

TERMS AND CONDITIONS OF SALE

LAST UPDATED: OCTOBER 2022

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

Applicable Law: means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

Background Intellectual Property: means any and all Intellectual Property Rights that are not Foreground Intellectual Property, owned or controlled by the relevant party or licensed to the relevant party prior to or outside the Order being confirmed but required for the purposes of the Order or for the proper use of the Goods;

Business Day: means a day other than a Saturday, Sunday or bank or public holiday when banks are open for business in England;

Buyer: means the named party in the Contract which has agreed to purchase the Goods from the Seller and whose details are set out in the Order;

Buyer Obligation: means an activity set out or referred to in the Contract (including in the Sales Order Confirmation) to be performed by the Buyer on which the Seller's performance of its obligations under the Contract (including any Order) may depend, such as the provision of any Buyer Specification, information, delivery date(s), terms of delivery and Location details;

Buyer Obligation Failure: means a failure by the Buyer to fulfil a Buyer Obligation;

Buyer Specification: means any drawings, special dimension limits, colour, design or any other particulars of the Goods requested by the Buyer in writing and/or as set out in an Order;

Conditions: means the Seller's terms and conditions of sale set out in this document;

Confidential Information: means any commercial, financial or technical information, information relating to the Goods, plans, insulation, internal processes and procedures, techniques, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

Contract: means the agreement between the Seller and the Buyer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including any schedules, attachments, annexures and statements of work made pursuant to an Order;

Control: means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls, Controlled** and **under common Control** shall be construed accordingly;

Documentation: means any descriptions, instructions, manuals, product literature (e.g. explaining the properties of raw materials, certificates of conformity, first article inspection reports or general inspection information), technical details or other related materials supplied in connection with the Goods;

Force Majeure: means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations in full or in part under the Contract including but not limited to an act of God, fire, flood, lightning, tempest, earthquake or other natural disaster; war, riot or civil unrest; arrest or requisition of the Goods or of the raw materials from which they are ordinarily made; interruption, shortage, delay or failure of

supplies of power, fuel, water, materials, labour transport, equipment or telecommunications service, or material required for performance of the Contract; and/or strike, lockout or boycott or other industrial action including those involving the Seller's or its suppliers' workforce; but, excluding the Buyer's inability to pay or circumstances resulting in the Buyer's inability to pay;

Foreground Intellectual Property: means all Intellectual Property Rights and other matter capable of being the subject of intellectual property rights that is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of the creation of the Goods;

Goods: means the goods and related accessories, related labour, Tooling, spare parts and Documentation and other physical material set out in the Order and to be supplied by the Seller to the Buyer in accordance with the Contract;

Intellectual Property Rights: means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled; and (f) in whichever part of the world existing;

IPR Claim: has the meaning given in clause 13.5;

Location: means the address or addresses for delivery or collection of the Goods as set out in the Order or such other address or addresses as notified by the Seller to the Buyer at least 1 (one) Business Day prior to delivery;

MSA Offence: has the meaning given in clause 10.4.1;

Order: means a written order for the Goods from the Seller placed by the Buyer (including email);

Price: has the meaning given in clause 4.1;

Sales Order Confirmation: means the document sent by the Seller to the Buyer provisionally confirming the Order, subject to any Third Party Confirmations;

Specification: means the description and any samples (where applicable), provided by the Seller for the Goods;

Seller: means Presspahn Limited, a company registered in England and Wales with company number 203946 and whose registered office is at Wharnccliffe Works, Harrogate Road, Eccleshill, Bradford, BD2 3TB;

Tooling: means the process of acquiring or manufacturing components and machines needed for production, such as fixtures, moulds and cutting equipment;

Third Party Confirmations: means any third party confirmations or approvals regarding any details contained within an Order in accordance with clause 2.9, including but not limited to pricing and delivery data confirmations, required by the Seller in order to confirm the full details of an Order before it becomes binding on the parties;

VAT: means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and

Warranty Period: has the meaning given in clause 9.1.

