

PODAB UK LIMITED
TERMS AND CONDITIONS OF BUSINESS

1. Interpretation
In these Terms:

- "Buyer" means the person whose Written order for the Goods and/or the Services is accepted by the Seller;
 - "Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;
 - "Seller" means Podab UK Limited (registered in England under number 12564350);
 - "Contract" means the contract for the sale and purchase of the Goods and/or for the supply of the Services;
 - "Services" means the delivery, installation, commissioning, servicing, maintaining, repairing, modifying, upgrading or other work which the Seller is to perform in accordance with these Terms on, to or in respect of goods which the Seller shall be selling or has sold to the Buyer or other goods which are or shall be in the Buyer's possession;
 - "Terms" means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
 - "Writing" and any similar expression, includes facsimile transmission but excludes electronic mail and other forms of electronic communication.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or the Seller shall supply and the Buyer shall purchase the Services in accordance with the Buyer's Written order (if accepted by the Seller), subject to these Terms which shall govern the Contract to the exclusion of any other terms subject to which any such order is made, or purported to be made, by the Buyer.
- 2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does so relying on its own judgment and that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 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 the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 Any future contract between the Seller and the Buyer for the supply by the Seller to the Buyer of goods or services shall, unless otherwise agreed by the Seller and the Buyer, be subject to these Terms.

3. Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by a Director of the Seller.
 - 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and, where applicable, to the Services within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms.
 - 3.3 The quantity, quality and description of the Goods and, if applicable, the Services and any specification for them shall be set out in the Buyer's order (if accepted by the Seller).
 - 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
 - 3.5 The Seller reserves the right to make any changes in the specification, design, materials or finishes of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
 - 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of a Director of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.
- 4. Price of the Goods and the Services**
- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted for goods are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
 - 4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), 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 Seller adequate information or instructions.
 - 4.3 Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, the price of the Goods given by the Seller is exclusive of (i) the Seller's charges (if any) for delivery, installation and commissioning and (ii) any applicable value added tax.
 - 4.4 The price of the Services shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid), a reasonable price taking into account the nature of the Services performed, the time taken to perform them, the amount of travelling and other associated time, the degree of urgency for the performance of the Services, the time(s) of the day and day(s) of the week when the Services were performed, the cost of parts and materials, the cost of special tools and equipment and all other relevant factors. All prices quoted for services are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, full payment of the amount specified in the Buyer's Written order (if accepted by the Seller), shall be paid in cleared funds by the Buyer forthwith upon acceptance of the Buyer's order for the Goods.
- 5.2 The time of full payment shall be of the essence of the Contract.
- 5.3 The Seller may invoice the Buyer for the price of the Goods on or at any time before or after delivery of the Goods.
- 5.4 The Buyer fails to make any payment in respect of the price of the Goods on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 5.3.1 by Written notice to the Buyer cancel the Contract and retain any deposit paid by the Buyer (applying such deposit so as to extinguish or reduce, as the case may be, the Buyer's liability to the Seller under and/or for breach of the Contract); or
 - 5.3.2 affirm the Contract and deliver the Goods (or tender the Goods for delivery) and then charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per annum above Barclays Bank Plc's base rate from time to time, until payment in full is made.
- 5.5 The Seller may invoice the Buyer for the price of the Services when or at any time before or after the Services are performed. Subject to any special terms agreed in Writing between the Seller and the Buyer, the full price of the Services shall be paid by the Buyer immediately upon completion of performance of the Services. If the Buyer fails to pay the price of the Services on the due date, the Seller may charge the Buyer interest (both before and after judgment) on the amount unpaid, at the rate of 3% per annum above Barclays Bank Plc's base rate from time to time, until payment in full is made.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.6 If the Goods are to be delivered by the Seller to the Buyer at a location other than the Seller's premises, it is the Buyer's responsibility in good time before the date quoted for delivery to obtain all relevant permits and permissions (whether from the Local Authority, the Police, the owner of the location or otherwise) and to ensure that all necessary steps are taken:
 - 6.6.1 to safeguard the health and safety of all employees or agents of the Seller who are engaged in delivering, installing, and/or commissioning the Goods whilst they are on or adjacent to the location; and
 - 6.6.2 to ensure that the Goods are delivered in full compliance with the Seller's Standard Installation and Operating Instructions and with all relevant health and safety regulations, planning regulations, road traffic regulations and other laws and by-laws.
- 6.7 In the event that the delivery of the Goods to the Buyer is delayed because of the Buyer's failure to comply fully with its obligations under clause 6.6 above or because of some other default on the part of the Buyer, the Buyer shall be liable for any expenses or losses incurred by the Seller as a consequence of such delay.

