

Syntegon Packaging Technology Ltd (PAGB)

General Terms and Conditions: Goods and Services (Edition 5.0 Jan 2020)

Definitions

Agreement: means the formation of a contract for the sale and purchase of the Goods and/or Services between PAGB and the Customer in accordance with and subject to these Conditions.

Conditions: means these PAGB General Terms and Conditions of Goods and Services.

Customer: means the customer contracting under these terms.

Goods: means the PAGB machinery delivered to the Customer, more particularly described in the Quotation.

Intellectual Property Rights: means any patents, inventions, copyright and related rights, trade marks, trade names, rights to goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how), utility models and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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 Acknowledgment: means PAGB's acceptance of a Customer order subject to, and incorporating, the terms of PAGB's Quotation, these Conditions and any other PAGB inclusions or amendments to the Customer order;

Quotation: means PAGB's quotation pertaining to the sale and purchase of the Goods and/or Services.

Services: means the services to be performed by PAGB, as further described in the Quotation.

Specification: means the specification for the Goods and Services delineated in the Quotation or Order Acknowledgment or as otherwise determined by PAGB.

1. Scope of validity

These Conditions shall apply to the Agreement 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. All of these Conditions shall apply to the supply of both Goods and Services, and to all work undertaken in connection with the provision of such Goods and Services including: training, modification work and modernisations of machinery and equipment as well as for the delivery of spare parts and software whether alone or together with the supply of Goods or Services.

2. Scope of Provision of Goods and Services

The Agreement shall be formed upon these Conditions either when the Customer submits an order for the supply of Goods and/or Services which is accepted by PAGB by issuance of an Order Acknowledgment, or the Customer accepts PAGB's Quotation. PAGB may set out additional conditions or amendments in its Order Acknowledgment or in any correspondence of supplemental documentation supplied with the Quotation, whereupon the Customer shall accept any such additional PAGB conditions or policies, which shall be incorporated into the Agreement.

3. Supply of Services

PAGB shall provide the Services to the Customer in accordance with the Quotation in all material respects. PAGB shall use all reasonable endeavours to meet any performance dates for the Services mutually agreed between the parties and specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. PAGB shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and PAGB shall notify the Customer in any such event. PAGB warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Charges and Payment

4.1 The price for Goods shall be the price set out in the Quotation. The price of the Goods is exclusive of all costs and charges for packaging, insurance and transport. PAGB shall be under no obligation to allow a Customer to cancel an order for Goods once a quotation has been accepted by the Customer or PAGB has accepted a purchase order from the Customer. PAGB shall, at its sole discretion, determine if it will accept cancellation prior to delivery and if so, upon what terms, and PAGB shall be entitled to charge the Customer a cancellation fee of up to 100% of the value of the Goods if the Customer cancels an order for Goods after either its purchase order has been accepted by PAGB or the Customer has accepted PAGB's quotation. A minimum order value may apply to your Order. If this is the case for your Order you will be informed at the time of placing the Order. This excludes any freight costs.

4.2 The charges for Services shall be on a time and materials basis:

- the charges shall be calculated in accordance with PAGB's standard daily fee rates, and/or as set out in the Quotation;
- PAGB's standard daily fee rates for each individual person are calculated on the basis of a 7.5 hour day (business days);
- PAGB shall be entitled to charge overtime based on the current service rates at that time (copy available on request), or a percentage of the standard daily fee rate based on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 4.2(b); and
- PAGB shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom PAGB engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by PAGB for the performance of the Services, and for the cost of any materials.

(a) PAGB shall be entitled to charge the Customer for any time spent by any individual waiting at the Customer's premises to gain access to the plant and equipment that is the subject of the Services, that is in excess of the amount of waiting time provided for in the quotation.

Unless otherwise expressly agreed, the Service works shall be invoiced according to the time spent and material used on the basis of the contractor's rates.

(b) PAGB shall use reasonable endeavours to ensure that any time sheets required by the Customer as evidence of the hours worked are signed by a representative of the Customer as being an accurate record of the hours worked.

(g) PAGB shall be entitled to invoice the Customer based upon the records maintained by its employees or agents.

(h) PAGB shall be entitled to charge the Customer a cancellation fee of up to 100% of the value of the Services if the Customer cancels an order for Services after either its purchase order has been accepted by PAGB or the Customer has accepted PAGB's quotation.

5. Intellectual Property Rights, Plans, technical documentation and software

5.1 Data and technical documents provided by PAGB to the Customer may be relied upon by the Customer only if expressly stated by PAGB. Each party to the Agreement shall own all right, title and interest in and to: (i) its Intellectual Property Rights, and the other party shall have no right, title or interest in or to them; and (ii) all data and technical documents provided to the other. The Customer shall not own any Intellectual Property Rights in the Goods, Services, in any software, data or assembly drawings provided by PAGB, nor in any Intellectual Property Rights of any kind resulting directly (or indirectly) from the Goods and/or Services unless expressly agreed with PAGB in writing.

