

PENTAXIA LIMITED

TERMS AND CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"**Conditions**" means the terms and conditions set out in this document [as amended from time to time in accordance with clause 12.6].

"**Contract**" means the contract between Pentaxia and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"**Customer**" means the person or firm who purchases the Goods from the Supplier.

"**Force Majeure**" means has the meaning given in clause 11. **Event**"

"**Goods**" means the goods (or any part of them) set out in the Order.

"**Items**" Goods not manufactured by the Supplier.

"**Order**" means the Customer's order for the Goods, as set out in the Customer's purchase order form.

"**Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

"**Supplier**" means Pentaxia Ltd (registered in England and Wales with company number 06585543).

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 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.

1.2.4 Any phrase introduced by the terms **including, include, or** any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

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 Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification [submitted by the Customer] are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any illustrations contained in the Supplier's brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

2.7 If terms and conditions have not been supplied by the customer then Pentaxia's terms and conditions shall apply.

3. GOODS

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Supplier in

connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Supplier shall ensure that:

- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 4.2 As agreed between the Supplier and the Customer Goods can be delivered or collected.

If delivery by the Supplier is agreed, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready or if collection is agreed by the Customer, the Customer shall collect the Goods from the Supplier's premises at Alfreton Road, Derby, DE21 4AG, United Kingdom or such other location as may be advised by the Supplier prior to delivery ("**Collection Location**") within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.

- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or (as the case may be) on the completion of loading of the Goods at the Collection Location.
- 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 Goods 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 Goods.

- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods 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 Goods.
- 4.6 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready and
 - 4.6.2 The Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
 - 4.6.3 All customer patterns, moulds and any other associated tooling that remain at the Supplier are left at Customer's own risk and the Supplier cannot accept responsibility for any damage, loss, or theft of these goods.
 - 4.6.4 Tooling Storage: the Supplier agrees to store all types of tooling and fixtures for a maximum period of 3 months from date of invoice of the last component of an order. Any change to this condition must be agreed in writing. After this period, unless covered by future component orders, the tooling and/or fixtures (including master patterns) will be either; returned to the customer, disposed of, or where agreed, retained by the Supplier subject to a standard storage charge.
- 4.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may dispose of part or all the Goods and, after deducting reasonable storage, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. COLLECTION

- 5.1 If agreed between the Supplier and the Customer, the Supplier may collect Items from the Customer for refurbishment purposes.
- 5.2 The Supplier accepts no responsibility for any Items collected for refurbishment whilst in transit.
- 5.3 Any dates quoted for collection are approximate only. The Supplier shall not be liable for any delay in collection of the Items that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate collection instructions or any other instructions that are relevant to the collection of the Items.
- 5.4 If the Supplier fails to collect the Items, its liability shall be limited to the costs and expenses incurred by the Customer in getting the items refurbished elsewhere at the cheapest market price available, less the price of the refurbishment.
- 5.5 The Supplier shall have no liability for any failure to collect the Items to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate collection instructions or any other instructions that are relevant to the collection of the Items.

6. QUALITY

- 6.1 The Supplier warrants that on delivery and for a period of 12 months from the date of delivery ("**warranty period**"), the Goods shall:
 - 6.1.1 conform in all material respects with their description and any applicable Specification;
 - 6.1.2 be free from material defects in design, material and workmanship;
 - 6.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979); and
 - 6.1.4 be fit for any purpose held out by the Supplier.
- 6.2 Subject to clause 6.3, if:
 - 6.2.1 the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all the Goods do not comply with the warranty set out in clause 6.1;
 - 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

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

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.3.2 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 Goods or (if there are none) good trade practice regarding the same;

6.3.3 the defect arises because of the Supplier following any drawing, design or Specification supplied by the Customer;

6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

6.3.5 the Goods (or components forming part of the Goods) that are not of the Suppliers manufacture, in which case the Supplier will use its reasonable endeavours to secure for the Customer the benefit of any warranty given by the actual manufacturer;

6.3.6 the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

6.3.7 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, fully permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.7 The Supplier shall not be liable for any Items that fail to be refurbished in the following events:

6.7.1 the defect arises because the Customer failed to follow the oral or written instructions as to the storage, commissioning,

- installation, use and maintenance of the Items or (if there are none) good trade practice regarding the same;
- 6.7.2 the defect arises because of the Supplier following any drawing, design or specification supplied by the Customer;
- 6.7.3 the Customer alters or repairs such Items without the written consent of the Supplier;
- 6.7.4 the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 6.7.5 the Items differ from the specification because of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- 6.7.6 any Items fail due to a previous fault or a fault occurring after the refurbishment which is not related to any works carried out by the Supplier.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until [the earlier of:]
 - 7.2.1 the Supplier receives payment in full in cleared funds for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums
 - 7.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and

- 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 7.4.1 it does so as principal and not as the Supplier's agent; and
 - 7.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Supplier may have:
 - 7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.5.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax ("**VAT**"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.6 The Customer shall pay the invoice in full and in cleared funds by the end 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 of payment is of the essence.
- 8.7 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 NATWEST Bank's base rate from time to time. Such interest shall accrue daily 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.
- 8.8 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.

9. TERMINATION AND SUSPENSION

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 9.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 9.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 9.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 9.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.6 (inclusive);
- 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 9.2.11 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; and

- 9.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods 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 9.2.1 to clause 9.2.12, 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.
- 9.4 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.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 10.1.4 defective products under the Consumer Protection Act 1987; or
 - 10.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 the Supplier shall under no circumstances whatever 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
 - 10.2.2 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 Goods.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. GENERAL

12.1 Assignment and other dealings.

- 12.1.1 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.
- 12.1.2 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.

12.2 Notices.

- 12.2.1 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, fax or e-mail.
- 12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; 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 e-mail, one Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 **Severance.**

12.3.1 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.

12.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

12.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).