

CONDITIONS OF SALE OF NEXUS D. M. S. LIMITED

1. These conditions shall be incorporated in the contract to the exclusion of any terms or conditions stipulated or referred to by the Buyer.

2. No variation or amendment of these conditions shall be valid unless agreed in writing and signed by or on behalf of the Seller.

3. All orders for Goods shall be deemed to be an offer from the Buyer to purchase goods pursuant to these conditions.

4. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these conditions.

1. PRICE

1.1 The Price shall be the Seller's quoted price/the price set out overleaf. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.

1.2 The Seller shall have the right (in respect of any uncompleted portion of the contract) to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the contract.

1.3 Price changes shall take effect on the date of service on the Buyer of notice of the change.

1.4 The Price of Goods shall be the price stipulated in the Seller's published list price current at the date of delivery of the Goods. The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.

2. PAYMENT

2.1 All invoices are payable in pounds sterling within 30 days of the date of the invoice. In no circumstances shall the Buyer be entitled to make any deduction or withhold payment by way of set-off.

2.3 Without prejudice to any other rights of the Seller, if the Buyer fails to pay the invoice price by the due date the Buyer shall pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgement) on a daily basis at a rate of 4% per annum over the base rate from time to time quoted by HSBC Bank plc and reimburse to the Seller all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

3. THE GOODS

3.1 The quantity and description of the Goods shall be as set out in the Seller's invoice.

3.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.

4. DELIVERY

4.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date.

4.2 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or not at all.

4.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

4.3.1 store the goods until actual delivery and charge the Buyer for reasonable costs (including insurance) of storage or

4.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable store and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract)

5. RISK AND PROPERTY

5.1 Risk of damage to or loss of the Goods shall pass to the Buyer.

5.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

5.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods

5.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the amount due under the invoice for them (including interests and costs) has been paid in full

5.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall, keep the Goods stored protected and insured and marked so that they can at all times be identified as the property of the Seller.

5.4 The Seller may at any time before title passes and without liability to the Buyer:-

5.4.1 repossess and dismantle or use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them and

5.4.2 for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.

5.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Seller and shall be held in a separate designated account and not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money

5.6 The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer

5.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

6. CLAIMS NOTIFICATION

6.1 Any claim for non-delivery of the Goods shall be notified in writing by the Buyer or the Buyer's Agent to the Company within 72 hours of receipt by the Buyer or Buyer's Agent of notification of despatch of the Goods.

6.2 Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Buyer to the Company within 72 hours of their delivery provided that the Buyer endorses the carriers delivery note with details thereof.

6.3 Any alleged defect shall be notified by the Buyer to the Company within 72 hours of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within seven days of the defect coming to the Buyer's attention.

6.4 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.

6.5 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Buyer shall, if so requested in writing by the Company, promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.

6.6 The Company shall have no liability with regard to any claim in respect of which the Buyer has not complied with the claims procedures in these conditions.

7. SCOPE OF CONTRACT

7.1 Under no circumstances shall the Company have any liability of whatever kind for:

7.2 Any defects resulting from wear and tear, accident, improper use by the Buyer or use by the Buyer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Buyer;

7.3 Any Goods which have been adjusted, modified or repaired.

7.4 The suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;

7.5 Any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company;

7.6 Any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Buyer before the Contract is made; or

7.7 Any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials or components are of a quality equal or superior to those originally specified.

8. EXTENT OF LIABILITY

8.1 The Company shall have no liability to the Buyer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:

- for death or personal injury resulting from the Company's negligence; and
- as expressly stated in these conditions.

8.2 If the Buyer establishes that any Goods have not been delivered, have been delivered damaged or do not comply with their description the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Buyer credit for their invoice value or repair any damaged Goods.

8.3 If the Buyer establishes that any Goods are defective the Company shall, at its option, replace with similar goods or repair any defective Goods, allow the Buyer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture, assign to the Buyer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.

8.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

8.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Buyer against or in respect of such other or other parts of the Goods.

8.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Buyer or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.

8.7 In no circumstances shall the liability of the Company to the Buyer under this condition exceed the invoice value of the Goods.

8.8 The Company shall not be liable for the acts or omissions of any third parties to the Contract under the Contracts (Rights of Third Parties Act) 1999.

9. CONFIDENTIALITY

The Buyer shall not at any time divulge or use any unpublished technical information deriving from the Seller or any other confidential information in relation to the Seller's affairs or business or method of carrying on business.

10. CANCELLATION

Orders for Goods which have to be made especially for the Buyer will be charged in full unless written notice of cancellation is received not later than [2 weeks] before the expected delivery date quoted in the Seller's order acknowledgement and manufacture of them or any components for them has not commenced at the date of that notice.

11. FORCE MAJEURE

The Seller shall not be liable for any failure in the performance of any of its obligations under this invoice caused by factors outside its control.

12. LAW AND JURISDICTION

This Contract shall be governed by English law and the Buyer consents to the exclusive jurisdiction of the English courts in all matters regarding it.

13. NOTICES

13.1 Any notice given under this deed shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail or air mail;
- by e-mail or facsimile transmission (the latter confirmed by post); or
- by any other means which any party specifies by notice to the others.

13.2 Each party's address for the service of notice shall be the address specified on the Order Acknowledgement or such other address as is specified by notice to the others.

13.3 A notice shall be deemed to have been served:

- if it was served in person, at the time of service;
- if it was served by post or air mail, [48] hours after it was posted; and
- if it was served by e-mail or facsimile transmission, at the time of transmission.

14. ARBITRATION

14.1 This Contract is subject to the law of England & Wales.

14.2 If any dispute or difference shall arise between the parties as to the meaning of this contract or any matter or thing arising out of (or connected with) this contract then it shall be referred to the determination of an arbitrator to be appointed by agreement of the parties or (in default of agreement within fourteen days of the service upon one party of a written request to concur in such appointment) by the President for the time being of the Chartered Institute of Arbitrators.

15. LIEN

The Seller shall have a lien on all the Buyer's property in the Seller's possession for all amounts due at any time from the Buyer and may use, sell or dispose of that property as agent for and at the expense of the Buyer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing in the Buyer. On accounting to the Buyer for any balance remaining after payment of any amounts due to the Seller and the costs of sale or disposal the Seller shall be discharged of any liability in respect of the Buyer's property.

16. TERMINATION

The Seller may at its discretion suspend or terminate the contract if the Buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Seller or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Seller bona fide believes that any of those events may occur, and in the case of termination may forfeit any deposit paid.

17. GENERAL

17.1 The Company may sub-contract the performance of the Contract in whole or in part.

17.2 The Buyer shall not assign or sub-let this contract in whole or in part.

17.3 The Company shall have a lien on all the Buyer's property in the Company's possession for all amounts due at any time from the Buyer and may use, sell or dispose of that property as agent for and at the expense of the Buyer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing in the Buyer. On accounting to the Buyer for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal the Company shall be discharged of any liability in respect of the Buyer's property.

17.4 If the Goods are manufactured in accordance with any design or specification provided or made by the Buyer the Buyer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.

17.5 Except for any which is expressly agreed to be included in the Goods all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any