

**PESTWEST ELECTRONIC LIMITED
TERMS & CONDITIONS**

The customer's attention is drawn in particular to the provisions of clause 9.

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.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Product in accordance with these Conditions.

Customer: the person or firm who purchases the Product from the Supplier.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Product: the product contained in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semiconductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the Product, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or otherwise the written correspondence between the parties as the case may be.

Supplier: **PestWest Electronics Limited** (registered in England and Wales with company number 02203979).

1.2 Interpretation:

- (a) 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.
- (b) 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.

(c) 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 Customer 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 Product in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier either issues a written acceptance of the Order or delivers (or makes the Product available for collection) the Product, at which point the Contract shall come into existence.
- 2.4 Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Product referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 A quotation for the Product given by the Supplier shall not constitute an offer. A quotation shall only be valid for the period of time set out in it, or if no timescale is provided for a period of 20 Business Days from its date of issue.

3. Product

- 3.1 The Product is as described in the Supplier's catalogue and in other literature provided by it whether on its website or otherwise.
- 3.2 The Supplier reserves the right to amend the specification of the Product if required by any applicable statutory or regulatory requirements.
- 3.3 If appropriate to the Product, the personal protective equipment pictograms, which appear in the Suppliers literature, are the Supplier's suggestions for the application of these products. Mixing of concentrates may require additional personal protective equipment (**PPE**). For the full requirements on PPE for use with these products please refer to the product label and safety data sheet and take into account circumstances of use. The Company's suggestions should in no way replace any part of your COSHH assessment.

4. Delivery

- 4.1 The Supplier shall ensure that each delivery of the Product is accompanied by a delivery note that shows the date of the Order, the contract number, the quantity of the Product (including the code number of the Product, where applicable), and, if the Order contains a requirement for the supply of more than one unit of it which are to be provided by way of instalments, the outstanding balance of Product remaining to be delivered; and
- 4.2 The Supplier shall deliver the Product to the location set out in the Order or such other location as the parties may agree; all deliveries shall be made FOB to a place in the United Kingdom (**Delivery Location**) at any time after the Supplier notifies the Customer that the Product are ready.
- 4.3 Delivery is completed when the Product arrives at, or is collected from, the Delivery Location. For certain products the following criteria will apply:
- (a) where delivery is made in drums or other containers, delivery is deemed to have been made when the drums or other containers have been removed at the Delivery location from the vehicle transporting them or, as the case may be, have been delivered over ship's rail at the port of shipment; or
 - (b) where delivery is made by road or rail, tanker, or from storage tanks, delivery is deemed to have been made when the goods have passed from the road or rail tanker's flexible hose, or from the storage tanks filling line.
- In circumstances where the Products is collected by the Customer:
- (c) where delivery is made from storage tanks when the goods have been passed from the filling line; or
 - (d) where delivery is made in drums or other containers when the drums or other containers have been placed on the vehicle collecting them
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Product that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 4.5 If the Supplier fails to deliver the Product, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Product of similar description and quality in the cheapest market available, less the price of the Product. The Supplier shall have no liability for any failure to deliver the Product to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.

5. Quality

5.1 The Supplier warrants that on delivery, and for a period of 36 months from the date of delivery (**warranty period**),] the Product shall:

- (a) conform in all material respects with its description; and
- (b) be free from material defects in design, material and workmanship;
however this warranty does not extend to the UV tubes and glue boards which make up part of the Product.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within three days of the date of delivery (or where the Delivery Location is outside of the UK, seven days from the date of delivery) of discovery that some or all of the Product do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Product; and
- (c) the Customer (if asked to do so by the Supplier) returns such Product to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Product, or refund the price of the defective Product in full.

5.3 The Supplier shall not be liable for the Product's failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Product after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Product or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Product without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Product' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Product Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Product supplied by the Supplier except that the warranty provided in clause 5.1 shall continue for the unexpired portion of the warranty as it applied to the defective Product, plus 12 months.

6. Title and risk

6.1 The risk in the Product shall pass to the Customer on completion of delivery.

6.2 Title to the Product shall not pass to the Customer until [the earlier of]:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Product which case title to the Product shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Product, in which case title to the Product shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Product has passed to the Customer, the Customer shall:

- (a) store the Product separately from all other Product held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Product;
- (c) maintain the Product in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
- (e) give the Supplier such information relating to the Product as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Product in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Product. However, if the Customer resells the Product before that time title to the Product shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Product passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Product or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Product in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Product are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Product shall be the price set out in the Supplier's published price list in force as at the date of delivery or such other price set out in the Order.
- 7.2 The price of the Product:
- (a) 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
 - (b) unless otherwise stated in the Order, excludes the costs and charges of packaging, insurance and transport of the Product, which shall be invoiced to the Customer.
- 7.3 The Supplier may invoice the Customer for the Product on or at any time after the acceptance of the Order or (where no written acceptance is made) the time when the Product is available for delivery (or collection).
- 7.4 Unless otherwise provided for in the Order, the Customer shall pay the invoice in full and in cleared funds by the 20th day (or next working day) of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC 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 Customer shall pay the interest together with the overdue amount.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or

remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Termination

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

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the Customer 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;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Product under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Product Act 1979

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Product.

10. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

11. General

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer 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 Supplier.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.2(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such 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 employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) 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 this agreement.

11.3 Entire agreement.

- (a) This 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

11.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 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.

11.6 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.

11.7 Notices.

- (a) Any notice or other communication 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day 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 fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.8 Third party rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

11.9 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.

11.10 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 this Contract or its subject matter or formation.