

pfm medical UK Limited
TERMS AND CONDITIONS OF SALE

1. Definitions

'Business Day'	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
'Buyer'	means the person, firm or company or other body who buys or agrees to buy the goods from the Seller.
'Conditions'	means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
'Contract'	means the contract for the sale and purchase of the Goods between the Buyer and Seller as evidenced by the Seller's quotation or order acknowledgement and no representations or conditions will be binding on either party.
'Delivery Date'	means the date specified by the Seller when the Goods are to be delivered.
'Goods'	means all items agreed to be supplied by the Seller which the Buyer agrees to buy from the Seller.
'Price'	means the price for the Goods excluding carriage, packaging, insurance and VAT.
'Seller'	means pfm medical UK Limited of Suite 3, Armcon Business Park, London Road South, Poynton, Cheshire SK12 1LQ.
'Services'	means all advice given and services performed by the Seller.

2. Conditions applicable

2.1	These Conditions shall apply to all contracts for the sale of Goods and Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
2.2	All orders for Goods and Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services pursuant to these Conditions.
2.3	Acceptance of delivery of the Goods and/or Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
2.4	Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
2.5	No representation, undertaking, promise or statement shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract.
2.6	The Buyer shall not have any remedy in respect of any untrue statement made by the Seller (including without limitation in the case of giving advice, if any, in relation to the Buyer's selection of particular Goods, Services or otherwise) upon which the Buyer relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Seller's ability to perform its obligations under the Contract) and the Buyer's only remedies shall be for breach of contract as provided for in these Conditions.

3. The Price and payment

3.1	The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
3.2	Payment of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence. Payment by BACs is the Seller's preferred method of payment.
3.3	Interest on overdue invoices shall accrue, at the Seller's discretion, from the date when payment becomes due from day to day until the date of payment at a rate of 8% above Barclay's Bank Plc's base rate from time to time in force. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
3.4	The charges for Services shall be on a time and materials basis:
a)	The charges shall be calculated in accordance with the Seller's standard rates
3.5	The Seller reserves the right to:
a)	increase its standard rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Seller will give the Buyer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within 2 weeks of the date of the Seller's notice and the Seller shall have the right without limiting its other rights or remedies to terminate the Contract by giving 3 weeks' written notice to the Buyer; and
b)	increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:
(i)	any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
(ii)	any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
(iii)	any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
3.6	The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

4. The Goods and Services

4.1	The quality and description of the Goods and/or Services shall be as set out in the Seller's written or oral quotation.
4.2	The Seller reserves the right to amend the specification of the Goods and/or Services if required by any applicable statutory or regulatory requirements.

5. Warranties and liability

5.1	The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract terms Act 1977 Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
5.2	The Seller shall have no liability under the warranty contained in Clause 5.1 in respect of any defect in the Goods arising from fair wear and tear; wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow the Seller's instructions (whether oral or in writing); misuse or alteration or repair of

the Goods without the seller's approval; or if the Buyer is in breach of its payment obligations under this Contract.

