



Primetake Limited

General Terms and Conditions of Sale (“Conditions”)

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in England;
Confidential Information	any commercial, financial or technical information, information relating to the Deliverables, Tender, plans, know-how or trade secrets or which is obviously confidential or has been identified as such;
Contract	the agreement between the Supplier and the Customer for the Deliverables incorporating these Conditions and the Order;
Customer	the organisation who purchases the Deliverables from the Supplier as set out in the Order;
Deliverables	the Goods or Services or both as the case may be;
Force Majeure	an event or sequence of events beyond the Supplier's reasonable control preventing or delaying it from performing its obligations under the Contract;
Goods	the goods set out in the Order;
Intellectual Property Rights	copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in Confidential Information, rights to sue for passing off, domain names and all 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;
Insolvency Event	each and any of the events listed at clause 14.1.2;
Location	the address for delivery of the Goods and performance of the Services as set out in the Order;
Order	the Customer's order for the Deliverables;
Price	has the meaning given in clause 3.1;



Services	the services (if any) set out in the Order;
Specification	the description or specification of the Deliverables set out or referred to in the Order;
Supplier	Primetake Limited incorporated in England and Wales under number 07173439 whose registered office is at Primetake Ltd, Reepham Road, Fiskerton, Lincoln, LN3 4EZ, UK:
Tender	where the Customer has initiated a tender process, the Customer's invitation to tender, as varied by the Supplier's response to tender;
VAT	value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables; and

1.2 In these Conditions:

- 1.2.1 a reference to the Contract includes these Conditions and the Order;
- 1.2.2 any words that follow 'include', 'includes', 'including', or any similar expressions shall be construed as illustrative only and shall not limit the sense of any word or phrase preceding those words; and
- 1.2.3 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2 APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions.
- 2.2 No terms or conditions contained in the Customer's purchase conditions, order, specification or other document shall form part of the Contract except to the extent agreed by the Supplier in writing.
- 2.3 No variation of these Conditions, an Order or the Contract, shall be binding unless expressly agreed in writing by the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.5 The Order must contain sufficient information to allow the Supplier to perform the Contract and the Supplier shall be entitled to amend the Price to reflect any increase in costs incurred as a result of failure by the Customer to provide sufficient information.
- 2.6 An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of the Supplier's written acceptance of the Order, or the Supplier delivering or performing the Deliverables.
- 2.7 Any quotation (including a Tender) given by the Supplier is only valid for the period stated on such quotation, or if the quotation is silent, 30 days from the date of its issue.

3 PRICE

- 3.1 The price for the Deliverables shall be as set out in the Order, or if relevant the Supplier's Tender and as may be varied by the Supplier in its acceptance of the Order ("**Price**").
- 3.2 Unless agreed otherwise in writing, the Price is exclusive of delivery, insurance and VAT or other sales taxes. The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.3 The Supplier may increase the Price prior to delivery to reflect any increase in cost due to:
 - 3.3.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, change in law, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 3.3.2 any request by the Customer to change the delivery date(s), Location(s), quantities or types of Deliverables ordered, or the Specification; or
 - 3.3.3 in relation to Services (including where goods are provided by a third party) any delay or suspension of work, mistakes, overtime, unusual hours or time spent by the Supplier's personnel on site where they are unable to perform the Services caused by any act or omission of the Customer (including a failure to comply with clause 7.1), any instructions or lack of instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or caused by any goods issued by the Customer or delay in the Customer's provision of such goods. For the purposes of this clause reference to Goods shall include reference to goods provided by a third party but which relate to the provision of Services.

