



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; **“Designated Location”** means the factory warehouse, facility, designated by PCH to Buyer in which Product are stored or designated by Buyer to PCH; **“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; **“PCH”** or **“Seller”** means P.C.H. International Unlimited Company with its registered office located at Heritage Business Park, Bessboro Road, Blackrock, Cork Ireland); **“Products”** means the products and/or services requested by Buyer; and **“Specification”** means the most current version of all applicable Specifications and requirements provided by Buyer to PCH in connection with the Products. Such Specifications shall include, but not be limited to, instructions, work instructions, specifications, schematics or other descriptions, requirements, relevant health, safety and regulatory requirements.

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 written contract 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.
- 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 prior to, at the time of or after an order has been placed upon PCH, is given without responsibility and upon placing an Order for Products 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 in the quotation and confirmed on acknowledgement of the order. All prices are exclusive of applicable taxes or duties and all storage fees. 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.
- 3.2 PCH shall invoice for the Products on delivery, save in circumstance where there is no existing business relationship in which event PCH may invoice the Products in advance of delivery and require payment of the same prior to delivery.
- 3.3 Save where credit terms have been approved in writing by PCH, payment terms of any invoices will be cash on delivery.
- 3.4 The Buyer may not withhold any payment for any reason and may not withhold or apply any set off or counterclaim no matter how it arises.
- 3.5 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.
- 3.6 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.
- 3.7 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. Buyer should test any Product provided by PCH for conformation to the Specifications. 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 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.
- 4.3 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.
- 4.4 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 wrongfully 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 Warranties. Subject to the conditions set forth below PCH warrants that the Products will correspond to the Specification 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 PCH shall be under no liability in respect of any defect in the Products arising from any Specification supplied by Buyer; it shall be the Buyer's responsibility to ensure that all Specification or other information supplied to PCH in pursuance of this Agreement is suitable for the Products and the use to which the Products is intended.
 - 7.2.3 This warranty does not extend to Products, parts, materials or equipment not manufactured by PCH (including but not limited to materials approved by Buyer and materials tested using Buyer testing procedures) in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to PCH.
 - 7.2.4 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.
 - 7.2.5 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 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).
- 7.4 Any claim by the Buyer which is based on any failure to correspond with Specification 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.
- 7.5 Where any valid claim in respect of any of the Products which is based on any failure to meet Specification 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.

7.6 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 THREE PERCENT (3%) OF THE AMOUNT PAID BY THE BUYER TO PCH UNDER THESE TERMS IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND \$100,000.

7.7 Buyer shall assume and have sole control of the defense of any Products liability claim, including the power to conduct and conclude any and all negotiations, compromises or settlements. PCH shall promptly comply with all reasonable requests from Buyer for information, materials or assistance with respect to the conduct of such defense.

7.8 The Buyer warrants to PCH that any specification for a Product supplied by Buyer to PCH does not infringe any third party's patent, copyright, design, trademark or other industrial or intellectual property rights.

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.

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 If any of these Terms is found to be invalid, illegal or unenforceable by a Court, the remaining terms will continue in full force and effect.
- 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 post, fax or email to the principal place of business of the recipient and will be deemed to be given 2 days after the date it was sent if not acknowledged sooner.
- 11.5 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. 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 may be settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Ireland or California, USA and shall be conducted in English.

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