



## **PURCHASE ORDER TERMS AND CONDITIONS OF SALE**

This Agreement (hereafter “Agreement” or “Terms”) set forth the terms and conditions that apply to all purchases by Buyer and sales by PCH of products and services by means of a purchase order (“Order”) issued by Buyer to Seller. THESE STANDARD TERMS AND CONDITIONS OF SALE WILL REMAIN IN FORCE UNLESS AND UNTIL A MASTER AGREEMENT OR OTHER WRITTEN AGREEMENT IS EXECUTED BY THE PARTIES. UPON MUTUAL EXECUTION THE MASTER AGREEMENT OR OTHER WRITTEN AGREEMENT SHALL SUPERSEDE THESE TERMS AND CONDITIONS OF SALE.

### **1. DEFINITIONS**

- 1.1 **“Buyer”** means the party placing the order;
- 1.2 **“Designated Location”** means the factory warehouse, facility, designated by PCH to Buyer in which Product are stored or designated by Buyer to PCH;
- 1.3 **“Order”** or **“Purchase Order”** means a written or electronically transmitted purchase order from Buyer to PCH for Products and related services that has been accepted by PCH and includes a description of the Products, a requested delivery date, Incoterms 2010 and delivery location where applicable;
- 1.4 **“Parties”** means PCH and Buyer (each of which is a “Party” to these Terms);
- 1.5 **“PCH”** or **“Seller”** means P.C.H. International Unlimited Company with its registered office located at Heritage Business Park, Bessboro Road, Blackrock, Cork Ireland);
- 1.6 **“Products”** means the products requested by Buyer; and

### **2. QUOTATIONS, ORDERS AND TERMS**

- 2.1 Performance by PCH is expressly made conditional on Buyer’s assent to the terms and conditions of these Terms and no others. No change to these Terms is effective unless agreed in writing. These Terms and any acknowledgement of order issued by PCH contain all of the rights and obligations of the parties. Buyer agrees to these terms and conditions which shall prevail over any inconsistent provisions in any form or other paper submitted by Buyer. Any additional or different terms in any Buyer request for quotation, acknowledgment, commencement, or purchase order shall constitute a counteroffer and such counteroffer shall not be accepted by PCH without written approval by PCH and shall not be binding on PCH without PCH’s express written consent. The provisions of any existing master services agreement between PCH and Buyer for the same goods or services shall take precedence over any inconsistent terms or conditions contained in these Terms from PCH.

- 2.2 No Order is binding on PCH until it is accepted in writing by PCH. Any quotation given is not an offer to sell but an invitation to the Buyer to order by submitting a written Order to PCH in accordance with these Terms.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by PCH shall be subject to correction without any liability on the part of PCH.
- 2.4 Any statement or information including (without limitation) any specification, application, technical advice or other advice given by PCH in respect of the Products or services prior to, at the time of or after an Order has been placed upon PCH, is given by PCH AS-IS and WITHOUT WARRANTY by PCH. The Buyer expressly warrants to PCH that it has taken and relied upon independent professional advice as to the matters provided for herein (even if as a matter of fact, it has not taken any such advice).
- 2.5 Buyer may not change any order except upon written execution of a change order signed by both Buyer and PCH. Depending upon the terms of the Change Order, Buyer may be responsible for additional costs, fees, and/or shipping costs.

### **3. PRICE AND PAYMENT**

- 3.1 Prices shall be agreed in advance by both Parties and confirmed on acknowledgement of the Order. All prices are exclusive of applicable taxes or duties and all storage fees.
- 3.2 All invoices will be payable in United States dollars by wire transfer to the account of PCH, details of which account PCH will provide in writing to the Buyer.
- 3.3 Unless otherwise indicated on the face of the Order all prices are given by PCH on an Ex-Works basis, and where PCH agrees to deliver the Products otherwise than at PCH Designated Location the Buyer shall be liable to pay PCH charges for transport, packing and insurance. Additional expenses shall be invoiced separately and subject to these Terms. Buyer acknowledges that it will buy the specified minimum order quantities as specified on the quotation provided in advance by PCH and agreed by Buyer.
- 3.4 PCH shall invoice for the Products upon shipment to or at the direction of Buyer. PCH will issue such invoices via email to the email address provided by the Buyer to PCH in writing for such purpose. Save where credit terms have been approved in writing by PCH, payment terms of any invoices will be cash on delivery.
- 3.5 Save where credit terms have been approved in writing by PCH, payment terms of any invoices will be cash on delivery.
- 3.6 The Buyer shall not, and acknowledges that it will have no right, under these Terms, any Purchase Order, any other agreement, document or law to, withhold, offset, recoup or debit any amount owed (or to become due and owing) to PCH or any of its affiliates, whether under these Terms or otherwise, against any other amount owed (or to become due and owing) to it by PCH or PCH's affiliates, whether relating to Buyer's breach or non-performance of these Terms, any Purchase Order, any other agreement between (a) Buyer or any of its affiliates and (b) PCH or any of its affiliates, or otherwise.
- 3.7 PCH may charge interest on overdue invoice at a rate of 2% above the base of LIBOR on any outstanding amount on a monthly basis until the foregoing default is remedied.

