

Pentland Wholesale Limited (“the Company”)

Terms and Conditions of Sale

All business is carried on subject to the following terms and conditions (“Terms”), except as varied by specific written agreement of the Company. By placing any order with the Company the customer shall be deemed to have agreed to and accepted these Terms. In these Terms “Contract” means the contract for the supply of Goods formed by the Company’s acceptance of the customer’s order.

1. No order will be binding upon the Company unless and until accepted by the Company in writing or by delivery of any goods the subject of the order (“Goods”).
2. Orders are accepted only on the basis that these Terms (or varied as aforesaid) apply to the order. Accordingly any terms endorsed on or contained or referred to in any customer’s order or confirmation or otherwise communicated to the Company which are inconsistent with these Terms and are not specifically agreed to in writing by the Company, shall be deemed to be superseded and nullified by these Terms.
3. The Company reserves the right to consult whomever it considers appropriate for the purposes of obtaining trade references for the Customer. Such trade references will be recorded by the Company and will be made available to other businesses for the continuing assessment of credit risk. The Company reserves the right to amend any accidental error or omission on quotations, order acknowledgements, invoices or credit notes.
4. Although all delivery dates stated by the Company are given in good faith and all reasonable efforts will be made to adhere to them, the Company accepts no liability for any failure to comply with such dates by reason of any cause beyond the Company’s reasonable control. Time of delivery shall not be of the essence.
5. The Company shall be entitled to make partial deliveries and failure to deliver part only of any order shall not entitle the customer to reject the Goods.
6. If the customer fails to take delivery of the Goods on the date of delivery, the Company shall, without prejudice to its other rights, be entitled to store the Goods at the customer’s risk and the customer shall pay all storage and additional carriage costs incurred.
7. Whilst with every effort will be made to supply Goods in accordance with samples and/or agreed specifications the Company reserves the right to modify specifications, designs and materials where such modifications do not materially affect the quality or fitness for purpose of the Goods or to comply with any applicable standards or legal requirements.
8. Unless otherwise notified to the Customer, Goods will be invoiced at the price stipulated in the Company’s published price list current at the date of the acceptance of the order. In the case of an order for delivery by instalments each instalment shall be invoiced at the price stipulated in the Company’s published price list at the date of despatch of such instalment. Such prices are exclusive of VAT.
9. Prices do not include delivery to a third party address, unless otherwise agreed in writing. Where appropriate, all carriage, modifications, special testing, inspections, insurance, packing or samples will be charged to the Customer.
10. Unless it has been agreed between the Company and the Customer that the Customer purchases the Goods on a proforma basis before Goods have been despatched to the Customer, the Company shall invoice the Goods on or after despatch of the Goods. The Company shall be entitled to invoice each instalment as and when each instalment is despatched. Payment of all sums shall be made in sterling and is due 30 days from the date of the relevant invoice. The Company may sue for any monies outstanding beyond this date even if property in any relevant Goods has not passed to the customer. A 2% charge will be levied for payments made by credit card.
11. If any payment is not made in full by the due date then, without affecting any other right which it may have, the Company may deduct any outstanding amounts from any monies owed to the customer on any account whatsoever.
12. Interest on any outstanding amounts may be charged, which shall accrue from the due payment date until the date of payment. No payment shall be deemed to have been made until the Company’s account is credited with the relevant cleared funds. Should the purchaser fail to pay on the due date or fail to comply with the terms of payment the Company reserves the right to claim compensation for debt recovery costs and interest under the Late Payment of Commercial Debts [Interest] Act 1988.
13. The customer may not withhold or make any deduction from or set off against any payment due to the Company for any reason.
14. Export sales shall be subject to FOB terms (as defined in the latest published version of Incoterms from time to time). It is the Customer’s responsibility to obtain all necessary import licenses, clearances and other consents necessary for the purchase of the Goods and to ensure that the Goods comply with all local legislative or legal requirements.
15. If the Customer has paid a service fee on any Goods purchased, then the Company warrants to make all necessary repairs on the terms as detailed on the Customers price list/catalogue given to the Customer and on quotations submitted and order confirmations following acceptance of order. All service calls must be placed by the Customer. This warranty does not cover breakdowns which have been caused by the misuse or incorrect installation of any Goods. If after repairing the Goods the fault is found to have been caused by Customer misuse the service charges plus an administration fee must be immediately repaid to the Company.
 - a. The Customer must make adequate provision to allow warranty repairs to be carried out, this would include ensuring any permits to work are made available during normal working hours. Where there is the need to work out of hours, i.e. certain shopping centres/market halls, the client is responsible for additional charges. If it is known that specific site health and safety inductions and security clearance are necessary for engineers to carry out work, these inductions will be done at the client’s expense, alternatively in these instances the units must be purchased on a parts only warranty basis. This would include some colleges, hospitals, airports and some shopping centres.
 - b. Exclusions to labour warranty – we are only able to offer labour warranty for goods to be sited on the UK mainland (excluding islands).
16. The Company will (at the Company’s option) either replace or refund the price of any Goods which are shown to the Company’s reasonable satisfaction to be defective in materials or workmanship at the time of

delivery or to be a shortfall in quantity delivered provided that:

