordingly.

**2.5.4** We shall not be liable in respect of any misrepresentation made by Us our employees or agents to You your employees or agents as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:

**2.5.4.1** made or confirmed in writing by a Company Signatory; and/or

**2.5.4.2** fraudulent.

**2.5.5** For the avoidance of doubt our liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 8 of these Terms.

### 3. PRICE

**3.1** The price of the Goods shall be exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice.

**3.2** Prices listed or quoted are based on costs prevailing at the time when they are given or agreed. We shall be entitled to adjust the price of the Goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by Us after the date of acceptance of your order and any direct or indirect costs of making obtaining handling or supplying the Goods.

**3.3** Prices listed or quoted are applicable to the quantity specified and on the information provided by You at the time of order. In the event of orders being placed for lesser quantities or if there is any change in specifications, delivery dates, or delay is caused by your instructions or lack of instructions we shall be entitled to adjust the price of the Goods as ordered to take account of the variations.

### 4. PAYMENT

**4.1** Unless the sale is for cash or other credit terms have been agreed in writing with a Company Signatory all accounts are due for payment on the last day of the month following the month in which the Goods are delivered.

**4.2** Late payments will incur interest at the rate of 8% per annum above the base rate of Barclays Bank Plc in force from time to time from the due date until the date of payment after as well as before judgement.

**4.3** Credit facilities may be withdrawn or reduced at any time in our sole discretion.

**4.4** Even if We have previously agreed to give You credit we reserve the right to refuse to execute any order or contract if the arrangements for payment or

your credit rating is not satisfactory to Us. In our discretion We may require security satisfactory to Us or payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until We are in receipt of security or cleared funds as requested by Us.

**4.5** In the case of short delivery You will remain liable to pay the full invoice price of all Goods delivered or available for delivery.

**4.6** You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason whatever.

**4.7** We shall be entitled at all times to set off any debt or claim of whatever nature which We may have against You against any sums due from Us to You.

### 5. DELIVERY

**5.1** Delivery will be affected when the Goods leave our premises whether carried by Us or an independent carrier or the premises of our suppliers when the Goods are delivered direct from suppliers.

**5.2** Delivery dates are given in good faith but are estimates only.

**5.3** Time for delivery shall not be of the essence of the Contract.

**5.4** For the avoidance of doubt and without detracting from any other provisions of these Terms We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by our negligence or otherwise howsoever.

**5.5** We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments or any claim by You in respect of any one or more instalments shall not entitle You to treat the Contract as a whole as repudiated.

**5.6** The price agreed includes our normal delivery charges but We may make an additional charge if We incur further costs or expense such as (but not limited to) those caused by delivery of less than a full load; complying with your request for delivery outside our normal delivery pattern or trading hours or by instalments; orders of small value which are not economical for us to deliver free.

**5.7** You must provide the necessary labour for unloading the Goods and unloading is to be completed with reasonable speed. If our delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if We provide additional staff to unload Goods an additional charge will be made.

**5.8** If You fail to take delivery accept or collect the Goods within the agreed time in our discretion We may make an additional charge, invoice You for the Goods or treat the contract as repudiated and in any case recover our losses from You.

**5.9** If You collect Goods from Us You are solely responsible for the size weight and positioning of the load on the vehicle and shall indemnify Us in respect of all costs claims losses or expenses We may incur as a result of your collecting the Goods including any resulting from our negligence.

**5.10** If the Goods are to be deposited other than on your private premises You shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property.

**5.11** You will indemnify Us in respect of all costs claims losses or expenses We may incur as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such costs claims losses or expenses are due to our negligence.

### 6. INSPECTION

**6.1** You shall inspect the Goods at the place and time of unloading or collection but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

#### 6.2

**6.2.1** You must advise Us by telephone immediately and give Us written notice within twenty four hours of unloading of any claim for short delivery.

**6.2.2** If You do not give Us that notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.

**6.2.3** You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.

**6.2.4** Our liability for short delivery is limited to making good the shortage.

#### 6.3

**6.3.1** Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample You must advise Us by telephone immediately and give us written notice within three working days of inspection.

**6.3.2** If You fail to give Us that notice within that time the Goods will be deemed to have been accepted and You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods.

