

Britax PMG Ltd - Terms & Conditions

1. Definitions

In these conditions, unless the context requires otherwise;

1.1 "Buyer" means the person, firm or company who buys or agrees to buy the Goods from the Company;

1.2 "Company" means Britax PMG Limited

1.3 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company

1.4 "Contract" means the contract for the sale and purchase of the Goods

1.5 "Delivery Date" means the date specified by the Company when the Goods are to be delivered;

1.6 "Goods" means the articles which the Buyer agrees to buy from the Company.

1.7 "Party" means the Company or the Buyer and "Parties" means both of them.

2. General

2.1 The express provisions of these Conditions shall apply to the sale of the Goods by the Company to the Buyer. Any provisions not set out in these Conditions, including those of the Buyer which the Buyer applies or purports to apply, shall not be the terms and conditions concerning the sale of the Goods by the Company to the Buyer however such provisions are introduced (including but not limited to provisions included on purchase orders, confirmations of order or similar documents ("Buyer's provisions")).

For the avoidance of doubt the Buyer acknowledges and agrees that the Company shall not be bound by any of the Buyer's provisions.

2.2 An order for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to the provisions of these Conditions.

2.3 Quotations given by the Company constitute solicitations for offers to purchase only.

2.4 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

2.6 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into these Conditions the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

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

2.8 No failure or delay by the Company in exercising any right, power or privilege under these Conditions shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Conditions are cumulative and not exclusive of any rights and remedies provided by law.

2.9 Any shipment terms quoted in relation to the Goods shall be in accordance with the

Incoterms 2010 or its latest version as from time to time modified or supplemented or revised.

2.10 The seller will be entitled to assign sub-contract or sub-let this contract or any part thereof

2.11 Certain items are imported by Britax PMG Limited and are not available to all overseas territories

2.12 No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods, nor the descriptions and illustrations contained in the Seller's or Manufacturer's catalogues, price lists and other advertising matter shall be deemed to form part of the Contract nor be regarded as a warranty or representation relating to the Goods.

3. Orders, Specifications, Cancellations and Variation

3.1 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification)

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the written acknowledgement of order between the Buyer and the Seller. The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory requirements, or where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

3.3 No order which has been accepted by the Company may be cancelled or varied by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

3.4 The following provisions will apply where the Seller supplies the Goods under a blanket order received from the Buyer:

3.4.1 If the order is a scheduled order where the maximum quantity of goods required and the approximate dates (including the terminal date) on which the requirements will be called off are specified, the whole order will be treated as a single contract upon the Contract Terms.

3.4.2 If the order is a non-scheduled order where the maximum quantity of goods required or where appropriate call off dates are not specified, each call off will be deemed to conclude a separate contract upon the Contract Terms.

3.4.3 If the order is a non-scheduled order where the appropriate call off dates are not specified, the Seller may require the Buyer to accept delivery of the maximum quantity of Goods required within twelve months of the date of the Contract.

3.4.4 Without limiting the generality of any of the other Contract Terms the Seller will not be under any liability to the Buyer if at the time of call off by the Buyer the Seller is unable for whatever reason to supply Goods in accordance with the Buyer's requirements.

4. Price

4.1 The price of the Goods shall be the price specified on the Company's quotation, or if none, on the Company's order confirmation, or if none, on the Company's price list current at the date of acceptance of the order.

4.2 Unless specified in writing, all quotations expire 30 days after the date of issue and may be terminated earlier by notice by the Company at its sole discretion.

4.3 The price is based upon the scope of the Goods referred to in the Company's quotation or order confirmation. In the event of any variation in inter alia the scope of the Goods ordered or quoted for, including delivery dates, from that of the Company's quotation, the Company reserves the right to vary the price.

4.4 Except as otherwise stated under the terms of any quotation, acceptance, or in any price list of the Company, and unless otherwise agreed in writing between the Buyer and the Company, all prices are given on an EXW basis.

