

## Park Signalling Limited: General Terms and Conditions for the Sale of Goods, 2013 Edition

**The Buyer's attention is drawn to the limitations of liability contained in this Agreement and in particular to the provisions of Clauses 7, 13 and 14 below. The Buyer's attention is also drawn to the provisions of Clauses 17 and 18 below pursuant to which the Buyer should examine the Goods promptly after delivery.**

1. **Definitions**
  - In this Agreement:
    - 1.1 "PSL" means Park Signalling Ltd (registered in England under number 03895736) whose registered office is at Unit 307, Houldsworth Mill Business Centre, Houldsworth Street, Reddish, Stockport, SK5 6DAPSL.
    - 1.2 "Acknowledgment of Purchase Order" means the document entitled "acknowledgment of purchase order", "sales order confirmation", or with a similar title in any such case as generated by PSL and sent by post, fax or e-mail by PSL to the Buyer.
    - 1.3 "Approved Goods" means goods or materials which are not customised and which have been approved by Network Rail Infrastructure Limited pursuant to Network Rail standard NR/L2/RSE/100/05;
    - 1.4 "Buyer" means the person, partnership, company, authority or other undertaking who buy the Goods.
    - 1.5 "Clause" means a clause of this Agreement.
    - 1.6 "Contract" means any particular individual contract for the supply of Goods by PSL to the Buyer.
    - 1.7 "Goods" means the goods or materials supplied or sold by PSL to the Buyer as specified in the Quotation.
    - 1.8 "Incoterms" means Incoterms 2010 as published by the International Chamber of Commerce in 2010.
    - 1.9 "Intellectual Property Rights" means patents, registered and unregistered trademarks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world.
    - 1.10 "Purchase Order" means an order placed by or on behalf of the Buyer for the Goods.
    - 1.11 "Quotation" means the document entitled "quotation", or if there is no such document, then the document entitled "sales order confirmation", in either case as generated by PSL and sent by post, fax or e-mail by PSL to the Buyer.
    - 1.12 "Safety Legislation" means the Health and Safety at Work Act 1974 etc. the Consumer Protection Act 1987 and all regulations thereunder the General Product Safety Regulations 1994 and all other legislation from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in Member States) imposing legal requirements with respect to the safety of goods the handling transportation storage or disposal of goods or goods incorporating the Goods and the health and safety of the users of the Goods.
    - 1.13 "Special Conditions" means any additional terms referred to in the Quotation.
    - 1.14 "Specification" means PSL's Data Sheet or any other written specification provided by PSL for the Goods.
    - 1.15 Reference to any statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
    - 1.16 Reference to any Clause is to a clause of this Agreement.
    - 1.17 In this document and in any Special Conditions: (i) the headings are for convenience only and shall not affect the interpretation of this document or those Special Conditions; (ii) the use of the plural shall include the singular and the use of the singular shall include the plural; and (iii) references to the masculine, feminine or neuter genders shall include each and every gender.
  2. **Applicability of Terms**
    - 2.1 Unless otherwise expressly agreed in writing by PSL every Contract shall be governed in all respects by this Agreement and any Special Conditions. This Agreement shall apply to any services that PSL supplies which are ancillary to the supply of the Goods to the maximum extent feasible.
    - 2.2 The Quotation and any similar document is not to be taken as an offer and no Contract shall take effect unless and until a Purchase Order submitted by the Buyer is accepted by PSL in an Acknowledgement of Purchase Order. Any acceptance by PSL shall always be on the provisions of this Agreement. This Agreement shall always apply to the exclusion of any terms and conditions contained in or referred to in the Buyer's Purchase Order or any other document submitted by the Buyer.
    - 2.3 Where the Buyer transmits the Buyer's Purchase Order by telephone, fax or e-mail, the Buyer is solely responsible for any error or omission in the transmission of the Purchase Order or any other document submitted by the Buyer.
    - 2.4 PSL shall be entitled to rely in all respects and in all circumstances on the contents of the Quotation as stating the quantity and description of the Goods that are to be supplied. Accordingly, it shall be the Buyer's sole responsibility to check the Quotation and to notify PSL forthwith after the receipt of the same where the Goods are not properly stated in the Quotation.