- 16.1. The Customer inspects the Goods on delivery and notifies the Company within 24 hours of delivery of any alleged defects, shortage in quality or damage. If the Customer fails to comply with these provisions, the Goods shall be deemed conclusively to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of them;
 - 16.2. When signing for deliveries the Customer must state clearly on the delivery note any damage or shortages;
 - 16.3. Loss or non-delivery must be notified in writing to the Company and to the carrier within fourteen days of the despatch date on the advice note or invoice.
 - 16.4. Where a defect would not have been apparent on a reasonable examination under clause 16.1, the Customer notifies the Company as soon as reasonably possible when the defect becomes apparent or within one hundred and eighty (180) days of delivery whichever is earlier; and
 - 16.5. The Customer provides information and assistance required by the Company to investigate any suspected defect and, if required, permits the Company to inspect the Goods concerned at any premises where the same are located.
- Goods returned which are over twenty eight (28) days old from the date of purchase may be replaced with refurbished or repaired product.
17. Clause 16 defines the Company’s full liability in respect of the Goods. All other conditions, warranties or other undertakings concerned with the Goods whether express or implied by statute, common law, custom, usage or otherwise, are excluded except that nothing in these Terms shall exclude any liability of the Company for death or injury resulting from negligence or breach of terms as to title under Section 12 of the Sale of Goods Act 1979.
 18. Without prejudice to the provisions of clauses 15 and 16, the Company shall not be liable for any costs, claims, damages, losses or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals.
 19. Save where the law prohibits such limitation of liability and without prejudice to clauses 16, 17 and 18 the liability if the Company shall not in any circumstances exceed the invoice value of the Goods.
 20. The Company shall not be responsible for affixing any warning notices to the Goods or their packaging, this shall be the responsibility of the Customer who is deemed to have full knowledge of the Goods in relation to safety and otherwise.
 21. The Company will only accept the cancellation of orders as follows:
 - a. Goods are not sold on a trial basis. Customers should check the specifications and suitability of the Goods before ordering. The Company does not warrant the suitability of the Goods specific applications.
 - b. Goods which have been incorrectly ordered will only be accepted for return with the prior approval of the Company.
 - c. Returned Goods will only be accepted if they are: correctly packed in the original packaging with the manuals, returned with the necessary proof of delivery and purchase, and have not been used. A restocking charge of 25% of the value of Goods will be charged to the Customer on all such Goods.
 - d. If the Customer cancels the Goods whilst the Goods are still in transit, an abortive delivery charge will be charged to the Customer.
 - e. Goods may not be returned without a Goods Return Authorisation Number which can be obtained from the Company by contacting the Company Sales Desk on 01254 614444.
 - f. Any item ordered that is not normally held in stock will be ordered on the Customers behalf from the manufacturer or other supplier. Such items cannot be returned if the customer decides it is no longer required.
 22. Goods which the Company has agreed to sell to the Customer shall be at the Customer’s risk as soon as they are delivered to the Customer’s UK premises or other agreed destination. These Goods shall remain the property of the Company until such time as the Customer shall have paid the Company the agreed price, together with the full price of any other goods sold to the Customer payment for which is outstanding. The passing of title and risk in the Goods supplied by the Company shall be as follows:
 - a. From time of delivery, the Goods shall be at the Customer’s risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company’s property until all payments to be made by the Customer under this agreement and any other agreement between the Company and the Customer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company’s ownership continues the Customer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other Goods in its possession as bailee for the Company.
 - b. The Customer’s right to possession of the Goods shall immediately cease if the Customer does anything or fails to do anything which would entitle an administrator or administrative receiver to take possession of any of the Customers assets or entitle any person to present against the Customer a petition for winding up;
 - c. The Customer may only re-sell the Goods to the Customer’s clients in the ordinary course of the Customer’s business as a fiduciary and trustee for the Company. In the event of any resale by the Customer of the Goods the Company’s beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Customer and such proceeds shall not be mingled with other moneys or paid into any overdraft bank account and shall at all times be identifiable as the Company’s moneys;
 - d. Without prejudice to the equitable rules as to tracing, in the event of failure to pay any and all the payments for the Goods in accordance with these conditions the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Customer to remove the Goods; and
 - e. Pending payment of any and all payments due hereunder for the Goods the Customer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and oth-

er risks usually covered by insurance in the type of business carried on by the Customer in an amount at least equal to the balance of the payments due hereunder for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company’s interest.