4.5 For orders below £200.00 a standard delivery charge of £10.00 will apply.

4.6 All inland orders of over £200 net will be despatched carriage paid by road; rail or post provided however that the cost of any excess for special, express, same day or Saturday delivery, if requested by the Customer, shall be borne by the Customer.

4.7 All prices are exclusive of VAT or any other tax or duty or the cost of delivery or insurance all of which shall be paid by the Buyer at the time when payment of the price for the Goods is due. If VAT is payable it shall be separately identified on the invoice and shall be payable by the Buyer subject to receipt of a valid VAT invoice. If exemption from taxes is claimed, the Buyer must provide a certificate of exemption. The price shall be net of any withholding tax payable by the Buyer and in no event shall the Buyer be entitled to withhold or deduct any such tax from the price.

4.8 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increases in the cost to the Company which is due to any factor beyond the control of the Company such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, any increase in the cost of labour, materials or other costs of manufacture. The Company further reserves the right to increase the price of the Goods due to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions. The price so adjusted shall be payable as if the price set out therein were the original contract price.

4.9 The Company reserves the right to impose a surcharge of £25 on orders less than Nett Value of £250 sterling.

5. Payment

5.1 Unless otherwise agreed in writing, payment in full shall be made to the Company in the currency invoiced no later than last day of month following despatch, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.

5.1.1 Where no account has been agreed by the Seller the Goods will not be delivered until the Seller is paid the amount shown on the proforma invoice relating to the Goods.

5.1.2 Where an account has been agreed the Seller may in its absolute discretion set and alter the Buyer's credit limit and the Seller reserves the right not to deliver the Goods if the price thereof increases the amount owed by the Buyer to the Seller beyond the Buyer's credit limit.

5.2 Time for payment shall be of the essence

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to;

5.3.1 Cancel the Contract or suspend any further deliveries to the Buyer.

5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer)

5.3.3 Interest and costs at the rate from time to time prescribed pursuant to the Late Payments of Commercial Debts (Interest) Act 1998, as amended from time to time, will accrue daily and be calculated on a daily basis on overdue accounts from the due date for payment until payment is received by the Seller.

5.4 Ownership of the Goods shall remain with the Company until payment has been made in full.

5.5 The Seller will be entitled to payment for all instalments of Goods delivered to the Buyer whether under a blanket order or otherwise.

6. Delivery

6.1 Any date specified or agreed for delivery or supply of the Goods is an estimate only and time shall not be of the essence. If no date is specified or agreed, the Buyer shall give the Company all necessary arrangements so that delivery may take place within 14 days after the Company has notified the Buyer that the Goods are ready for delivery, but the Company shall not be liable for any loss caused by any delay in delivery or supply.

6.2 The Company shall be entitled to deliver or supply the Goods at one time or by instalments. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.3 Delivery of the Goods shall take place once the Goods have been delivered or collected in accordance with the Incoterm stated by the Company in the quotation or order confirmation. In the event that an Incoterm is not stated, delivery of the Goods shall take place:

6.3.1 Where the Company undertakes delivery of the Goods, when they are loaded off the Company's vehicle, ship or other transport at the station, port or address specified by the Buyer. The Buyer must permit and accept delivery of the Goods within normal business hours and if the Buyer does not do so the Company may leave the Goods at such premises or as near to them as may be practicable.

6.3.2 Where the Buyer undertakes to collect the Goods, when they are loaded onto the Buyer's vehicle or other transport at the address of the Company.

6.3.3 Where the Goods are handed to a carrier for delivery to the Buyer, the carrier will be the Buyer's agent and delivery of the Goods will occur on receipt by the carrier.

6.4 If the Buyer:

6.4.1 Fails to accept delivery of the Goods when delivered or supplied; or

6.4.2 Having agreed to collect the Goods fails to do so when asked, the Company shall be entitled to treat the contract for the Goods as repudiated in which case:

6.4.3 the Buyer shall indemnify the Company in respect of all resulting losses suffered or incurred by the Company; and

6.4.4 the Company may (but shall not be obliged to) store all or any of the Goods at the risk and expense of the Buyer. The cost of any storage together with any additional insurance or double handling charges will be added to and form part of the price for the Goods.