5.2 If any software is provided directly (or indirectly) by PAGB to the Customer embedded in the Goods or otherwise delivered with the Goods or with any Services provided, the Customer is accorded a limited, non-exclusive, non-sub-licensable right to use the software solely to the extent necessary to install, use and maintain the Goods for its intended purpose set out in the Quotation. The Customer is not permitted to reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the software or create derivative works based on the whole or any part of the software or incorporate the software into any other software program not provided by PAGB; and shall only use the software in the operation of the Goods, and shall not make the software available for use by any third party in any manner whatsoever.

6. Customer's Obligations

The Customer shall:

- ensure that the information it provides for inclusion in the Specification is complete and accurate;
- co-operate with PAGB in all matters relating to the Goods or Services;
- provide PAGB, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by PAGB to provide the Goods or Services;
- provide PAGB with such information and materials as PAGB may reasonably require to supply the Services and ensure that such information is accurate in all material respects;
- prepare the Customer's premises for the supply of the Goods or Services;
- obtain and maintain all necessary licences, permissions and consents which may be required for the Goods or Services before the date on which the Goods are to be delivered or the Services are to start;
- keep and maintain all materials, equipment, documents and other property of PAGB (PAGB Materials) at the Customer's premises in safe custody at its own risk, maintain PAGB Materials in good condition until returned to PAGB, and not dispose of or use PAGB Materials other than in accordance with PAGB's written instructions or authorisation; and
- the Customer and PAGB shall each appoint a responsible representative (technical supervisor) to co-ordinate the delivery of the Goods or Services. The Customer shall inform the technical supervisor of PAGB about specific safety regulations if relevant for the delivery of the Goods or performance of the Services; and
- provide, at its own expense, such technical assistance as PAGB shall reasonably require including but not limited to: having a Customer representative present when the Goods are delivered or the Services are performed outside normal working hours, provide necessary cranes and elevators, transport vehicles and tools as well as the further items and materials needed (for example wedges, mats, cement, plaster and sealing material, grease, fuel), provide heating, light, electricity, water including necessary connections.

7. Customer Default

If PAGB's performance of any of its obligations in respect of the Goods or Services is prevented or delayed by any act or omission by the Customer or by the Customer to perform any relevant obligation (Customer Default):

- PAGB shall without limiting its other rights or remedies have the right to delay the delivery of the Goods or suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays PAGB's performance of any of its obligations;
- PAGB shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from PAGB's failure or delay to perform any of its obligations as set out in this clause; and
- the Customer shall reimburse PAGB on written demand for any costs or losses sustained or incurred by PAGB arising directly or indirectly from the Customer Default.

8. Delivery of Goods

8.1 PAGB shall deliver the Goods to the location set out in the Quotation or at such other location as the parties may agree. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Notwithstanding the provisions set out in clause 14, PAGB shall not be liable for any delay in delivery of the Goods or any failure to deliver the Goods when caused by a Force Majeure Event, any industrial action that affects PAGB or its subcontractors, or the Customer's failure to provide PAGB with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If PAGB fails to deliver the Goods, it's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

8.2 PAGB will only repair or replace, at PAGB's option, Goods which are lost or damaged in transit if:

- notice is given to PAGB and carrier (if any) within 2 days of the date of delivery specifying the non-arrival of the Goods or the damage alleged;
- the date of receipt by PAGB of notification of loss or damage in transit shall determine whether or not notification is in good time. Claims on account of loss or damage in transit shall be excluded if the notification of the loss or damage is not received in good time; and
- the Customer (if asked to do so by PAGB) returns such Goods to PAGB's place of business at the Customer's cost within 14 days of such receipt.

8.3 The Parties acknowledge and agree that due to the United Kingdom's (regardless of which countries comprise the UK at such date) intended exit from the European Union/ceasing to be a: (i) member state of the European Union, (ii) member of the European Economic Area and/or (iii) member of the EU customs union (together "Brexit") there may be delays and disruptions due to any Brexit-related change to (or new application of existing) taxes, customs, duties, tariffs, levies, charges or fees, licences or consents or any restriction to trade (not involving a tax or duty) whether foreseen or unforeseen at the date of the Agreement (together, or separately, the "Brexit-related Delays"). The Parties agree that in the event of any delays in delivery of goods or services resulting from a Brexit-related Delay, the respective Party first aware of the Brexit-related Delay shall promptly confirm by notice in writing, by recorded first class post to the other Party, that such Brexit-related Delay has taken effect (the "Brexit Delay Notice"). First receipt of the Brexit Delay Notice by the recipient Party, which shall suspend the time limit for confirmation by the sender Party of the Brexit Delay Notice shall be deemed to have occurred on a date no later than two (2) Business Days from the date of posting, the delivery date set out in the Quotation shall automatically be extended by: (i) the continued period of the Brexit-related Delay; or (ii) for a period no longer than six (6) months from the date of receipt by the affected Party of the Brexit-Delay Notice, whichever period ends first (the "Extended Delivery Date").