**6.3.3** If You fail to give Us that notice within that time Clause 8 shall have effect.

## 7. TITLE AND RISK

- 7.1** Risk in the Goods shall pass to You when the Goods are delivered.
- 7.2** The property in the Goods shall remain with Us until You pay all sums due to Us whether in respect of this Contract or otherwise.
- 7.3** Until title passes:-
- 7.3.1** You shall hold the Goods as our fiduciary agent and bailee.
- 7.3.2** The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods.
- 7.3.3** We agree that You may use or agree to sell the Goods as principal and not as our agents in the ordinary course of your business subject to the express condition that at our direction the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for Us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as our money.
- 7.4** We shall be entitled at any time to recover any or all of the Goods in your possession to which We have title and for that purpose We our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

## 8. LIABILITIES

- 8.1** Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation.
- 8.2** Subject to Clause 8.1 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever, instead of liability in damages We undertake liability under Clause 8.3 below.
- 8.3** Where but for the effect of Clause 8.2 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 8.4 below shall in our sole discretion either repair the Goods at our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- 8.4** We will not be liable under Clause 8.3:
- 8.4.1** if the Defect arises from fair wear and tear
- 8.4.2** if the Defect arises from wilful damage negligence abnormal working conditions misuse alteration or repair of the Goods failure to follow British Standard or industry instructions relevant to the Goods or storage of the Goods in unsuitable conditions (but this sub-clause shall not apply to any act or omission on our part)
- 8.4.3** unless after discovery of the Defect we are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. For the avoidance of doubt We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures
- 8.4.4** if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You advise Us by telephone immediately and written notice of any claim is given to Us within three working days of the time of unloading; or in any other case
- 8.4.5** the Defect is discovered within four months from the date of delivery and We are given written notice of the Defect within three working days of it being discovered.
- 8.5** If the Goods are not manufactured by Us or have been processed or milled by a third party whether or not at our or your request our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 8.6** If the Goods are manufactured processed or milled by Us to the design quantity measurement or specification of You or your agents then:
- 8.6.1** Subject to Clause 8.1 of these Terms We shall not be under any liability for damages whatsoever or under Clause 8.3 of these Terms as the case may be except in the event of:
- 8.6.1.1** fraudulent misrepresentation
- 8.6.1.2** misrepresentation where the representation was made or confirmed in writing by a Company Signatory
- 8.6.1.3** non-compliance with such design quantity measurement or specification
- 8.6.1.4** breach of a written warranty signed by a Company Signatory that the Goods are fit for that purpose; or
- 8.6.1.5** a claim maintainable against Us pursuant to Clause 8.1 of these

Terms.

- 8.6.2** You will unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person.
- 8.6.3** You will further unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any other claim arising from any such manufacturing processing or milling including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damage costs and expenses are due to our negligence.
- 8.7** You will unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This Indemnity will be reduced in proportion to the extent that such loss damage costs and expenses are due to our negligence.
- 8.8** Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the purchase price of the goods the subject matter of any claim.

## 9. NON-PAYMENT/INSOLVENCY

- 9.1** "Insolvent" means You becoming unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any of your property; the appointment of a receiver or administrative receiver over all or any part of your property; a proposal for a voluntary arrangement or compromise between You and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up or for an administration order in relation to You; if You suffer any analogous step or proceedings under foreign law or You ceasing or threatening to cease to carry on your business.
- 9.2** If you fail to pay the price for any Goods on the due date or fail to pay any sum due to Us under any contract on the due date or You become insolvent or if You are a Limited Company or partnership and there is a material change in your constitution or You commit a material breach of this Contract and fail to remedy that breach all sums outstanding between You and Us shall become immediately payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-
- 9.2.1** require payment in cleared funds in advance of further deliveries
- 9.2.2** cancel or suspend any further deliveries to You under any contract without liability on our part
- 9.2.3** without prejudice to the generality of Clause 7 of these Terms exercise any of our rights pursuant to that clause.
- 9.3** If we reasonably incur third party costs such as tracing or debt collection agency costs or seek legal advice or take legal proceedings to enforce our rights as a result of your breach of this Contract including but not limited to recovery of any sums due, you will reimburse us such reasonable agency costs or legal costs incurred on an indemnity basis.

## 10. GENERAL

- 10.1** This Contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 10.2** We shall not be liable for any delay or failure to perform any of our obligations in relation to the Goods due to any cause beyond our reasonable control including industrial action.
- 10.3** The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 10.4** If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 10.5** We may assign novate or sub contract all or part of this Contract and You shall be deemed to consent to any novation. This Contract is personal to You and it may not be assigned.
- 10.6** Nothing in this Contract is intended to or will grant any right to any third party to enforce any terms of this contract whether express or implied.