4 PAYMENT

- 4.1 The Supplier may, at its discretion, invoice for Deliverables prior to delivery of Goods and/or performance of Services but will inform the Customer of this in its written acceptance of the Order. In this case, the Supplier shall be under no obligation to supply the relevant Goods or perform the Services until payment in full has been received from the Customer in accordance with these Conditions.
- 4.2 Subject to clause 4.1, the Supplier shall invoice the Customer:
 - 4.2.1 at the intervals set out in the Supplier's written acceptance of the Order;
 - 4.2.2 if the Order is silent as to invoicing at intervals, for the Goods at any time after notifying the Customer that they are ready to be despatched and for the Services (including erection or installation) at any time after performance; or
 - 4.2.3 at such time as the Supplier considers reasonably appropriate where the provision of Deliverables is delayed as a result of any act or omission of the Customer, any instructions or lack of instructions of the Customer, the failure of the Customer to give adequate or accurate information or as a result of any goods provided by the customer.

4.3 Unless otherwise agreed in writing prior to the invoice being issued, the Customer shall pay all invoices in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice.

4.4 Where sums are not paid in full by the due date the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Bank of England from time to time. 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 DELIVERY

5.1 The Goods shall be delivered on the date(s) specified in the Supplier's written acceptance of the Order.

5.2 Delivery of the Goods, shall be Ex-Works (Suppliers factory) Incoterms 2020 unless otherwise specified on the Order. The Goods shall be deemed delivered by the Supplier when the Supplier notifies the Customer that the Goods are ready for collection. Any variation to the Location shall be at the cost of the Customer.

5.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Supplier's written acceptance of the Order. The Services shall be deemed completed by the Supplier only on completion of the performance of the Services at the Location.

5.4 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.5 Time is not of the essence in relation to the performance or delivery of the Deliverables. Subject to clause 5.6, the Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.

5.6 The Supplier shall not be liable for any delay in delivery where such delay is attributable to or contributed to by the acts or omissions of the Customer or Force Majeure.

5.7 Where the Price includes delivery other than at the Suppliers works the Supplier shall only be liable in respect of Goods lost or damaged in transit if the Customer notes such loss or damage on the delivery receipt and gives notice in writing to the Supplier within five days of receipt or such shorter period as may be required by the carrier's conditions of carriage. The Supplier's liability in respect of Goods lost or damaged in transit shall be limited at the Suppliers option to replacing or repairing such Goods within a reasonable time.

5.8 If the Customer fails to provide accurate delivery instructions, or to take or accept delivery of the Goods when presented for delivery at the Location the Supplier will be entitled to store the Goods at the Customer's cost (including costs of storage, insurance and demurrage) until re-delivery can be arranged, and the Customer will pay all such costs on demand.

6 PACKAGING

6.1 **FOR UK:** Unless otherwise agreed in writing, all packing cases, skids, drums and other packing materials must be returned to the Supplier's works at the Customer's expense and in good condition within one month from date of receipt. If the Customer fails to return the

packaging in accordance with clause 6.1 the Supplier shall invoice the Customer for the cost of the packaging.

- 6.2 **FOR EXPORT:** Unless otherwise agreed in writing, packing shall be in accordance with the Supplier's standard export practice.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 ensure that the terms of the Order and Specification are complete and accurate and that the Deliverables are suitable for its requirements;

7.1.2 where required provide the Supplier, its employees, agents, consultants and subcontractors, with clear, uninterrupted access to the Customer's premises, office accommodation or other facilities as reasonably required by the Supplier;

7.1.3 on or before the date specified by the Supplier, provide the Supplier with such information equipment, materials and tools, as the Supplier requires to supply the Deliverables and ensure that such information is complete and accurate;

7.1.4 obtain all permissions, consents, licences or otherwise which are required for the provision of the Deliverables;

7.1.5 return all samples provided by the Supplier within one month from the date of receipt otherwise the Supplier shall invoice the Customer for the cost of such samples;

7.1.6 where applicable for the Services:

- (a) prepare the Customer's premises for the supply of Deliverables including providing clear access to the area where the Deliverables shall be provided; and clearing the site and performing such other preparatory works notified by the Supplier to the Customer as being necessary to provide the Deliverables;
- (b) unless agreed otherwise in writing, promptly offload all materials (including Goods) brought onto site by the Supplier or its subcontractors, using plant or labour supplied by the Customer at the Customer's cost;
- (c) ensure that the Customer's existing structure is in good condition and capable of supporting the Goods;
- (d) provide to the Supplier free of charge, lighting as necessary and power at the appropriate voltage;
- (e) provide suitable waste disposal containers on site, free of charge;
- (f) provide suitable storage and preparation facilities on site, free of charge: and
- (g) provide onsite washing and toilet facilities free of charge.