3.8 PCH may demand immediate payment of all outstanding invoices, whether due or not, if any payment for any order is overdue or if any of the events in paragraph 10.1 (Insolvency/Breach) of these Terms occurs. PCH may without further liability to the Buyer also cancel outstanding orders and/or further deliveries.

3.9 Time for payment shall be of the essence.

#### **4. DELIVERY**

4.1 Before shipment, the Buyer shall be responsible for arranging testing and inspection of the Products at the Designated Location. PCH shall have no liability for any claim in respect of any defect in the Products which is made after shipping or in respect of any damage during transit. In the event of a non-conformity, at PCH's sole discretion PCH may repair, replace, and/or credit the non-conforming Product. In the event of such repair or replacement, Buyer agrees to follow all of PCH's procedures and to bear the costs of returning the product to PCH. The Buyer shall be responsible for complying with any legislation or regulation governing the importation of the Products into the country of destination and paying any duties on them.

4.2 Buyer acknowledges that PCH's ability to deliver the Order or any part of the Order is subject to PCH's own suppliers being in a position to deliver to PCH. Buyer acknowledges that in times of high demand for Products and similar products to the Products, PCH may not be able to make delivery of the Order or part of the Order within the anticipated or communicated timeframe. PCH will endeavor to provide Buyer with weekly updates with regard to the ability to deliver the Order or any part of the Order. Buyer acknowledges that in the event it becomes apparent to PCH that it will not be in a position to fulfill the Order or any part of the Order PCH may cancel the Order or any part of the Order and will be under no obligation to deliver the Order or any such part of the Order. PCH will have no liability in regard to its failure to deliver the Order or any part of the Order.

4.3 Dates quoted for delivery of the Products are approximate only and PCH shall not be liable for any delay in delivery, however caused. Time for delivery shall not be of the essence unless previously agreed by PCH in writing.

4.4 PCH will deliver the Products to the address specified in the Order, unless otherwise agreed. Delivery shall occur upon physical delivery of the Products to the Buyer or its carrier, on upon withdrawal or collection from the Designated Location.

4.5 If the Buyer fails to take delivery of the Products or fails to give PCH adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to PCH, PCH may at its sole discretion store the Products until actual delivery and charge Buyer for the reasonable costs including, but not limited to, insurance, storage and finance fee. If Products are not collected within 7 days from the initial delivery date, PCH may at its sole discretion: (a) sell the Products 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 Terms or charge the Buyer for any shortfall below the price under the Terms or (b) arrange delivery of the Products to the Buyer at the Buyer's expense and as the Buyer's agent. PCH, at its sole discretion, may agree to arrange for the Products to be transported to some place other than its own designated location for delivery, in which case Buyer shall be liable for the entire expenses and costs incurred by PCH.

#### **5. NON-DELIVERY**

- 5.1 The quantity of any consignment of Products as recorded by PCH upon dispatch from PCH's premises shall be evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the satisfaction of PCH proving the contrary.
- 5.2 Any liability of PCH for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note against any invoice raised for such Products.

