



Purple Zebra PRODUCTS LTD.

TERMS AND CONDITIONS OF SALE OF PURPLE ZEBRA PRODUCTS LIMITED (PZ)

1. Definitions and Interpretation

1.1 In these terms and conditions of sale the following words and expressions shall have the following meanings:

"Conditions" means the terms and conditions of sale set out in this document, subject to any variation agreed in accordance with Condition 2.3;

"Contract Documents" means, in relation to each contract for the sale of goods by PZ to the Customer:

(a) these Conditions;

(b) the Order Confirmation;

(c) the Order Acknowledgement;

(d) the Delivery Note; and

(e) any other document, signed by a duly authorised representative of each of PZ and the Customer, that expressly provides that it is a Contract Document for the purposes of the contract, and 'Contract Document' shall mean any one of them.

"Contract Price" means the total price for the Goods (including VAT and delivery charges (if applicable)) as set out in the Order Confirmation;

"Customer" means the person who has entered into the Contract Documents with PZ;

"Delivery Note" means the note signed by the Customer when the Goods are delivered;

"Force Majeure" means, the occurrence of any circumstance or event beyond the reasonable control of PZ. Without prejudice to the generality of the definition an event of Force Majeure may include any of the following:

(a) an event or threat of war, act of terrorism, civil disturbance or requisition; or

(b) an act of God, flood, tempest, fire or accident; or

(c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any agency, governmental, parliamentary or local authority; or

(d) import or export regulations or embargoes; or

(e) strikes, lock outs or other industrial actions or trade disputes (whether involving PZ's employees or employees of a third party); or

(f) difficulties in obtaining raw materials, labour, fuel, parts or machinery or increases in the costs of the same; or

(g) power failure or breakdown in machinery; or

(h) foreign exchange fluctuations and currency regulation; or

(i) any change in delivery dates, quantities or specifications for Goods requested by the Customer.

"Goods" means the goods or services specified in the Order Confirmation;

"Intellectual Property" means any and all copyrights, patents, design rights, trade marks (including without limitation the Trade Marks), database rights, names, signs, logos, symbols and all other intellectual property rights, whether registered or unregistered owned by PZ.

"Order Acknowledgement" means the Customer's acknowledgement and acceptance of the Order Confirmation in the form attached to the Order Confirmation or otherwise accepted by PZ in Writing;

"Order Confirmation" means PZ's offer to sell the Goods to the Customer; and **"PZ"** means Purple Zebra Products Limited whose registered office is Elm Court, Elm Park Road, Pinner, Middx. HA5 3NN

"Trade Mark (s)" means the names "PZ"

"Writing" means facsimile transmission, electronic communication and comparable means of communication and **"written"** shall be construed accordingly

1.2 All references herein to Conditions are references to these Conditions unless otherwise specified.

2. General

2.1 All agreements for the sale and delivery of Goods entered into by PZ incorporate these Conditions, which override and exclude any other terms and conditions stipulated or referred to by the Customer or which the Customer otherwise seeks to apply.

2.2 Any terms and conditions (whether express or implied or imputed by custom or course of dealing) upon which the Customer and PZ have previously entered into contracts shall not apply unless expressly incorporated in the Order Confirmation.

2.3 These Conditions may only be varied or supplemented at the express written instigation, or with the express written permission, of PZ.

2.4 A binding contract (incorporating these Conditions) under which PZ will supply and the Customer will buy the Goods will be formed on the issue by PZ of the Order Confirmation.

3. Delivery

3.1 Unless otherwise stated in the Order Confirmation, PZ will be responsible for arranging the delivering of the Goods to the Customer, title and risk in which shall pass to the Customer in accordance with Condition 4 below.

3.2 Dates or periods for delivery set out in any Contract Document are approximate and are given for information only. Delivery of any Goods, including delivery later than any date or dates provided in the Contract Documents, shall not constitute a breach of contract and shall not entitle the Customer to avoid the contract or to any other remedy, in the absence of express written provision to the contrary included by PZ in the Order Confirmation.