  - 2.5 Where there is a conflict between the provisions of the Special Conditions and the provisions of this Agreement, the provisions of the Special Conditions shall prevail.
  - 2.6 The Buyer acknowledges that this Agreement shall prevail over any qualification, term or condition purported to be imposed by the Buyer (whether in the Purchase Order or elsewhere) and any previous course of dealing between the Buyer and PSL.
  - 2.7 The Contract shall be based solely on this Agreement and any Special Conditions.
  - 2.8 The Buyer expressly agrees that this Agreement and any Special Conditions shall take precedence over any contractual provisions proffered by the Buyer. PSL shall not be bound by and does not agree to any contractual provisions proffered by the Buyer save to the extent, if any, that PSL expressly agrees to the same in writing and by expressly referencing those other contractual provisions. The Buyer agrees that no other action taken by PSL shall be interpreted as PSL accepting any contractual provisions proffered by the Buyer.
  - 2.9 Notwithstanding the definitions of "Acknowledgement of Purchase Order" and "Quotation" given in Clause 1 above, the Parties may otherwise agree the identity of a document which is to be the "Acknowledgement of Purchase Order" or the "Quotation" for the purposes of this Agreement.
  3. **Publications and Representations**
    - 3.1 All descriptions, illustrations and information contained in (i) PSL's catalogues, price lists, web site, advertising matter and other publications and (ii) labels attached or affixed to PSL's containers and packaging or any other collateral item relating to the Goods shall be regarded as approximate only and are to present merely a general idea of the goods described in them and shall not form part of the Contract or be deemed to import any warranty regarding the Goods.
    - 3.2 The Buyer acknowledges that in entering into the Contract, it has not relied upon any representation made by or on behalf of PSL save to the extent that any such representation is set forth in writing and expressly included in the Contract.
    - 3.3 Nevertheless nothing in this Contract shall be taken to exclude PSL's liability for a fraudulent misrepresentation made by PSL.
  4. **Prices**
    - 4.1 The price of the Goods will be that stated in the Quotation and Acknowledgment of Purchase Order. Save to the extent that the contrary may be stated in the Quotation and Acknowledgment of Purchase Order, the price of the Goods shall include transportation, insurance and delivery.
    - 4.2 In the event of any conflict between the Acknowledgment of Purchase Order and the Quotation, the Acknowledgment of Purchase Order shall prevail.
    - 4.3 Save as expressly stated otherwise by PSL in writing, prices are quoted by PSL exclusive of Value Added Tax and any other sales tax, which PSL shall add to the invoice (and which the Buyer shall be liable to pay for) at the appropriate prevailing rate. The Buyer is solely responsible for all customs duties, import duties or similar duties and taxes.
    - 4.4 PSL shall be entitled to charge the Buyer simple interest on any sums paid late pursuant to a Contract from the due date until the date of payment. Such interest shall be calculated on a daily basis at the rate of four per cent (4%) above the base lending rate of Barclays Bank plc from time to time prevailing, as well after as before any judgment.
    - 4.5 Where the price of a component used or contracted for by PSL to manufacture the Goods increases above the price payable as at the date of this Contract then PSL may increase the price payable by the Buyer by a commensurate amount calculated by PSL acting reasonably and taking into account that increase and the proportionate amount of that element within the total manufacturing cost of the Goods. PSL shall notify or e-mail the Buyer of the said increase in the price of the Goods. If the Goods are Approved Goods, the Buyer may terminate this Contract by giving notice to PSL promptly after receipt of any such notice or e-mail. Where (i) the Goods are not Approved Goods or (ii) the Buyer does not terminate this Contract promptly after receipt of any such notice or e-mail and in any event twenty four (24) hours before the time that the Goods are scheduled to leave PSL's premises, the Buyer shall be bound to accept the delivery of the Goods at the new price.
  5. **Reservation of Title – Risk and Property**
    - 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time at which the Goods are ready for unloading by or on behalf of the Buyer.
    - 5.2 Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the Buyer until PSL has received in cash or cleared funds payment in full of the price of the Goods.
    - 5.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as PSL's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and

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- insured and identified as PSL's property. Notwithstanding the previous sentence, the Buyer shall be entitled to resell or use the Goods or integrate the Goods with other products provided that the Buyer does so in the ordinary course of its business.