## **6. RISK AND TITLE**

- 6.1 Risk of damage to or loss of the Products shall pass to Buyer: (i) at the time of delivery or, (ii) if Buyer fails to take delivery of the Products, at the time when PCH has tendered delivery of the Products.
- 6.2 Notwithstanding delivery and the passing of risk in the Products, title to the Products will not pass to the Buyer until PCH has received in cash or cleared funds, payment in full of the price of the Products and all other Products agreed to be sold by PCH to Buyer for which payments is then due.
- 6.3 Until title to the Products passes to the Buyer, the Buyer may not use or sell the Products in the ordinary course of its business. Until the Products are used or sold, the Buyer must keep them separate from its own property, protected, stored and insured and identified as PCH's property.
- 6.4 Until such time as the title to the Products passes to the Buyer (and provided the Products are still existence and have not been resold), PCH shall be entitled at any time to require the Buyer to deliver back the Products to PCH, and if Buyer fails to do so forthwith, PCH may go into any place where the Buyer has stored them and retrieve them.
- 6.5 The Buyer may not pledge or use as security the Products which remain the property of PCH. In the event that Buyer breaches this Term then, without limitation of PCH's other rights, all revenues received by Buyer from such breach shall immediately become due and payable to PCH.

## **7. WARRANTIES AND LIABILITY**

- 7.1 Subject to the conditions set forth below PCH warrants that the Products will be free of defects at the time of delivery.
- 7.2 The above warranty is given by PCH subject to the following conditions:
  - 7.2.1 PCH shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment.
  - 7.2.2 It shall be the Buyer's sole and entire responsibility to ensure that the Products are suitable for the Buyer's intended use and purpose and PCH shall have no liability in this regard.
  - 7.2.3 PCH shall not be liable for any defect or failure that could not have been detected at the time the Products were supplied because of insufficient scientific or technical knowledge at that time.

- 7.2.4 PCH shall not be liable for the consequences of any defect or failure which would have been detected by Buyer upon a proper inspection at the time of delivery (regardless of whether the inspection was or was not carried out by Buyer).
- 7.3 The Buyer warrants to PCH that the intended use of the Products does not infringe or violate any law, regulation or rule.
- 7.4 The Buyer warrants that it will not resell or permit the resale by third parties of the Products to consumers.
- 7.5 EXCEPT AS PROVIDED IN THESE TERMS, ALL WARRANTIES, CONDITIONS OR OTHER TERMS IMPLIED BY LAW ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).
- 7.6 Any claim by the Buyer which is based on any alleged defect or failure of the Products shall be notified in writing to PCH within seven (7) 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 but not more than thirty (30) calendar days from the date of delivery. If delivery is not refused, and the Buyer does not notify PCH accordingly, the Buyer shall not be entitled to reject the Products and PCH shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Products had been delivered in accordance with these Terms.
- 7.7 Where any valid claim in respect of any of the Products which is based on a defect or failure is notified to PCH in accordance with these Terms, PCH shall be entitled to replace the Products (or the part in question) free of charge or, at PCH's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), but PCH shall have no further liability to the Buyer.
- 7.8 **IN NO EVENT SHALL PCH'S LIABILITY UNDER THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LOWER OF ONE PERCENT (1%) OF THE AMOUNT PAID BY THE BUYER TO PCH UNDER THESE TERMS IN THE 1 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (OR FIRST OF A SERIES OF RELATED CLAIMS) AND \$100,000.**
- 7.9 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, UNDER NO CIRCUMSTANCES WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR (EXCEPT FOR BREACH OF CONFIDENTIALITY) CONSEQUENTIAL DAMAGES, OR COSTS, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, ARISING OUT OF, OR RELATING IN ANY WAY TO, THE SUBJECT MATTER OF THESE TERMS, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT LIMIT ANY PARTY'S LIABILITY FOR BODILY INJURY (INCLUDING DEATH) RESULTING FROM ITS NEGLIGENCE TO THE EXTENT THAT SUCH LIABILITY CANNOT BY LAW BE LIMITED OR EXCLUDED. THE FOREGOING LIMITATIONS OF LIABILITY IN THIS SECTION SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS.**

**8. INDEMNITY**

The Buyer shall defend, indemnify and hold harmless PCH, its affiliates and their respective directors, officers, employees, contractors, successors, assigns and agents from any third party allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to reasonable attorney fees and expenses) arising out of or related to (i) infringement of any third party's intellectual property rights or (ii) bodily injury (including death) or damage to any property in connection with the use or misuse of the Products, (iii) a violation of any law, rule or regulation or (iv) a breach of the warranties provided by the Buyer herein.

