

PEI-GENESIS (UK) LIMITED

TERMS AND CONDITIONS

The following are the terms and conditions of PEI-Genesis (UK) Limited ("PEI-Genesis") for the sale of goods

1. Introduction

- 1.1 In these Terms:-
"Contract" means any contract between PEI-Genesis and the Customer for the purchase and sale of the Goods
"Customer" means the person whose order is accepted by PEI-Genesis
"Goods" means all goods which are supplied to the Customer by PEI-Genesis under any contract between them
"Terms" means the standard terms and conditions set out in this document and including any special terms and conditions agreed in writing between the Customer and PEI-Genesis
- 1.2 Any reference in these Terms to any provision of a statute or statutory instrument 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 Terms are for convenience only and shall not affect their interpretation

2. Basis of Sale

- 2.1 PEI-Genesis shall sell and the Customer shall purchase the Goods in accordance with any written order of the Customer which is accepted by PEI-Genesis. By placing an order the Customer shall be deemed to have accepted these Terms, which shall govern the Contract to the exclusion of any other terms and conditions accompanying the order or proposed at any stage by the Customer in correspondence or elsewhere or implied by trade, custom practice or course of dealing
- 2.2 PEI-Genesis' employees or agents are not authorised to make any representations concerning the Goods unless confirmed by PEI-Genesis in writing. In entering into a contract the Customer acknowledges that it does not rely on, and waives any claim for breach arising from, any such representations which are not so confirmed. Clerical errors may be corrected by PEI-Genesis at any time without any liability on the part of PEI-Genesis
- 2.3 Whilst every effort is made to ensure that the description and illustrations contained in the catalogues, price lists and other advertisements of PEI-Genesis are accurate and current, they shall not form part of the Contract and PEI-Genesis shall not be liable in respect thereof
- 2.4 No variation to the Contract shall be binding unless agreed in writing by the authorised representatives of the Customer and PEI-Genesis
- 2.5 PEI-Genesis has drawn up these Terms in light of the Unfair Contract Terms Act 1977 as amended and considers them to be fair and reasonable and its prices are based on Contracts made on these Terms. If the Customer considers these Terms to be unreasonable it must inform PEI-Genesis in writing before any Contract is made otherwise it will be deemed to have accepted that these Terms are fair and reasonable

3. Formation of Contract and Specifications

- 3.1 Any quotation issued by PEI-Genesis is valid for 30 days only and does not represent an obligation until PEI-Genesis accepts the Customer's order. PEI-Genesis reserves the right to withdraw or revise a quotation at any time prior to acceptance of the Customer's order.
- 3.2 If the Goods are to be supplied or assembled in accordance with a specification submitted by the Customer:-
3.2.1 the Customer shall be responsible for ensuring that the specification is complete and accurate and that the Goods referred to in it are suitable for and fulfil the Customer's requirements;
3.2.2 the Customer shall be responsible for giving all necessary information within a sufficient time to enable PEI-Genesis to perform the Contract;
3.2.3 the Customer shall indemnify PEI-Genesis against all loss, damages, costs and expenses incurred by PEI-Genesis in connection with a claim for infringement of a patent, copyright design, trade mark or other intellectual property rights of any other person which results from PEI-Genesis' use of the Customer's specification; and
3.2.4 PEI-Genesis shall not be liable to the Customer if the Goods have been assembled in accordance with the Customer's specification
- 3.3 The Contract shall be formed when the Customer's order is confirmed in writing by PEI-Genesis's authorised representatives subject to these Terms