5.3	Subject to any express obligation to indemnify, neither party shall be liable for any indirect or consequential, or punitive damages of any kind from any cause arising out of the sale, use or inability to use any of the Goods, nor for, without limitation, loss of profits, goodwill or business interruption.
5.4	The Seller's total liability arising under or in connection with the Contract, including for any breach of contractual obligations and/or any misrepresentation, misstatement or tortious act or omission (including without limitation, negligence and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the amount paid to the Seller under the Contract.
5.5	The exclusion of liability in these Terms and Conditions shall only apply to the extent allowed according to applicable law.
6.	Delivery of Goods
6.1	Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
6.2	Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
6.3	If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
6.4	If the Buyer fails to accept or take delivery of the Goods within two Business Days of the Seller notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods:
a)	delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Seller dispatched the Goods
6.5	If 5 Business Days after the Seller dispatched the Goods for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods.
6.6	The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
7.	Acceptance of Goods
7.1	The Buyer shall be deemed to have accepted Goods 24 hours after delivery to the Buyer.
7.2	After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
7.3	All delivery discrepancies must be reported to the Seller within 48 hours of receipt of the Goods
8.	Title and risk
8.1	Risk shall pass on delivery of the Goods.
8.2	Notwithstanding delivery and the passing of risk in any Goods legal and beneficial title to the Goods shall not pass to the Buyer and shall remain vested in the Seller, until the Seller has received payment in full (in cleared funds) of the price for them together with any other sums due to it under the Contract or any other contract from the Buyer.
8.3	Goods in the Buyer's possession or control in relation to which legal and beneficial title remain vested in the Seller are referred to in the following provisions of this Condition 8 as "Retained Goods".
8.4	Until payment in full in accordance with Condition 8.2, the Buyer shall:
8.4.1.	hold any Retained Goods on a fiduciary basis as the Seller's bailee;
8.4.2.	store any Retained Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
8.4.3.	not destroy, deface or obscure any identifying mark or packaging on or relating to any Retained Goods;
8.4.4.	maintain any Retained Goods in good condition; and
8.4.5.	at its own expense keep the Retained Goods insured on the Seller's behalf against all risks to the reasonable satisfaction of the Seller and on request produce the relevant policy of insurance for inspection by the Seller.
8.5.	The Seller reserves the immediate right of repossession of any Retained Goods exercisable at any time after delivery or collection of the Goods. The Buyer hereby grants to the Seller and the Seller's agents, employees and contractors an irrevocable licence at any time to enter any premises where Retained Goods are being stored without prior notice for this purpose in order to inspect them, identify them as the Seller's property and repossess them.
8.6.	For the avoidance of doubt, the Buyer agrees that the Seller shall be entitled to recover payment for any Retained Goods from the Buyer notwithstanding that legal and beneficial ownership of the same has not passed from the Seller.
8.7.	The repossession of Retained Goods by the Seller in accordance with this Condition 8 shall be without prejudice to all or any of the Seller's other rights against the Buyer under any Contract whether hereunder, at law or in equity.
8.8.	On termination of the Contract howsoever caused, the Seller's but not the Buyer's rights contained in this Condition 8 shall remain in full force and effect.
9.	Supply of Services
9.1	The Seller shall provide the Services to the Buyer in accordance with the Service Specification in all material respects.
9.2	The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in by the Buyer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
9.3	The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
9.4	The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