3.3 If the Customer fails to take delivery of the Goods on the delivery date and / or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date; PZ shall have the right to give notice to the Customer that it intends to store or arrange the storage of the Goods on its behalf whereupon PZ shall be deemed to have been authorised by the Customer so to do and (i) risk in the Goods will pass to the Customer on the giving of such notice, (ii) delivery thereof will be deemed to have taken place, (iii) the Customer will be deemed to have accepted the Goods as to quality, specification and condition, and (iv) the Customer will reimburse PZ in respect of all costs and expenses including storage and insurance charges arising from such failure to take delivery.

4. Passing of Risk and Title

4.1 Risk in the Goods shall pass to the Customer when:

- (a) in the case of Goods to be delivered at the Customer's premises, when the Goods are dispatched from PZ premises;
- (b) in the case of Goods to be delivered at PZ's premises, PZ notifies the Customer that the Goods are available for collection; or
- (c) PZ gives notice to the Customer as permitted in Condition 3.3.

4.2 Until PZ has been paid in full for the Goods and any other goods comprised in any other sale contract between them, and until all other monies due from the Customer to PZ on any account whatsoever have been paid in full:

- (a) legal and beneficial ownership of the Goods remain with PZ;
- (b) PZ may recover all or any part of the Goods at any time from the Customer if they are in its possession. If the amount outstanding from the Customer to PZ in respect of any goods supplied, whether under this contract or otherwise, or any other amounts owed remain unpaid after the due date for payment has passed then for the purposes of recovery PZ shall have the right at any time to enter the premises of the Customer to repossess such Goods or take any other action as it thinks fit in its absolute discretion;
- (c) the Customer shall have the right to dispose of the Goods (as between it and its customers only) as principal in the ordinary course of its business provided that such right is terminable forthwith by PZ giving to the Customer notice at any time to that effect and shall be automatically terminated (without notice) upon the happening of any of the events referred to in Condition 5;

and

(d) in the event of such disposal, the Customer has a fiduciary duty to PZ to account to PZ for the proceeds but may retain from such proceeds any excess of such proceeds over the amount outstanding under this or any other sale contract between the Customer and PZ;

and

(e) each of sub-Condition (b), (c) and (d) shall be construed and have effect as a separate clause and accordingly if any of them is for any reason whatsoever unenforceable according to its terms, the others shall remain in full force and effect.

4.3 Once delivered to the Customer's premises, PZ shall have the right at any time until title in the Goods passes to the Customer to give notice to the Customer requiring it to store the Goods separately from other goods and to ensure that the Goods are clearly identified as belonging to PZ and shall have the right at any time, on giving reasonable notice, to enter the premises of the Customer to verify the Customer's compliance with this obligation, and if it finds the Customer in breach thereof to repossess such Goods or take any other action as it thinks fit in its absolute discretion.

5. PZ's Termination Rights

5.1 Without prejudice to its other rights and remedies PZ shall be entitled to demand payment of all outstanding amounts and terminate wholly or in part any or every contract between itself and the Customer or to suspend any further deliveries under any or every contract on the occurrence of any of the following events:

- (a) If any debt is due and payable by the Customer to Riedel but is unpaid, or if the Customer has failed to provide any letter of credit, bill of exchange or any other security required by the Contract Documents or if the Customer is otherwise in breach of any of its obligations under the Contract Documents.
- (b) If the Customer has failed to take delivery of any of the Goods under any other contract between it and PZ otherwise than in accordance with the Customer's contractual rights thereunder.
- (c) If the Customer becomes insolvent or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or enters into any composition or arrangement (including a voluntary arrangement) with its creditors or, has passed a resolution for voluntary winding up except where solely for the purpose of reconstruction, or if a petition has been presented for an order for its winding up or for a receiver (which expression shall include an administrative receiver) or administrator to be appointed or if any such order or appointment is made or if, being an individual or partnership, the Customer suspends payment of his or their debts in whole or in part or if an application has been made for an interim order or a petition has been presented for a bankruptcy order or if any such order is made or if the Customer, whether or not a body corporate, shall carry out or be subject to any analogous act or proceedings under any law.
- (d) If the Customer ceases or intends to cease to carry on business.
- (e) If the Customer, being a company, experiences a change of control which in PZ's reasonable opinion could lead to the Customer being unable to fulfil its obligations under this or any other contract then in force with PZ.
- (g) If the Customer pledges or in any way charges by way of security any of the Goods which remain the property of Riedel in accordance with the terms of the Contract Documents or purports or attempts so to do.
- (h) If PZ reasonably believes that any of the above is likely to occur in relation to the Customer.

