

# Terms and Conditions

The customer's attention is drawn in particular to the provisions of clause 9.

## 1. INTERPRETATION

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form.

**Supplier:** Neudorff UK Ltd, Vienna House, International Square, Birmingham International Park, Bickenhill Lane, Solihull B37 7GN, UK.

## 2. BASIS OF CONTRACT

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

**2.3** The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

**2.4** Only managers or authorised persons of the Supplier are authorised to agree an Order via telephone.

**2.5** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

## 3. GOODS

**3.1** The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

## 4. DELIVERY

**4.1** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.2** Fixed delivery dates require the Supplier's express agreement in writing in order to be binding.

**4.3** Where dates for the delivery of Goods are fixed at four months or longer following date of order, the Supplier reserves the right to increase the purchase price of the Goods.

**4.4** The Supplier shall notify the Customer in writing of any increase in the purchase price of Goods pursuant to clause 4.3.

**4.5** The Customer shall be entitled to cancel the Order for goods within 10 days of being notified of any price increase in accordance with clause 4.4, save that the Customer's right of cancellation shall not apply where price increases are due to the increase in carriage tariffs.

**4.6** If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

**4.7** The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.8** The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute partial performance of the Contract.

**4.9** Delivery of Goods shall be CPT to the Customers place of business (Incoterms 2010) unless the Supplier receives a written request from the Customer or the Goods to be delivered to a specific location in which case, the Supplier shall at its sole discretion deliver Goods to such location specified.

**4.10** Subject to clause 4.11, the Goods shall be delivered in their original packaging as detailed in the Supplier's price list.

**4.11** The Supplier shall at its sole discretion deliver the Goods using customary packaging.

**4.12** Packaging shall not be returned to the Supplier save for pallets that remain the property of the Supplier, unless such are exchangeable pallets or pallets within a pool system.

**4.13** The Customer shall be responsible for the costs associated with the disposal of packaging.

**4.14** The Goods shall be insured during transit for delivery at the request and cost of the Customer.

## 5. QUALITY

**5.1** In so far as is reasonable, the Customer must immediately inspect the delivered Goods upon receipt for any defects, incorrect delivery or quantity discrepancy.

**5.2** Goods may only be returned with prior written consent from the Supplier. Depending on the quality and condition of the Goods which have been returned, the Supplier may at its option issue a credit note to the Customer.

**5.3** The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality; and
- (d) be fit for any purpose held out by the Supplier.

**5.4** Subject to clause 5.5, if:

(a) the Customer gives notice in writing to the Supplier within 7 days of receipt of the Goods that some or all of the Goods do not comply with the warranty set out in clause 5.2;

(b) the Customer gives notice in writing to the Supplier during the warranty period within a 8 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.2;

(c) the Supplier is given a reasonable opportunity of examining such Goods; and

(d) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**5.5** If repair or delivery of replacement Goods is not possible, fails or is unreasonably delayed, the Customer can either opt to reduce or withdraw from the Contract.

**5.6** The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.3 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.4;

(b) the defect arises because the Customer failed to follow the Supplier'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 Customer alters or repairs such Goods without the written consent of the Supplier; or

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(e) the defect arises as a result of any change in the statutory or regulatory requirements.

**5.7** Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.3.

**5.8** These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6. TITLE AND RISK

**6.1** The risk in the Goods shall pass to the Customer on completion of delivery.

**6.2** Title to the Goods shall not pass to the Customer until:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

**6.3** Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2;

(e) notify the Supplier of any third party access to the Goods; and

(f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**6.4** Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of business (but not otherwise) before the supplier receives the payment for the Goods. However if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass to from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

**6.5** If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. PRICE AND PAYMENT

**7.1** The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

**7.2** All prices for Goods quoted by the Supplier are exclusive of Value Added Tax (and any other applicable sales tax) but are carriage paid to destinations within the Territory.

**7.3** The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

**7.4** Unless otherwise agreed, the Customer shall pay the amount due under the invoice in full and in cleared funds immediately upon receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

**7.5** The Customer shall enter into arrears if the amount due under the invoice has not been paid within:

- (a) 30 days of receipt of the invoice; or
- (b) the payment schedule agreed between the parties.

**7.6** The Supplier may at its sole discretion agree a discount with the Customer.

**7.7** The Supplier shall only honour any discount agreed provided that all previous invoices issued to the Customer by the Supplier have been paid in full.

**7.8** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Lloyd TSB Bank Plc's base rate from time to time. 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 Customer shall pay the interest together with the overdue amount.

**7.9** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 8. TERMINATION AND SUSPENSION

**8.1** If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

**8.2** For the purposes of clause 8.1, the relevant events are: (a) the Customer 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;

(b) the Customer 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 the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(c) (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) (being a company) 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 Customer;

(e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver; (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(g) (being an individual) the Customer is the subject of a bankruptcy petition or order; (h) a creditor or encumbrancer of the Customer 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;

(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);

(j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**8.3** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if:

(a) the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or

(b) the Supplier reasonably believes that the Customer is about to become subject to any of them; or

(c) or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**8.4** On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

**8.5** Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

**8.6** Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. LIMITATION OF LIABILITY

**9.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987; or

(e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

**9.2** Subject to clause 9.1:

(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, 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

(b) the Supplier's total liability to the Customer 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% of the total annual turnover (excl. VAT). The total annual turnover will be calculated on the basis of the ordered quantities in the last 12 month before the occurrence of damage.

**9.3** The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any breach or negligent performance or non-performance by the Customer, any claim against the Supplier by a third party arising out of or in connection with the supply of the goods or services, to the extent that such claim arises out of breach, negligent performance, or failure or delay in performance by the Customer, its employees, agents or subcontractors, and/or any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with defective goods, to the extent that the defect in the goods is attributable to the act or omission of the Customer, its employees, agents or subcontractors.

**9.4** The Customer warrants that any design, drawings, trademark or other instruction furnished or given to the Supplier shall not be the cause of the Supplier to infringe any Intellectual Property. The Customer shall indemnify the Supplier against all claims, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, penalties and legal and other reasonable professional costs and expenses) made or brought against the Supplier in respect of any infringement of Intellectual Property.

## 10. FORCE MAJEURE

**10.1** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control.

**10.2** Should delay in the delivery of any Goods due to a Force Majeure Event exceed 6 weeks, then either party may terminate the Contract.

## 11. GENERAL

**11.1** Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**11.2** Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**11.3** Property rights. Customer acknowledges and agree that Supplier is the duly authorised owner of any property right in the goods including but not limited to patents, trademarks, trade names, trade dresses, slogans and know-how, regardless of whether or not the property rights are registered, registrations are pending or whether registrations might be filed on the future or the property rights are not registrable. Nothing in the contract between the parties or in this general terms and conditions can be interpreted as a transfer of these rights or as granting of a licensee for the Customer. The Supplier does not warrant that the sale or use of the goods will not constitute an infringement of any third party's property rights. It is the responsibility of the Customer to ascertain whether the sale or use of the goods will infringe any third party rights and Supplier will not accept any liability in respect of any claim arising out of such infringement.

**11.4** Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

**11.5** Variation. 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 in writing and signed by the Supplier.

**11.6** Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

**11.7** Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).