

CONDITIONS OF PURCHASE OF PACE PLC

- 1. Interpretation**
 - 1.1 All references to "Pace" refers to Pace plc and reference to "the Supplier" refers to the person, firm or company to which the purchase order of Pace is addressed. All references to the goods and the services shall mean the goods and services the subject of this contract.
 - 1.2 In these terms the singular shall include the plural and vice versa; and use of gender shall be immaterial.
 - 1.3 Clause headings are for ease of reference only and shall not be interpreted as part of the contract.
- 2. Entire Agreement**
 - 2.1 The terms and conditions contained herein govern the sale and supply of goods and/or services to the exclusion of any other terms and conditions.
 - 2.2 Acknowledgement of an Order will constitute the Supplier's acceptance of these terms and those on the face of the Order to the exclusion of all others including any which may be printed on the Supplier's documents.
 - 2.3 All orders placed by Pace ("the Order") and contracts entered into by Pace will be deemed to be exclusively subject to these conditions and those set out on the relevant Order unless otherwise specifically agreed in writing by a director of Pace making reference to the relevant Order.
 - 2.4 No goods or services shall be supplied without an Order therefore and no variation to the price stated in the Order or any other contractual term will be effective unless also comprised in a further Order.
 - 2.5 In the event of any conflict or inconsistency arising between the conditions specified on the face of the Order and these terms and conditions the conditions on the face of the Order shall prevail.
 - 2.6 Any waiver or failure of Pace to require strict compliance with these conditions in any respect shall not be deemed a waiver in other respects.
- 3. Price**
 - 3.1 The price for the goods and/or services shall be as stated in the Order and shall be fixed. Where no price is stated it shall be subject to agreement in writing by Pace pursuant to Clause 10.2.
 - 3.2 Variation to price will be effective only with the prior written consent of Pace and set out in a further Order.
- 4. Performance and Delivery**
 - 4.1 Unless otherwise agreed by Pace in writing, the Supplier shall at its own expense deliver the goods on the delivery date to the delivery point stated in the Order or such other destination as may be agreed in writing between the parties packaged to the highest standards for the purposes of protecting the goods in transit under cover of a delivery note quoting the Order number, details of the goods supplied, including Pace part numbers and clearly stating Pace's name.
 - 4.2 The Supplier must not commence delivery prior to the contractual delivery date without obtaining the prior written approval of Pace. If such approval is not obtained Pace may at its discretion refuse such delivery.
 - 4.3 The Supplier shall deliver ordered goods and complete ordered work or services at the time specified by Pace and in this respect time shall be of the essence.
 - 4.4 Delivery in instalments shall be permitted only with the prior written consent of Pace.
 - 4.5 Without prejudice to any other rights of Pace, goods not despatched in time to reach the delivery point by the contractual delivery date shall be delivered at the expense of the Supplier to such address and by such means as Pace may reasonably require.
 - 4.6 The Supplier shall not charge Pace for pallets, containers or packaging and Pace shall not be responsible for storage or return of such pallets, containers or packaging.
 - 4.7 The Supplier will, with all possible speed, repair or replace (at Pace's option) free of charge, goods lost or damaged in transit provided that Pace shall give the Supplier written notification of any such claim of loss or damage.
- 5. Acceptance and Quality**
 - 5.1 The Supplier accepts that deliveries and consignments of goods or services to Pace's works are accepted in an unexamined state, and are not inspected by Pace's stores personnel. Pace may visually inspect samples of goods or services so delivered. Pace reserves the right to pursue the course(s) of action specified in Clause 5.6 below, if in the opinion of Pace's inspectors that examination or any subsequent examination or any quality testing of the goods (following incorporation of the goods into the final product) renders such a course appropriate.
 - 5.2 It is an essential term of this Order that the Supplier shall strictly comply with the requirements stated on the Order and all goods and/or services supplied must be in accordance with the Order and with the full technical specifications samples or drawings specified by Pace or provided to Pace by the Supplier and set out or incorporated into the Order. No substitutes for the materials or parts specified by Pace shall be issued without Pace's consent.
 - 5.3 If the Order specifies that certificates of conformance are required then the Supplier shall provide the same in duplicate free of charge on delivery of the goods and/or completion of the services.
