

**PEXA LIMITED
UK CONDITIONS OF SALE**

Interpretation

- 1.1 In these Conditions the following words have the following meanings:
- "the Buyer"** the firm or company who purchases Goods from the Company;
- "the Carrier"** the carrier, nominated by the Company to make delivery of the Goods in accordance with Condition 3, or such other carrier nominated by the Buyer to accept delivery of the Goods in accordance with Condition 3 as may be agreed between the Company and the Buyer from time to time;
- "the Company"** Pexa Limited (a company registered in England under number 4421963) and whose registered office is at 69-71 East Street, Epsom, Surrey KT17 1BP
- "Contract"** any contract between the Company and the Buyer for the sale and purchase of Goods;
- "the Credit Account Application"** the application for a credit account to be set up with the Company attached to these Conditions;
- "Goods"** any goods agreed in a Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2. Application of Terms**
- 2.1 Subject to any variation under condition 2.2 a Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.
- 2.3 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.4 No order placed by the Buyer shall be accepted by the Company and no Contract shall come into existence until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods pursuant to Condition 3.
- 2.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 3. Delivery**
- 3.1 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.
- 3.2 In the event that the Carrier is nominated by the Company, delivery of the Goods shall take place when the Carrier delivers the Goods to the Buyer's premises.
- 3.3 In the event that the Carrier is nominated by the Buyer and agreed with the Company, the Company will make delivery of the Goods by making the Goods available for collection by the Carrier.
- 3.4 If for any reason the Buyer or the Carrier will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then, at the time of such non-acceptance of delivery or inability to deliver:
- 3.4.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 3.4.2 the Goods will be deemed for all purposes to have been delivered; and
- 3.4.3 the Company may store the Goods until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 3.5 The Buyer will provide at its expense if requested by the Company at the place where delivery of the Goods is to take place, adequate and appropriate equipment and manual labour for unloading the Goods.
- 3.6 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 3.7 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 working days of the date of delivery of the invoice to the Buyer.
- 4. Risk/Title**
- 4.1 The Goods are at the risk of the Buyer from the time of delivery pursuant to Condition 3.
- 4.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cleared funds) all sums due to it in respect of:
- 4.2.1 the Goods; and
- 4.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 4.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 4.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 4.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 4.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 4.3.4 maintain the Goods in a satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 4.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 4.4 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 5. Price**
- 5.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's written acknowledgement of order issued in accordance with Condition 2.4.
- 5.2 The price for the Goods shall be exclusive of any value added tax which amount the Buyer will pay in addition when it is due to pay for the Goods.
- 5.3 Any costs and charges payable by the Buyer in relation to the carriage or transport of the Goods will be set out in the written acknowledgement of order issued pursuant to Condition 2.4, which amounts the Buyer will pay to the Company, in addition to the price for the Goods, when it is due to pay for the Goods.
- 6. Payment**
- 6.1 Payment of the price for the Goods is due in accordance with the payment terms set out in the Credit Account Application.
- 6.2 Time for payment shall be of the essence.
- 6.3 All payments payable shall be made in the manner specified on the Credit Account Application or as otherwise agreed between the Company and the Buyer. No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.4 All payments payable to the Company under the Contract shall become due immediately upon termination of any Contract despite any other provision.
- 6.5 The Buyer shall make all payments due under a Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 6.6 If the Buyer fails to pay the Company any sum due pursuant to a Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgement.
- 7. Goods damaged in Transit**
- 7.1 Subject to the remaining provisions of this Condition 7 and providing that the Buyer complies with Condition 8, if the Goods are damaged beyond use during transit by a Carrier nominated by the Company prior to the Goods being delivered by the Company pursuant to Condition 3.3, the Company will repair or make good such damage, or, at its option, replace the Goods or refund to the Buyer all payments made by the Buyer applicable to the damaged Goods.
