

CONDITIONS OF SALE

1. General

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

Buyer: The person, firm or company who purchases the Goods from the Company.

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

Contract: Any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

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

1.2 All contracts and orders are accepted by the Company on the following conditions only to the exclusion of all terms contained in any document issued by the Buyer. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract whether or not such document is referred to in the Contract. No variation, extension or cancellation of these conditions shall be valid, unless agreed in writing by a director of the Company. The Buyer 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. Quotations

2.1 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.2 Unless previously withdrawn, the quotation will remain open for the period stated therein, or where no period is so stated for thirty days after its date. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer.

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3. Price

The quotation is based on (A) the present cost of materials, transport and labour and (B) the Contract being executed during normal working hours. The Company shall be entitled to adjust the Contract price of the Goods, or work and materials, in the event of any variation in the cost to the Company of supplying the same or any part thereof caused by any increase in the cost of materials, wages or any other reason whatsoever beyond the Company's reasonable control between the date of acceptance of the order and its completion.

4. Time

- 4.1 The time specified for the completion of the Contract is an estimate only and shall be calculated from the date on which the Company receives the Buyer's written order or from the date on which the Company receives all the information and drawings necessary to enable the Company to proceed, whichever date may be the later.
- 4.2 The Company will use its best endeavours to despatch by the date given, but will not accept any liability for failure to do so, should despatch be hindered or delayed by the Buyer's instructions or lack of instructions, or by any cause beyond the Company's reasonable control (including strikes, lockouts, fire, accidents, breakdowns, war, riot, government interference, failure or shortage of labour, fuel, gas, electricity or manufacturing requisites, interruptions of transit or defective materials). In the event that any delay is caused, a reasonable extension of time shall be granted by the Buyer.

5. Delivery

- 5.1 Unless otherwise agreed delivery will be ex works (unpacked and unloaded) and any packing, loading, freight or insurance arranged by the Company will be charged extra. The Buyer shall take delivery of the Goods within seven days of the Company giving it notice that the Goods are ready for delivery. Time for delivery shall not be of the essence.
- 5.2 Where the Contract provides for delivery of the Goods to site, the method of transport of the goods shall be at the discretion of the Company and the Buyer will arrange for the Goods to be off-loaded promptly on their arrival at site. The Buyer must provide and bear the cost of clear access both to and at the point of delivery together with means of off-loading.
- 5.3 When the Contract includes delivery, the Company will repair, or replace at its option free of charge, Goods damaged in transit provided the carriers and the Company shall both receive written notification of such damage within three days of delivery but not otherwise.

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- 5.4 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 Buyer to terminate or rescind the Contract unless such delay exceeds 180 days. In the event that the delay exceeds 180 days, the Company shall be entitled to cancel the Contract without liability.
- 5.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- Risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - The Goods shall be deemed to have been delivered; and
 - The Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Payment

Prices quoted are net of any applicable value added tax (for which the Buyer shall be additionally liable), unless otherwise agreed, subject to satisfactory Trade References. Credit Accounts shall be due for payment not later than the end of the month following the month of despatch or notification that the goods are ready for despatch, whichever is the sooner. Time for payment shall be of the essence. The Buyer 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 Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer. No payment shall be deemed to have been received until the Company has received cleared funds. In default of timely payment, the Company shall be entitled to charge interest at the rate of 8% per annum above the base rate for the time being at HSBC UK PLC, and shall be entitled to suspend work, if any remaining on the Contract, until payment in full is made. Any such suspension shall entitle the Company to the appropriate adjustment of the despatch date.

7. Property

Property in or title to Goods and materials supplied by the Company shall not pass to the Buyer until all monies due and owing from the Buyer to the Company on any accounts have been paid in full. The Company shall be entitled to recover payment for the Goods

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notwithstanding that ownership of any of the Goods has not passed from the Company. Until ownership of the Goods has passed to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee, store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property and shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods. The Buyer shall 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 Buyer shall produce the policy of insurance to the Company. The Company reserves the right to reject any material found unsuitable. The Buyer hereby authorises the Company to enter any of the premises of the Buyer for the purpose of repossessing any Goods or materials supplied under the Contracts and in respect whereof the property therein has not passed to the Buyer.

