

## TERMS AND CONDITIONS OF SALE

[Prinova Europe Limited/Prinova Solutions Europe Limited] ("the Seller")

**1. THESE CONDITIONS** (1) These terms and conditions ("Conditions") together with the express terms and conditions ("express terms") set out in Seller's Sales Contract Order Confirmation are the only terms and conditions on which [Prinova Europe Limited/Prinova Solutions Europe Limited] ("Seller") is prepared to offer and sell the goods described in the Sales Contract ("the Goods") to the person, firm or company described as buyer ("Buyer") and govern the contract ("the Contract") between Seller and Buyer for the sale and purchase of the Goods to the entire exclusion of all other terms or conditions express or implied. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract. (2) In the event of any conflict between these Conditions and the express terms, the express terms shall prevail. (3) Unless stated otherwise in these Conditions or the express terms, expressions defined in "Incoterms" published by the International Chamber of Commerce shall have the same meaning in these Conditions, Incoterms being incorporated herein for such purpose. (4) References to Clauses are to the numbered Clauses of these Conditions. Reference to the Contract includes the express terms and these Conditions.

**2. THE CONTRACT** (1) The Contract cancels all previous quotations, agreements, representations and understandings between Seller and Buyer in relation to the Goods however so made. Each order ("Order") by Buyer for Goods shall require written acceptance by Seller before a Contract arises. Buyer is responsible for ensuring that the terms of the Order and (where applicable) of any applicable specification for the Goods submitted by the Buyer are complete and accurate. Reference by Seller to Buyer's contract number shall not imply or have effect as acceptance of Buyer's terms and conditions. (2) Any taking of delivery of any of the Goods or documents of title representing them ("Documents"), giving shipping or delivery instructions, tender of any part of the Price or other part performance by or on behalf of Buyer of this Contract shall be conclusive as to Buyer's acceptance of these Conditions. (3) No amendment to or variation of these Conditions or the Contract shall be valid or effective unless in writing and signed by Seller.

**3. PRICE** (1) The price for the Goods ("Price") shall be the amount stated on the face hereof or calculated in accordance with the express terms. (2) The Price is exclusive of any applicable value added tax, which value added tax Buyer shall be additionally liable to pay Seller at the same time as the Price. Accordingly, Buyer's obligation to pay the Price shall include Buyer's obligation to pay any such value added tax whether or not expressly referred to elsewhere in these Conditions.

**4. PAYMENT TERMS** (1) Time of payment of the Price shall be of the essence of the Contract. (2) The Price and all other sums due to Seller from Buyer under this Contract (or which would be due but for Buyer's delay or default) but unpaid shall until actual payment (whether before or after judgment) bear interest (which Seller may compound quarterly) at the rate of 4% above Seller's bank base rate or prime rate from time to time or such other rate(s) as Seller may advise Buyer in writing. (3) Unless otherwise provided in the express terms, Seller shall not be obliged to tender the Goods unless Buyer has first tendered payment of the Price or, if applicable, opened an acceptable documentary credit in favour of the Seller in respect of the Price. (4) All payments from the Buyer shall be in the currency in which the Price is stated in freely available cleared funds without deduction, discount, abatement or set off of any kind, and shall not be deemed satisfied until unconditionally credited to Seller's bank account. Unless Seller agrees, otherwise place for payment of the Price shall be Seller's place of business. Cheques or other payment instruments sent to Seller through the post or by courier shall be sent at the risk of Buyer.

**5. DELIVERY AND SHIPMENT** (1) Dates or periods for delivery of the Goods in the express terms or in these Conditions are approximate and not guaranteed by Seller. Time of delivery shall not be of the essence. (2) Seller may deliver an excess or deficiency of not more than 5% by weight or volume of the contractual quantity of the Goods without being in breach of the Contract and without adjustment to the unit Price. (3) The Goods may be shipped in installments, and Seller may elect to treat each such shipment as a separate Contract without limitation to Seller's rights under Clauses 11 or 14. (4) On delivery Buyer will ensure prompt unloading of the Goods from transport used by Seller and indemnify Seller from any ship or container demurrage or other loss or liability arising from delay in unloading by Buyer or Buyer's agents or carriers. (5) Where Buyer may call for delivery of the Goods ("call off") in installments by or at particular dates or over a stated period, then: (a) notwithstanding the terms of any particular call off by Buyer, Buyer is obliged to purchase all the Goods; (b) time shall be of the essence in respect of Buyer's obligation to call off each installment of the Goods at the date(s) or within the period(s) stated in the express terms; (c) deferral of any particular call off agreed by Seller shall not relieve Buyer of its obligation to make timely call offs of other installments of the Goods; and (d) without limitation to Seller's other rights, if Buyer fails to call off any of the Goods in accordance with the Contract Seller may in its discretion require Buyer to call off and pay for any or all of the Goods forthwith or at such time or times as Seller may decide. (6) If Seller agrees at Buyer's request (under the Contract or otherwise) to deliver or sell the Goods to a third-party Buyer shall remain liable as principal to Seller for full performance of such third party's obligations to Seller and under the Contract generally.