- 8. Claims**
- 8.1 The Buyer shall inspect the Goods immediately following taking possession of them.
- 8.2 Any claim that the Goods have been delivered damaged must be notified by the Buyer to the Company within 24 hours of the Buyer taking possession of them, containing full details of the claim.
- 8.3 The Company must be afforded a reasonable opportunity and facilities to investigate any claims made under this Condition. The Buyer, if so requested by the Company, must promptly return the Goods the subject of any claim, securely packed and carriage paid, to the Company for examination and in any event must cease to use the Goods.
- 8.4 The Company will have no liability with regard to any claim in respect of which the Buyer has not complied with the claims procedures in these Conditions.
- 9. Limitation of Liability**
- 9.1 Subject as expressly provided in these Conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any Contract.
- 9.2 Nothing in these Conditions excludes or limits the liability of the Company for:-
- 9.2.1 death or personal injury caused by the Company's negligence;
- 9.2.2 fraudulent misrepresentation.
- 9.3 In any event, the Company shall not be liable to the Buyer for:
- 9.3.1 any indirect or consequential loss, damage, costs, expenses or other claims for consequential compensation; or
- 9.3.2 loss of profit, business, contracts, revenues or expected savings whatsoever (howsoever caused) which arise out of or in connection with a Contract.
- 10. Compliance with Law**
- 10.1 The Buyer warrants to the Company that it will, at all times after taking possession of the Goods, store and use the Goods in accordance with all relevant laws and regulations.
- 10.2 The Buyer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company as a result of any breach by the Buyer of the terms of Condition 10.1.
- 11. Assignment**
- 11.1 The Buyer shall not be entitled to assign the Contract or any part of it.
- 11.2 The Company may assign the Contract or any part of it to any person, firm or company.
- 12. Force Majeure**
- The Company reserves the right to defer the date of delivery or to cancel the Contract without liability or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, fire, explosion, flood, strikes or other labour disputes, import restrictions, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 13. Insolvency or other default of the Buyer**
- 13.1 This Condition 13 applies if:-
- 13.1.1 the Buyer fails to make payment when due or commits any other breach of a Contract; or
- 13.1.2 the Buyer makes any arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- 13.1.3 an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Buyer; or
- 13.1.4 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.1.5 the Company reasonable considers that any of the events listed in conditions 13.1.2 to 13.1.4 inclusive is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 13.2 If this Condition 13 applies, the Company may in its absolute discretion suspend all further deliveries of Goods, and/or terminate a Contract, without liability on its part. If the Goods have been delivered but not paid for, the price of the Goods will become immediately due and payable.
- 14. Confidentiality**
- 14.1 Except as referred to in the next sub-clause, the Buyer will not disclose and will treat as strictly confidential all pricing and financial information regarding the Company received or obtained as a result of entering into a Contract.
- 14.2 The Buyer may disclose information which would otherwise be confidential if and to the extent:-
- 14.2.1 that disclosure is required by law or any regulatory or governmental authority;
- 14.2.2 the information has come into the public domain through no fault of the Buyer;
- 14.2.3 the Company has given prior written approval to the disclosure.
- 14.3 The obligations imposed upon the Buyer by this clause shall survive the termination or expiry of a Contract.
- 15. General**
- 15.1 Each right or remedy of the Company under a Contract is without prejudice to any other right or remedy of the Company whether under a Contract or not.
- 15.2 If any provision of a Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid void, voidable, unenforceability or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of a Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of a Contract will not be construed as a waiver of any of its rights under a Contract.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of a Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of a Contract.
- 15.5 The formation, existence, construction, performance, validity and all aspects of a Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 15.6 A person, firm or company who is not a party to a Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 16. Notices**
- 16.1 All notices between the parties about a Contract must be in writing and sent by facsimile transmission to such facsimile number for the other party as is set out in the Credit Account Application, or such other facsimile number as may be notified in writing from time to time by the relevant party to the other.
- 16.2 Notices shall be deemed to have been received 48 hours from the time of despatch. Nov01