- 3.4 The quantity and description of the Goods shall be as set out or referred to in PEI-Genesis's quotation or other specification issued by PEI-Genesis
- 3.5 PEI-Genesis 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 Goods are to be supplied to PEI-Genesis's specification, which do not materially affect the quality or performance of the Goods or their interchangeability with components supplied by the Customer
- 3.6 No order which has been accepted by PEI-Genesis may be cancelled by the Customer except with the agreement in writing of PEI-Genesis and on terms that the Customer shall indemnify PEI-Genesis in full against all losses (including but not limited to loss of profit), costs (including but not limited to the cost of all labour and materials used), damages, charges and expenses incurred by PEI-Genesis as a result of cancellation
- 3.7 The Customer, by written request ("Change Request") delivered to PEI-Genesis, shall have the right to request changes to any order accepted by PEI-Genesis. No Change Request by the Customer shall be effective, nor binding upon PEI-Genesis, unless specifically agreed to in writing by PEI-Genesis. If a Change Request agreed to in writing by PEI-Genesis results in a delay in PEI-Genesis's delivery of the Goods or an increase or decrease in the cost of the Goods to the Customer, PEI-Genesis shall notify the Customer and negotiate an equitable adjustment in the delivery schedule or the price of such Goods, or both. PEI-Genesis shall submit all of its claims for equitable adjustments to the Customer in writing at any time prior to the completion of the Contract

4. Price

- 4.1 The price of the Goods shall be PEI-Genesis's quoted price
- 4.2 PEI-Genesis reserves the right for an order to be subject to a minimum order value and in such cases PEI-Genesis shall be entitled to increase the price or quantity to meet that minimum requirement
- 4.3 PEI-Genesis reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to PEI-Genesis which is due to price increases by PEI-Genesis' suppliers, alterations in taxation, changes in legislation or exchange rates, any change of delivery dates, quantities or specifications of the Goods, or special packaging which are requested by the Customer, or any delay caused by any instructions of the Customer, or failure of the Customer to give PEI-Genesis adequate information or instructions
- 4.4 Unless otherwise agreed in writing, all prices are quoted on an ex-works basis (as defined in Incoterms 2000), that is exclusive of the cost of transport and insurance
- 4.5 For deliveries to an agreed location in the United Kingdom transport and insurance will be made at PEI-Genesis' standard rates applicable at the time of despatch. PEI-Genesis reserves the right to charge higher rates where delivery takes place overseas or where the Customer requires an overnight or guaranteed early morning delivery in the United Kingdom
- 4.6 The price is exclusive of Value Added Tax which shall be payable by the Customer
- 4.7 PEI-Genesis reserves the right to vary the price so that it accords with the rate of exchange prevailing at the time of PEI-Genesis' invoice. If the Euro is adopted as the sole lawful currency of the United Kingdom:-
4.7.1 any accrued payment obligation of any part expressed in sterling shall be converted into a Euro denominated payment obligation at the rate specified in and otherwise in accordance with the relevant EMU legislation; and
4.7.2 any sum which becomes payable from one party to the other shall be paid in Euros at the appropriate date

5. Payment

- 5.1 Unless otherwise agreed in writing, PEI-Genesis shall be entitled to invoice the Customer for the price of the Goods, including any transport handling and insurance charges (where applicable), on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer and the Customer wrongfully fails to take delivery of the Goods, or the Customer fails to take delivery of the Goods as may have been previously agreed, in which event PEI-Genesis shall be entitled to invoice the Customer for the price of the Goods at any time after PEI-Genesis has notified the Customer that the Goods are ready for collection or PEI-Genesis has tendered delivery of the Goods