**6. RISK AND TITLE** (1) All risk in the Goods shall pass to Buyer on delivery or if Buyer delays or defaults in taking delivery when delivery would otherwise have occurred. Delivery to Buyer's agent, carrier, consignee or to third party in accordance with Buyer's request shall satisfy Seller's delivery obligation to Buyer. (2) Notwithstanding delivery of the Goods or any Documents, the property in the Goods shall not pass to Buyer until Seller has received payment in full of the Price. (3) Until the property in the Goods passes to Buyer under Clause 6(2), Buyer shall (a) hold the Goods as Seller's fiduciary agent and bailee; (b) keep the Goods separate from those of Buyer and third parties, and properly stored; (c) be entitled at its risk to resell or use the Goods in the ordinary course of its business; (d) account to Seller for all proceeds of sale of the Goods or any insurance proceeds; and (e) keep all such proceeds separate from any other moneys of Buyer.

**7. INSURANCE** (1) If the Contract is a CIF sale, Seller shall insure the Goods for 100% of their invoiced value and including war, strikes and civil commotion risks. In the event of loss or damage to the Goods after loading onto the ship but prior to actual arrival and discharge at port of discharge and payment of the Price, Buyer will pay the Price against delivery of the Documents or, if the ship is lost, immediately on such loss being established. (2) Seller shall not be obliged to give Buyer notification under Section 32(3) of the Sale of Goods Act 1979 in relation to insurance of Goods during sea transit.

**8. IMPORTS** (1) Except as stated in any express terms or applicable Incoterms Buyer shall obtain all necessary import permits, authorisations and licenses and pay when required all applicable import charges, port fees, customs and excise duties and taxes on Buyer's importing the Goods. Buyer shall indemnify Seller against any loss or damage caused by Buyer's delay or breach of its obligations under Clause 8 (1). (2) Where Seller imports the Goods to or through any country Seller accepts the risk of increase in import duties payable by Seller for sixty (60) days from the date of the Contract, any increase having effect thereafter being for Buyer's account unless such increase applies solely because of Seller's delay or default and Seller is not relieved of such liability under Clause 11. Seller will advise Buyer of such increase (if any) for which Buyer is responsible by way of Price increase. Buyer may cancel the Contract in respect of Goods not yet in the course of delivery or appropriated to the Contract within seven (7) days of receipt of such advice by notice in writing to Seller, failing which Buyer shall have affirmed the Contract and accepted such increase.

**9. ACCEPTANCE AND USE** (1) Upon receipt of the Goods, Buyer shall at its cost examine the Goods to ascertain that their description, quality, weight and other characteristics are in accordance with the Contract (which examination shall, if appropriate, include weighing, assaying and analysis). All claims by Buyer that Goods are not in accordance with the Contract shall be made in writing to Seller with seven (7) days of delivery, or, in the case of alleged incomplete or non-delivery, within three (3) business days of delivery, or, of when Seller was first due to deliver if non-delivery. (2) Any use or disposal of the Goods (as defined in Clause 10) by Buyer other than storage, examination or testing for the purposes of Clause 9 or Clause 10 shall be deemed conclusive as to Buyer's acceptance of the Goods as satisfactory and in accordance with the Contract.

**10. RISK OF USE; HEALTH AND SAFETY** (1) As used in these Conditions "use" of the Goods includes (without limitation) consumption, conversion, testing, mixing with other goods, fabrication, processing or other application, alteration, packing, storing or movement; and "disposal" includes (without limitation) sale, hire, consignment, pledge, gift, delivery, release or other disposal or encumbrance of the Goods or any product or waste derived from the Goods whereby the Goods cease to be owned and in the exclusive possession of Buyer. (2) Buyer agrees to carry out all legally required and other appropriate tests of the Goods using proper care to ensure that any use and/or disposal of the Goods by Buyer will be safe, without risk to health and in compliance with all applicable laws and regulations. (3) Buyer represents and warrants to Seller that it has and will maintain all necessary or prudent licenses, authorisations and consents for its purchase, use and/or disposal of the Goods and will at all times comply with all conditions thereof and all other applicable laws and regulations in relation to its use and disposal of the Goods. (4) Buyer represents and warrants to Seller that it has and will maintain and comply with all applicable appropriate health, safety and environmental practices, procedures and records. (5) Buyer undertakes to keep accurate written records of all examination and tests of the Goods under Clause 9 or Clause 10 and to make these available to Seller for inspection or (if Seller so requires) to provide copies to Seller on Seller's request.