 - 5.4 Unless other standards are explicitly detailed by Pace, goods or services supplied by the Supplier shall be of the best materials and workmanship and shall comply with all relevant standards and all appropriate safety and consumer protection legislation in the UK and the country of destination. In addition, where the Supplier is aware of the final destination of the goods, the Supplier shall warrant that the goods comply with all appropriate safety standards and shall sign a certificate to this effect and shall indemnify Pace against any costs, expenses and/or liabilities incurred by Pace as a result of its failure to comply with this.
 - 5.5 The Supplier shall be responsible for any discrepancies errors or omissions in the drawings and other particulars supplied by it for the purposes of the Order whether or not Pace has approved such drawings or particulars and any approvals given by Pace under the Order will not relieve the Supplier of any liability hereunder.
 - 5.6 Following the examination and (if any) quality testing of the goods, Pace reserves the right (without prejudice to its other rights) to reject all or any part goods and/or services which are in its opinion faulty, of inferior quality, incorrectly supplied or do not conform with Condition 6 or to the Order and/or specifications specified by Pace or provided to Pace by the Supplier and in addition to the rights set out in Clause 20.2, Pace shall have the right to have the rejected goods replaced at the purchase price stated in the Order and the Supplier shall indemnify Pace for all expenses, costs and liabilities incurred by Pace as a result of the defective goods (including, for the avoidance of doubt, the cost of replacing any other items damaged as a result of the goods or any claims made against Pace by a third party as the result of the delay in receiving the final product). If the Supplier does not agree that the goods are defective then the goods shall be referred to a third party to be agreed by the parties for examination and whose findings shall be final and binding on the parties (the costs of such examination to be borne by the Supplier if the goods are declared not to meet their required specification and Pace, if the goods are declared to meet their specification).
 - 5.7 Pace will be fully reimbursed by the Supplier in respect of sums paid under the Order for goods rejected or cancelled pursuant to Clause 5.5.
 - 5.8 Where rejected goods are returned to the Supplier they will be forwarded at the Supplier's expense and risk and Suppliers shall promptly reimburse Pace's inspection costs and carriage charges.
 - 5.9 The Supplier shall notify Pace as soon as possible if it has reasonable cause to believe the goods and/or services do not comply with these terms and conditions.
- 6. Warranties**
 - 6.1 In performing this contract, the Supplier, as a person supplying goods in the course of its business, shall exercise proper skill, expertise and judgement so as to ensure that the goods are fit for Pace's purposes, Pace relying upon this provision. The Supplier shall satisfy itself that the Supplier understands Pace's requirements so as to enable the Supplier to comply herewith and avoid delay on account of modifications required to meet Pace's need. The cost of any modification shall be deemed to be included in the price.
 - 6.2 The Supplier expressly warrants all goods and items of equipment (including where applicable the workmanship thereof) which are the subject of this order (a) to be of the quality, quantity, size, description and dimensions specified (b) to be free from all defects, including latent defects (c) to correspond with any samples provided by the Supplier which have been approved by Pace and (d) to be capable of any standard performance specified in the order. This warranty shall remain in full force and effect notwithstanding delivery, acceptance, or payment by Pace.
 - 6.3 The Supplier shall indemnify and hold Pace harmless (a) from any loss, damage or expense whatsoever that Pace may suffer (including any fines) from breach of any of these warranties (b) from all claims, liens or charges which may be asserted against the goods, and (c) from all claims of whatsoever nature for damage or injury to property or persons arising out of the act or omission or the negligence of the Supplier its employees servants agents sub-contractors or others.
 - 6.4 The Supplier warrants that the goods and services and/or processes and equipment used to provide any services to Pace are year 2000 compliant and, for the purposes of these conditions, year 2000 compliant shall mean (a) that the goods and/or services under consideration fulfil the requirements in the BSI DISC PD 2000-1:1998 (a definition of Year 2000 conformity requirements) and (b) the ability for continued normal use of the goods and/or services such that neither the performance nor the functionality of the goods and/or the services will be affected by any changes to the Date Format (defined below) caused by the advent of the year 2000. The Date Format shall mean the field configuration which contains the date information within any part of the goods and/or the services.
