

## **PUTZMEISTER LIMITED GENERAL TERMS & CONDITIONS OF SALE**

### **1. INTERPRETATION**

- 1.1 In these Conditions the following words and expressions shall, unless the context otherwise requires, have the meaning given to them below.
- 1.1.1 "Buyer" means the person, firm or company who places an order with the Seller.
- 1.1.2 "Contract" means any contract between the Seller and the Buyer for the sale and purchase of the Goods, or the performance of the Services incorporating these conditions.
- 1.1.3 "Conditions" means the terms and conditions herein set out.
- 1.1.4 "Delivery" means the making available of the Goods at the Seller's place of business for the Buyer's collection or the date of performance of the Services.
- 1.1.5 "Delivery Note" means the document available at Delivery that lists the description and quantity of the Goods delivered by the Seller to the Buyer
- 1.1.6 "Goods" means any goods referred to in the Order to be supplied to the Buyer by the Seller (including any part or parts of them).
- 1.1.7 "Job Card" means the document describing the Services to be or being rendered by the Seller to the Buyer
- 1.1.8 "Order" means the order placed by the Buyer with the Seller for the supply of the Goods and/or Services.
- 1.1.9 "Price" means the price of the Contract as defined clause 8 below).
- 1.1.10 "Seller" means PUTZMEISTER LIMITED (Registered in England under Company No. 1020871) whose registered office is at Carrwood Road, Chesterfield Trading Estate, Chesterfield, S41 9QB.
- 1.1.11 "Services" means maintenance, repair or other services to be provided to the Buyer by the Seller.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 Condition headings do not affect the interpretation of these Conditions.

### **2. APPLICATION OF THE CONDITIONS**

- 2.1 Unless any variations are expressly agreed in writing and signed by an authorised signatory on behalf of the Seller, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any of the usual Buyer's terms and conditions or any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document even though such document(s) may be referred to in the Contract).
- 2.2 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

### **3. CONTRACT**

- 3.1 Each Order or acceptance of a quotation for Goods or Services by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these Conditions.
- 3.2 The Buyer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 3.3 Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an acknowledgement of Order to the Buyer. Any quotation is valid for an initial period of 21 days only from its date, provided that the Seller has not previously withdrawn it. The validity of the quotation may, at the Seller's absolute discretion, be extended in writing to 28 days.

3.4 Irrelevant of whether or not the premises are under the Buyer's control, the Seller's quotation will assume, and the Contract will contain a condition, that the Buyer is responsible for the provision of water, electricity, compressed air and similar services, access, unloading, storage and any reasonably necessary facilities for the Seller's staff. Any default on that Condition will entitle the Seller at his absolute discretion to cancel or delay the Contract and, in any event, to claim any loss or damage from the Buyer.

3.5 The Buyer is entitled to request in writing variations to the Contract, but the Seller reserves the right, in its absolute discretion, to refuse these if any increase in Price or alteration in the Delivery date or other matter proves incapable of agreement.

#### **4. DESCRIPTION**

4.1 The quantity and description of the Goods or (where applicable) description of the Services shall be as set out in the Seller's quotation or acknowledgement of Order.

4.2 Where parts are ordered or Services are requested verbally, the Buyer acknowledges that the Delivery Note and/or Job Card will set out the details of the parts ordered and/or Services to be performed, the delivery or performance of which by the Seller always (for the avoidance of doubt) being subject to these Conditions only. For the avoidance of doubt, in respect of an order for Services, the Seller shall only perform the Services specifically requested of it by the Buyer should the Buyer choose to accept such order from the Seller. For instance (and without limitation to the foregoing) where repairs are requested, the Seller shall only perform the Services (where such order is accepted by the Seller) in respect of the direct repairs brought to the Sellers' attention by the Buyer.

4.3 All measurements, dimensions, weights, colours and other specifications contained in the Seller's catalogues, sales manuals, photographs, drawings, illustrations and price lists, and the Seller's samples, constitute only an approximate guide and do not form part of the Contract. No warranty is given that the Goods supplied or Services performed will correspond exactly to those specified. The specifications shall not form part of the Contract and this is not a sale by sample.

