



## **General Terms and Conditions of Sale**

### **1 Definitions and interpretation**

1.1 In these Conditions the following terms have the following meanings:

"Conditions" means the terms and conditions of sale set out in this document;

"Contract" means any agreement between PCT and the Customer for the sale and purchase of the Products incorporating these Conditions;

"Customer" means the person who agrees to purchase the Products from PCT subject to these Conditions whose details may be set out overleaf;

"Delivery Address" means the address for delivery of the Products which shall be the Customer's principal place of business unless specified otherwise overleaf;

"Estimated Delivery Date" means the date on which PCT estimates that the Products will be delivered to the Delivery

Address which may be set out overleaf;

"PCT" means Premier Control Technologies Limited (Registered Company Number: 3667682) whose registered office is at Unit 8, Hopper Way, Diss Business Park, Diss, IP22 4GT; and "Products" means the products which PCT is to supply to the Customer as agreed in the Contract and which may be listed overleaf.

### **2 Basis of sale**

2.1 These Conditions apply to all contracts for the sale of Products entered into by PCT. By placing an order with PCT or accepting PCT's quotation, the Customer agrees to deal with PCT on these Conditions, subject to any terms specified in writing overleaf and to the exclusion of all other terms, conditions, warranties or representations (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or any other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract save where these conditions (and (where applicable) the terms which are to be overridden) are specifically referred to in that document and the document is signed by both the Customer and PCT.

2.3 No variation to these Conditions shall be binding unless made in accordance with clause 2.2 above or in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and PCT.

2.4 PCT's employees or agents are not authorised to make any representations concerning the Products unless confirmed by PCT in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.

2.5 Any advice or recommendation given by PCT or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by PCT is followed or acted upon entirely at the Customer's own risk and accordingly PCT shall not be liable for any such advice or recommendation which is not so confirmed.



2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by PCT shall be subject to correction without any liability on the part of PCT.

### **3 Sale and purchase**

3.1 The Customer agrees to purchase the Products from PCT and PCT agrees to sell the Products to the Customer.

3.2 Each order or acceptance of a quotation for Products by the Customer from PCT shall be deemed to be an offer by the Customer to buy Products subject to these Conditions and shall be binding on the Customer, but shall not bind PCT until PCT has accepted that order.

3.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3.4 Any quotation is given on the basis that no Contract shall come into existence until PCT dispatches an acknowledgement of order to the Customer or (if earlier) PCT delivers the Products to the Customer. Any quotation is valid for a period of 30 (thirty) days only from its date, provided that PCT has not previously withdrawn it.

3.5 The Customer shall not be entitled to cancel in whole or in part any order which PCT has accepted or any quotation of PCT which the Customer has accepted in either case whether orally or in writing, except where such cancellation has been accepted by PCT subject to reasonable cancellation charges.

3.6 If the Products are to be manufactured or any process is to be applied to them by PCT in accordance with the specifications submitted by the Customer, or if the Products are to be marked with any trade mark at the request of the Customer, the Customer shall indemnify and hold PCT harmless against:

3.6.1 all, damages, costs and expenses awarded against or incurred by PCT in connection with any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights;

3.6.2 all, damages, costs and expenses paid or agreed to be paid by PCT in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights;

3.6.3 all, damages, costs and expenses awarded against or incurred by PCT in connection with any claim for misuse of any confidential information of any other person;

3.6.4 all, damages, costs and expenses paid or agreed to be paid by PCT in settlement of any claim for misuse of any confidential information of any other person;

3.6.5 any other liability whatsoever which results from PCT's use of the Customer's specifications or the marking of the Products or from the sale or supply of such Products by PCT.

3.7 PCT reserves the right to make any changes in the specifications of the Products which are required to conform with any applicable safety or other requirements or which do not materially affect their quality or performance.

### **4 Description**

4.1 The quantity and description of the Products shall be as set out in PCT's quotation or acknowledgement of order.



4.2 All samples, drawings, descriptive matter, specifications and advertising issued by PCT and any descriptions or illustrations contained in PCT's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.