- 5.2 The Customer shall pay the price of the Goods as invoiced in full within 30 days of the end of the month in which the Goods were delivered. The Customer shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution whatsoever arising. The time of payment of the price shall be of the essence of the Contract
- 5.3 If the opinion of PEI-Genesis the credit-worthiness of the Customer shall have deteriorated prior to delivery or collection, PEI-Genesis may require full or partial payment of the price prior to delivery or collection or the provision of security for payment by the Customer in a form acceptable to PEI-Genesis
- 5.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to PEI-Genesis, PEI-Genesis shall (at its option) be entitled to:-
- 5.4.1 treat the Contract as repudiated by the Customer and suspend any further deliveries to the Customer, claim damages from the Customer and charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the base rate of National Westminster Bank Plc from the date payment is due until payment in full is made; or
- 5.4.2 affirm the contract, claim damages for the Customer and charge the Customer interest (in accordance with Clause 5.4.1)
- 6. Delivery**
- 6.1 Delivery of the Goods shall be at PEI-Genesis's premises at any time after PEI-Genesis has notified the Customer that the Goods are ready for collection, unless otherwise agreed by PEI-Genesis in writing
- 6.2 Any dates quoted for delivery of the Goods are approximate only and PEI-Genesis shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence
- 6.3 The Customer shall notify any claim for short delivery to PEI-Genesis within 10 working days of the date of delivery by PEI-Genesis. If PEI-Genesis is satisfied that the Goods have been short delivered, PEI-Genesis shall at its option:-
- 6.3.1 make up any short delivery by despatching to the Customer such Goods as PEI-Genesis is satisfied were not delivered; or
- 6.3.2 allow the Customer credit in respect thereof PEI-Genesis's liability shall be limited to making up the delivery or allowing credit as above
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and defective delivery by PEI-Genesis of any one or more of the instalments in accordance with these Terms shall not entitle the Customer to treat the Contract as a whole as repudiated
- 6.5 If the Customer fails to take delivery of the Goods or fails to give PEI-Genesis adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of PEI-Genesis's fault) then, without prejudice to any other right or remedy available to PEI-Genesis, PEI-Genesis may:-
- 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including handling and insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract
- 7. Risk**
- The risk of loss and damage to the Goods shall pass to the Customer immediately upon delivery unless the Goods are to be collected by the Customer when the risk of loss and damage to the Goods shall pass to the Customer upon PEI-Genesis notifying the Customer that the Goods are ready for collection
- 8. Title**
- 8.1 Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the Customer and shall remain in PEI-Genesis until either such time as the Customer shall have paid to PEI-Genesis the full price for all Goods sold by PEI-Genesis to the Customer under any and all contracts between them or PEI-Genesis shall have written to the Customer notifying the Customer that the property in the Goods has passed to the Customer
- 8.2 Until such payment the Customer shall carefully store the Goods in such a way as to enable them to be identified as the property of PEI-Genesis and at its own expense keep them insured against all loss or damage howsoever caused and against any loss damage or injury caused to the Customer, its servant or agents and any third party
- 8.3 The Customer shall not attach the Goods to any real property without the prior written consent of PEI-Genesis
- 8.4 PEI-Genesis reserves the immediate right of re-possession of any Goods to which PEI-Genesis has retained title as aforesaid exercisable at any time after delivery or collection of the Goods and the Customer hereby grants an irrevocable right and licence to PEI-Genesis's servants and agents to enter upon all or any premises where the Goods are stored without prior notice for this purpose.
