

CONDITIONS OF PURCHASE

1. General

a. The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: Néos Engineering Limited [NEL] (Company No. 473086) the registered office of which is at Pedmore Road, Dudley, West Midlands, DY2 0RD.

Contract: The Order and the Seller's acceptance of the Order.

Goods: Any goods agreed in the Contract to be bought by the Buyer from the Seller (including any part or parts of them).

Order: The Buyer's written instruction to supply the Goods, incorporating these conditions.

Seller: The person, firm or company who accepts the Buyer's Order.

Services: The services agreed in the Contract to be provided by the Seller to the Buyer.

b. All Orders are made by the Buyer on the following terms and conditions and all other conditions contained in any quotation or otherwise are excluded from the contract or variation thereof. Each Order for Goods from the Buyer to the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer. No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

c. Delivery by the Seller shall, of itself, constitute an acceptance of the terms and conditions of the Order where acceptance shall not previously have been sent to the Buyer.

2. Variations

No variation extension or cancellation of these conditions shall be valid unless agreed in writing by the Buyer.

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3. Price

The price stated in the Order for the Goods or Services may only be varied by prior agreement in writing between the Buyer and the Seller. The price, unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges. No variation in the price nor extra charges shall be accepted by the Buyer.

4. Time

The time for the completion of the Goods or Services and delivery dates specified in the Order shall be of the essence. Failure to deliver the Goods

in accordance with paragraph 5 hereunder on or before the date stated in the Order shall entitle the Buyer to cancel the Order without notice. Notwithstanding such failure to deliver on the part of the Seller, and whilst the Buyer reserves the right to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date and recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier, the Buyer may insist where Goods are not delivered on time, or which appear likely by reason of the Seller's delay, not to be delivered within that time, that the Goods be delivered by the fastest possible method of delivery at the expense of the Seller.

5. Delivery

Delivery of Goods, carriage paid, shall be made to the Buyer's premises or as otherwise specified by the Buyer. The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. Delivery shall be affected when the Goods have been unloaded (at the Seller's risk and expense). Goods or material supplied in excess of quantities ordered are returnable at Seller's risk and expense. Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated. The Buyer shall not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. The Buyer shall also have the right to reject the Goods as though they had not been accepted for 28 days after any defect not apparent on reasonable inspection in the Goods has become apparent.

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6. Payment

The Seller shall invoice the Buyer upon, but separately from, despatch of the Goods to the Buyer. Payment will be made in accordance with the terms stated in the Order. No payment of or on account of the order shall constitute any admission by the Buyer as to the performance by the Seller of his obligations. The Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

7. Materials, Specifications and Performance

The Seller undertakes to supply Goods which in respect of chemical composition, physical and mechanical properties, dimensional and shape tolerances, surface finish and delivery quantity tolerances, conforms to the British Standard applicable at the date of the Order and specification as contained in the Order. The Buyer's rights under these conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.

8. Chemical Analysis and Physical Test Certificates

If not specified in the Order, the Seller undertakes to supply on request at any time up to 12 months from the date of supply of the Goods, chemical analysis and test certificates.

9. Inspections

Any inspector or representative authorised by the Buyer shall be entitled to inspect the Goods at any reasonable time at the Seller's works or where applicable at the works of any sub-contractor, providing that such inspection or right to inspect shall not constitute acceptance or approval of the Goods. The Buyer shall have the right to reject all or any portion of the works that it considers defective in workmanship, material or design. Where rejected Goods are returned to the Seller they will be forwarded at the Seller's expense and risk. The Seller shall immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to require and witness further testing and inspection. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract. If any of the Goods fail to comply with the provisions set out in condition 7 the Buyer shall be entitled to avail itself of any one or more remedies listed in condition 12.

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10. Buyer's Property

All jigs, tools, patterns, drawings and free issue material supplied by, or at the expense of the Buyer shall remain the Buyer's property and must be returned in good order and condition on request or on completion of the Order, and shall not be copied or used for any purpose other than for carrying out the Order. Without prejudice to any of its other rights and remedies the Buyer shall have the right upon termination of the Order for whatever reason, to enter upon the premises of the Seller and repossess and take any property belonging to the Buyer, and the Seller undertakes to secure for the Buyer the same rights against the Seller's sub-contractors.

11. Free Issue Material

The Seller shall be responsible for the safe keeping of any free issue material supplied by the Buyer whilst it is in the Seller's possession. If the said free issue material is damaged in any way whilst in the possession of the Seller whether due to fault on the part of the Seller or otherwise and is rendered unsuitable for the specified performance of the Order, the Seller shall at its own expense replace the said free issue material and shall indemnify the Buyer against any losses sustained by it as a result of damage to the said material.