6.5 Where delivery of the Goods requires an export licence or other authorisation before shipment the Company shall not be responsible for any delay in delivery due to delay in, or refusal of, such licence or authorisation.

7. Title and Risk

7.1 Risk in the Goods shall pass to the Buyer at the point of delivery as defined in 6.3.1, 6.3.2 and 6.3.3 above.

7.2 In spite of delivery having been made property in the Goods shall not pass from the Company until;

7.2.1 The Buyer shall have paid the Price plus VAT in full; and

7.2.2 No other sums whatever shall be due from the Buyer to the Company

7.3 Until property in the Goods passes to the Buyer in accordance with clause 6. 3 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

7.4 Notwithstanding that the Goods (or any of them) remain the property of the Company the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Company the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.

7.5 The Company shall be entitled to recover the price notwithstanding that property in any of the Goods has not passed from the Company.

7.6 Until such time as property in the Goods passes from the Company the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company. If the Buyer fails to do so the Company may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 7.4 shall cease.

7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Buyer does so, all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.

7.8 The Buyer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of the Company until the date the property in the Goods passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the rights of the Company if the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.

7.9 Unless otherwise agreed in writing all patterns, drawings, tools etc. produced by the Seller shall remain the property of the Seller and must not be used or copied by the Buyer.

7.10 Where the cost of tooling is wholly borne by the Buyer the tools will belong to the Buyer upon payment in full for the tools.

7.11 If tools belonging to the Buyer are subject to fair wear and tear, the Buyer will agree to repair or replace them at the Buyer's expense.

7.12 After completion of any contract the Seller may by written notice require the Buyer to remove its tools from the Seller's premises on one month's prior notice.

7.13 Should the Buyer fail to remove its tools the Seller may sell the tools and the Seller's only liability to the Buyer thereafter will be to remit to the Buyer the proceeds of such sale after deducting all sums due to the Seller from the Buyer including the cost of sale of the tools and storage charges.

8. Acceptance of Goods

8.1 The Buyer shall inspect the Goods on delivery and shall within 5 days of delivery notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or sample. If any such report is made the Buyer shall afford the Company an opportunity to inspect the Goods within a reasonable time thereafter and before any use is made of them.

8.2 If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent upon a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods. The Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered.

9. Return of Goods

9.1 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return.

9.2 Goods returned without prior written approval of the Company may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Company may have.

10. Warranties

10.1 The Company warrants that;

10.1.1 the Company has the right and title to sell the Goods to the Buyer;

10.1.2 the Goods supplied will at the time of delivery correspond to the quality and description given by the Company.

10.2 In respect of Goods manufactured by the Seller, the Seller will, within a period of 24 months (60 months for LED light heads) from the date of manufacture unless otherwise agreed in writing, repair or at its option, replace any Goods which are proved to the satisfaction of the Seller to be defective in material or workmanship provided that this obligation will not apply where:

- (a) the Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair, or
- (b) the Goods have been improperly installed or connected (unless the Seller carried out such installation or connection): or
- (c) the Buyer has failed to observe any maintenance relating to the Goods; or
- (d) the Buyer has failed to notify the Seller of any defect suspected within 14 days of the same coming to the knowledge of the Buyer; or
- (e) the Buyer is in breach of this or any other contract made with the Seller; or
- (f) the Buyer has failed to provide proof of purchase and date of the Goods being put

into service.

The cost of dismantling and reassembling the Goods and of returning them to the Seller for inspection will be borne by the Buyer. Any goods replaced will belong to the Seller. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the twenty four month period (60 month period for LED light heads).

11. Liability

11.1 Clause 10 sets out the full extent of the Company's obligations to the Buyer under or in connection with any contract.