#### **5. DELIVERY**

5.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the Seller's place of business and the performance of the Services shall be at such locations as is agreed between the parties.

5.2 Delivery shall be made at the Seller's earliest convenience. Any time or date for delivery specified to the Buyer by the Seller is an estimate only and may be cancelled or revised at the Seller's discretion. Time for delivery shall not be of the essence of the Contract. If no dates are specified, delivery shall be within a reasonable time.

5.3 The Buyer shall take delivery of the Goods within the period specified by the Seller on its quotation or, if no such period is so quoted, the Buyer shall take delivery of the Goods at such reasonable time as the Seller shall direct in writing to the Buyer.

5.4 Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss (including any loss of profits), costs, damages, charges or expenses caused directly or indirectly by any delay howsoever arising in the delivery of the Goods or performance of the Services.

5.5 When Goods are made to the Buyer's order for call-off and no delivery dates are specified then any Goods not called-off within 3 months after the date of the Seller's confirmation of Order may be deemed by the Seller in its absolute discretion to have been called off.

5.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.7 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

- 5.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## **6. NON-DELIVERY**

- 6.1 The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on Delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Seller shall not be liable for any non-delivery of Goods howsoever caused, unless the Buyer gives written notice to the Seller of the non-delivery within [3] days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **7. RISK/TITLE**

- 7.1 The Goods are at the risk of the Buyer from the time of Delivery.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Seller from the Buyer on any account, including any costs of repossession of the Goods.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Seller's Bailee;
  - (b) store the Goods, at its own cost, separately from its own goods or those of any third party in such a way that they can be readily identifiable as the Seller's Goods; and
  - (c) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. The Buyer shall procure that the interest of the Seller is noted upon the policy of insurance put in place and that a copy of the document is supplied to the Seller once it is made available to the Buyer.
- 7.4 The Buyer is authorised to resell the Goods before ownership has passed to it on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and, in any event, at a price that is no less than the purchase price of the Goods;
  - (b) any such sale shall be a sale of the Seller's Goods on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale;
  - (c) the proceeds of the sale are held on trust for the Seller and are kept separate from the Buyer's other monies so as to remain at all times identifiable as the Seller's monies;
  - (d) the Buyer keeps records of its sub-sales, which must be produced to the Seller upon request; and
  - (e) the Buyer assigns any claims he may have against to any sub-purchasers to the Seller, upon the Seller's written request, the Seller being entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.5 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, because the Goods have been mixed with or incorporated into the Buyer's property, the product(s) in question, or the proceeds of sale of the product(s), shall be deemed to be the sole and exclusive property of the Seller.

7.6 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or

(being a body corporate) convenes a meeting of creditors, or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

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

(c) the Buyer encumbers or in any way charges any of the Goods.

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

## **8. PRICE**

8.1 Unless otherwise agreed by the Seller in writing, the price for the Goods and/or the Services shall be the price set out in the Seller's price list published on the date of Delivery.

8.2 The price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance and including all duties and other taxes relating to the Goods and/or Services, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8.3 The Seller reserves the right to alter its prices and quotations without notice whenever it, in its absolute discretion, considers necessary as Orders are accepted by the Seller on the condition that the Price is that prevailing at the date of Delivery unless otherwise agreed between the parties in writing.

8.4 The Seller shall be entitled to charge for any materials and/or time spent in dealing, after the formation of the Contract, with any query, request, variation, additional work, research test and/or inspection not covered by the Contract, irrelevant to whether or not such matter eventually leads to an addition or a variation of the Contract.

## **9. PAYMENT**

9.1 Payment of the price for the Goods and/or Services is due in pounds sterling:

(a) Where the Goods comprise machines, payment shall be made as specified by the Seller to the Buyer in writing and in any event no later than 5 working days prior to Delivery;

(b) Where the Goods comprise spare parts, components, accessories and the like, payment shall be made within 30 days of Delivery unless otherwise specified by the Seller to the Buyer in writing.

(c) Where only Services are provided, payment shall be made within 10 days of the provisions of the Services unless otherwise specified by the Seller to the Buyer in writing.

