

TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
- 1.2 **Company:** Nexus (GB) Limited.
Conditions: these Terms and Conditions of Sale.
Contract: any contract between the Company and the Customer for the sale of Goods, incorporating these conditions.
Customer: the person, firm or company who purchases the Goods from the Company.
Goods: any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them).
Sale: the sale of any Goods by the Company to the Customer.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to the sale of any and all Goods by the Company and any variation to these Conditions and any representations about any Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued and executed by the Company.
- 2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches a written acknowledgment of order to the Customer. Any quotation is valid for a period of 30 days only from its date (unless stated otherwise on the face of the quotation), provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The quantity and description of any Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 If any Goods are to be produced, designed, built or configured and/or any process is to be applied to any Goods by or on behalf of the Company and/or in accordance with any specification submitted by the Customer, then, without limiting the generality of Condition 11, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person, resulting from the Company's use of any specification so submitted.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Customer's place of business. All carriage charges in relation to the delivery of any Goods, including, without limitation, all costs in relation to transport, insurance and unloading, shall be borne by the Customer.
- 4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Should expedited delivery of any Goods be agreed, the Company reserves the right to levy an expedited delivery charge.
- 4.3 Subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or
 - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery, unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for

the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (b) the Customer suffers or allows any execution, distress or diligence, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure access at any time to any such premises for the Company, its agents and employees in order to inspect the Goods, or, where the Customer's right to possession has terminated, to recover them.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's written acknowledgment of order issued pursuant to Condition 2.5.

The price for the Goods shall be exclusive of any value added tax and shall also be exclusive of all carriage charges, pursuant to Condition 4.1.

8. PAYMENT

8.1 The price for the Goods shall be paid by the Customer to the Company within 30 days of the date of the relevant Company invoice therefor, if the Customer has been approved for a Company credit account following the receipt of satisfactory references by the Company, but unless and until a Company credit account has been so approved, payment shall be required to be made in full on a proforma invoice basis.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the Bank of England's base lending rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 Without prejudice to Condition 8.6, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 6.4 shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:

- (a) To suspend or cancel the further delivery of any Goods including, without limitation, stopping the delivery of any Goods in transit; and
- (b) To treat the Contract as having been repudiated by the Customer.

9. WARRANTIES

- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions):
- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the acknowledgment of order that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated.
- 9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:
- (a) the Customer gives written notice of the defect to the Company (and also to the carrier, if the defect is a result of damage to any Goods in transit), within 7 days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice, of examining any Goods which the Customer has alleged to be defective and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:
- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or
 - (b) the Customer alters or repairs the Goods without the prior written consent of the Company; or
 - (c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (d) the defect arises from any specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or
 - (e) the full price for the Goods has not been paid by the time for payment stipulated in Condition 8.1; or
 - (f) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods do not conform with any of the warranties in Condition 9.2:
- (a) the Company shall at its option repair or replace any such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which are defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Customer's premises (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever or howsoever caused, (including, without limitation, through any loss of data or files) which arise out of or in connection with the Contract.

11. INDEMNITY

The Customer shall hold the Company harmless and keep the Company indemnified in full and shall be liable to pay to the Company, on demand, all reasonable costs, charges, losses or expenses (including legal and other professional fees and expenses) sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those losses arising from injury to or the death of any person and loss of opportunity to deploy resources elsewhere), arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of, or breach of, any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

12. TERMINATION

12.1 Without prejudice to any other available rights or remedies, the Contract may be terminated immediately upon written notice from the Company to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
- (b) the Customer commits a recurring or material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of receipt of written notice of the breach from the Company; or
- (c) any of the events set forth in Condition 6.4 occurs or seems, in the reasonable opinion of the Company, likely to occur; or
- (d) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the Company as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.3 On termination of the Contract (however arising), Conditions 9-13 shall survive and continue in full force and effect.

13. CUSTOMER OBLIGATIONS, PERSONAL DATA AND INTELLECTUAL PROPERTY RIGHTS

13.1 The Customer is responsible for and must provide all computer hardware and operating system software necessary to use the Goods.

13.2 In order to use the Goods, the Customer may first need to activate the Goods and may during the activation process, need to provide the Company with personal data which will be used to identify and authenticate the Customer and to contact the Customer regarding the Customer's account.

13.3 Any passwords and usernames created or provided, during the activation process or subsequently, must be kept confidential by and are to be used solely and exclusively by, the Customer and the Customer acknowledges that the Customer shall be solely and exclusively responsible for preventing unauthorized access to the Customer's account.

13.4 The Company is committed to protecting the Customer's privacy. The Customer's personal data will be processed in accordance with the terms of the Data Protection Act 1998 and will be used only in connection with the use and operation of the Goods.

13.5 Other than with respect to the Customer's personal data, the Goods and all intellectual property rights contained therein and thereon are the property of the Company and/or third party licensors of the Company. The Customer may not rent or lease the Goods. The Customer may not copy, alter, modify or adapt the Goods or reverse engineer, decompile, disassemble, modify or create derivative works from the Goods. Any trademarks displayed on the Goods are the registered and/or unregistered trademarks of the Company and/or third party licensors of the Company. Under no circumstances may the Customer use copy, alter, modify, or change these trademarks or any other proprietary markings on the Goods. Nothing contained in or on the Goods should be construed as granting, by implication or otherwise, any license or right to use any intellectual property right of the Company and/or any third party licensor of the Company without the express written permission of the Company.

14. ASSIGNMENT AND SUBCONTRACTING

The Company, but not the Customer, may assign the Contract or any part of it to any person, firm or company and may subcontract any or all of its obligations under any part of the Contract.

15. FORCE MAJEURE

The Company reserves the right to defer the date of delivery, or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or otherwise through power outages, computer viruses, systems failures, spyware or malware.

16. GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly unenforceable or unreasonable it shall to the extent of such unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.
- 16.3 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.