**11. FORCE MAJEURE** (1) Seller shall not be liable to Buyer for any delay, breach or incomplete performance or non-performance of Seller's obligations in relation to the Goods or otherwise under this Contract or these Conditions which is wholly or partially due to any cause ("Force Majeure") beyond Seller's control which Force Majeure shall include (without limitation) any of:- Acts of God, war, civil disturbances, fire, storm, flood, acts of any international organisation, state, government, federal, local or like body or authority ("public authority"), non-availability of or delay in obtaining or variation of export or import permits or authorisations, imposition by any public authority of quota or other restrictions on the Goods or the Price (including without limitation imposition or increase of export duties or taxes) at which they may be sold; non-availability, delay or diversion in availability of shipping or other transport, lock outs, strikes or trade disputes whether or not official; break down or interruption of any plant, machinery, communications or data processing services or equipment, shortage or non-availability of labour, components, raw materials or supplies of any commodity; or any combination of the foregoing; or any Force Majeure affecting any seller or supplier of any of the Goods to Seller. (2) On the happening of Force Majeure:- (a) Seller may by written notice to Buyer elect to suspend delivery of all or any of the Goods without liability to Buyer, and Buyer shall continue to perform all its obligations in respect of Goods or Documents delivered or in the course of delivery to Buyer or in relation to which Seller does not elect to suspend delivery; (b) if Force Majeure continues for ninety (90) days or Seller, acting reasonably, sooner concludes such is irrecoverable, Seller may by written notice to Buyer cancel the Contract in respect of all or any of the Goods without liability to Buyer but without prejudice to Buyer's obligations in relation to Goods or Documents delivered or in the course of delivery to Buyer; and (c) if Force Majeure ceases to apply and Seller has not exercised its right of cancellation under Clause 11(2)b Seller shall recommence deliveries of the Goods within a reasonable time (with time for shipment and/or delivery of the Goods extended accordingly) and Buyer shall duly perform Buyer's obligations as buyer of the Goods. (3) Seller shall use reasonable endeavours to advise Buyer in writing of Force Majeure or its cessation, but failure to do so shall not restrict Seller's rights under this Clause 11.

**12. SELLER'S LIABILITIES** (1) Except as expressly provided in the express terms or in Clause 12(2) of these Conditions and Section 12 of the Sale of Goods Act 1979 as regards Seller's title to the Goods, Seller gives no condition, warranty, representation or other commitment in relation to the Goods or their description, quality or fitness or suitability for any purpose, or use (whether or not Seller is aware of the same) and all other conditions, warranties or representations or other commitments in relation thereto (express or implied or whether arising by law, statute, trade usage, course of dealing or otherwise) are hereby wholly excluded. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract. (2) Seller warrants to Buyer that allowing for reasonable variations in quality (including appearance and other physical characteristics) the Goods, if sold against sample shall at delivery comply with such sample; and if sold by written description or specification set out or referred to in the express terms shall at delivery comply with such description or specification. Any samples, drawings, information on the Seller's website, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, website or brochures are produced for the sole purpose of giving an

approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force unless such samples, drawings, information on the Seller's website, descriptive matter, or advertising are incorporated in the Contract by Seller's express agreement in writing. (3) Subject as provided in Clauses 12(4) and 12(4A) in the event of any breach of Seller's warranty set out in Clause 12(2) ("Seller's Warranty") Seller shall at the Seller's discretion replace such of the Goods as do not comply with Seller's Warranty with Goods which do comply free of cost to Buyer, or reduce the Price for the Goods by such amount as shall in the reasonable opinion of Seller be fair or collect all the Goods from Buyer and refund Buyer the Price or such lesser amount as shall be fair having regard to the condition of the Goods when collected. Seller shall have no obligation to accept returned or rejected Goods except in accordance with these Conditions. (4) Seller's obligations for breach of Seller's Warranty shall be conditional upon:- (a) Buyer advising Seller in writing of any alleged breach of Seller's Warranty within ten (10) days of delivery of the Goods to Buyer; (b) Buyer having performed all its outstanding obligations to Seller in relation to the Goods; (c) Buyer providing Seller with copies of Buyer's reports of any examinations and tests of the Goods carried out by Buyer (including pursuant to Clause 9 and Clause 10) and permitting Seller (if Seller so requires) to inspect, sample and otherwise test the Goods allegedly in breach of Seller's Warranty. 4A) The Seller shall not be liable for Goods' failure to comply with any Seller's Warranty in any of the following events:- (a) the Buyer makes any further use of such Goods after giving notice in accordance with Clause 12(4)(a); (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; (c) the Buyer alters such Goods without the written consent of the Seller; (e) the defect arises as a result of wilful damage by, the negligence of, abnormal storage by or working conditions of, the Buyer; or (f) the Goods differ from Seller's Warranty as a result of changes made to ensure they comply with applicable statutory or regulatory requirements. (5) The foregoing sets forth Seller's entire liability to Buyer for breach of Seller's Warranty. All other losses arising under or in connection with the Contract or these Conditions or otherwise in respect of the Goods whether arising by statute at general law or otherwise (including any liability for special, indirect or consequential damages or loss of business or profit) are hereby excluded. Buyer accepts Seller's liability under this Clause 12 as its entire right and remedy in relation to breach by Seller of Seller's Warranty. (6) 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 the Price payable by Buyer for the Goods. (7) Seller may charge Buyer for Seller's costs and expenses incurred in investigating alleged breaches of Seller's Warranty for which Seller is not liable under this Contract. (8) Nothing contained in these Conditions shall exclude or limit Seller's liability to third parties for death or physical injury directly caused by Seller's negligence, defective products under the Consumer Protection Act 1987 or liability for fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability. (9) Buyer acknowledges that in deciding whether or not to buy, use or dispose of the Goods or any of them Buyer relies on its own judgement and evaluation and its own examination and testing of the Goods and not on any representation warranty or advice or recommendation from Seller (whether made orally in writing, on the Seller's website or otherwise). (10) Buyer further agrees that where Goods are produced in accordance with Buyer's specification, Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of Buyer's specification and that this indemnity shall survive termination of the Contract.

**13. REPRESENTATIONS AND WARRANTIES BY BUYER** (1) Buyer represents and warrants to Seller ("Buyer's Warranty") that Buyer acts at all times as principal and has full legal capacity and power to enter into and perform the Contract, that the person agreeing or accepting the Contract on behalf of the Buyer is duly authorised to do so, and that the Contract constitutes a legal valid and binding obligation on Buyer. The Buyer's Warranty shall continue to apply notwithstanding delivery of the Goods or payment of the Price.