1.2 In these conditions, unless the context requires otherwise:

- 1.1.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.1.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.1.3 a reference to a party includes that party's personal representatives, successors and permitted assigns;
- 1.1.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.1.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.1.6 words in the singular include the plural and vice versa;
- 1.1.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.1.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.1.9 a reference to legislation is a reference to that legislation as in force at the date of the Contract; and
- 1.1.10 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2. ORDER PROCESS

- 2.1 Each Order placed by the Buyer with the Seller shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 2.2 Each Order shall include, as a minimum, the Goods, Price and requested delivery date or collection date (as the case may be). Where a purchase order number is required, such number must also be stated within the Order.
- 2.3 The offer constituted by an Order shall remain in effect and capable of being accepted by the Seller for 10 (ten) Business Days from the date on which the Buyer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.4 The Seller may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
 - 2.4.1 the Seller's written acceptance of the Order, in the form of a Sales Order Confirmation, subject to Third Party Confirmations; or
 - 2.4.2 the Seller dispatching the Goods or notifying the Buyer that they are available for collection (as the case may be).
- 2.5 Rejection by the Seller of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.
- 2.6 The Seller may issue quotations (orally or in writing) to the Buyer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Buyer.
- 2.7 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

- 2.8 Any other acknowledgement or other confirmation of receipt of an Order which is not a Sales Order Confirmation, shall not constitute acceptance of an Order.
- 2.9 Where Goods sold are of third party origin or the Goods rely on the acts of third parties, their sale to the Buyer is subject to the supplies being made available to the Seller by its relevant supplier, other third parties and/or any necessary Third Party Confirmations. In the event of failure of such Goods being available to the Buyer in accordance with the Order due to the inability of a third party meeting the Order and/or the a third party's failure to provide any Third Party Confirmation(s), the Seller shall notify the Buyer and the Contract between the Seller and the Buyer will be deemed to be cancelled without any liability to either party.
- 2.10 Subject to clause 4.8, where the Buyer has a Buyer Specification, this must be clearly set out in an Order. Where special dimension limits are requested by the Buyer under a Buyer Specification, such dimensions must be clearly stated on the Order. There is no guarantee that a Buyer Specification will be met unless and until the Seller has provided clear written confirmation that it will use reasonable endeavours to comply with any Buyer Specification, where such acceptance of a Buyer Specification is separate to the acceptance of the Order at clause 2.4. The Price may be increased by the Seller in order to comply with any Buyer Specification. The Seller shall not be in breach of the Contract if it does not accept, or rejects, any Buyer Specification.
- 2.11 The Seller shall use reasonable endeavours to ensure that all work in relation to the Goods shall be carried out to a reasonable workshop accuracy for the respective class of material.

3. BUYER OBLIGATIONS

- 3.1 The Buyer, at no cost to the Seller, shall promptly:
- 3.1.1 provide all information and assistance as may be necessary on a timely basis to assist the Seller to provide the Goods;
 - 3.1.2 comply with all reasonable instructions and directions of the Seller in connection with Seller's provision of the Goods; and
 - 3.1.3 ensure that all written information given by it to the Seller is accurate and comprehensive when given and remains so in all material respects.
- 3.2 Where requested by the Seller, the Buyer shall provide any Buyer Obligations to the Seller by the date specified by the Seller, and where such date is not specified, within a reasonable time frame.
- 3.3 The Seller shall not be in breach of the Contract if, and to the extent that, the Seller's breach is caused in full or in part by any Buyer Obligation Failure and/or any Buyer Specification.
- 3.4 In the event of a Buyer Obligation Failure, the Seller shall be entitled to:
- 3.4.1 charge the Buyer for all costs and expenses (including the cost of wasted resource based on the Seller's standard rates from time to time in place) arising from a Buyer Obligation Failure;
 - 3.4.2 charge the Buyer for all additional work effort required to deliver the Goods (if applicable) in accordance with an Order notwithstanding a Buyer Obligation Failure; and/or
 - 3.4.3 immediately terminate the Contract and recover damages from the Buyer.