12. Cancellations

Where Goods or services are supplied which do not conform with the Order and the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

To rescind the Order,

- a. To reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller,
- b. At the Buyer's option to give the Seller the opportunity at the Seller's expense either to replace the Goods, and where the Seller has not replaced or rectified same within a reasonable time after having been notified thereof, the Buyer shall have the right to cancel the Order in whole or in part as the case may be and to secure replacement Goods or Services elsewhere, and all expenses so incurred in so doing shall be paid by the Seller, and
- c. To claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

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13. Property

Subject to the Buyer's right of rejection, the property in the Goods shall pass to the Buyer upon delivery, or upon the making of any progress payment, whichever shall come first. Regardless of the passing of property, the risk shall remain with the Seller until acceptance by the Buyer.

14. Sub-Contracting

The Seller shall not sub-contract without the written authority of the Buyer. Where the Buyer agrees to the placing of sub-contracts the rights of inspection and rejection contained herein must be preserved therein on behalf of the Buyer and a copy of all such sub-contracts must be forwarded within seven days of being entered into.

15. Site Work

Where the Order requires the Seller, its employees, sub-contractors, or agents to carry out work within the Buyer's premises or sites, the Seller shall ensure that throughout the period that such personnel are within the Buyer's premises or sites, all relevant statutory rules and regulations will be observed in the carrying out of the said rules in addition to the Buyer's own rules and regulations.

16. Indemnity

The Seller shall indemnify the Buyer in full against all direct, indirect and consequential losses (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), liabilities, claims, costs and expenses (including legal and other professional fees and expenses) in respect of:

- a. Any loss or damage to any property (including that of the Buyer), or
- b. Injury to or the death of any person (including any employee of the Buyer) that may arise or occur as a result of either the Goods not being in accordance with the express or implied provisions of the Order, or
- c. Any act or omission of the Seller, its agents or sub-contractors on the Buyer's premises. Should they enter these premises for any purpose connected with the performance of the Order, save insofar as such losses, liabilities, claims, costs and expenses are attributable solely to the negligence of the Buyer, or
- d. Defective workmanship, quality or materials, or

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- e. An infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods, or
- f. Any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

17. Intellectual Property

Except to the extent that they embody designs prepared by the Buyer, the Seller warrants that neither the Goods nor the Buyer's use thereof will infringe any patent, registered design, trademark, or any other protected right, and undertakes to indemnify the Buyer against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

18. Guarantee

The Seller shall within a period of 12 months of delivery of the Goods replace with all possible speed free of charge (or elect to pay the cost of local replacement) all Goods or parts thereof which are faulty due to faulty material, workmanship, or design (other than designs made or furnished by the Buyer). Replacements by the Seller shall include the cost of replacement parts and all other costs in connection therewith.

19. Termination

Without prejudice to clause 12 of these conditions, the Buyer may by written notice cancel the Order and the Contract if:

- a. The Seller being an individual becomes bankrupt or being a company goes into liquidation or suffers a receiver or an administrator to be appointed, or
- b. The Seller commits a material breach of any of the terms and conditions of the Contract, or
- c. Any distress, execution or other process is levied upon any of the assets of the Seller, or
- d. The Seller ceases or threatens to cease to carry on its business, or

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- e. The financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- f. without payment of compensation to the Seller and without prejudice to any claim or right that the Buyer might otherwise make or exercise.

20. Information

All information of whatever nature supplied or communicated to the Seller in connection with the Order shall remain the Buyer's property and shall be regarded as confidential and shall not, without the Buyer's consent, be published or discharged to any third party or made use of by the Seller except for the purpose of executing the Order.

21. Service of Notice

All notices to be served upon the Seller shall be deemed to be properly served if sent by post, by recorded delivery to the address given in the last written communication received from the Seller.

22. Health and Safety at Work Act 1974

The Seller undertakes that he has disclosed to the Buyer any information or requirement affecting the Buyer under the Health and Safety at Work Act 1974, and notwithstanding such disclosure, the Seller undertakes that any written information supplied pursuant to the said Act has been delivered to the Buyer's office with whom the Seller is dealing.

23. Confidentiality

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

24. Legal Construction

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The formation, existence, validity and performance of the Contract shall in all respects be governed under English law. The titles of these clauses shall not affect their legal construction. The parties submit to the exclusive jurisdiction of the English courts.

25. General

- 25.1. Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.
- 25.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 25.3. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 25.4. Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 25.5. 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.

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