- 8.5 The Customer may in the ordinary course of its business:-
- 8.5.1 process the Goods in such fashion as it may wish and/or incorporate them in or with any other product or products; and
- 8.5.2 sell the Goods to any third party as principal but not as the agent for PEI-Genesis
- 8.6 Items supplied by the Customer for the Contract shall be of suitable quality and shall be provided free of charge in sufficient quantities and at all times required by PEI-Genesis. Any defects in such items shall not entitle the Customer to rescind the Contract, reject the Goods, make deductions from the Contract price or claim damages in respect thereof and the Customer shall indemnify PEI-Genesis against all loss damage and liability arising from the supply of defective items by the Customer
- 8.7 All tools, dies, jigs, patterns, equipment material and other items purchases and supplied by the Customer to PEI-Genesis, and any replacement thereof, shall at all times, remain the property of the Customer. Any property of the Customer in possession of PEI-Genesis shall continue to be at the risk of the Customer and be held without any liability to PEI-Genesis save and except where the loss or damage is due to the gross negligence of PEI-Genesis
- 8.8 Except as otherwise expressly agreed in writing, all right and title to tooling, designs, patterns, drawings and materials not purchased and supplied by the Customer to PEI-Genesis shall be and remain with PEI-Genesis
- 8.9 The Customer acknowledges that all and any patent, copyright, design (registered or unregistered), trademark, know-how and similar intellectual property rights in those Goods manufactured or assembled by PEI-Genesis and samples, instructions or other items supplied by PEI-Genesis to the Customer upon these Terms are and shall remain the sole property of PEI-Genesis.
- 9. Warranty**
- 9.1 PEI-Genesis warrants that it has title to sell the Goods and that the Goods will conform with the description and quantity set out in the Customer's order and specification (if any) accepted by PEI-Genesis
- 9.2 Where PEI-Genesis has assembled the Goods pursuant to the Customer's specification PEI-Genesis warrants that:-
- 9.2.1 the Goods have been assembled in accordance with the specification; and
- 9.2.2 PEI-Genesis has exercised reasonable skill and care in assembling the Goods
- 9.3 Save as provided in Clauses 9.1 and 9.2 all terms, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods are hereby excluded including but not limited to the following:-
- 9.3.1 No representations are made and no warranties are given in respect of the source or origin of manufacture or production of the Goods or any part thereof; and
- 9.3.2 PEI-Genesis gives no warranties as to the quality, performance, design, specification or suitability for any particular purpose or other aspect of any Goods not manufactured by PEI-Genesis in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to PEI-Genesis, and which PEI-Genesis will, so far as possible, assign to the Customer upon the written request of the Customer
- 9.4 The Customer is advised to read the warranty and product safety information in PEI-Genesis' catalogues and any instructions for safe use in the literature from which it selected the Goods or with which the Goods are supplied and to follow those instructions closely. If the Customer has any difficulty interpreting those instructions or is unsure as to the suitability of the Goods for its use, it should seek advice from PEI-Genesis prior to using the Goods. It is the duty of the Customer to convey instructions for safe use to its employees and other third parties.
- 10. Liability**
- 10.1 PEI-Genesis shall be under no liability under Clauses 9.1 and 9.2:-
- 10.1.1 arising from or attributable to any specification, drawing or design supplied by the Customer;
- 10.1.2 arising from fair wear and tear, neglect, failure to follow the instructions of the manufacturer and/or PEI-Genesis, misuse or improper installation or alteration or repair of the Goods
- 10.1.3 if the total price for the Goods has not been paid by the due date for payment; or
- 10.1.4 if the Customer fails to notify any claim based on a breach of the warranties in Clauses 9.1 or 9.2 within the earlier of 30 days of discovery of the breach and 6 months from the delivery date