4. PRICE

- 4.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Seller from time to time before the date the Order is placed (the **Price**).

- 4.2 Subject to clauses 4.7, 4.8 and 4.10 and unless otherwise specified in writing by the Seller, the Prices are exclusive of:
- 4.2.1 packaging, insurance, duty charges, certification charges, delivery, shipping carriage, and all other related charges or taxes or describe relevant elements of the Goods which are not included in the standard price which shall be charged in addition at the Seller's standard rates, and
- 4.2.2 VAT (or equivalent sales tax).
- 4.3 The Buyer shall pay any applicable VAT to the Seller on receipt of a valid VAT invoice.
- 4.4 The Buyer shall pay any import duty, tax, levy or any other payment whatsoever imposed by any government or regulatory authority relating to the Goods.
- 4.5 The Seller may increase the Price of any Goods not contained within an accepted Order, at any time.
- 4.6 In the event of accepted Orders not being accompanied by sufficient information (including Buyer Obligations) the Seller may request such additional information (including Buyer Obligations) from the Buyer as is required to perform the Order. Where such additional information is not provided by the Buyer to the Seller within a reasonable time frame, or a time frame set by the Seller, the Seller reserves the right to amend the Price(s) in the accepted Order to cover any increase in costs which have taken place after acceptance of the relevant Order and/or reject the relevant Order, without liability.
- 4.7 Notwithstanding clause 4.5, the Seller may increase the Price(s) of Goods stated in any confirmed Order with immediate effect by written notice to the Buyer where there is an increase in the direct cost to the Seller of supplying the relevant Goods which exceeds 2% (two percent) and which is due to any factor beyond the control of the Seller.
- 4.8 Notwithstanding clause 4.5, the Seller may increase the Price(s) of Goods stated in a confirmed Order with immediate effect by written notice to the Buyer where there is an increase in the direct cost to the Seller of supplying the relevant Goods due to the Seller complying with any Buyer Specification.
- 4.9 Any details relating to the Price and any inclusive costs within the Price which are included in an Order but not specifically confirmed by the Seller in writing shall not be binding on the Seller.
- 4.10 Tooling used in the manufacture of the Goods shall be charged on a part cost basis and shall be invoiced in addition to the Price, pursuant to clause 5. An additional cost may be payable by the Buyer if it requires possession of the Tooling, based on the Sellers charges from time to time in force.
- 4.11 Where Tooling stored at the Seller's premises becomes unworkable, the Seller may request that an additional fee is payable by the Buyer to purchase new Tooling for the purposes of their Order(s). This additional Tooling fee shall be invoiced in addition to the Price, pursuant to clause 5.

5. PAYMENT

- 5.1 The Seller shall invoice the Buyer for the Goods, partially or in full, at any time following the Seller's acceptance of the Order.
- 5.2 The Buyer shall pay all invoices on a proforma basis:
- 5.2.1 in full without deduction or set-off, in cleared funds within 30 (thirty) days of the date of each invoice (the **Due Date**); and
- 5.2.2 to the bank account nominated by the Seller.

- 5.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the Due Date:
- 5.3.1 the Seller may, without limiting its other rights, charge interest on such sums at 8% (eight percent) a year above the base rate of the National Westminster Bank Ltd from time to time in force; and
- 5.3.2 interest shall accrue on a daily basis, and apply from the Due Date for payment until actual payment in full, whether before or after judgment.
- 5.4 Subject to clause 5.5 and in addition to the Seller's remedies under clause 5.3 if any payment due to the Seller by the Buyer is not made on or before the relevant Due Date, the Seller reserves the right to:
- 5.4.1 cancel or suspend the whole Contract (or such Goods not already delivered or collected);
- 5.4.2 cancel or suspend any other Contract existing between the parties at the date of such default by the Buyer; and/or
- 5.4.3 require immediate payment for all Goods delivered or collected (as the case may be) under any other Contract(s).
- 5.5 If any amount due and payable under the Contract remains outstanding for more than 10 (ten) days after the Due Date for payment, without prejudice to its other rights and remedies, the parties agree that the Seller may itself or through a third party recover or pursue as a debt action, any outstanding payments due from the Buyer to the Seller. The Buyer agrees to pay all costs incurred by the Seller in pursuing any debt action including (without limitation) any reasonable commission, costs or fees charged or incurred by such third party in addition to the amount being recovered pursuant to the Contract.
- 5.6 The Buyer shall not be entitled to set-off any payments or withhold payment of any amount payable under the Contract to the Seller.