7.2 The Customer acknowledges that in relation to installation work the Services only includes supervision work by the Supplier.

7.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation:

- 7.3.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the default;
 - 7.3.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations set out at clause 7.1; and
 - 7.3.3 the Customer shall indemnify the Supplier on demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer's default.
- 7.4 The Customer shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising out of or in connection with any injury to Supplier personnel (or those of its subcontractors) or any loss or damage to any equipment on the Customer's site (including equipment belonging to third parties and sub-contractors), in each case which is caused by (or by the negligence of) the Customer, its agents, employees, or any other person under the Customer's control.

8 INSPECTION AND TESTS

- 8.1 Prior to delivery of the Goods, the Supplier shall inspect and test the Goods to ensure that they are in accordance with the Specification. The Customer can request, at additional cost, for further tests to be carried out and/or to be in attendance during the testing. The Customer will be provided with seven days' notice of the testing and, if unable to attend within this period, the Supplier will continue with the tests and it will be deemed that the Customer was in attendance.
- 8.2 If on-site testing is required by the Customer after installation of the Goods, the Customer shall provide written notice of this requirement and ensure the testing is completed within one calendar month of the installation. If the test results are not in accordance with the Specification the Supplier can request the tests be repeated within one calendar month of deeming the Goods are suitable for re-testing.

9 TITLE AND RISK

- 9.1 Risk in the Goods shall pass to the Customer on delivery, or where agreed in the Order, installation of the Deliverables has been completed.
- 9.2 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 9.3.1 store the Goods separately from all other material in the Customer's possession and ensure they are identifiable as belonging to the Supplier;
 - 9.3.2 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 9.3.3 insure the Goods from the date of delivery with a reputable insurer for an amount at least equal to their Price and noting the Supplier's interest on the policy;

9.3.4 not remove or alter any mark on or packaging of the Goods; and

9.3.5 allow the Supplier access to the Goods and to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

9.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to an Insolvency Event the Supplier, or its agents, may enter any premises where the Goods are stored and repossess them.

10 DEFECTS

10.1 All specifications, drawings and details of weights and dimensions submitted by the Supplier as part of a Tender or contained in a catalogue, price list or other advertisements are approximate only and shall not form part of the Contract unless expressly agreed in writing.

10.2 For a period of twelve months from delivery (the "**Defect Period**"), the Goods shall conform in all material respects to the Specification.

10.3 The Supplier shall supply the Services with reasonable care and skill and in accordance with the Specification.

10.4 Unless otherwise agreed in writing, the Supplier shall have no liability on any failure of the Goods to meet any performance figures quoted by the Supplier.

10.5 The Supplier shall, at its option as a sole remedy, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 10, provided that the Customer:

10.5.1 serves a written notice on Supplier:

- (a) in the case of defects discoverable by a physical inspection: not later than five Business Days from the date that the Deliverables are inspected by the Customer and the Supplier or if the Services to be provided by the Supplier do not include such an inspection, not later than five Business Days from delivery or performance; or
- (b) in the case of latent defects: within a reasonable period of time from delivery;

10.5.2 such notice specifies that some or all of the Deliverables do not comply with clause 10.2 and identifying in sufficient detail the nature and extent of the defects; and

10.5.3 gives the Supplier a reasonable opportunity to examine the defective Deliverables.

10.6 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.