<p>10. Changes and Returns</p> <p>10.1 Any returns agreed must be in accordance with the NHS Supply Chain returns policy.</p> <p>10.2 For Goods not purchased through the NHS Supply Chain, changes and returns cannot be assumed and must be agreed in writing by the Seller prior to the purchase being made.</p> <p>11. Buyer's Obligations</p> <p>11.1 The Buyer shall:</p> <p>a) ensure that the terms of the purchase order are complete and accurate;</p> <p>b) co-operate with the Seller in all matters relating to the Goods and/or Services;</p> <p>c) provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;</p> <p>d) provide the Seller with such information and materials as the Seller may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;</p> <p>e) prepare the Buyer's premises for the supply of the Services and delivery of the Goods;</p> <p>f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;</p> <p>g) keep and maintain all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.</p> <p>h) ensure that Goods requiring temperature controlled storage are stored at the required temperature.</p> <p>12. Remedies of Buyer</p> <p>12.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.</p> <p>12.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.</p> <p>12.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.</p> <p>13. Indemnities</p> <p>13.1 Except where a claim arises as a direct result of the negligence or breach of contract by the Seller, the Buyer shall indemnify the Seller in respect of any claim which may be made against the Seller:</p> <p>(i) arising in connection with the Buyer's unintended use of the Products;</p> <p>(ii) alleging that the Buyer's use of the Products infringes the intellectual property rights of any third party.</p> <p>14. Health and Safety</p> <p>14.1 The Buyer shall ensure that:</p> <p>(i) the Goods (provided such Goods comply with its specifications) are suitable and safe for the Buyer's intended use;</p> <p>(ii) the Goods are handled in a safe manner;</p> <p>(iii) containers, packaging, labelling and equipment, where provided by the Buyer, comply with all relevant national and international safety regulations;</p> <p>(iv) the Goods are used appropriately and in line with the instructions for use.</p> <p>15. Services</p> <p>15.1 Where the Seller is to provide Services, the Buyer shall ensure that adequate and safe facilities exist at its premises and that the Seller is properly notified of any relevant regulations.</p> <p>16. Limitation of Liability</p> <p>16.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:</p> <p>a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;</p> <p>b) fraud or fraudulent misrepresentation;</p> <p>c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);</p> <p>d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or</p> <p>e) defective products under the Consumer Protection Act 1987.</p> <p>16.2 Subject to clause 16.10:</p> <p>a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and</p> <p>b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10,000,000 Euros.</p> <p>16.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.</p> <p>16.4 This clause shall survive termination of the Contract</p> <p>17. Termination</p> <p>17.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.</p> <p>17.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:</p> <p>a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 5 Business Days after receipt of notice in writing to do so;</p> <p>b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];</p> <p>c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];</p> <p>d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;</p>	<p>e)</p> <p>f)</p> <p>g)</p> <p>h)</p> <p>i)</p> <p>j)</p> <p>k)</p> <p>l)</p> <p>m)</p> <p>17.3</p> <p>17.4</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>d)</p> <p>18. Force Majeure</p> <p>18.1.</p> <p>18.2.</p> <p>18.3.</p> <p>18.4.</p> <p>19. Data Protection</p> <p>19.1</p> <p>20. Notices</p> <p>20.1</p> <p>21. Assignment and other dealings.</p> <p>21.1</p> <p>21.2</p> <p>22. Third parties</p> <p>22.1</p> <p>23. Variation</p> <p>23.1</p> <p>24. Proper law of contract</p> <p>24.1</p>	<p>the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;</p> <p>an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);</p> <p>the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;</p> <p>a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;</p> <p>any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2 (b) to clause 17.2 (i) (inclusive);</p> <p>the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;</p> <p>the other party's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or</p> <p>the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.</p> <p>Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 17.1 (b) to clause 17.2 (m) or the Seller reasonably believes that the Buyer is about to become subject to any of them.</p> <p>On termination of the Contract for any reason: the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;</p> <p>the Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and</p> <p>clauses which expressly or by implication have effect after termination shall continue in full force and effect.</p> <p>18. Force Majeure</p> <p>The Seller reserves the right to suspend, delay or cancel the performance of a Contract or any part thereof where the Seller is prevented or hindered from performing the same due to any cause beyond its reasonable control including but not limited to, strikes, or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts or threats of terrorism, plant breakdown, computer or other equipment failure and inability to obtain equipment.</p> <p>Notwithstanding anything to the contrary in these Conditions, the Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Goods by the Seller being prevented, hindered, delayed or rendered uneconomic or for the suspension or cancellation of a Contract by reason of any circumstances or event beyond the Seller's reasonable control.</p> <p>If due to such circumstances or events the Seller has insufficient stocks or resources to meet all its commitments, the Seller may apportion available stocks or resources between its Buyers at its sole discretion.</p> <p>Cancellation of a Contract by the Seller under Condition 13.1 shall be without prejudice to any rights or liabilities of either party which accrued prior to the date of cancellation other than as a result of the relevant event beyond its reasonable control.</p> <p>19. Data Protection</p> <p>The parties shall each comply at all times with data protection laws in respect of any personal data processed by it under the Contract.</p> <p>20. Notices</p> <p>Notice under these Conditions and any Contract shall be in writing and notices shall be deemed to be received on delivery if sent by hand, courier or recorded delivery and 48 hours (excluding Saturdays, Sundays and Bank and public holidays) after despatch if sent by pre-paid first class post, and on confirmation of transmission if sent by facsimile or e-mail.</p> <p>21. Assignment and other dealings.</p> <p>The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.</p> <p>The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.</p> <p>22. Third parties</p> <p>A person who is not a party to the Contract shall not have any rights to enforce its terms.</p> <p>23. Variation</p> <p>Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.</p> <p>24. Proper law of contract</p> <p>This contract is subject to the law of England and Wales.</p>
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