## 5 Delivery

5.1 PCT shall use its reasonable efforts to deliver the Products to the Customer at the Delivery Address (provided there is a safe suitable route of access) on or around the Estimated Delivery Date, but time of delivery shall not be of the essence.

5.2 PCT shall be entitled to deliver the Products in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by PCT in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.

5.3 The Customer shall provide all necessary labour and equipment to enable the Products to be safely unloaded at the Delivery Address.

5.4 The Customer shall inspect the Products on delivery and if the Products are damaged on delivery or less than the correct amount of the Products is delivered then, unless the Customer notifies PCT and the carrier (otherwise than by a note on the delivery note) within 5 (five) days of delivery no claim against PCT may be made in respect of damage to or short delivery of such Products.

5.5 If the Products have not been delivered despite receipt by the Customer of the invoice from PCT relating to them, then unless the Customer notifies PCT within 5 (five) days after the date of such invoice no claim against PCT may be made in respect of non-delivery of those Products.

5.6 The Customer shall be deemed to accept the Products on delivery notwithstanding any late delivery by PCT.

5.7 Subject to the other provisions of these conditions PCT shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by PCT's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 (sixty) days.

5.8 If the Customer fails to take delivery of the Products or fails to give PCT adequate delivery instructions before the Estimated Delivery Date, then, without prejudice to any other right or remedy available to PCT, PCT may:

5.8.1 store the Products until actual delivery is made and charge the Customer for the costs (including insurance) of storage; and/or

5.8.2 sell or supply the Products (whether or not such Products were manufactured or marketed by PCT pursuant to the provisions of clause

3.6 above) in or to a third party in any country at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Customer for any shortfall below the price that PCT would have achieved under the Contract and in either case shall be entitled to charge interest (both before and after any judgment) on the price payable for the Products under the Contract at the statutory



interest rate (as provided for in the Late Payment of Commercial Debts (Interest) Act 1998) from the Estimated Delivery Date to the date of actual delivery.

## **6 Price and payment**

6.1 The price of the Products shall be the price set out overleaf or, if not specified, the price quoted by PCT or, if not specified and no price has been quoted (or a quoted price is no longer valid), the price listed in PCT's published price list current at the date of delivery.

6.2 PCT reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to PCT which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Products which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give PCT adequate information or instructions.

6.3 Unless otherwise stated overleaf or under the terms of any quotation or in any price list of PCT, all prices are given by PCT on an EXW basis (as defined by the Incoterms published by the International Chamber of Commerce from time to time), and the Customer shall be liable to pay PCT's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by PCT, whether as a result of the Delivery Address not being in the UK or otherwise.

6.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to PCT.

6.5 PCT shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after delivery of the Products unless the Products are to be collected by the Customer or the Customer wrongly fails to take delivery of them, in which case PCT shall be entitled to invoice the Customer at any time after PCT has notified the Customer that the Products are ready for collection or (as the case may be) PCT has tendered delivery of the Products.

6.6 The Customer shall make payment to PCT in respect of all invoices in full within 30 (thirty) days of the date of the invoice.

6.7 Time of payment shall be of the essence.

6.8 No payment shall be deemed to have been received until PCT has received cleared funds.

6.9 All payments payable to PCT under the Contract shall become due immediately on its termination despite any other provision.

6.10 The Customer shall make all payments due under the Contract in full without any deduction whether by way of setoff, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by PCT to the Customer.

6.11 All payments shall be applied to invoices and to Products listed in such invoices in the order determined in its discretion by PCT.

6.12 If full payment is not received by PCT by the due date then without prejudice to its rights PCT shall be entitled:

6.12.1 to sue for the entire price; and/or

6.12.2 to charge statutory interest (both before and after any judgment) as provided for in the Late Payment of Commercial Debts (Interest) Act 1998 on the outstanding balance; and/or

6.12.3 to require the immediate return to PCT of all products agreed to be sold by PCT to the Customer in which the property has not passed to the Customer in accordance with the provisions of clause 8



below and the Customer hereby agrees to reimburse to PCT upon demand PCT's costs or expenses in recovering such products.

## **7 Warranty and liability**

7.1 The Customer warrants and represents to PCT (and it is a condition of this agreement) that it has full capacity and authority and all necessary consents, registrations and approvals to enter into and perform its obligations under this agreement.