11.2 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses, or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these conditions.

11.3 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limitation the following shall be regarded as causes beyond the Company's reasonable control;

11.3.1 Act of God, explosion, flood, tempest, fire or accident

11.3.2 war or threat of war, sabotage, piracy, insurrection, civil disturbance or requisition

11.3.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority

11.3.4 import or export regulations or embargoes

11.3.5 strikes, lock outs or other industrial actions or trade disputes

11.3.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery

11.3.7 power failure or breakdown in machinery

11.4 Where the Goods are manufactured in accordance with information or drawings supplied by the Buyer or to his design or specification or where standard goods of the Seller are altered in accordance with the Buyer's instructions:

11.4.1 no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods (this being without prejudice to any other of the Contract Terms)

11.4.2 the Buyer will indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of such goods infringing any patent, registered design, copyright, or other intellectual property right protection or the provision of any statute, statutory instrument or regulation for the being in force.

11.5 No variation by the Seller in the specification or design of any Goods shall constitute a breach of contract or impose upon the Seller any liability whatsoever.

11.6 The Seller shall be under no liability whatsoever to the Buyer in respect of any loss,

damage or claim incurred by or made against the Buyer should any goods supplied by the Seller infringe any patent registration, design, copyright or other intellectual property right protection or the provision of any statute, statutory instrument or regulation for the time being in force.

12. Export

Where the Goods are to be exported to the Buyer:

12.1 The Uniform Laws on International Sales Act 1967 shall not apply to the Contract.

12.2 The Goods will be sold EXW at the option of the Seller and the Seller will be under no obligation to give the Buyer notice as specified in Section 32(3) of the Sale of Goods Act 1979.

12.3 Payment will be in Pounds Sterling in England unless otherwise expressly agreed by the Buyer and Seller in writing.

12.3.1 the Buyer will, where mutually agreed, establish and maintain in favour of the Seller an irrevocable and confirmed letter of credit with a U.K. clearing bank payable on drafts drawn at sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date and shall cover the full price of the Goods (including applicable taxes) and such letter of credit shall be divisible. All bank charges and other expenses in relation to the letter of credit, shall be for the Buyer's account; or-
12.3.2 the Seller can negotiate and mutually agree in writing with the Buyer payment terms other than a Letter of Credit,

12.4 Standard export packing material is included in ex-works price. Wooden cases can be supplied at an extra charge of £50 each net.

13. Export Controls

13.1 The fulfilment of the Contract on the Company's part is subject to the proviso that this shall not be prevented by impediments on the grounds of national and international legal requirements, in particular export controls

13.2 If the Buyer exports, re-exports or imports the Goods it shall assume responsibility for complying with applicable laws and regulations including all export control laws. The Company may suspend performance if the Company is in violation of applicable laws or regulations.

13.3 If the Goods require the Company to have any permit or licence from any governmental or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time.

13.4 In particular this Contract shall be subject to the proviso that all required export licences have been granted and that there are no other impediments arising from export control laws.

14 Agency and Partnership

14.1 These Conditions shall not constitute or imply any partnership, joint venture, agency or other relationship between the parties other than the contractual relationship expressly provided for in these Conditions. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

15. Severance

15.1 If any provision of these Conditions is prohibited by law or judged by a Court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Conditions and rendered ineffective as far as possible without modifying the remaining

provisions of these Conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of these Conditions.

16. Law and Jurisdiction

16.1 The validity, construction and performance of these Conditions shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts to which the parties submit.

17. Third Parties

17.1 For the purposes of the Contract (Rights of Third Parties) Act 1999 these Conditions are not intended to, and do not, give any person who is not a party to it any right to enforce any of its provisions.

18. Default and Termination

18.1 The Contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following events:

18.1.1 that the Buyer has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or has suffered or allowed any execution whether legal or equitable to be levied on his property or obtained against him or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Buyer or any proceedings have been commenced relating to the insolvency or possible insolvency of the Buyer.