5.2 PZ shall be entitled to exercise its rights of termination or suspension under Condition 5.1 at any time during which the event giving rise to such rights is continuing and has not been remedied and, in the event of a suspension, PZ shall be entitled, as a condition of resuming delivery under any contract between it and the Customer, to require prepayment of, or such security as it may require for the payment of, the price of any further goods.

5.3 No waiver by PZ of any breach of the Contract Documents by the Customer will be considered as a waiver of any subsequent breach of the same or any other provision.

6. Price

6.1 The Contract Price shall be the total amount set out in the Order Confirmation and shall only remain open for acceptance for 28 days from the date of the Order Confirmation.

6.2 PZ shall be entitled, at any time before delivery, to adjust the Contract Price to reflect any increase in the cost to PZ which is due to any event of Force Majeure or any delay caused by any instructions of the Customer or failure of the Customer to give PZ adequate and timely instructions or information.

6.3 PZ will issue all invoices in the currency specified in the Order Confirmation.

7. Terms of Payment

7.1 Payment for the Goods shall be made as specified in the Contract Documents.

7.2 Customer will pay PZ the Contract Price without deduction within 30 days of receipt by the Customer of the invoice notwithstanding that delivery of the Goods may not have taken place and / or that the title to the Goods has not passed to the Customer. Payment will be deemed to have been made when cleared funds for the Goods are received in PZ's bank account. The time of payment of the Contract Price shall be of the essence.

7.3 In the event that payment is made by the Customer in any currency other than the currency specified in the Order Confirmation, the Customer shall bear the exchange rate risk and shall not be deemed to have obtained title to the Goods until funds in the currency specified in the Order Confirmation are received in PZ's bank account in respect of the total of all amounts outstanding from the Customer.

7.4 In the event of default in payment by the Customer, PZ shall be entitled, without prejudice to any other right or remedy, to charge the Customer interest on the amount unpaid at the rate of 8% above the Bank of England base rate compounded on a monthly basis until payment in full is made.

7.5 The Customer shall not be entitled to withhold payment to PZ of any amount payable under the Contract Documents by reason of any disputed claim of the Customer in respect of defective goods or any other alleged breach of the Contract Documents, nor shall the Customer be entitled to set off against any amount payable to PZ under the Contract Documents any monies which are not then presently payable by PZ or for which PZ disputes liability.

8. Warranties and Limitations

8.1 Subject to the provisions of these Conditions, Goods supplied by PZ will comply with any specification and standard specified in the Contract Documents. If the Goods are not in compliance with the Contract Documents and the Customer has given notice of defect or non-compliance as permitted by Condition then:

8.1.1 to the exclusion of any other legal remedy that the Customer may have in respect of the Goods:

(a) if PZ and the Customer agree, the Customer shall accept the Goods at an agreed value or the Goods shall be made good at PZ's expense; or

(b) if, within 21 days after the Customer gave notice to PZ under Condition 10.1 PZ and the Customer do not so agree, the Customer may return the Goods to PZ whereupon which PZ shall, at the Customer's option, either:

(i) [repay the Customer (if any payment has been made), or, if PZ so decides, give the Customer credit for, the invoice price of the goods (including freight) and any reasonable transport costs incurred by the Customer in carrying the relevant goods from the place they were originally delivered to the PZ site from which they were despatched or to such other place as PZ may nominate; or

(ii) replace the Goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.

8.2 Without prejudice to the provisions of Condition 8.1, any condition, warranty, statement or undertaking as to the quality of the goods or their fitness or suitability for any purpose however or whenever expressed or which may be implied by statute, custom of the trade or otherwise is hereby excluded, except to the extent that such exclusion is prevented by law.