- 5.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in separate identifiable existence and have not been resold) PSL shall be entitled at any time to require the Buyer to deliver up the Goods to PSL and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 5.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of PSL, but if the Buyer does so all monies owing by the Buyer to PSL shall (without prejudice to any other right or remedy of PSL) forthwith become due and payable.
6. **Payment**
- 6.1 PSL shall be entitled to submit an invoice to the Buyer at any time on or after the Goods leave the premises of PSL or are otherwise despatched.
- 6.2 The Buyer shall pay PSL's invoice in full within thirty days of the date of the invoice.
- 6.3 Notwithstanding the provisions of Clauses 6.1 and 6.2 PSL reserves the right (in PSL's absolute discretion) to require payment in full for the Goods at any time or otherwise to change any credit facility from time to time given to the Buyer.
- 6.4 The Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by PSL in writing.
- 6.5 Any charges given by PSL in respect of the Goods do not include the cost of any installation or maintenance, which, where requested by the Buyer, may be provided by PSL. Where PSL agrees to undertake any installation and maintenance of the Goods, the Buyer shall be liable to pay the additional charges for the same as levied by PSL.
7. **Delivery**
- 7.1 Where PSL agrees or states a specified delivery date, PSL shall use reasonable endeavours to deliver on or before the relevant date, but PSL shall be under no obligation to do so.
- 7.2 Time shall not be of the essence with respect to any of PSL's obligations arising pursuant to a Contract.
- 7.3 PSL shall not be liable in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or performance of any service.
- 7.4 PSL shall be responsible for making delivery in accordance with (Delivered at Place (named place of destination)), where that phrase has the meaning given to it by Incoterms.
- 7.5 The provisions of Clauses 7.4 above are subject to any contrary provision of the Quotation or anything to the contrary which is recorded by the parties by written agreement or by exchange of e-mail. Without limitation the Quotation, such agreement or such exchange may specify that a different Incoterm applies in which event the risk shall transfer to the Buyer when delivery is effected as stated in that Incoterm.
8. **Delivery by Instalments**
- 8.1 PSL shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between PSL and the Buyer.
- 8.2 Any failure, suspension or delay by PSL in respect of any part-delivery of the goods or the discovery of any defect in any of the Goods so delivered shall not entitle the Buyer to cancel the remainder of the contract and shall not affect the obligations of the Buyer in respect of the remainder of the Goods or the remainder of the Contract.
9. **Suitability of Storage and Offloading Facilities**
- 9.1 PSL reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Buyer are inadequate or unsuitable.
- 9.2 Notwithstanding Clause 9.1, where the Goods are delivered by or on behalf of PSL such delivery shall in no way constitute a commitment or representation by PSL as to the adequacy or suitability of the Buyer's storage or offloading facilities. The Buyer shall at all times be solely responsible and liable to ensure that the Buyer's storage and offloading facilities are adequate and suitable.
10. **Failure to Accept Delivery when Tendered**
- 10.1 Where any delay in delivery of the Goods is caused by the Buyer, PSL shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the cost of returning the Goods to PSL's premises, of storing the Goods and of re-delivering the Goods.
- 10.2 Where any delay in delivery of any services is caused by the Buyer, PSL shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the wasted cost of having men and materials ready to deliver the service.
11. **Force Majeure**
- 11.1 In this Clause 11, "Force Majeure Event" means an event wholly beyond the reasonable control of the party claiming the benefit of the Clause (including its sub-contractors) including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure by any statutory undertaker, utility company, local authority, internet access provider or similar body to provide services, any failure, shortage or significant price increase of power, fuel, raw material, component or transport.
- 11.2 Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract.
- 11.3 The party seeking to take advantage of this Clause 11 shall (i) give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and (ii) use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the effect of the Force Majeure Event.
12. **Suspension and termination**
- 12.1 For the purposes of this Clause 12, an "Insolvency Event" means where:
- a) the Buyer makes any voluntary arrangement with its creditors or (being an individual (or in the case of a partnership, any partner) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or has an administrator or administrative receiver appointed over the whole or any part of its assets; or
- b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- c) the Buyer ceases, or threatens to cease, to carry on business; or
- d) any event takes place in any jurisdiction other than England which is analogous to any of the above under this Clause 12.1; or
- e) the Buyer is in breach of any material provision of this Contract and fails to remedy such breach within thirty (30) days of a notice from PSL indicating the breach and requiring the Buyer to remedy the same.