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 7.1.1 in the case of Goods to be delivered to the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and shall not alter or modify the Goods in any way and shall keep the Goods properly stored, protected and fully insured and identified to its insurers as the Seller's property, but the Buyer may re-sell or use the Goods in the ordinary course of its business. In the event of the Buyer re-selling the Goods, the Buyer shall keep the net proceeds of that sale separate and identifiable from any other funds and shall forthwith after the sale account to the Seller for the net proceeds and the Seller shall apply the net proceeds so as to extinguish or reduce (as the case may be) the Buyer's liability to the Seller under and/or for breach of the Contract.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are installed or stored and repossess the Goods, and thereafter the Seller may re-sell the Goods and apply the net proceeds of sale so as to extinguish or reduce (as the case may be) the Buyer's liability to the Seller under and/or for breach of the Contract.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) become due and payable.

8. Warranties and liability

- 8.1 Subject to the following provisions and unless otherwise stated in the Buyer's Written order, the Seller warrants that the Goods, if new, will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for the period of 12 months from delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
 - 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or written), incorrect installation of the Goods, misuse or alteration or repair of the Goods without the Seller's Written approval;
 - 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Goods are either (i) delivered by the Seller to a location outside the United Kingdom or (ii) delivered by the Seller to a location within the United Kingdom but subsequently moved by the Buyer to a location outside the United Kingdom or (iii) the Goods are not serviced by the Buyer strictly in accordance with the manufacturer's recommendations or within 30 days of the date on which the Buyer is informed by the Seller that a service is due;
 - 8.2.4 the benefit of the above warranty cannot be assigned by the Buyer (or by any subsequent owner of the Goods) without the Written agreement of a Director of the Seller;
 - 8.2.5 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 8.2.6 where under the terms of the above warranty, any part of the Goods is replaced by the Seller during the warranty period, the warranty will apply to the replacement part but not beyond the end of the warranty period applicable to the Goods.
- 8.3 Subject as expressly provided in these Terms, and except where the Goods are sold, or the Services are supplied, to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold, or the Services are supplied, under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.
- 8.5 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in Writing to the Seller within three working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller 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 in accordance with the Contract.
- 8.6 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller will take such steps as are reasonably practicable to remedy the defect or failure or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and the Seller shall thereafter have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller 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 Seller, 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 delivery, installation or commissioning or their use or resale by the Buyer, or which arise out of or in connection with the supply of the Services, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or, as applicable, the price of the Services, except as expressly provided in these Terms.
- 8.8 The Seller 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 Seller's obligations in relation to the Goods or the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
 - 8.8.1 Act of God, explosion, flood, tempest, fire or other catastrophe or accident;
 - 8.8.2 war or threat of war, hostilities, sabotage, insurrection, civil disturbance or requisition;
 - 8.8.3 acts, restrictions, sanctions, quarantines, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.8.4 import or export regulations or embargoes;
 - 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.8.6 difficulty in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.8.7 power failure or breakdown in machinery.

9. Insolvency of the Buyer

- 9.1 This clause 9 applies if:
 - 9.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
 - 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries of goods or the provision of any further services under the Contract without any liability to the Buyer, and if the Goods have been delivered and not been paid for, the price (or, if a deposit has been paid, the balance of the price) of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary. Likewise, if the Services have been performed and not been paid for, the price of the Services shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

10. General

- 10.1 Any notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2 No waiver by the Seller of any breach of the Contract by the Buyer should be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 10.4 The Buyer acknowledges and agrees that the details of the Buyer's name, address and payment record may be submitted to a credit reference agency and that personal data will be processed by and on behalf of the Seller.
- 10.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.