**14. RIGHTS AND REMEDIES OF SELLER** (1) For the purpose of these Conditions "event of default" means any of: (a) Buyer failing to pay Seller in full on time the Price or any other sum due under this Contract; (b) Buyer failing to take delivery of Goods or Documents when duly tendered by Seller or if Buyer is to collect Goods or Documents Buyer failing to do so when advised the same are available for collection; (c) Buyer failing to give Seller appropriate shipping delivery or other instructions when reasonably required and in any event within two business days of Seller requesting the same; (d) any other breach or anticipatory breach or other delay, default or neglect by Buyer in performance of any of its obligations under the Contract or these Conditions which (being capable of rectification) is not rectified to Seller's satisfaction within 7 days of Buyer being advised in writing of the same by Seller; (e) cessation of business or any loss of legal capacity of Buyer or any winding-up insolvency liquidation or bankruptcy of Buyer or any corporate or judicial proceedings by or against Buyer for the purposes or in consequence thereof or the appointment of any liquidator, manager, receiver, administrative receiver, administrator or trustee in respect of all or a significant part of Buyer's assets or undertaking or any moratorium or composition with or seeking protection from creditors by Buyer; (f) where payment of the Price is by documentary credit, delay, default or neglect by Buyer or any issuing or confirming bank of such documentary credit in providing, issuing, or confirming such documentary credit or, when reasonably required by Seller, in amending or extending any such documentary credit; (g) if in Seller's reasonable opinion Buyer's ability to perform this Contract or the creditworthiness of Buyer is or is likely to be materially impaired or threatened; or (h) any of the events of default described in paragraphs (a) to (g) of this Clause 14(1) happening or being threatened (i) in relation to Buyer under any Related Contract between Seller and Buyer; or (ii) in relation to any Associate under any Related Contract between such Associate and Seller; or (iii) in relation to any surety or provider of a documentary credit for Buyer. For the purposes of this Clause 14 "Related Contract" means any contract for the sale of goods, supply of services, provision of credit or financial accommodation or surety; and "Associate" means in relation to buyer:- (i) a holding company or subsidiary of Buyer ("holding company" and "subsidiary" having the respective meanings set forth in Section 1159 of the Companies Act 2006, the "Act") and any company which is itself a subsidiary of any such holding company or subsidiary and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of: (aa) another person (or its nominee) by way of security or in connection with the taking of security or (bb) its nominee or (ii) any public authority (as defined in Clause 11(1)) by which Buyer is directly or indirectly owned, managed or controlled or any other company or undertaking directly or indirectly owned, managed or controlled by such public authority. For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights. (2) On the happening of any event of default and without limitation to any of Seller's other rights or remedies (including any right to claim damages) Seller may in its discretion at Buyer's cost do all, some or any of the following at such time or times as Seller may think fit:- (a) terminate its obligations under this Contract as seller of all or any of the Goods; (b) suspend deliveries of the Goods to Buyer; (c) apply any payments from Buyer as Seller may elect without regard to any appropriation by Buyer; (d) notwithstanding any credit period or forbearance, require immediate payment by Buyer of the Price or, if subject to finalisation, Seller's estimate of the Price (in relation to which Seller shall act in good faith) for any or all the Goods subject of the Contract whether or not delivered which Buyer shall pay on Seller's first demand; (e) charge Buyer interest in accordance with Clause 4(2) which Buyer shall pay on Seller's first demand; (f) require Buyer to provide Seller with such security for Buyer's obligations under this Contract within such time as Seller may require; (g) place any Goods appropriated to this Contract in storage at the exclusive cost and risk of Buyer; (h) require Buyer to redeliver Goods to Seller, or collect from Buyer's premises and Buyer shall so redeliver or allow collection of any Goods the property in which has not passed to Buyer and which are still in Buyer's possession or control; (i) resell the Goods or any of them at such Price as may be available but without having any duty to Buyer to resell the Goods at the best or any particular price; and (j) exercise any default rights Seller may have in respect of any Related Contract between Seller and Buyer as if Buyer were in breach thereof. (3) Seller shall use reasonable efforts to give Buyer notice of any exercise of its rights under Clause 14.2 but Seller's failure or delay in doing so shall not prejudice Seller's rights under Clause 14.2. (4) Without limitation to Seller's rights of set off at general law, Seller may set-off and apply any sums due to Seller from Buyer on any account whatsoever in or toward payment of any liability or sums due from Seller to Buyer whether in relation to this Contract or otherwise. (5) Buyer shall indemnify Seller from and against all losses, expenses, liabilities, damages (including consequential or indirect damages and loss of profits) and demands arising from or in connection with any delay, breach or non-performance by Buyer of this Contract.

**15. GENERAL** (1) No indulgence or forbearance granted by Seller and no omission or delay on the part of Seller in exercising any right, power or privilege under these Conditions or the Contract or general law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. (2) To the extent any one or more of the provisions of the Contract or these Conditions should be held invalid, illegal or unenforceable the validity, illegality and unenforceability of the remaining provisions shall not be affected or impaired. (3) Buyer may not assign this Contract or its rights hereunder. (4) No one other than a party to the Contract shall have any right to enforce any of its terms. (5) (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, or commercial courier, or fax. (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15(5)(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission. (c) The provisions of this clause 15(5) shall not apply to the service of any proceedings or other documents in any legal action.

**16. LAW AND DISPUTES** (1) The Contract and these Conditions are governed by and shall be construed in accordance with English law. (2) Any dispute or claim under or relating to the Contract (including without limitation as to its existence, terms, meaning or validity) or in relation to the Goods shall be finally determined by arbitration in London the forum for such arbitration being in accordance with the applicable rules, regulations and procedures of such arbitral body, trade association, market or exchange (if any) as is expressly referred to in the express terms or, if not, of the London International Court of Arbitration. Any such Arbitration shall be conducted in the English language. (3) If for any reason arbitrators appointed pursuant to Clause 16(2) decline to accept jurisdiction or Clause 16(2) is otherwise ineffective Buyer submits to the exclusive jurisdiction of English Courts for all disputes and claims as referred to in Clause 16(2). (4) Either party may seek enforcement of any judgement or arbitration award in any jurisdiction in which the other may carry on business or have assets situated. (5) The Uniform Law on the Formation of Contracts for the International Sale of Goods, the Uniform Law on the International Sale of Goods 1964, and the conventions relating thereto, and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. (6) Buyer for itself and on behalf of all its Associates irrevocably waives any right to claim sovereign immunity which it or they might otherwise have.