8.3 Under no circumstances shall PZ be liable for any loss, damage or expense incurred or suffered by the Customer (including, but without limitation, loss of profit, revenue or goodwill) howsoever such loss, damage, or expense may have been caused (including, but without limitation, any breach of contract, negligence or breach of any duty of PZ whatsoever) other than as set out in Condition 8.1.

8.4 In the event that PZ is not entitled to rely upon the provisions of Condition 8.3, any loss, damage or expense whatsoever incurred or suffered by the Customer (including, but without limitation, loss of profit, revenue or goodwill) howsoever such loss, damage, or expense may have been caused (including, but without limitation, any breach of contract, negligence or breach of any duty of PZ whatsoever) shall for all purposes (including, but without limitation, under the Contract Documents and in negligence or any other tort) be limited to the cost of making good the Goods, the repayment or giving of credit for the invoice price of the Goods or the replacement of the Goods in accordance with Condition 8.1.

8.5 Conditions 8.2, 8.3, 8.4, and 18.1 to 18.4 shall be construed severally and as separate contract terms. These Conditions shall survive the termination of the contract for whatever cause.

9. Acceptance of Goods and Returns

9.1 The Customer shall be deemed to have accepted the Goods from the point of delivery or deemed delivery as provided in Condition 4 unless, in the case of a defect in the quality or state of the Goods or the Goods otherwise not complying with the Contract Documents, which defect or non-compliance was apparent upon on inspection or testing of the Goods (or would have been had a careful inspection

or reasonable test been carried out), the Customer gives PZ a notice specifying such defect or non-compliance within 14 days after receiving the Goods and in any event prior to their use or re-sale and, after doing so, gives PZ a reasonable opportunity to inspect or test the Goods before they are used or resold.

9.2 Unless the Goods are found to be defective under Condition 9.1, no Goods may be returned to PZ without its prior agreement. Subject thereto, if PZ agrees that the Goods may be returned and such Goods are not defective under Condition 9.1, the Customer will pay to PZ an amount equal to 20% of the Contract Price to cover PZ's costs of re-stocking.

9.3 In respect of all returns made under Condition 9.2, the Customer shall redeliver the Goods to a delivery point designated by PZ, and shall be responsible for all freight and insurance costs and shall bear the risk in the Goods until returned to PZ in accordance with the terms hereof.

10. Cancellation and Assignment

10.1 The Customer shall have no right to cancel the Contract without the consent of PZ which, if given, may be given on any terms that PZ thinks fit in its absolute discretion. The Customer shall indemnify PZ against any loss, cost, liability, claim or damage which PZ incurs or suffers arising out of or in connection with such cancellation. No such cancellation shall be effective unless agreed in Writing by an authorised representative of PZ.

10.2 Without the prior written consent of PZ the Customer shall not assign the benefit of all or any part of its rights or sub-contract the performance of all or any part of its obligations under the Contract Documents.

11. Force Majeure

11.1 PZ shall not be deemed to be in breach of contract or otherwise liable to the Customer for delay or failure in performing any of its obligations under the Contract Documents if and to the extent that the delay or failure results from an event of Force Majeure.

11.2 If any Force Majeure event persists for a continuous period in excess of [three months] PZ shall be entitled to terminate the Contract by written notice specifying the termination date, which must be not less than 30 days after the date on which the notice to terminate is given.

12. Severability

In the event that, for any reason, any provision in any of the Contract Documents is held to be void, unenforceable or otherwise invalid, any contract which incorporates any such Contract Document shall otherwise continue to be fully binding and all the other provisions of the Contract Document, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain fully effective.

13. Intellectual Property

13.1 The Contract Documents do not grant the Customer any proprietary right in or licence to use any Intellectual Property or any of the Trade Marks save that the Customer may use any such Intellectual Property Trade Marks as PZ may determine:

- (a) for the purpose only of its display and promotion of the Goods; or
- (b) with PZ's prior written consent.

The Customer acknowledges that all goodwill associated with the use of the Trade Marks by the Customer vests, and shall vest, in PZ and that if any goodwill or proprietary right in relation to any of the Trade Marks vests in the Customer, the Customer shall assign such goodwill or right to PZ.