 - 6.5 The Supplier warrants that the introduction of the Euro shall not affect the ability of the Supplier to carry on business and that it shall be in a position to supply Pace in any currency agreed in writing by Pace.
- 7. Progress and Inspection**
 - 7.1 Pace reserves the right both for itself and its nominees to inspect progress of work under the Order or any part thereof and to subject work under the Order to its quality assurance procedures and/or tests during normal business hours at any time during or after manufacture, but such inspection shall not relieve the Supplier from any responsibility or liability or imply acceptance or approval by Pace.
 - 7.2 The Supplier shall afford Pace and or its nominees all such facilities as may be necessary to enable Pace to exercise its rights under Clause 7.1 at no cost.
 - 7.3 Pace may adopt any reasonable means to satisfy itself that the work is being carried out in accordance with the Order and without prejudice to all other rights Pace may reject any part of the work which does not conform with the Order and if any work be so rejected the Supplier shall immediately execute it afresh to Pace's reasonable satisfaction and in accordance with the Order.
- 8. Site Work**
 - 8.1 Where the Order requires the Supplier his employees sub-contractors or agents to carry out work on any premises or site the Supplier shall ensure that throughout the period that such personnel are on such premises or site all relevant statutory rules and regulations and instructions of those in charge of such premises or site will be followed in the carrying out of the said work including, if the work is to be carried out on the premises or site of Pace or its sub-contractor, the Supplier shall ensure that such personnel comply with the site rules of Pace (and/or its Landlord) and any sub-contractor, where appropriate.
 - 8.2 All surplus materials damage or disruption must be removed or rectified promptly and at the Supplier's expense.
- 9. Statutory Requirements**

The Supplier shall comply with all relevant provisions of the Health and Safety at Work Act 1974, and shall ensure that goods which are potentially dangerous to health or safety shall be delivered only in suitable protective packaging or containers, the external surfaces of which shall be clearly labelled so as to indicate any hazards to health and safety involved in handling and/or using the goods. The Supplier shall fully and effectively indemnify Pace against all claims and actions arising from the Supplier's failure to comply with this paragraph. A copy of any information relating to the safety aspects, and to the proper use of the articles or substance shall be sent to Pace's safety and services manager or other appropriate employee and where changes occur in content or risk factor of existing goods, then these must be notified to Pace in writing within 3 days of instigation of such change.
- 10. Payment Terms**
 - 10.1 Payments shall be conditional upon the goods and services being supplied in all respects in accordance with the Order and upon supply to Pace of a proper invoice from the Supplier in the form referred to in Clause 10.2
 - 10.2 Before Pace shall be obliged to make any payment which shall otherwise be due to the Supplier under the Order, Pace must have received from the Supplier an invoice which must correctly specify the Order number, Order date, the goods or services supplied, the date of supply, and the sum due and properly addressed and referenced (and constituting a tax invoice in the case of a Supplier registered for VAT purposes). In the case of an Order where the price is not specified the same shall be subject to agreement in writing with Pace and such invoice shall include a statement of material, labour overhead costs and other expenses (net of all VAT paid by the Supplier) incurred in supplying such goods or services and the Supplier shall provide such verification thereof as Pace shall reasonably require.
 - 10.3 Unless otherwise agreed, payment shall be made within 30 days of the end of the month following the month in which Pace received a proper invoice as described in Clause 10.2 above or the Order was completed in accordance with all its terms, whichever shall be the later. No interest charges, penalties or losses of discount on overdue accounts shall be accepted unless previously agreed to in writing by Pace.
 - 10.4 Pace shall be at liberty to set off from sums due to the Supplier any or all sums due from the Supplier to Pace and to withhold payment from the Supplier in the event of any claim or dispute in respect of the Order or any other contract between the Supplier and Pace.