- 10.2 Where any valid claim in based on a breach of the warranties in Clauses 9.1 or 9.2 is notified to PEI-Genesis within the period set out in Clause 10.1.4, PEI-Genesis shall be entitled to:-
- 10.2.1 repair or replace the Goods (or the part in question) at the premises of PEI-Genesis free of charge; or
- 10.2.2 at PEI-Genesis's discretion, refund to the Customer the price of the Goods (as a proportionate part of the price)
- 10.3 All Goods returned by the Customer to PEI-Genesis for repair or replacement pursuant to Clause 10.2 shall be returned freight paid by the Customer and shall be insured by the Customer for the value of the shipment. When such repaired or replaced Goods are returned by PEI-Genesis to the Customer, the freight for such return shall be paid by PEI-Genesis
- 10.4 PEI-Genesis shall be under no liability to the Customer for any loss (including loss of profits), damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of PEI-Genesis its employees or agents save that PEI-Genesis accepts liability for death or personal injury caused by the negligence of PEI-Genesis
- 10.5 The Customer hereby acknowledges and agrees that in consideration of the price agreed to be paid by it pursuant to these Terms, PEI-Genesis's liability arising out of this Contract shall in no event exceed the price paid by the Customer to PEI-Genesis
- 11. Force Majeure**
- 11.1 PEI-Genesis shall not be liable to the Customer for loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Goods by PEI-Genesis being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond PEI-Genesis's reasonable control including (but not limited to) Act of God, act of terrorism, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport other circumstances affecting the supply of the Goods or of raw materials therefore by PEI-Genesis's normal source of supply or the manufacture of the Goods by PEI-Genesis's normal means or the delivery of the Goods by PEI-Genesis's normal route or means of delivery
- 11.2 If due to such circumstances or events PEI-Genesis has insufficient stocks to meet all its commitments PEI-Genesis may apportion available stocks between its customers at its sole discretion
- 12. Insolvency of Customer**
- 12.1 This clause applies if:-
- 12.1.1 the Customer makes any voluntary arrangement with its creditors or an administrator is appointed (being an individual or firm) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it;
- 12.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed of any of the property or assets of the Customer; or
- 12.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 12.1.4 PEI-Genesis reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer or any other matter which in the opinion of PEI-Genesis may prejudice its rights against the Customer
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to PEI-Genesis, PEI-Genesis shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, 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
- 13. General**
- 13.1 No failure or delay by PEI-Genesis or time or indulgence given by PEI-Genesis in exercising any right or remedy under or in relation to these Terms shall operate as a waiver of such right or remedy nor shall any single or partial exercise of any remedy or right preclude any further exercise by PEI-Genesis of such right or remedy or the exercise of any other right or remedy
- 13.2 No waiver by PEI-Genesis of any requirement of these Terms or of any right or remedy under these Terms shall have effect unless given in writing signed by an authorised person on behalf of PEI-Genesis. No waiver of any particular breach of these Terms shall operate as a waiver of any repetition of such breach
- 13.3 A person who is not a party to the Contract is not entitled to enforce any of its terms under the Contract (Rights of Third Parties) Act 1999 except where the Terms expressly provide that such a person is entitled to do so
- 13.4 All notices relating to the Contract must be given in writing by hand or by first class post or facsimile to the party to be notified at that party's registered office or such other address as shall have been notified by that party to the other for the purpose. All notices shall be deemed to have been received as follows:-
- 13.4.1 if delivered personally, when delivered;
- 13.4.2 if sent by first class post to an address in the United Kingdom at the opening of business on the second business day after posting in the relevant part of the United Kingdom;
- 13.4.3 if sent by post to an address outside the United Kingdom at the opening of business on the seventh business day after posting in the United Kingdom; and
- 13.4.4 if by facsimile, when received
- except that any notice delivered or received on a day which is not a business day in the relevant country of receipt or after business hours in such country shall be deemed to be given on the next business day at the place of delivery or receipt
- 13.5 The Customer shall not be entitled to assign its rights under these Terms without the prior consent in writing of PEI-Genesis. PEI-Genesis may assign its rights under these Terms to any person, firm or company
- 13.6 Each party agrees and undertakes that it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party all information of a confidential nature, (including trade secrets and information of commercial value) which may become known to such party from the other unless such information is public knowledge (other than by breach of this Condition) or is required to be disclosed by a court of competent jurisdiction
- 13.7 Customer shall, upon receipt of the demand of PEI-Genesis, supply to PEI-Genesis such financial data and related information as may be required to permit an on-going determination of the financial status of the Customer. If at any time during the performance of this Contract the Customer fails to provide adequate assurances to PEI-Genesis of its financial ability to perform this Contract, PEI-Genesis may treat this Contract as repudiated pursuant to Clause 5.4.1
- 13.8 If any provision or part of a provision of these Terms shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect
- 13.9 The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts
- 14. General Lead-free/RoHS Disclaimer**
- 14.1. Product information, including information related to a product's specifications, uses or conformance with legal or other requirements, is obtained by PEI-Genesis from its suppliers or other sources deemed reliable and is provided on an "as is" basis. PEI-Genesis recommends that all product information be validated before using or acting on such product information. PEI-Genesis makes no representation as to the accuracy or completeness of the product information and PEI-Genesis disclaims all representations, warranties and liabilities under any theory with respect to the product information, including any implied warranties of merchantability, fitness for a particular purpose, title and/or non-infringement. All product information is subject to change without notice. PEI-Genesis is not responsible for typographical or other errors or omissions in product information.