13.2 The Customer undertakes not to commit or omit any act which may damage the goodwill or reputation attaching to the Intellectual Property or any of the Trade Marks or which may be detrimental to or damage the good name, reputation or image of PZ.

13.3 The Customer shall not adopt or use any mark, name, logo, design or symbol which incorporates or is confusingly similar to any of the Trade Marks. The Customer shall not at any time apply anywhere in the world to register any mark, name, logo, design or symbol which incorporates or is confusingly similar to any of the Trade Marks.

13.4 Any publications, brochures, catalogues, illustrations, samples and designs supplied to the Customer by PZ remain the property of PZ. The Customer will not distribute, copy or circulate any such document received from PZ to any other party save with PZ's prior written consent. PZ may at any time require that all such documents and copies made thereof are returned to it by the Customer immediately.

14. Reselling Restrictions

14.1 The Customer undertakes not to resell the Goods to any person who intends to re-sell the Goods for any business or trade purpose after purchase from the Customer (a "Non End User").

14.2 If the Customer knowingly contravenes Condition 14.1, PZ may immediately terminate all contracts then in place with the Customer and / or, without prejudice to any other right or remedy, receive from the Customer damages equal to the amount received by the Customer from the Non End User.

15. Third Parties

The Customer and PZ agree that no term of this agreement shall be enforceable, by virtue of the Contracts (Rights and Third Parties) Act 1999, by any person who is not a party to the Contract Documents.

16. Data Protection

16.1 PZ shall have the right to hold information supplied by the Customer and to use it to process the order and to inform the Customer of new ranges, products and prices.

16.2 PZ shall have the right to conduct credit and other checks and use credit scoring techniques and to pass the Customer's details to credit reference agencies (who shall have the right to retain their own record).

16.3 PZ shall have the right to share information about the Customer with other members of the same group of companies and they shall have the right to send the Customer information about their other goods or services which they believe may be of interest.

16.4 Unless the customer requests otherwise PZ shall also have the right to pass details about the Customer and its account(s) to other carefully selected reputable companies who may wish to offer the Customer other goods or services which PZ believes may be of interest.

16.5 Offerings of further goods or services by PZ and other members of the PZ group, or other carefully selected reputable companies, may be made to the Customer by any means (including by telephone).

16.6 The Customer is entitled to a copy of the information PZ holds concerning it by Writing to PZ and requesting it. There is a fee of £10 for this service.

17. Notices

17.1 Any notice or other communication required or permitted to be given or made under the Contract Documents shall be in Writing and shall be deemed to have been duly given or made if delivered:-

(A) in the case of PZ, Geochron House, Vale Park, Tolpits Lane, Watford, Herts. WD18 9QP (facsimile number 01923 77877); and

(B) in the case of the Customer, at the address given to PZ by the Customer.

17.2 Any such notice or communication shall be delivered by hand, post or facsimile and if delivered by hand shall be deemed to have been given upon delivery at the address of the relevant party, if sent by facsimile upon receipt thereof in legible form by the recipient and if sent by first class post upon delivery.

17.3 Either party may change its notice details on giving notice to the other party of the change in accordance with this condition. That notice shall only be effective on the fifth day after the notification has been received or such later date as may be specified in the notice.

18. Pre Contractual Statements

18.1 The Contract Documents constitute the whole and only agreement between the parties relating to the subject matter of the contract.

18.2 The Customer acknowledges that in entering into the contract it is not relying upon any pre-contractual statement which is not set out in the Contract Documents.

18.3 Except in the case of fraud, neither party shall have any right of action against the other party to this agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in the Contract Documents.

18.4 For the purposes of this condition, 'pre-contractual statement' means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in Writing, relating to the subject matter of the contract made or given by either party to the other at any time prior to the date of this agreement.

19. Governing Law and Jurisdiction

The Contract Documents shall be governed by and construed in accordance with English law and it is irrevocably agreed that the Courts of England are to have jurisdiction to settle any dispute which may arise out of or in connection with the Contract Documents.

Purple Zebra Products Ltd.

Geochron House, Vale Park, Tolpits Lane, Watford, Herts. WD19 9QP England

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