- 11. Guarantee**
 - 11.1 In addition to the rights of Pace under any warranty or guarantee given by the Supplier in respect of the goods and/or services, if within 18 months after delivery or 12 months of putting them into service, whichever period shall be the shorter, there shall appear in the goods (which expression shall where the context permits, include all materials supplied and work done by or on behalf of the Supplier in the performance of the Order) any defect which under proper use shall arise from faulty design or from faulty materials or workmanship the Supplier shall with all possible speed and at his expense make good such defect either by repair or (at Pace's option) by the supply of replacement goods and shall reimburse Pace any associated indirect or consequential losses which may arise out of or in connection with the repair or replacement of the goods under this Clause.
 - 11.2 The foregoing provisions shall apply for a period ending [12] months after the date of such repair or replacement to any goods so repaired or replaced.
- 12. Spares and Obsolescence of Goods**
 - 12.1 The Supplier warrants and undertakes that:-
 - 12.1.1 it will manufacture and supply goods and/or work of the same types as those described in the Order and spare parts for the repair or part replacement of such goods and/or work available throughout the period of design life of the goods and/or works or for a period of 7 years from the date of last supply whichever shall be the longer in accordance with Pace's requirements and at equitable prices;

- 12.1.2 if the Supplier proposes to cease to be a manufacturer or supplier of any goods and/or works or spare parts or modify the goods and/or services provided under this Agreement it will give Pace written notice of the same at the earliest opportunity and in any event not less than 3 months' written notice in the case of modifications and 24 months' written notice in the case of withdrawal before ceasing manufacture or supply; and
- 12.1.3 in the circumstances described in Clause 12.1.2 the Supplier will make available to Pace such quantities of goods and/or work and of spare parts as Pace shall reasonably require of the future renewal, replacement or repair of goods and/or work already supplied by the Supplier to Pace.
- 13. Pace's Tooling**
- 13.1 All jigs, tools, fixtures, dies, moulds, materials and other items supplied to the Supplier by or at the expense of Pace shall remain Pace's property ("Pace's Tooling"). The Supplier shall on request return Pace's Tooling to Pace and hereby grants to Pace an irrevocable licence for Pace or its authorised representatives to enter upon the premises where Pace's Tooling is kept at any time to take possession of it.
- 13.2 Pace's Tooling will be deemed to have been received by the Supplier in perfect condition unless Pace receives written notification specifying any defects or damage within a reasonable time from delivery to the Supplier. For the avoidance of doubt, a reasonable time will expire within 10 days of delivery or the first production run whichever occurs sooner.
- 13.3 The Supplier shall ensure that each item of Pace's Tooling is clearly marked and stored as being the legal property of Pace and that Pace's Tooling is not used for contracts for any third party.
- 13.4 Any scrap material generated from free issue material or Pace's Tooling shall remain the property of Pace who may direct its return or credit against the cost of executing the Order.
- 13.5 The Supplier shall maintain a tooling register showing details of Pace's tooling and shall maintain such tooling at its own expense in accordance with best engineering practices and in accordance with any specific processes specified by Pace.
- 13.6 The Supplier shall be liable for any loss or damage to (a) Pace's Tooling (including without limitation any indirect or consequential losses) (b) loss of profits (c) loss of business or (d) any other loss or damage or injury however caused thereby suffered by Pace and/or Pace's customers which may arise out of or in connection with this contract and shall ensure that Pace's Tooling is maintained in good working order (at the Supplier's own expense) and the Supplier shall maintain insurance for the full replacement value of Pace's Tooling against all usual risks including without limitation fire and theft.
- 13.7 If any loss or damage is caused to Pace's Tooling the Supplier will promptly and satisfactorily repair or replace Pace's Tooling at its own expense.
- 13.8 The Supplier undertakes that it shall not in any circumstances exercise any lien that it may acquire in respect of Pace's Tooling.
- 13.9 In addition to this Clause, if agreed in writing by the parties, Pace's Tooling will be subject to a separate maintenance agreement between Pace and the Supplier.