10.7 The Supplier shall not be liable for any failure of the Goods to comply with clause 10.1:

10.7.1 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;

- 10.7.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
- 10.7.3 to the extent caused by the Supplier following any specification or requirement of the Customer in relation to the Goods;
- 10.7.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
- 10.7.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 10.1.
- 10.8 Except as set out in this clause 10 the Supplier gives no warranty and makes no representations in relation to the Deliverables and all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted.
- 11 LIMITATION OF LIABILITY**
- 11.1 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 11.
- 11.2 Subject to clause 11.5, the Supplier's total liability shall not exceed:-
- 11.2.1 £1 million in relation to property damage caused solely by the negligence of the Suppliers employees or contractors on the Customers site; and
- 11.2.2 for all other liability the price of the relevant Deliverables.
- 11.3 Subject to clause 11.5 the Supplier shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to clause 11.5 the Supplier shall not be liable for any of the following, whether direct or indirect, (including but not limited to negligence or breach of statutory duty), contract or otherwise, arising under or in connection with the Contract for: any loss of use, loss of profits, loss of anticipated profits, loss of business or contracts, loss of data, loss of reputation or goodwill, business interruption, or any type of special, indirect or consequential loss, damage costs or expenses.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.5.1 death or personal injury caused by negligence;
- 11.5.2 fraud or fraudulent misrepresentation;
- 11.5.3 any other losses which cannot be excluded or limited by applicable law.

12 INTELLECTUAL PROPERTY

- 12.1 Unless otherwise agreed in writing all intellectual property rights (including copyright) and other rights in any Deliverables, estimates, designs, drawings, plans or models prepared by the Supplier for the Customer's information or in connection with the Contract remain the property of the Supplier or its licensors.
- 12.2 The Customer warrants that any specification, design or instruction given by it to the Supplier will not infringe any Intellectual Property Rights or other rights of any third party and the Customer indemnifies the Supplier in respect of any damages, losses, costs, expenses or claims arising in relation thereto.

13 FORCE MAJEURE

The Supplier shall not be liable or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations under the Contract, if the delay or failure is due to a Force Majeure event.

14 TERMINATION

- 14.1 Without affecting any other right or remedy, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.1.1 the Customer commits a material breach of the Contract which (if such breach is remediable) it fails to remedy within a period of 7 days after being notified in writing to do so; or
- 14.1.2 the Customer:
- (a) makes any voluntary arrangement with its creditors or becomes subject to administration or liquidation;
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - (c) suspends or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business;
 - (d) becomes subject to any analogous procedure or circumstance analogous to any of the above in any relevant jurisdiction; or
 - (e) the Supplier reasonably believes that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,
(each an "**Insolvency Event**").
- 14.2 On termination of the Contract, the Customer shall immediately pay to the Supplier, all of the Supplier's outstanding unpaid invoices and any accrued interest thereon. In respect of Deliverables supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice for such Deliverables which shall be payable by the Customer immediately on receipt.
- 14.3 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim



damages in respect of any breach of the Contract which existed at or before the date of termination.

15 NOTICES

- 15.1 Any notice shall be in writing and shall be delivered by hand or sent by pre-paid first class post or recorded delivery post to the other party at its address set out in the Order, or such other address as may have been notified by that party for such purposes.
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first class post, recorded delivery post or AirMail shall be deemed to have been delivered 48 hours after the time it was posted (or if delivery is not in business hours, at 9am on the first Business Day following delivery) and in proving such service it shall be sufficient to prove that the notice was properly addressed.

16 GENERAL

- 16.1 The Customer expressly agrees to keep all Confidential Information confidential and not to copy the same nor to supply the same to any third party for any purpose whatsoever nor to use the same except for the purpose of the Contract.
- 16.2 These Conditions and the Order constitute the whole agreement, between the parties and supersede any previous arrangement or understandings between them relating to its subject matter.
- 16.3 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions and an affiliate of the Supplier may perform the Contract.
- 16.4 The Contract does not establish any joint venture, trust, fiduciary or other relationship between the parties.
- 16.5 If any provision (or part of a provision) of these Conditions is or becomes invalid or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 16.6 No failure or delay by the Supplier to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy.
- 16.7 If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Conditions shall prevail.
- 16.8 No one other than a party to this Contract or any affiliate of the Supplier shall have any right to enforce its terms.



17 GOVERNING LAW

- 17.1 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.
- 17.2 The parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with each Contract or its subject matter or formation (including non-contractual disputes or claims).