7.2 PCT warrants the Products in accordance with the statement of warranty policy which is set out in schedule 1 (as amended by PCT from time to time) provided that:

7.2.1 PCT shall be under no liability in respect of any defects in the Products arising from any drawing, design or specifications supplied by the Customer;

7.2.2 PCT shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Customer or persons using the Products, abnormal working conditions, failure to follow PCT's instructions (whether oral or in writing), or misuse or alteration or repair of the Products without PCT's approval;

7.2.3 PCT shall be under no liability if the total price of the Products has not been paid by the due date for payment;

7.2.4 any such defect in or failure to meet any such specification by the Products shall be notified to PCT in writing as soon as reasonably possible after the Customer discovers such defect or non-conformity; and

7.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by PCT, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to PCT and which PCT hereby assigns to the Customer so far as it is able.

7.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

7.4 PCT does not seek to exclude or limit its liability for fraudulent misrepresentation or death or personal injury resulting from negligence of PCT or its employees, or for any matter which it would be illegal for PCT to exclude or attempt to exclude its liability.

7.5 Except pursuant to clause 7.4 above, PCT shall not in any event be liable for:

7.5.1 any loss of profits,

7.5.2 loss or depletion of goodwill,

7.5.3 loss of anticipated savings, business opportunity or data, or

7.5.4 for any indirect, special or consequential loss or damages howsoever arising in connection with or arising out of the furnishing, functioning or use of the Products, or any item or service provided whether in contract, strict liability, tort (including without limitation, negligence) and whether PCT knew or had reason to know of the same, and shall not be liable for any other damages except as provided in the Contract.

7.6 Except pursuant to clause 7.4 above in no event shall PCT's liability in respect of any of the Products exceed the price paid for those Products.



7.7 Except pursuant to clause 7.4 above, no action, regardless of form, arising out of the transactions under the Contract may be brought by the Customer more than two years after the cause of action has accrued.

## **8 Risk and title**

8.1 The Products are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Products shall not pass to the Customer until PCT has received in full (in cash or cleared funds) the price of the Products and all other sums which are or which become due to PCT from the Customer on any account. PCT shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from Supplier.

8.3 Until ownership of the Products has passed to the Customer, the Customer shall:

8.3.1 hold the Products on a fiduciary basis as PCT's bailee;

8.3.2 store the Products (at no cost to PCT) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as PCT's property;

8.3.3 grant PCT, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them;

8.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and

8.3.5 maintain the Products in satisfactory condition and keep them insured on PCT's behalf for their full price against all risks to the reasonable satisfaction of PCT. On request the Customer shall produce the policy of insurance to PCT.

8.4 The Customer may resell the Products before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

8.4.2 any such sale shall be a sale of PCT's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.5 The Customer's right to possession of the Products shall terminate immediately if:

8.5.1 PCT is entitled to terminate this agreement under clause 10 below; or

8.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under this agreement or any other contract between PCT and the Customer, or is unable to pay as they fall due or the Customer ceases to trade; or

8.5.3 the Customer encumbers or in any way charges any of the Products.

8.6 Where PCT is unable to determine whether any Products are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by PCT to the Customer in the order in which they were invoiced to the Customer.

8.7 PCT shall be entitled to re-sell or otherwise dispose of recovered Products in any way PCT in its absolute discretion, thinks fit. The Customer hereby grants PCT a non-exclusive, world-wide, royalty free, perpetual, irrevocable licence (with a right to sublicense) to use, for the purposes of such re-sale or other



disposal, any and all trademarks which may have been applied to the Products by the Customer and/or by PCT or any third party at the request or with the consent of the Customer.

8.8 On termination of the Contract, howsoever caused, PCT's (but not the Customer's) rights contained in this clause 8 shall remain in full force and effect.

## **9 Compliance with US and UK Export Laws**

9.1 The Customer acknowledges that Products purchased from PCT are subject to US and UK and other export control laws and regulations.

