

Terms and Conditions of Sale of Primeur Limited

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) when banks in London are open for business;

Conditions: the terms and conditions set out in this document together with any special terms agreed in writing between the Customer and Primeur;

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of Primeur for the time being confidential to Primeur and trade secrets including, without limitation, technical data and know-how relating to the business of Primeur or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential;

Contract: the contract between Primeur and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

Customer: the entity that purchases the Goods from Primeur;

Force Majeure Event: has the meaning given in clause 12;

Goods: the goods (or any part of them) set out in the Order;

Insolvency Situation: the Customer (i) enters liquidation; (ii) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; or (iii) proposes to make any arrangement with its creditors or goes into liquidation;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of Primeur's quotation, or overleaf, as the case may be;

Primeur: Primeur Limited a company registered in England and Wales with company number 02484431 and having its registered office at Castlefields, Crossflatts, Bingley, West Yorkshire, BD16 2AF; and

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Primeur.

1.2 In these Conditions, the following rules apply:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and

- 1.2.2 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer must ensure that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Primeur (or an agent acting on its behalf) issues an email acceptance of the Order ("**Order Acceptance**"), at which point the Contract shall come into existence. No Contract will come into existence until an Order Acceptance is issued by the Company.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Primeur which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Primeur and any descriptions or illustrations contained in Primeur's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and this is not sale by sample.
- 2.6 A quotation for the Goods given by Primeur shall not constitute an offer. A quotation shall only be valid for a period of 90 (ninety) days from its date of issue.
- 2.7 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Customer's acceptance of these Conditions.

3. Goods

- 3.1 The description of the Goods will be as set out in Primeur's catalogue from time to time.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Primeur against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Primeur in connection with any claim made against Primeur for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Primeur's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Primeur reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements or if any such amendment would not materially affect the quality or performance of the Goods.

4. Delivery

- 4.1 Primeur shall use its reasonable endeavours to ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Primeur reference numbers, the type and quantity of the Goods; and
- 4.2 Primeur shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Primeur notifies the Customer that the Goods are ready. Delivery of the Goods will be made during the

Customer's usual business hours if possible. Customers may also collect the Goods from Primeur's premises if agreed with Primeur.

- 4.3 Delivery of the Goods shall be completed immediately prior to the unloading of the Goods at the Delivery Location unless the Goods are collected from Primeur in which case delivery of the Goods shall be completed on collection from Primeur. The Customer will provide, at its expense at the delivery Location, adequate and appropriate equipment and manual labour to assist with the off-loading the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Primeur shall not be liable for any delay or failure to deliver the Goods to the extent such delay or failure is caused by a Force Majeure Event or the Customer's failure to provide Primeur with (i) adequate delivery instructions or (ii) any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take delivery of the Goods within 3 three Business Days of Primeur notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Primeur's failure to comply with its obligations under the Contract:
 - 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Primeur notified the Customer that the Goods were ready; and
 - 4.5.2 Primeur shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 10 (ten) Business Days after the day on which Primeur notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Primeur may:
 - 4.6.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with clause 4.5.2 and charge the Customer for all related costs and expenses (including without limitation, storage and insurance); and/or
 - 4.6.2 following written notice to the Customer, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. Quality

- 5.1 Primeur warrants that on delivery the Goods shall:
 - 5.1.1 conform in all material respects with their description; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing to Primeur within 2 (two) Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
 - 5.2.2 Primeur is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by Primeur) returns such Goods (being all the Goods unless otherwise agreed with Primeur) to Primeur's place of business at the Customer's cost,

Primeur shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 Primeur shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow Primeur's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3 the defect arises as a result of Primeur following any drawing or design supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of Primeur;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, Primeur shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Primeur.

6. Title and risk

- 6.1 The risk of damage to or loss of the Goods shall pass to the Customer on completion of delivery (or deemed delivery in accordance with clause 4).
- 6.2 Ownership of the Goods shall not pass to the Customer until Primeur has received payment of all sums due in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
 - 6.2.2 any other goods or services that Primeur has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as Primeur's bailee;
 - 6.3.2 store the Goods (at no cost to Primeur) separately from all other goods held by the Customer so that they remain readily identifiable as Primeur's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.5 notify Primeur immediately if it becomes subject to any of the events listed in clause 8.1.2; and

- 6.3.6 give Primeur such information relating to the Goods as Primeur may require from time to time,
- 6.4 Notwithstanding the terms of clause 6.3, the Customer may resell or use the Goods in the ordinary course of its business before ownership has passed to it provided that:
 - 6.4.1 any sale will be at full market value and the Customer will account to Primeur accordingly;
 - 6.4.2 any such sale will be a sale of Primeur's property on the Customer's own behalf and the Customer will deal as principal when making such a sale; and / or
 - 6.4.3 if before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1.2, or Primeur reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Primeur may have, Primeur may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. Primeur will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Primeur.
- 6.5 Where Primeur is unable to determine whether any goods are the Goods in respect of which Primeur's right to possession has terminated, Primeur will be deemed to have sold all goods of the kind sold by Primeur to the Customer in the order in which they were invoiced to the Customer.