- 14. Indemnity and Insurance**
- 14.1 Unless otherwise agreed in writing by the parties the Supplier shall at all times during the continuance of the Order and thereafter maintain product liability insurance in an amount not less than £5,000,000 (five million pounds sterling) or any other currency equivalent thereof (or such other figure as Pace may from time to time specify given the nature of goods, the goods and the goods are to be incorporated within and the country to which the products into which the goods are to be incorporated are to be supplied) to indemnify the Supplier and Pace and the Supplier hereby indemnifies and shall continue to keep indemnified and save harmless Pace and its affiliated companies and employees and representatives of such parties from and against all claims, proceedings, damages and actions which may be brought by a third party against either Pace or the Supplier in respect of the failure of the goods and/or services to meet the requirements set out in these terms and conditions and/or the use or operation or malfunction of the goods supplied under the Order and all awards and settlements made in respect thereof and all costs, damages, losses, expenses and fees (including management time) thereby incurred (including such losses or costs incurred by third parties).
- 14.2 The Supplier shall provide to Pace a copy of the insurance policy referred to above at Clause 14.1 and copies of receipts of premiums in respect thereof within 14 days of written request to do so by Pace.
- 14.3 The Supplier shall indemnify Pace and hold Pace harmless against any liability which Pace may incur from any other person whatsoever, including without limitation any liability arising as a result of the operation of the Consumer Protection Act 1987, and against all claims, costs, proceedings, damages, expenses including legal costs on an indemnity basis made against or incurred by Pace by reason of any use of the goods or any act omission or breach of statutory duty of the Supplier his employees, sub-contractors or agents or any other breach or default of the Supplier in performance of the Order.
- 14.4 The Supplier shall upon request by Pace to the Supplier's own account take control of the prosecution and/or defence of any such claims or proceedings howsoever arising.
- 15. Sub-Contracting and Assignment**
- 15.1 No Order whether in whole or in part shall be sub-contracted without Pace's prior written approval and all requests for such approval shall specify the goods or services to be covered and the identity of the sub-contractor.
- 15.2 Where Pace agrees to the placing of sub-contracts the rights of inspection and rejection contained herein must be reserved therein on Pace's behalf and a copy of all such sub-contracts must be forwarded to Pace on demand.
- 15.3 Any approval of sub-contracting shall not relieve or vary the obligations or liabilities of the Supplier under this Order.
- 15.4 The contract is personal to the Supplier and shall not be sub-contracted, charged, transferred or assigned whether in whole or in part without the prior written approval of Pace. However, Pace shall be entitled to assign or transfer all or any of its obligations under the contract. For the avoidance of doubt, nothing in this Clause shall preclude the factoring of any monies owed by Pace.
- 16. Confidentiality**
- 16.1 All specifications, plans, drawing, patterns blue prints, descriptions, designs, jigs, tools and fixtures (including without limitation Pace's Tooling) all know-how, technical information, advice, any information relating to Pace and/or its suppliers in whatever format and however stored (electronically or otherwise) and all intellectual property rights therein supplied by Pace to the Supplier or its employees in connection with the Order shall remain the property of Pace and all of the foregoing and any information derived therefrom or otherwise communicated to the Supplier in connection with the Order shall be treated by the Supplier as confidential and shall not without the consent in writing of Pace be published or disclosed to any third party or made use of by the Supplier except to the extent necessary to implement the Order. Where required by Pace, the Supplier shall ensure that all employees on the premises or site of Pace sign a form of confidentiality agreement prescribed by Pace.
- 16.2 It is understood that a breach by the Supplier of any of the terms of this Clause may cause Pace irreparable harm which could not be adequately compensated for by damages that, in addition to a damages claim, Pace shall be entitled as a matter of right to seek injunctive relief as a cumulative and additional remedy.
- 17. Intellectual Property Rights**
- 17.1 The Supplier hereby warrants that except where the goods are manufactured to the express requirements and specifications of Pace, the use or sale of the goods or services supplied under the Order shall not infringe the intellectual property rights of a third party and shall indemnify and hold harmless Pace against any claim for infringement of patent, registered design, trade mark, service mark, copyright or any other form of intellectual property right by the use or sale of any article or material supplied by the Supplier to Pace and against any and all costs, proceedings, damages and expenses incurred by Pace in connection therewith. The Supplier further warrants that the goods/services supplied to Pace do not require a licence and that the Supplier shall notify Pace if any such licence is required.
- 17.2 Any trade marks, trade names or other symbols used in connection with or affixed to goods supplied shall be strictly in accordance with Pace's written instructions.