The Customer shall not re-export Products from the territory in which they are supplied, and shall not sell or facilitate a sale of the Products within the territory in which they are supplied to any customer or end-user who the Customer knows or has reason to know will use them or resell them for use in the design, development or production of nuclear, chemical or biological weapons. The Customer shall not sell, or facilitate a sale, of Products to any customer or end-user who has been prohibited from participating in export transactions by any governmental body of the US or UK.

9.2 The Customer represents that it has not and agrees that it shall not in connection with the transactions contemplated by this agreement, or in connection with any other business transactions involving PCT or the Products, make any payment or transfer anything of value, directly or indirectly, (i) to any governmental official or employee (including employees of government corporations), or to any political party or candidate, (ii) to any officer, director, employee or representative of any actual or potential customer of PCT, (iii) to any officer, director or employee of PCT, or any of its affiliates, or (iv) to any other person or entity if such payment or transfer would violate the laws of the country in which made or the laws of the US or UK. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business. This section shall not, however, prohibit normal and customary business entertainment or the giving of business mementos of nominal value.

## **10 Termination**

10.1 PCT shall be entitled to terminate the Contract forthwith by notice in writing to the Customer if:

10.1.1 the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 (thirty) days of receipt of notice of the breach requiring remedy of the same; or

10.1.2 the Customer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere; or

10.1.3 the Customer ceases or threatens to cease to carry on business; or

10.1.4 there is at any time a material change in the management, ownership or control of the Customer; or

10.1.5 if PCT reasonably apprehends that any of the events specified in clause 10.1.2 to clause 10.1.4 is about to occur in relation to the Customer and notifies the Customer accordingly.



10.2 In the event of termination by PCT pursuant to clause 10.1 above then, without prejudice to any other right or remedy available to PCT, PCT shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Customer and, if the Products have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and PCT shall be entitled to charge statutory interest as provided for in the Late Payment of Commercial Debts (Interest) Act 1998 from the time of such cancellation or suspension until PCT receives payment.

## **11 Force Majeure**

PCT reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of PCT including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 (one hundred and eighty) days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **12 General**

12.1 The remedies available to PCT under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.

12.2 The failure or delay of PCT to enforce or to exercise, at any time, or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

12.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

12.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has been previously notified to the sending party and shall be deemed to have been given on the day of delivery.

12.5 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of PCT.

12.6 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

12.7 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise





shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.

12.8 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.

12.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.10 Any reference in this agreement to any statute, law, statutory instrument, enactment, order, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof.

12.11 The formation, existence, construction, validity and performance and all aspects of the Contract are governed by the laws of England and the parties accept the exclusive jurisdiction of the English Courts.

## **SCHEDULE 1**

### **Statement of Warranty**

PCT warrants to the end purchaser, for a period of one year from the date of shipment from its factory, that all Products manufactured by it are free from defects in materials and workmanship. This warranty does not cover products that have been damaged due to normal use, misapplication, abuse, lack of maintenance, or improper installation. PCT's liability under this warranty is limited to the repair or replacement of a defective product, at no charge to the end purchaser, if the product is inspected by PCT and found to be defective. Repair or replacement is at PCT's discretion. An authorisation number must be obtained from PCT before any product may be returned for warranty repair or replacement. The product must be thoroughly cleaned and any process chemicals removed before it will be accepted for return. The purchaser must determine the applicability of the product for its desired use and assumes all risks in connection therewith. PCT assumes no responsibility or liability for any omissions or errors in connection with the use of its products. PCT will under no circumstances be liable for any incidental, consequential, contingent or special damages or loss to any person or property arising out of the failure of any product, component or accessory.

All expressed or implied warranties, including the implied warranty of merchantability and the implied warranty of fitness for a particular purpose or application are expressly disclaimed and shall not apply to any products sold or services rendered by PCT.

This warranty supersedes and is in lieu of all other warranties, either expressed or implied and all other obligations or liabilities. No agent or representative has any authority to alter the terms of this warranty in any way. PCT sells its Products only under the above terms and conditions. It will not be bound to any terms or conditions stated by the purchaser or end user in any offer, acceptance or other contractual document. Placing an order with PCT or accepting a delivery from PCT shall be considered acceptance of its terms and conditions.