6. CREDIT LIMIT

The Seller may set and vary credit limits from time to time pursuant to an Account Application Form and withhold all further supplies if the Buyer exceeds such credit limit.

7. DELIVERY

- 7.1 The Goods shall be:
- 7.1.1 delivered by the Seller, or its nominated carrier, to the Location on the date(s) specified in the Order; or
- 7.1.2 collected by the Buyer at the Location on the date(s) specified in the Order.
- 7.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by the Seller or its nominated carrier (as the case may be). The Buyer must ensure that it has suitable equipment to receive the Goods and/or unload the Goods at the Location.
- 7.3 The Seller may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 7.4 The Buyer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 7.5 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 7.6 Delivery of the Goods may be accompanied by a delivery note stating:

- 7.6.1 the date of the Order;
- 7.6.2 the product numbers, type and quantity of the Goods in the consignment; and
- 7.6.3 any special handling instructions.
- 7.7 Time of delivery is not of the essence. The Seller shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.
- 7.8 The Seller shall not be liable for any delay in or failure of delivery caused by:
 - 7.8.1 the Buyer's failure to make the Location available;
 - 7.8.2 the Buyer's failure to prepare the Location as required for delivery of the Goods;
 - 7.8.3 the Buyer's failure to provide the Seller with adequate instructions for delivery or otherwise relating to the Goods; and/or
 - 7.8.4 Force Majeure.
- 7.9 If the Buyer fails to accept delivery of the Goods, collect the Goods (as applicable) or any of the events at clause 7.8.1 to 7.8.4 apply and cause the failure of delivery of the Goods, the Seller shall store and insure the Goods pending delivery or collection (as applicable), and the Buyer shall pay all reasonable storage and insurance charges incurred by the Seller in doing so. If agreed by the parties, the Seller may arrange the re-delivery of the Goods at an additional cost to the Buyer.
- 7.10 If 10 (ten) Business Days following the due date for delivery or collection of the Goods (as applicable), the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods without any obligation or liability to the Buyer, except as provided for in clauses 7.10.1 and 7.10.2. The Seller may:
 - 7.10.1 deduct all reasonable storage charges and costs of resale; and
 - 7.10.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the Price paid by the Buyer for the Goods.
- 7.11 Any issue regarding delivery must be reported in writing to the Seller within 7 (seven) days of the issue arising.

8. RISK AND TITLE

- 8.1 Risk in the Goods shall pass to the Buyer on delivery or collection (as the case may be).
- 8.2 Title to the Goods shall pass to the Buyer once the Seller has received payment in full and cleared funds for the Goods pursuant to the Contract.
- 8.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 8.3.1 hold the Goods as bailee for the Seller;
 - 8.3.2 store the Goods separately from all other material in the Buyer's possession and mark the Goods as the Seller's property;
 - 8.3.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered or collected;
 - 8.3.4 insure the Goods from the date of delivery or collection: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Seller's interest on the policy;
 - 8.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;

- 8.3.6 not remove or alter any mark on or packaging of the Goods;
 - 8.3.7 inform the Seller immediately if it becomes subject to any of the events or circumstances set out in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.13; and
 - 8.3.8 on reasonable notice permit the Seller to inspect the Goods during the Buyer's normal business hours and provide the Seller with such information concerning the Goods as the Seller may request from time to time.
- 8.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.13, the Seller may:
- 8.4.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and
 - 8.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

