

## TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

### INTERPRETATION

1.1. In these Conditions the following words have the following meanings:

**“Buyer”** means the person(s), firm or company from whom an order to supply Goods is received by the Company and including (in respect of collection of the Goods) any person(s), firm or company nominated or instructed by the Buyer to collect the Goods on the Buyer’s behalf;

**“Buyer Materials”** means any documents or other materials and any data or other information provided by the Buyer relating to the Goods;

**“Company”** means PSI (UK) Limited, whose registered office is at 30 Nelson Street, Leicester LE1 7BA, United Kingdom, with registered number 02736029;

**“Company Materials”** means any documents or other materials, and any data or other information provided by the Company relating to the Goods;

**“Conditions”** means the standard terms and conditions of sale as set out in this document;

**“Contract”** means any contract between the Company and the Buyer for the sale and purchase of the Goods as specified in Condition 2.4 below;

**“Delivery Point”** means the place where delivery of the Goods is to take place under Condition 4.1;

**“Goods”** means any Goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce.

**“Parallel trade”** means intra-community trade in products in accordance either

- with Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market or
- with Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for veterinary use, as amended,

and in accordance with articles 34-36 of Treaty on the Functioning of the European Union and related community case law (Free Movement of Goods).

1.2. This document is written in English and is the only version to produce legally binding effect. Translations may be provided solely for convenience. When in doubt the precise meaning of the English version will prevail over any translation.

1.3. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term.

1.5. In these Conditions headings will not affect the construction of these Conditions.

## APPLICATION OF TERMS

- 2.1. The Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.4. No order placed by the Buyer shall be deemed to be accepted by the Company until the Company issues a written acknowledgement of order or (if earlier) by delivery of the Goods to the Buyer.
- 2.5. The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6. Any quotation is given on the basis that it is an invitation to treat and no contract will come into existence except in accordance with Conditions 2.3 and 2.4 above. Any quotation is valid for a period of 7 days only from its date, provided that the Company has not previously withdrawn it.

## DESCRIPTION

- 3.1. The description of the Goods shall be in accordance with the description provided by the manufacturer.
- 3.2. The Company reserves the right to reasonably substitute the Goods ordered with alternative Goods so long as the alternative Goods fulfil materially the same purpose. Such substitution shall not provide the Buyer with any remedies in excess of those specified in these Conditions.
- 3.3. All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

## DELIVERY AND RETURN

- 4.1. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business or such other place as the Buyer and the Company shall agree, or upon collection of the Goods from the Company by the Buyer or (in respect of Goods to be despatched outside of the UK mainland) Ex-Works (as defined in Incoterms) the Company's place of business.
- 4.2. The Buyer will take delivery of the Goods within 3 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 4.4. Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5. If for any reason the Buyer will not take or accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or the Company delivers the Goods but the Buyer is not available to acknowledge delivery:
  - 4.5.1. risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - 4.5.2. the Goods will be deemed to have been delivered; and
  - 4.5.3. the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

- 4.6. If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the *pro rata* Contract rate.
- 4.7. The Company may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments.
- 4.8. Goods can be returned at the Buyer's cost if they are returned in good and saleable condition. Subject to the Goods being returned in good and saleable condition: a) a credit note equal to the price paid for the Goods will be issued if the Goods are returned within 60 days of delivery (or, if the Goods comprise insecticides, within 7 days of delivery); and b) if the Goods are returned more than 60 days after delivery (or, for insecticides, more than 7 days after delivery), the value of the credit note will be reduced by 10% (or, for insecticides, by 20%).