23. The Company or any related Companies shall have the right to cancel all or any contracts with the Customer or withhold delivery of any Goods if:-
 - 23.1 The Customer fails to pay any monies owing to the Company or any related companies by the due date;
 - 23.2 The Customer commits any breach of any contract with the Company or any related companies; or
 - 23.3 The Customer compounds with or executes an assignment for the benefit of its creditors or commits any act of bankruptcy or goes into liquidation or has a receiver, administrative receiver or administrator appointed over all or part of its assets or has a third party levy distress on their property, or suffers any similar or analogous act. In the event of delivery being withheld the Company shall be entitled as a condition of resuming delivery to require pre-payment of or such security as it may require for the payment of the price of any further delivery.
24. The Customer’s attention is drawn to the Company’s guidelines and regulations on health and safety within the workplace, copies of which will be provided on request. The installation of Goods requires a qualified person. The Company will not accept any actual or consequential claim or liability arising from incorrect installation and fitting of Goods. The Company makes no warranty as to the suitability of any packaging should the Customer wish to re-sell the Goods. It is the responsibility of the Customer to take such steps as are necessary to ensure that appropriate information relevant to the Goods is made available to any person to which the Customer supplies the Goods to.
25. The construction, validity and performance of all Contracts between the parties shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts although this shall not limit the right of the Company to commence proceedings in any other jurisdiction the Company deems appropriate.
26. Any suggested retail prices quoted in the Company’s price list or catalogues shall not limit the Customer’s right to set its own retail prices.
27. The Company shall not be liable in any way for loss, damage or expense arising directly or indirectly from any failure or delay in performing any obligation under any contract caused by any circumstances beyond its reasonable control, which shall, without limiting the generality of the foregoing, be deemed to include war or any other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment, fire flood, legislative or administrative interference, acts of God, strike, lock-out or other industrial disputes (whether or not involving employees of the Company) or shortage of materials or the Company’s inability to procure materials or supplies. On the occurrence of any such event, the Company may at its discretion, perform, suspend performance of or terminate the Contract.
28. The Customer shall ensure that no trade mark or logo used on or in connection with any of the Goods or their packaging is added to, obscured, removed, defaced, altered or otherwise interfered with in any way.
29. Trade marks and/or logos applied to any of the Goods may be used in advertising material intended for use in retail outlets or in catalogues for the purpose only of promoting the retail sale of the Goods concerned and provided that the Company’s prior written consent is obtained.
30. Except as permitted by clause 29 above the customer shall not make any use of any of any logo or trade mark owned or used by the Company (whether in connection with the Goods or otherwise) or any part thereof for any purpose whatsoever.
31. The purchaser warrants that it is the owner of any artwork, logo, device, brand names, company names or other mark (whether registered, pending or otherwise) supplied to the Company for use on the Goods (“Purchaser Artwork”) and that none of the Purchaser Artwork infringes the intellectual property rights of any third party. The purchaser shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the application to and use of any Purchaser Artwork on the Goods.
32. Any part of these Terms which is void or unenforceable shall be deemed severable and shall not affect any other part of these Terms.
33. No waiver or forbearance by the Company (express or implied) in enforcing any of its rights under a Contract shall prejudice its right to do so in the future.

Customer’s statutory rights are not affected and All Errors and Omissions are excepted.

UK WEEE Regulations (SI2006/3289 Waste Electrical and Electronic Equipment Regulations 2006 as modified by any subsequent legislation).

Future WEEE

Pentland Wholesale Limited sell its products either retaining the Producer’s obligations under the WEEE Regulations or with our Customer taking on those responsibilities. In either case the Customer must clearly state which of these options he requires and this must be documented.

Pentland Wholesale Limited will confirm this option on its order acceptance documentation.

The Customer must agree to disclose this agreement to any subsequent purchaser(s) of this equipment, as required by the regulations.

Historic WEEE

The purchaser agrees to absolve Pentland Wholesale Limited from its obligations under the UK WEEE Regulations which require Pentland Wholesale Limited to be responsible for financing the collection, treatment, recovery and environmentally sound disposal of any product supplied before 13th August 2005, where a similar new product is being purchased. Pentland Wholesale Limited will undertake the collection, treatment, recovery and environmentally sound disposal of any product supplied before 13th August 2005 (or outside the scope of the WEEE Regulations) subject to payment of its current disposal fees.

I/We acknowledge the Terms of Trading stated above and confirm that payments to the “Company” will be made within the terms stated above.

Authorised Signatory _____ Date _____
 Name _____ Position _____