- 18. Property and Risk**
- 18.1 The property and risk in the goods shall remain with the Supplier (who shall insure the same against all risks which can be reasonably contemplated) until they are delivered to Pace at the address specified in the Order whereupon it shall pass to Pace. It shall be the Supplier's responsibility to unload its vehicles and deliver the goods to Pace's premises subject to Pace's right of rejection, the property in the goods shall pass to Pace on acceptance or the making of any progress payment whichever is sooner.
- 18.2 In the case of services the risk remains with the Supplier until completion thereof in accordance with the Order.
- 19. Cancellation and Termination**
- 19.1 Pace may cancel this Order at any time by notice in writing to the Supplier and shall thereupon be liable (save in the case of cancellation due to breach by the Supplier of his obligations) only to pay for goods delivered prior to the date of the notice. In no case shall Pace be liable to pay more than the proportion of the purchase price attributable to the goods delivered.
- 19.2 In the event of the Supplier failing to comply with all the provisions of the Order after reasonable notice requiring the Supplier to make good such failure, or if the Supplier is unable to make good any such failure, or if the provisions of Clause 19.3 apply, Pace will be entitled to terminate forthwith the Order in whole or in part and to return to the Supplier at the Supplier's risk and expense any of the goods and/or services already delivered out which cannot be effectively and commercially used by reason of the Supplier's failure to perform the contract and to recover any monies paid by Pace in respect of such goods and/or services, secure replacement goods or services and/or to recover from Supplier a sum equivalent to the loss, damage and all expenses caused thereby and any indirect or consequential loss including loss of profits, loss of business or goodwill or any additional expenditure incurred by Pace in connection with such failure without prejudice to any other rights which shall have accrued or shall accrue to Pace under the Order.
- 19.3 If the Supplier becomes insolvent, or makes an arrangement with its creditors, or has a receiver, administrator or manager appointed or commences to be wound up whether by order of the Court or resolution (other than for the purposes of bona fide amalgamation or bona fide reconstruction) Pace will be entitled to the remedies set out in Clause 19.3 above.
- 20. Force Majeure**
- Neither party will be liable to the other for any failure to perform its obligations under the Order if such failure results from any event of force majeure and the purposes of this Agreement, force majeure shall mean fire, explosion, earthquake, storm, flood, wind, drought act of God or the elements, provided always that where the Supplier is so prevented Pace shall be entitled to make such variations to the Order as are in its opinion reasonable or terminate the Order. For the avoidance of doubt, the shortage of raw materials and/or the unavailability of labour shall not constitute force majeure.
- 21. General**
- 21.1 If any provision of these conditions is agreed by the parties to be illegal, void or unenforceable under any law applicable to the Order or if any court of competent jurisdiction in a final decision so determines, the Order shall continue in force save that such provision shall be deemed to be exercised from these conditions with effect from the date of such agreement or decision or such earlier date as the parties may agree.
- 21.2 A failure by either party hereto to exercise or enforce any rights conferred upon it hereunder shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof of any subsequent time or times.
- 21.3 The rights and remedies of Pace under the Order are separate and additional to each other and to any available in law generally and the exercise of any power or remedy shall not preclude the exercise of or waiver of any right or remedy.
- 21.4 Any notice to be given hereunder shall be deemed to be properly given if delivered by hand or sent by pre-paid post or facsimile transmission to the last known address or registered office of the other party with correct answer back or confirmed telefacsimile to the intended recipient party. Notices sent by hand shall be deemed to be served at the time of delivery, or if sent by post, upon the expiration of 48 hours after posting and if sent by facsimile transmission, at the time of despatch provided that a copy is sent by first class pre-paid post or delivered by hand on the same day.
- 21.5 The Supplier must not disclose to any third party the existence of the Order between Pace and the Supplier and must not use Pace's name in any publicity or advertising materials without Pace's prior written consent.
- 22. Dispute Resolution**
- The parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties the dispute shall be referred to the Managing Directors of the parties who shall attempt to resolve the dispute.
- 23. Law and Jurisdiction**
- The interpretation and performance of the contract shall be governed by English law and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the English Courts, save that Pace may in its absolute discretion pursue any dispute or difference arising in respect of the contract in any other jurisdiction it may consider appropriate.