**9. FORCE MAJEURE**

- 9.1 Where PCH is prevented from performing its obligations to the Buyer by circumstances beyond its control, PCH may suspend the supply of Products by giving written notice to Buyer. If force majeure continues for longer than 30 days, either party may terminate this Agreement without liability for any loss caused to the other save that PCH will be entitled to charge the Buyer for the direct cost of any Products/Materials stored and/or bought and stored by PCH to meet Buyers order. For the purposes of this clause the following events shall be considered events of force majeure: (a) Act of God, explosion, flood, fire or accident; (b) War or threat of war, sabotage, insurrection, civil disturbance or requisition; (c) Acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority. (d) Import or export regulations or embargos; (e) Strikes, lockouts or other industrial actions or trade dispute (whether involving employees of PCH or of a third party); (f) Difficulties in engaging suppliers or in obtaining raw materials, labor, fuel, parts or machinery; (g) Power failure or breakdown in machinery or (h) plague, epidemic, pandemic or the fear of any plague, epidemic or pandemic.

**10. INSOLVENCY OR BREACH**

- 10.1 If the Buyer commits a breach of any of its obligations under these Terms or otherwise, or becomes insolvent, or enters into a voluntary arrangement with its creditors, has a receiver appointed over the whole or any part of its business or assets or is the subject of any administration order or any petition of bankruptcy, liquidation or winding up or passes a resolution for voluntary winding up (other than for the purpose of a bona fide amalgamation or reconstruction) or anything with a similar effect or if in the reasonable opinion of PCH there are doubts as to the solvency of the Buyer then PCH may immediately terminate this agreement or suspend any further deliveries under the contract without any liability to the Buyer and all money that the Buyer owes to PCH will immediately become due and payable, notwithstanding any prior agreement or arrangement to the contrary.

**11. GENERAL**

- 11.1 Should any of these Terms be found to be illegal or unenforceable, the other provisions will nevertheless remain effective and enforceable to the greatest extent permitted by law
- 11.2 The Buyer may not assign or delegate its rights obligations under this Agreement without the other party written consent of PCH; PCH may assign all of its debts and rights to receive payments under this Agreement without the other party's written consent. The Agreement shall be binding upon successors, representatives and administrators of the parties.

- 11.3 No waiver by PCH of any breach of any of these Terms by the Buyer will operate as a waiver of subsequent breach of the same or any other provision.
- 11.4 Any notice given by either Party to the other under these Terms must be in writing and delivered by registered mail to the principal place of business of the recipient and, in the case of notice to PCH, with a copy via email to legal@pchintl.com, and such notice will be deemed to be given 2 days after the date it was delivered if not acknowledged sooner
- 11.5 The Parties acknowledge that, regardless of which Party had primary responsibility for the drafting of these Terms, each of the Parties had the opportunity to review these Terms in their entirety prior to signing and, if such Party so chose, to consult with independent legal counsel. The Parties expressly waive and agree that any rule of construction that ambiguities shall be construed against the drafter shall not apply to any dispute arising hereunder.
- 11.6 This Agreement is the complete, final, and exclusive agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing. Notwithstanding the foregoing, these Terms will remain in force only until a Master Agreement for services and products is signed by both parties and covers the same subject matter as these Terms or its related Order.

## **12. GOVERNING LAW/ JURISDICTION**

- 12.1 The formation, existence, construction, performance, validity and all aspects of these Terms shall be governed by the laws of the State of California in the United States as applied to agreements among California residents, made and to be performed entirely within the State of California. The Parties expressly waive any application of the Convention on International Sale of Goods and the Uniform Commercial Code whether adopted in California or elsewhere to any transaction hereunder. If there is a dispute between the Parties (whether or not the dispute arises out of or relates to these Terms), the Parties agree that they will first attempt in good faith to resolve the dispute through one senior management member of each Party with the authority to bind the company. If they are unable to do so within 30 days after the complaining Party's written notice to the other Party, all disputes, controversies and claims arising out of or in any way relating to these Terms, including the formation, interpretation, breach or termination of this Agreement, and whether sounding in contract, tort or otherwise, including whether the claims asserted are arbitrable, will be referred to and finally determined by binding arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of three arbitrators, one of which will be chosen by each of the Buyer and PCH and the third of which will be chosen by the two arbitrators selected by the Parties hereto. The place of arbitration will be San Francisco, California. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

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