- 12.2 Where an Insolvency Event occurs then, without prejudice to any other right or remedy available to PSL, PSL shall be entitled to suspend any further deliveries under the Contract.
- 12.3 Where an Insolvency Event occurs 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.
- 12.4 At any time after an Insolvency Event occurs and whether the Goods have been delivered or not, PSL may, without prejudice to any other right or remedy, terminate this Agreement with immediate effect by written notice so to do.
- 12.5 The following provisions of this Clause 12.5 shall apply solely in the case of Approved Goods. The Buyer may terminate this contract by not less than twenty four (24) hours written notice so to do at any time before the time that the Goods are scheduled to leave PSL's premises provided always that where the Buyer exercises this right, the Buyer shall be liable to compensate PSL for costs (including without limitation any loss of profit) incurred prior to receipt by PSL of notice of such termination. PSL may issue an invoice for such costs at any time after such notice of termination has been received.
13. **Limited Guarantee**
- 13.1 PSL's only responsibility shall be to ensure that when the Goods are supplied they are substantially in accordance with the Specification. If the Specification has not previously been supplied to the Buyer or is not available on PSL's internet site, PSL will supply the Specification to the Buyer on request.
- 13.2 PSL guarantees that the Goods when supplied are substantially in accordance with the Specification save that where the supplier of a component used in the Goods provides a lesser guarantee then PSL's guarantee in respect of that component is solely to use its reasonable endeavours to pass on that lesser guarantee to the Buyer.
- 13.3 PSL shall not be liable under this guarantee or otherwise for any use of the Goods by the Buyer (or any third party) outside the use for which the Specification was originally written.
- 13.4 Where the Goods are pre-packaged goods which are sold on by PSL in the same packaging as they are bought by PSL, then in place of Clauses 13.1 and 13.2 above, PSL's only obligation shall be to use its reasonable endeavours to pass on to the Buyer the warranties given to PSL by the seller of the Goods to PSL. Such pre-packaged Goods include without limitation the "Safetrack" range of goods and computer equipment sold by PSL.
- 13.5 PSL may make any improvement to the Goods at any time prior to dispatch and without giving any notice to the Buyer. In the event that PSL makes any other modification to the Goods, it shall as soon as reasonably practicable give notice in writing or by e-mail to the Buyer and inform the Buyer of the variation in the Specification. The Buyer may terminate this Contract by giving notice promptly after receipt of any such notice or e-mail.

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14. **Liability**
- 14.1 Save as expressly provided in this Agreement or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgment and not PSL's in determining such suitability. PSL's only warranty is that the Goods when supplied are substantially in accordance with the Specification, as further provided for in Clause 13 above.
- 14.2 PSL's charges to the Buyer are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. The Buyer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that the amount of damages awardable to the Buyer for a breach by PSL of this Agreement may be disproportionately greater than the price of the Goods.
- 14.3 The following provisions in this Clause 14 set out PSL's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Buyer in respect of:
- a breach of PSL's contractual obligations;
  - a tortious act or omission for which PSL is liable;
  - an action arising out of a misrepresentation made by or on behalf of PSL;
- arising in connection with the performance or contemplated performance of this Agreement or out of an act done or omission made as a consequence of the entry into by PSL of this Agreement.
- 14.4 The total liability which PSL shall owe to the Buyer and in respect of all claims shall not exceed an amount equal to two and a half times the price of the Goods.
- 14.5 PSL shall in no circumstances be liable to the Buyer for any pure economic loss, loss of profit, loss of business and like loss. PSL shall in no circumstances be liable to the Buyer for any indirect loss.
- 14.6 The Buyer shall only be entitled to bring a claim against PSL where the Buyer issues legal proceedings against PSL within the period of twenty four (24) months commencing on the date upon which the Goods are despatched by PSL.