9. WARRANTY

- 9.1 The Seller warrants to the Buyer only that the Goods shall, for a period of 60 (sixty) days from delivery or collection (the **Warranty Period**):
- 9.1.1 conform in all material respects to the Order and the Specification;
 - 9.1.2 be free from material defects in design, material and workmanship.
- 9.2 The Buyer warrants that it has provided the Seller in writing with all relevant, full and accurate information as to the Buyer's business and needs.
- 9.3 As the Buyer's sole and exclusive remedy, the Seller shall within 30 (thirty) days of receiving the written notice pursuant to clause 9.3.1.1, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 9.1 as far as practicable, provided that the Buyer:
- 9.3.1 serves a written notice on Seller:
 - 9.3.1.1 during the Warranty Period in the case of defects discoverable by a physical inspection; or
 - 9.3.1.2 in the case of latent defects, within 4 (four) weeks from the date on which the Buyer became aware (or should reasonably have become aware) of the defect;
 - 9.3.2 provides the Seller with adequate samples and sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
 - 9.3.3 gives the Seller a reasonable opportunity to examine the defective Goods; and
 - 9.3.4 returns the defective Goods to the Seller at the Buyer's expense.
- 9.4 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery or collection of the repaired or replaced Goods.
- 9.5 The Seller shall not be liable for any failure of the Goods to comply with clause 9.1:
- 9.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;

- 9.5.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods, operation, special terms or instructions, storage or maintenance;
 - 9.5.3 to the extent caused by the Seller following any Customer Dependency, Buyer Specification, instruction or any other requirement of or given by the Buyer in relation to the Goods;
 - 9.5.4 where the Buyer modifies any Goods without the Seller's prior written consent or, having received such consent, not in accordance with the Seller's written instructions; or
 - 9.5.5 where the Buyer uses any of the Goods after notifying the Seller that they do not comply with clause 9.1.
- 9.6 Except as set out in this clause 9:
- 9.6.1 the Seller and/or any third party gives no warranties and makes no representations in relation to the Goods;
 - 9.6.2 the Seller shall have no liability for their failure to comply with the warranty in clause 9.1; and
 - 9.6.3 and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10. ANTI-BRIBERY AND MODERN SLAVERY

- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with the Bribery Act 2010, the Modern Slavery Act 2015 and all Applicable Laws in connection with modern slavery, bribery or anti-corruption including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- 10.2.1 all of its personnel;
 - 10.2.2 all others associated with it; and
 - 10.2.3 all of its subcontractors;
involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 10.4 The Buyer undertakes, warrants and represents and confirms and agrees that:
- 10.4.1 neither the Buyer nor any of its officers, employees, agents or subcontractors has:
 - 10.4.1.1 committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**);
 - 10.4.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

- 10.4.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 10.4.2 it shall comply with the Modern Slavery Act 2015 and the Seller's anti-slavery and human trafficking policy in force and notified to the Buyer from time to time; and
 - 10.4.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and any of the Sellers' policies (including Modern Slavery and anti-Bribery policies) in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Seller on request at any time throughout the Contract.
- 10.5 The Buyer shall notify the Seller immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Buyer's obligations under clause 10, such notice to set out full details of the circumstances concerning the breach or potential breach of the Buyer's obligations.
- 10.6 Any breach of clause 10 by the Buyer shall be deemed a material breach of the Contract and shall entitle the Seller to terminate the Contract with immediate effect.

11. INDEMNITY AND INSURANCE

- 11.1 The Buyer shall indemnify the Seller and hold the Seller harmless from and against any losses, damages, liability, costs (including legal fees) and expenses which the Seller may suffer or incur directly or indirectly from (a) the Buyer's breach of any of its obligations under the Contract; (b) any third party claims; (c) any reliance or compliance with a Buyer Specification and/or a Buyer Obligation; and (d) any other losses arising out of or in connection with the Contract as a result of the Buyer's acts and/or omissions.
- 11.2 The Buyer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Buyer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