9. Export control clause

9.1 The provision of Goods and/or Services (the performance of the Agreement) are subject to the proviso that performance is not opposed by national or international export control regulations, in particular by embargoes or other sanctions. The Customer shall provide all information and documents that are necessary for export or re-export of the Goods or Services or authorisation procedures shall suspend the time limit and delivery times. If any requisite authorisations are not granted or if the supply or service is not able to be authorised, the Agreement shall be deemed not to have been concluded in relation to the parts affected.

9.2 PAGB is entitled to terminate the Agreement without notice, if termination is required for the purpose of complying with national or international legal regulations.

9.3 In the event of a termination in accordance with clause 9.2 the Customer is excluded from raising a claim for any damages or other rights on account of the termination.

9.4 When passing on the supplied goods (hardware and/or technology and the relevant documents, independently of the manner in which they are provided), or of work, and services provided by PAGB (including technical support of any kind) to third parties domestically or abroad, the Customer shall comply with the applicable regulations of the national and international (re-) export control legislation.

10. Quality of Goods

10.1 PAGB warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall conform in all material respects with the Specification.

10.2 Subject to clause 10.3, if:

- the Customer gives notice in writing during the Warranty Period within: (i) in the case of a defect that is apparent on normal visual inspection, within two days of delivery; and (ii) in the case of a latent defect, within 21 days of discovery of the defect; that some or all of the Goods do not comply with the warranty set out in clause 10.1;
- PAGB is given a reasonable opportunity to examine such Goods; and
- the Customer (if asked to do so by PAGB) returns such Goods to PAGB's place of business at the Customer's cost within 14 days of such receipt;

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

10.3 PAGB shall not be liable for the Goods' failure to comply with the warranty in clause 10.1, if:

- the Customer makes any further use of such Goods after giving a notice in accordance with clause 10.2;
 - the defect arises before the Customer failed to follow PAGB'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;
 - the defect arises in connection with or as a result of PAGB following any instruction, drawing, design or specification supplied by the Customer, or an affiliate, agent or subcontractor of the Customer, or any other information supplied by the foregoing prior to delivery of the Goods;
 - the Customer, or an affiliate, agent or subcontractor of the Customer, alters, modifies or repairs such Goods without the written consent of PAGB; or
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 10.4 Except as provided in this clause 10, PAGB shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.1.
- 10.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by PAGB under clause 10.2.

11. Title and Risk

11.1 The risk in the Goods shall pass to the Customer on delivery. Title to the Goods shall not pass to the Customer until PAGB has received payment in full (in cash or cleared funds) for:

- the Goods; and
- any other Goods that PAGB has supplied to the Customer.

Until title to the Goods has passed to the Customer, the Customer shall:

- hold the Goods on a fiduciary basis as PAGB's bailee;
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as PAGB's property;
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on PAGB's behalf from the date of delivery;

11.2 The Customer may resell or use the Goods in the ordinary course of its business.

11.3 If before title to the Goods passes to the Customer the Customer becomes subject to any insolvency event or PAGB reasonably believes that any such event will occur, then, provided the Customer gives notice to the Customer, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy PAGB may have, PAGB 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.

12. Limitation of Liability: the customer's attention is particularly drawn to this clause

12.1 Nothing in these Conditions shall limit or exclude PAGB's or the Customer's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 12.2 PAGB shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits; loss of revenue; loss of contracts; loss of anticipated savings; loss of business; loss of use; loss of goodwill; loss or damage arising from the loss, damage or corruption of any data; pure economic loss; costs, damages or charges, any ex gratia or other compensation; payments made to a third party by the Customer or on the Customer's behalf; or for any special, indirect or consequential loss arising under or in connection with the Agreement for the supply of Goods and/or Services.
- 12.3 PAGB's total liability to the Customer in respect of all other losses (including any indemnified losses) arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 50% of the value of the Agreement for the supply of Goods and/or Services.
- 12.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- This clause 12 shall survive the termination of the Agreement.

