

Company Number:  
07178557

VAT Number:  
GB 996 8809 30



[www.pitchmark.com](http://www.pitchmark.com)

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+44 (0)1454 776666

## Terms & Conditions for the Sale of Goods

### 1. Interpretation

1.1 In these Conditions:

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

“Goods” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and any goods supplied in substitution for or in replacement of or in addition to such goods.

“Seller” means PITCHMARK LIMITED (registered in England under number 7178557).

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods.

“Writing” includes letter, email and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.



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2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.5 If you are the consumer of the Goods within the United Kingdom, then you are protected under the terms of the Consumer Rights Act 2015, more details of which can be found on [www.legislation.gov.uk](http://www.legislation.gov.uk) or on the Citizens Advice website ([www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)).

### 3. Orders and specifications

3.1 The order process shall consist of the following steps:

3.1.1 The Buyer communicates their order to the Seller via verbal or digital means.

3.1.2 The Seller will send an email to the Buyer, with a Pro Forma Invoice attached, outlining the Goods, pricing, expected dispatch date of the Goods, and estimated transit time.

3.1.3 The Buyer replies to the Seller (either verbally or digitally) to confirm the order.

3.1.4 Once the Buyer has confirmed the order as per 3.1.3, the Buyer understands that any adjustments made to the order after this stage could delay the dispatch date, and could also be subject to a repacking charge of at least 1% of the overall invoice value to cover the Seller's additional costs.

3.2 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.

3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.



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3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.7 The Seller will endeavour to dispatch Goods to the Buyer within 10 working days from the date of order confirmation. In certain circumstances this could be longer, and the Seller shall not be liable for any delays outside of their reasonable control.

3.8 If the Buyer requires bespoke or non-standard Goods as discussed and confirmed with the Seller, the Seller will endeavour to dispatch said Goods to the Buyer within 20 working days from the date of order confirmation. In certain circumstances this could be longer, and the Seller shall not be liable for any delays outside of their reasonable control.

#### 4. Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's specific price list shall apply. All prices quoted are valid for 10 working days unless otherwise specified or outlined in writing between the Buyer and the Seller.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, raw materials such as TiO<sub>2</sub> or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer.



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4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are in GBP Sterling and exclusive of carriage charges.

4.4 The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.

## 5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods.

5.2 All Invoices are payable net by debit/credit card/BACS on a pro-forma basis, unless credit facilities have been approved, in which case standard Invoices are payable net 30 days from date of the invoice, or otherwise agreed timeframe. The Buyer shall pay all invoices without any other deductions notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further orders or deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such value of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 All invoices shall be sent from the Seller to the Buyer via electronic means (i.e. email). If the Buyer requires paper copies of invoices, the Seller reserves the right to charge a nominal fee to cover costs for this service.



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## 6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at an agreed time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Where delivery is requested by the Buyer, the Seller will use third-party couriers and the Seller accepts no liability for any third-parties used.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The Seller shall be entitled to make part delivery of the Goods at any time.

6.3 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.4 The Buyer assumes full responsibility to ensure the location for delivery, other than to the Seller's premises, is secure and weatherproof.

## 7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection: or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of dispatch of the Goods, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods

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7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and payment in full of all sums due from the Buyer to the Seller whether under the Contract or by virtue of any other liability of the Buyer to the Seller.

## 8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer:

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alternation or repair of the Goods without the Seller's approval.

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.2.4 the above warranty does not extend to Goods not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered In accordance with the Contract.



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8.4 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Seller in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of receipt by the Buyer of the Seller's Invoice for the goods which the Buyer claims have not been delivered. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject any goods that have been delivered and the Seller shall have no liability for such short delivery or non-delivery.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or (refund to the Buyer the price of the Goods) (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.7.1 Act of God, explosion, flood, tempest, fire or accident;

8.7.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;

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

8.7.4 import or export regulations or embargoes;

8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);



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8.7.6 difficulties in obtaining raw materials labour, fuel, parts or machinery;

8.7.7 power failure or breakdown in machinery.

## 9. Insolvency of buyer

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10. Export terms

10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.



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10.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply, notwithstanding any other provisions of these conditions.

10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to the Seller the requirements of any such legislation or regulations requiring action on the part of the Seller and for the payment of any duties in connection with the Goods.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered EXW from the Sellers address. The Seller shall be under no obligation to give notice under section 32(3) of the Sale of the Goods Act 1979.

10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Buyer's premises on the day of arrival. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of damage during transit.

10.6 Payment of all amounts due to the Seller shall be made in such manner as shall be agreed between the Seller and the Buyer in Writing.

## 11. Intellectual Property Rights

11.1 The Buyer recognizes the validity and the ownership by the Seller of its intellectual property rights regarding the designs of the Products, including any applicable patents and utility models used in connection with the manufacture and commercial use of the products and the copyright and design of the individual products as well as all other products from the Seller made available to the Buyer.

11.2 The Buyer understands the Goods should remain in their original form, untampered and not amended in any format.



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11.3 Copyright in any specification, drawing, technical description and other document supplied by the Seller under or in connection with the order and all intellectual property rights in the design of any part of the equipment or provision of services, whether such design be registered or not, shall vest in the Seller absolutely. The Buyer shall keep confidential any information expressed or confirmed by the Seller in writing to be confidential and shall not disclose it without the Seller's prior consent in writing to any third party or use it other than for the operation and maintenance of any equipment provided.

## 12. Equipment Loan Agreements

12.1 Although the title of the Goods will remain with the Seller, the Buyer is responsible for adhering to all terms outlined in the latest version of the document titled Equipment Loan Agreement. This includes but not limited to the Loanee Obligations, Minimum Purchase, Title & Risk and Insurance.

12.2 For any Equipment Loan Agreement, the Buyer could also be referred to as the Loanee.

## 13. General

13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party given the notice

13.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.4 The contract shall be governed by the laws of England and Wales.



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