9.2 Payment of sums on account of the price of the Goods shall be made subject to and in accordance with the terms of the Contract.

9.3 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

9.4 Time for payment shall be of the essence.

9.5 No payment shall be deemed to have been received until the Seller has received cleared funds.

9.6 Should the Buyer fail to pay the Seller any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the National Westminster Bank Plc, accruing on a daily basis until payment is made.

9.7 Should there be any default in the due payment to the Seller of the price of the Goods and/or Services or any part or instalment or of any sum due under the Contract, the Seller reserves the right to:

- (a) suspend further work on the Goods and/or Services;
- (b) cancel the Contract;
- (c) use the payments made by the Buyer on account as payment towards its unpaid invoices in their date of order beginning with the oldest invoice; and
- (d) claim its losses, expenses and costs from the Buyer. Should the Seller elect to proceed with the Contract, the Seller shall be entitled to require full payment of monies due under the Contract, plus its losses, before proceedings. Should the Seller elect to cancel the Contract, the Buyer will be liable for the Seller's costs and losses. These may be satisfied, in whole or in part, from monies already paid. Any balance will be refundable, without interest, to the Buyer.

## **10. QUALITY (WARRANTIES)**

- 10.1 The Buyer is entitled to request testing of the Goods prior to Delivery, which will be at the Buyer's cost. The Seller shall arrange for the testing to take place within 14 days of the Buyer's written request. Any dissatisfaction with the results of the test must be recorded in writing within 3 days of the results of the test failure of which will result in the Buyer being deemed to be satisfied with the results. Should the Buyer fail to attend the testing, the Seller shall be entitled to carry out the test on behalf of the Buyer, at the Buyer's expense, and the results shall be deemed to be accepted by the Buyer.
- 10.2 The Buyer shall inspect the Goods immediately upon collection and the signature of the Buyer or of its agent(s) on the Delivery Note shall be deemed to be an acknowledgment on the part of the Buyer that the Goods are undamaged and in accordance with the Contract.
- 10.3 Subject to the provisions below, the Seller shall not replace the Goods nor be under any liability to deliver any missing part thereof, unless the Buyer:
- (a) states on the Delivery Note that the Goods or part(s) are either damaged or missing; and
  - (b) notifies the Seller in writing within 7 days of the collection of the Goods of the extent to which the Goods are damaged and/or missing.
- 10.4 The Seller warrants that (subject to the other provisions of these Conditions) on Delivery, and for a period of 6 months from the earlier of the date of Delivery or of the issue of the Seller's invoice or from the date of the replacement of the Goods, the Goods shall:
- (a) (in respect of Goods) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and be reasonably fit for purpose; and
  - (b) (in respect of Services) be of satisfactory quality within the meaning of the Supply of Goods and Services Act 1982.
- 10.5 The Seller shall not be liable for a breach of any of the warranties in condition 10.4 unless:
- (a) the Buyer gives written notice of the defect to the Seller, with details of the alleged defect(s), within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - (b) the Seller, or its agents, is given a reasonable opportunity after receiving the notice of examining such Goods, together with full and proper assistance to enable them to ascertain the nature and the extent of the Defects, and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business, at the Buyer's cost, for the examination to take place there. The Buyer shall indemnify the Seller for any cost arising from the return of the Goods, unless the Seller has accepted responsibility under Clause 10.3.
- 10.6 The Seller shall not be liable for a breach of any of the warranties in condition 10.4 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
  - (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - (c) the Buyer alters or repairs such Goods without the written consent of the Seller.
- 10.7 Subject to the Conditions above, if any of the Goods do not conform with any of the warranties in condition 10.4 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate subject to payment by the Buyer of the Seller's standard charges for labour in connection with such repairs and/or replacement and provided that, if the Seller so requests, the Buyer shall, at the [Buyer's] expense, return the Goods or the part of such Goods which is defective to the Seller.

- 10.8 If the Seller complies with condition 10.5 it shall have no further liability for a breach of any of the warranties in condition 10.4 in respect of such Goods.
- 10.9 Defects in quantity, quality or dimensions in any Delivery shall not be grounds for cancellation of the remainder of the Contract by the Buyer.