12. LIMITATION OF LIABILITY

- 12.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.2 Subject to clauses 12.6 and 12.7, the Seller's total liability shall not exceed the Price paid for the Goods pursuant to the Contract.
- 12.3 Subject to clauses 12.6 and 12.7, the Seller shall not be liable for consequential, indirect or special losses.
- 12.4 Subject to clauses 12.6 and 12.7, the Seller shall not be liable for any incorrect or unsatisfactory Goods supplied by the Seller to the Buyer owing to (in full or in part) misleading or insufficient instructions provided to the Seller, any Buyer Obligation Failure, any samples provided to the Buyer and/or any Buyer Specification.
- 12.5 Subject to clauses 12.6 and 12.7, the Seller shall not be liable for any of the following (whether direct or indirect):
- 12.5.1 loss of profit;
 - 12.5.2 loss of revenue;
 - 12.5.3 loss or corruption of data;
 - 12.5.4 loss or corruption of software or systems;

- 12.5.5 loss or damage to equipment;
 - 12.5.6 loss of use;
 - 12.5.7 loss of production;
 - 12.5.8 loss of contract;
 - 12.5.9 loss of commercial opportunity;
 - 12.5.10 loss of savings, discount or rebate (whether actual or anticipated);
 - 12.5.11 harm to reputation or loss of goodwill; and/or
 - 12.5.12 wasted expenditure.
- 12.6 The limitations of liability set out in clauses 12.2 to 12.5 shall not apply in respect of any indemnities given by the Buyer under the Contract.
- 12.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 12.7.1 death or personal injury caused by negligence;
 - 12.7.2 fraud or fraudulent misrepresentation; or
 - 12.7.3 any other losses which cannot be excluded or limited by Applicable Law.
- 12.8 All further claims against the Seller by the Buyer for damages consequential or otherwise however arising are hereby expressly excluded.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Background Intellectual Property used in connection with an Order shall remain the property of the party who owns it or the third party who licenses it to that party as at the date of the Contract.
- 13.2 The parties anticipate that they will disclose to each other all owned or licensed Background Intellectual Property that is relevant to the Order, including any Tooling requirements.
- 13.3 Subject to clause 13.2, any Foreground Intellectual Property which is developed by a party shall be the sole property of that party.
- 13.4 Unless specified otherwise on the Sales Order Confirmation, all moulds, equipment and other tools, remain the property of the Seller.
- 13.5 The Seller shall indemnify the Buyer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Goods infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Seller shall have no such liability if the Buyer:
- 13.5.1 does not notify the Seller in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 13.5.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Seller;
 - 13.5.3 does not let the Seller at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

- 13.5.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 13.5.5 does not, at the Seller's request, provide the Seller with all reasonable assistance in relation to the IPR Claim (at the Buyer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Buyer; and/or
 - 13.5.6 uses the Goods in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 13.6 If any IPR Claim is made or is reasonably likely to be made, the Seller may at its option:
- 13.6.1 procure for the Buyer the right to continue using and possessing the relevant Goods; or
 - 13.6.2 modify or replace the infringing part of the Goods so as to avoid the infringement or alleged infringement.
- 13.7 The Seller's obligations under clause 13.5 shall not apply to:
- 13.7.1 Goods modified or used by the Buyer other than in accordance with the Contract or the Seller's instructions and the Buyer shall indemnify the Seller against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Seller in connection with any claim arising from such modification or use;
 - 13.7.2 any Goods provided to the Buyer in accordance with a Buyer Specification; and/or
 - 13.7.3 IPR Claims arising out of or in connection with the Buyer's use of the Goods where such use does not comply in full or in part with the intended use of the Goods.

14. CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 The Buyer shall keep confidential all Confidential Information of the Seller and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 14.1.1 any information which was in the public domain at the date of the Contract;
 - 14.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 14.1.3 any information which is independently developed by the Buyer without using information supplied by the Seller; or
 - 14.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 14.2 This clause 14 shall remain in force in perpetuity.
- 14.3 The Buyer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

15. FORCE MAJEURE

- 15.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure.
- 15.2 The party subject to the Force Majeure event shall promptly notify the other party in writing when such event causes a delay or failure in performance, particulars of the event, the expected duration of the event and when it ceases to do so.