- 14.7 The exclusions from and limitations of liability referred to in this Clause 14 do not apply so as to exclude or limit PSL's liability for:
- death or personal injury resulting from the negligence of PSL, its servants or agents;
  - damage for which PSL is liable to the Buyer under Part I of the Consumer Protection Act 1987 and where the Buyer acts as a consumer pursuant to that Act; or
  - breach of PSL's implied undertaking as to title to the Goods contained in Section 12 of the Sale Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- save that nothing in this Clause 14 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
- 14.8 The exclusions from and limitations of liability set out in this Clause 14 shall be considered severably. The validity or enforceability of any one part of this Clause 14 shall not affect the validity or enforceability of any other part of this Clause 14.
- 14.9 The provisions of this Clause 14 shall survive the termination of this Contract.
15. **Samples**
- 15.1 Except where the Goods are specifically ordered in writing against samples supplied by PSL and the Quotation expressly refers to those samples, any and all samples supplied by PSL are supplied for information only. Where the Buyer requires an additional warranty that the Goods comply with such a sample, the Buyer must communicate the same to PSL prior to the issue of the Acknowledgment of Purchase Order. Where PSL agree to that additional warranty, that warranty shall be recorded in writing in the Acknowledgment of Purchase Order.
- 15.2 PSL does not give any further warranty about compliance of the Goods with any sample other than as provided for in Clause 15.1.
16. **Intellectual Property**
- The supply of any of the Goods by PSL shall not give the Buyer any rights whatsoever in respect of any Intellectual Property Rights owned, used or enjoyed by PSL in connection with the Goods, save a limited licence to use those Intellectual Property Rights to use the Goods in accordance with their normal use and within the use envisaged by the Specification.
17. **Transit Inspection**
- 17.1 The Buyer shall inspect the Goods for any defect, shortage, damage or loss whilst in transit as soon as is practicable after actual delivery and shall give to PSL and the carrier notice in writing before the end of the third working day after actual delivery of any claim for any such defect, shortage, damage or loss. If the Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by the Buyer without any claim for any defect, shortage, damage or loss in transit.
- 17.2 The provisions of this Clause 17 shall only apply where any claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.
18. **Claims For Failure To Meet Specification**
- The Buyer shall properly inspect and test the Goods to ensure that they are in compliance with the Specification within ninety days of the risk transferring to the Buyer and shall give to PSL notice in writing promptly after such inspection and testing of any claim that the Goods are not in compliance with the Specification. If the Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by the Buyer without any claim that the Goods are not in compliance with the Specification.
19. **Defects**
- The Buyer shall fully and effectually indemnify PSL against any claims or proceedings resulting from any injury, loss or damage caused by the use to which the Goods are put or a failure to use the Goods in accordance with the applicable Specification).
20. **Export Sales**
- 20.1 The provisions of this Clause 20 shall apply only where an Incoterm applies to the Contract or where the Goods are being exported outside the United Kingdom.
- 20.2 In the event of any conflict between the provisions of Incoterms and this Agreement, then this Agreement shall prevail.
- 20.3 It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to any Contract pursuant to this Agreement.
- 20.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.
- 20.5 Unless otherwise agreed in writing as a Special Condition, PSL shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
21. **Assignability**
- The Buyer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of PSL. PSL may sub-contract the performance of its obligations as it sees fit, provided always that PSL shall remain responsible for the acts and omissions of its subcontractors.
22. **Waiver**
- Save in respect of a waiver granted in writing, the failure of PSL at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of PSL's right thereafter to enforce that or any other provision of this Contract.
23. **Severability**
- If a provision in this Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason (i) such unenforceability shall not affect the rest of this Contract; and (ii) the parties shall in good faith amend and if necessary novate this Contract to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.
24. **Status**
- Nothing in this Agreement shall create any joint venture, agency or partnership between PSL and the Buyer.
25. **Variations**
- All variations to any Contract or to this Agreement shall be valid only if recorded by the parties by written agreement or by exchange of e-mail.
26. **Third Party Rights**
- A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.
27. **Proper Law**
- Every Contract to which this Agreement applies shall be construed and take effect in accordance with the laws of England. The parties hereby accept the non-exclusive jurisdiction of the English Courts in connection with any dispute relating to the formation, construction or performance of a Contract or this Agreement.