7. Price and Payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Primeur's published price list in force as at the date of delivery.
- 7.2 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods.
- 7.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Primeur, pay to Primeur such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.4 Primeur may invoice the Customer for the Goods on or at any time after the completion of delivery and the Customer shall pay the invoice in full and in cleared funds 30 days from the date of invoice. Payment shall be made to the bank account nominated in writing by Primeur. Time of payment is of the essence.
- 7.5 If the Customer fails to make any payment due to Primeur under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate set in the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Primeur in order to justify withholding payment of any such amount in whole or in part. Primeur may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Primeur to the Customer.

8. Termination

- 8.1 Primeur may terminate this Contract or cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Primeur without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due if the Customer:
- 8.1.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 (ten) Business Days after receipt of notice in writing requiring it to do so; or
 - 8.1.2 stops trading or is in a position whereby it cannot pay its debts and/or an Insolvency Situation arises or the equivalent of any of the foregoing occurs to the Customer under the jurisdiction to which the Customer is subject; or
 - 8.1.3 the Customer's financial position deteriorates to such an extent that in Primeur's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, Primeur may suspend provision of the Goods under the Contract or any other contract between the Customer and Primeur if the Customer becomes subject to any of the events listed in clause 8.1.2, or Primeur reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, Primeur may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to Primeur all of Primeur's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of Liability

- 9.1 Nothing in these Conditions shall limit or exclude Primeur's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2 fraud or fraudulent misrepresentation;
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Sale and Supply of Goods and Services Act 1982;
 - 9.1.4 defective products under the Consumer Protection Act 1987; or
 - 9.1.5 any matter in respect of which it would be unlawful for Primeur to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 Primeur shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss (including at all times, without limitation, economic loss, loss of business, depletion of goodwill or similar) howsoever caused arising under or in connection with this Contract; and

9.2.2 Primeur's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid for the Goods in the Order under which the liability has arisen.

9.3 Primeur hereby excludes to the fullest extent permitted in law, all conditions and warranties, whether express (other than as set out in these Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

9.4 The Customer acknowledges that the above provisions of this clause 9 are reasonable and reflected in the price which would be higher without those provisions, and the Customer accepts such risk accordingly.

10. Intellectual Property Rights

10.1 No right or licence is granted to the Customer in respect of the Intellectual Property Rights of Primeur, except the right to use, or re-sell the Goods in the Customer's ordinary course of business.

11. Confidentiality

11.1 The Customer undertakes that it shall not at any time disclose to any person any Confidential Information of Primeur, except as permitted by clause 11.2.

11.2 The Customer may disclose Primeur's Confidential Information:

11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under this Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Confidential Information comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 The Customer shall not use Primeur's Confidential Information for any purpose other than to perform its obligations under or in connection with this Agreement.

12. Force majeure

12.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. General

13.1 **Notices.** Notices required to be given under this Contract shall not be given by email unless otherwise states. Notices shall be deemed to have been duly received:

13.1.1 if delivered personally, when left at the registered address of the relevant party or otherwise the address notified by the recipient to the other party in writing; or

- 13.1.2 if sent by pre-paid first class post or recorded delivery, at 9.00am on the second day (excluding weekends and public holidays) after posting; or
- 13.1.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- 13.1.4 if sent by fax or email, one Business Day after transmission.
- 13.2 **Assignment and Sub-Contracting.** The Customer may not subcontract, assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Contract without the prior written consent of Primeur. Primeur may at any time subcontract, assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.3 **Entire Agreement.** This Contract contains all the terms which the parties have agreed with respect to its subject matter and supersedes all previous agreements and understandings between the parties (whether oral or in writing) relating to such subject matter. Each party acknowledges and agrees that it has not been induced to enter into this Contract by a statement or promise which it does not contain.
- 13.4 **Third Party Rights.** For the purposes of the Contracts (Rights of Third Parties) Act 1999 no person who is not a party to this Contract shall have any right to enjoy the benefit or enforce any of the terms of this Contract.
- 13.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).
- 13.6 **Waiver.** Failure to exercise (or to fully exercise), or any delay in exercising, any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy under this Contract or by law.
- 13.7 **Severability.** If any provision of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from this Contract in so far as this Contract relates to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and the other provisions of this Contract shall not be affected or impaired.
- 13.8 **Governing Law and Jurisdiction.** This Contract shall be governed by English Law. The parties agree to submit to the exclusive jurisdiction of the English Courts.