#### NON-DELIVERY

- 5.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2. Where the Buyer arranges for collection of the Goods from the Company's place of business, the Company shall under no circumstances be liable in respect of non-delivery, short delivery or damage or defect occurring after the Goods are collected by the Buyer.
- 5.3. Where the Buyer is not available to accept delivery of the Goods, confirmation of delivery by the carrier shall be deemed to be evidence of delivery unless the Buyer conclusively proves otherwise.
- 5.4. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.5. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

#### RISK / TITLE

- 6.1. The Goods are at the risk of the Buyer from the time of delivery or (where appropriate) collection.
- 6.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 6.2.1. the Goods; and
  - 6.2.2. all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer must:
  - 6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.3.2. store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4. maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;
  - 6.3.5. hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4. The Buyer's right to possession of the Goods shall terminate immediately if:
  - 6.4.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or

administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

6.4.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;

6.4.3. the Buyer encumbers or in any way charges any of the Goods; or

6.4.4. upon expiration of any agreed period of credit.

6.5. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.6. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

## PRICE

7.1. Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the order acknowledged by the Company.

7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

## PAYMENT

8.1. Unless otherwise agreed, payment of the price for the Goods is due and payable 28 days from the date of the Company's invoice for the Goods and 7 days in case of Parallel Trade.

8.2. Time for payment shall be of the essence.

8.3. No payment shall be deemed to have been received until the Company has received cleared funds.

8.4. All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.5. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6. If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the maximum rate permitted by applicable law, accruing on a daily basis until payment is made, whether before or after any judgment.

## QUALITY

9.1. Where Goods are supplied by the Company but manufactured by a third party, the Company shall use its best endeavours to pass on to the Buyer any benefits relating to warranties in respect of or guarantees of such Goods, which the Company has under contract with that third party. In case of Parallel Trade, the identity of the manufacturer is included in the Parallel Trade label in the relevant market language(s) in accordance with the Product Liability Directive.

9.2. The Buyer acknowledges and agrees that it will use and store the Goods strictly in accordance with the instructions contained on the packaging, as specified by the manufacturers or (if none of these are available) in accordance with industry practice. The Buyer agrees that the Company shall have no liability in respect of breach of the obligation contained in Condition 9.1 which is due in any way to the Buyer's failure to fully comply with this Condition 9.3.

9.3. The Company shall not be liable for a breach of the obligation in Condition 9.1 unless:

- 9.3.1. the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit by a carrier appointed by the Company) to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect and save in respect of any defects or damage arising at any point after collection of the Goods by the Buyer; and
- 9.3.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's expense for the examination to take place there.
- 9.4. The Company shall not be liable for a breach of the obligation in Condition 9.1 if:
  - 9.4.1. the Buyer makes any further use of such Goods after giving such notice; or
  - 9.4.2. the defect arises because the Buyer failed to follow the Company's or manufacturer's oral or written instructions (including any instructions contained in or on any packaging or labelling) or (if there are none) good trade practice; or
  - 9.4.3. the defect arises as a result of the Buyer's storage, handling, mixing or use of the Goods or as a result of weather changes before, during or after application; or
  - 9.4.4. the Buyer alters, mixes, incorporates or repairs such Goods without the written consent of the Company.

#### LIMITATION OF LIABILITY

- 10.1. Subject to Condition 9, the following provisions of this Condition of Limitation of Liability set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - 10.1.1. any breach of these Conditions; and
  - 10.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3. Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 10.4. Subject to Conditions 10.2 and 10.3:
  - 10.4.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total price for the Goods; and
  - 10.4.2. the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### ASSIGNMENT

- 11.1. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2. The Company may assign the Contract or any part of it to any person, firm or company.

#### FORCE MAJEURE

- 12.1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if

the event in question continues for a continuous period in excess of 60 days, either party shall be entitled to give not less than 30 days notice in writing to the other party to terminate the Contract, and in such circumstances the Buyer shall pay for all Goods supplied to the date of such termination, such payment to be made with 28 days of the date of termination.

## GENERAL

- 13.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.5. The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6. The parties to this Contract irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this Condition shall limit the right of the Company to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## COMMUNICATIONS

- 14.1. All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
  - 14.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - 14.1.2. (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2. Communications shall be deemed to have been received:
  - 14.2.1. if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);
  - 14.2.2. if delivered by hand, on the day of delivery;
  - 14.2.3. if sent by facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.
- 14.3. Communications addressed to the Company shall be marked for the attention of Stephane DELAUTRE-DROUILLON.