13. Terms of Payment

13.1 Unless otherwise agreed, Goods and Services are invoiced upon dispatch or upon the date of supply and are payable by the Customer within 30 days from the invoicing date. PAGB reserves the right to require a partial or complete payment of the Agreement price/fees in advance. The Customer shall pay each invoice submitted by PAGB:

- within 30 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by PAGB, and time for payment shall be of the essence of the contract. All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by PAGB to the Customer, the Customer shall pay to PAGB, in respect of a valid VAT invoice from PAGB, any such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods. Without limiting any other right or remedy of PAGB, if the Customer fails to make any payment due to PAGB under the Agreement by the due date for payment (Due Date), PAGB shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Barclays Bank Plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. The Customer shall pay all amounts due under the Agreement 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 PAGB in order to justify any withholding payment of any such amount in whole or in part. PAGB may without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by PAGB to the Customer.
- 13.2 In the event of any alleged discrepancy in a PAGB invoice, the Customer shall have a total of 7 days from the date of the invoice to notify PAGB of any such alleged discrepancy and request a re-issue of the respective invoice.

14. Force majeure

Each party is entitled to discontinue performance of contractual duties, if performance by the relevant party is rendered impossible or unreasonably difficult through no fault of that party as a result of the following circumstances: fire, armed conflicts, war, general mobilisation, insurrection, requisition, confiscation, embargo, or restrictions, on energy consumption and defective or delayed deliveries by subcontractors on account of the circumstances listed in this clause. The right to discontinue contractual duties also applies to industrial action that affects the parties to the Agreement or their suppliers.

A party to the contract that pleads force majeure shall inform the other party to the contract immediately and in writing of the occurrence and of the end of such circumstances. If force majeure hinders the Customer from performing its contractual duties, it shall compensate PAGB for any costs incurred for the purpose of security and for the protection of the plant.

Notwithstanding all effects defined in these Conditions, each party to the contract has the right to withdraw from the Agreement by providing notice in writing to the other party, if the discontinuation of performance of the Agreement due to force majeure will last longer than six months. In this case PAGB shall be reimbursed with the costs incurred by it up to that point in time (in particular the materials, working hours, supply contracts).

15. Confidentiality

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement. PAGB shall ensure that its employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Agreement.

16. General

- if a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- if any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

No partnership:

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, to bind, the other party in any way.

Third parties:

A person or entity who is not a party to the Agreement shall not have any rights under or in connection with it.

Variation:

Any variation, including the introduction of any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by the Customer and PAGB.

Entire Agreement:

These conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

17. Software Technologies

17.1 The Customer acknowledges that any open source software and third party software under royalty free licenses (together "Free or Open-Source Software" or "FOSS") directly or indirectly integrated or forming part of the Goods or Services or otherwise delivered by PAGB is provided "as is" and has not been developed to meet the individual requirements of the Customer. All other conditions, warranties or other terms which might have effect between PAGB and the Customer or be implied or incorporated into the Open-Source Software, whether by statute, common law or otherwise, are hereby excluded, including all implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

17.2 The FOSS in the Goods may be owned by third party FOSS developers and subject to FOSS license agreements, herein referred to as "FOSS Licenses". In utilising the Goods, or in the event the Customer sells, distributes or otherwise delivers the Goods to a third party, the Customer hereby acknowledges and agrees to comply with the terms and conditions of any such FOSS Licenses and to ensure that any third party recipient of the Goods shall be notified of its continuing obligations as a sub-licensor or user of the particular FOSS License and agree to abide by its terms and conditions.

17.3 In the event the Customer passes on a copy of the Goods to another party, the terms and conditions of the respective FOSS Licenses shall apply to the distribution and sub-licensing or use of any included FOSS (in some cases, the particular FOSS License may provide a direct license from the author / licensor of the FOSS to the third party). The Customer acknowledges that it is responsible for obtaining all information in regard to any FOSS Licenses applicable to the Goods, and PAGB is not liable for the non-compliance of any such third party, nor is PAGB obliged to grant or obtain any rights, sub-licenses or additional information in regard to a FOSS License unless the scope and usage rights of a particular FOSS License is mutually agreed and recorded in the terms of the Agreement.

17.4 The FOSS itself does not contribute to the sales price of the PAGB product and is provided without royalty or monetary compensation.

17.5 Unless expressly stated in the terms of the Agreement or any quotation, subsequent service and support related to or otherwise resulting from a FOSS license(s) is excluded in its entirety; any such service or support requested by the Customer shall require a separate agreement specifying such service or support and the fees payable.

17.6 In the event that FOSS is integrated into the Goods, the Customer acknowledges restrictions are in place to ensure that the FOSS remains a standalone code derived from a reference block from a unique PAGB library, and the Customer agrees that it shall neither modify, alter or delete the FOSS, or any related code, it may receive access to.