## **11 LIMITATION OF LIABILITY**

11.1 Subject to condition 5, condition 6 and condition 10, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Seller:

- (a) for death or personal injury caused by the Seller's negligence; or
- (b) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

- (a) Where work is being carried out on site, and damage is caused by the Seller's proven negligence to any goods, equipment or other items of the Buyer or for which the Buyer is directly or indirectly responsible, the Seller's liability shall be limited to the cost of repairing or otherwise making good the damage;
- (b) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
- (c) the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- (d) the Seller shall have no liability under the Contract unless a claim in respect of any breach is notified to the Seller within one year of the date of Delivery (or in respect of Services, within one year of the date of performance of the Services).

## **12 EXCLUSION OF LIABILITY**

- 12.1 The Seller shall not be liable for any defect caused in whole or in part by any alteration and/or addition to the Goods (other than that done by the Seller itself) or by the use or storage of the Goods in a manner contrary to any instructions of the Seller or the relevant operating instructions for the Goods or for a purpose for which the Goods were not designed, or by faulty installation, maintenance or repair by the Buyer or any third party.
- 12.2 The Seller shall not be liable for any defects in any Goods or components or parts of the Goods that have not been manufactured by the Seller, nor shall it be liable for any defects for second-hand, used or reconditioned Goods and no warranty is given in respect of any such third party manufactured items and/or second-hand, used or reconditioned Goods on the basis of inter alia the fact that second-hand, used or reconditioned Goods do not have the same quality or ability to perform as new manufactured machines or parts.
- 12.3 The Seller shall not be liable to repair, replace or make good any loss, damage or defect which result from wear and tear, accident, neglect or misuse occurring after the physical delivery of the Goods to the Buyer or its agent(s).
- 12.4 The Seller excludes all liability for any and all material provided by the Buyer or acquired or Goods manufactured on the basis of specifications or designs provided by the Buyer.

### **13 FORCE MAJEURE**

The Seller reserves the right to defer the date of Delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 1 year, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

### **14 COMMUNICATIONS**

- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by ordinary class post or sent by fax:
- (a) in case of communications to the Seller, to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
  - (b) in the case of the communications to the Buyer, to the registered office of the addressee or such other address as shall be notified to the Seller by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by ordinary post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

### **15 ASSIGNMENT**

- 15.1 The Seller may assign the Contract or any part of it to any person, firm or company.
- 15.2 Buyer shall not assign the Contract or any part of it without the prior written consent of the Seller.

### **16 TERMINATION**

- 16.1 Should the Buyer fail to pay the Price or any other sum due to the Seller on the date specified by the Conditions, or should the Seller receive any information about the Buyer which the Seller, in its absolute discretion, considers to be of an adverse nature, the Seller shall be entitled:
- (a) to suspend further deliveries and/or suspend performance of any Services; or
  - (b) to vary, by notice in writing, with immediate effect the credit terms specified in the Contract or any other contract subsisting between the Seller and the Buyer or any company respectively associated with them, if any; or
  - (c) to treat the Contract as wrongfully repudiated by the Buyer without prejudice to the Seller's right to payment for any Goods delivered and to damages for the Buyer's breach of contract.
- 16.2 THE Without prejudice to any other rights or remedies which the Seller may have, the Seller may terminate the Contract without liability to the Buyer immediately on giving notice to the Buyer if:
- (a) the Buyer commits a material breach of any of the terms of the Contract and (if such a breach is remediable and the Seller in its discretion requires the Buyer to so remedy the breach) fails to remedy that breach within 7 days of that party being notified in writing of the breach; or
  - (b) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986]; or
  - (c) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Buyer; or
- (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer; or
- (f) a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer; or
- (h) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mention above;
- (j) the Buyer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

16.3 On termination of the Contract for any reason:-

- (a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied or work undertaken but for which no invoice has been submitted, the Seller may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the Seller as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **17 WAIVER**

- 17.1 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

## **18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## **19 GENERAL**

- 19.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

## **20 JURISDICTION AND APPLICABLE LAW**

These Terms and Conditions shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

Putzmeister Ltd.  
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 Chesterfield Trading Estate, Chesterfield  
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