15.3 If the Force Majeure event continues for a continuous period of more than 6 (six) months, either party may terminate the Contract by written notice to the other party.

15.4 The Seller shall not be under any liability arising out of its failure to deliver Goods or allow the collection of the Goods which is directly or indirectly attributable to a Force Majeure event.

16. TERMINATION

16.1 The Seller may terminate the Contract or any other contract which it has with the Buyer at any time by giving notice in writing to the Buyer if:

16.1.1 the Buyer commits a material breach of the Contract and such breach is not remediable;

16.1.2 the Buyer commits a material breach of the Contract which is not remedied within 14 (fourteen) Business Days of receiving written notice of such breach;

16.1.3 the Buyer has failed to pay any amount due under the Contract on the Due Date and such amount remains unpaid 10 (ten) days after the date that the Seller has given notification to the Buyer that the payment is overdue; or

16.1.4 any consent, licence or authorisation held by the Buyer is revoked or modified such that the Buyer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

16.2 The Seller may terminate the Contract at any time by giving notice in writing to the Buyer if the Buyer:

16.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

16.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Seller reasonably believes that to be the case;

16.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

16.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

16.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;

16.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;

16.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

16.2.8 has a resolution passed for its winding up;

16.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

16.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 (seven) days of that procedure being commenced;

16.2.11 has a freezing order made against it;

16.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;

- 16.2.13 is subject to any events or circumstances analogous to those in clauses 16.2.1 to 16.2.12 in any jurisdiction.
- 16.3 The Seller may terminate the Contract any time by giving not less than 4 (four) weeks' notice in writing to the Buyer if the Buyer undergoes a change of Control.
- 16.4 If the Buyer becomes aware that any event has occurred, or circumstances exist, which may entitle the Seller to terminate the Contract under this clause 16, it shall immediately notify the Seller in writing.
- 16.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Seller at any time up to the date of termination.
- 17. NOTICES**
- 17.1 Any notice given by a party under these Conditions shall be in writing and in English; be signed by, or on behalf of, the party giving it; and, be sent to the relevant party at the address set out in the Contract.
- 17.2 Notices may be given, and are deemed received:
- 17.2.1 by hand: on receipt of a signature at the time of delivery;
- 17.2.2 by post: at 9.00 am on the second Business Day after posting; and
- 17.2.3 by email: on receipt of a read receipt email from the correct address which shall be Sales@presspahn.com for the Seller.
- 17.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17.1 and shall be effective:
- 17.3.1 on the date specified in the notice as being the date of such change; or
- 17.3.2 if no date is so specified, 10 (ten) Business Days after the notice is deemed to be received.
- 17.4 This clause 17 does not apply to notices given in legal proceedings or arbitration.
- 18. GENERAL**
- 18.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.
- 18.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, confirmation of order, Buyer Specification or other document shall form part of the Contract except to the extent that the Seller otherwise agrees in writing.
- 18.3 The rights and remedies provided in the Contract for the Seller only are cumulative and not exclusive of any rights and remedies provided by law.
- 18.4 The Buyer shall at the request of the Seller, and at the Buyer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 18.5 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 18.6 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 18.7 Nothing in these Conditions purports to limit or exclude any liability for fraud.

- 18.8 No variation of the Contract (including the Conditions and the Order) shall be valid, binding or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
- 18.9 The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Seller's prior written consent.
- 18.10 The Seller shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract or under any other contract which the Seller has with the Buyer.
- 18.11 The Buyer shall pay all sums that it owes to the Seller under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 18.12 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 18.13 The Buyer recognises that any breach or threatened breach of the Contract may cause the Seller irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Seller, the Buyer acknowledges and agrees that the Seller is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 18.14 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 18.15 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 18.16 No failure, delay or omission by the Seller in exercising any right, power, debt action or remedy provided by law or under the Contract shall operate as a waiver of that right, power, debt action or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 18.17 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Seller shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Seller.
- 18.18 The Buyer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 18.19 If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.
- 18.20 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

19. GOVERNING LAW AND JURISDICTION

- 19.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

- 19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).