8. Risk

Risk in respect of Goods and materials supplied by the Company shall pass at the time the Buyer is notified that the Goods are available for collection at the Company's premises or, where applicable and agreed between the parties in writing, upon delivery of the Goods to the Buyer. Where the Goods and materials are delivered by the Company's own transport, delivery shall be deemed to take place when the Goods are unloaded from the delivery vehicle. Where Goods and materials are delivered by other methods of transport, delivery shall be deemed to take place when the Goods and materials are loaded onto the road or rail vehicle used.

9. Tests and Inspection

Goods manufactured by the Company are carefully inspected and, where practicable, submitted to standard tests at the Company's works before despatch. If special tests or tests in the presence of the Buyer or the Buyer's representative are required, these will be charged extra. In the event of any delay on the Buyer's part in attending tests after seven days notice that the Company is ready, the tests will proceed in the Buyer's absence, and shall be deemed to have been made in the Buyer's presence. All tests must be made at the Company's works or in the case of Goods not of the Company's manufacture at such other place as may be specified by the Company.

10. Drawings and Specifications

10.1. Where the Contract requires the submission of drawings and specifications to the Buyer prior to their implementation, the Buyer shall be obliged to return them to the Company either approved or with a complete set of comments within fourteen days of the date

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of their submission. The Company will also, at the Buyer's expense, supply such additional documentation as the Buyer may reasonably request.

10.2. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's 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.

11. Free Issue Material / Buyer's Property

11.1. Materials, goods, plant, tools, equipment or any other property supplied by or on behalf of the Buyer to the Company for carrying out the Contract shall remain at the Buyer's risk at all times whilst it is on the Company's premises, or in transit, or otherwise under the Company's control. The Company will not under any circumstances be liable for any consequential loss or damage arising there from. The Buyer is advised to insure all such property for all risks.

11.2. The following conditions apply to the following processes of free issue material: cold pressing, machining, rolling and fabricating: -

11.2.1. In compliance with section 6 of the Health and Safety at Work Act 1974, a Buyer supplying free issue materials shall make available to the Company in writing all relevant information relating to the results of any relevant tests carried out on, or in connection with, the materials supplied to us. Furthermore, the Buyer shall make the Company aware in writing, of any conditions necessary to ensure that the Buyer shall use its best endeavours to supply the Company with free issue material the tensile of which free issue materials supplied to it will be made safe and without risks to health when properly used.

11.2.2. Shall be in the tensile range of 26/30 tonnes in no case shall the Company be supplied with material with a tensile in excess of 33.5 tonnes.

11.2.3. The Buyer (or its supplier) shall ensure that the 'grain' of the material should run at 90 degrees to the required pressing operation i.e. Material to be pressed across the 'grain' and not with the 'grain'. Where more than one bend is required and the 'grain' and the material for one of these bends runs parallel with the pressing operation, no responsibility will be accepted by the Company for cracking or breaking along this bend.

11.2.4. Materials SHOULD NOT be supplied to the Company having any cut-outs, slots, holes, etc., local to the required bend lines. In such cases distortion may occur until the Buyer accepts that the Company shall not be liable for such distortion.

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11.2.5. Any work carried out by the Company on any faulty material or material not confirming with conditions, 2, 3 and 4 will be chargeable at cost.

11.3. The Company reserves the right to reject any free issue material deemed unsuitable for the specified performance of the Contract. Suppliers of Free Issue Material are required to make available to the Company in writing adequate information relating to the results of any relevant tests carried out on or in connection with the material supplied to the Company. Furthermore, the Company is to be made aware of any conditions necessary to ensure that free issue materials supplied will be safe and without any risks to Health when properly used.

12. Lien

Free Issue Material delivered to the Company will be worked and held by the Company subject to:-

12.1. To a lien on such Goods for monies due in respect of any work carried out to them and

12.2. To a general lien on such Goods for any monies charged or expenses due to the Company from the Buyer for any work carried out by the Company to any other Goods on behalf of the Buyer, and if any lien is not satisfied within a reasonable time from the date upon which the Company give notice of exercise of its lien to the Buyer, the Goods may be sold by the Company and the proceeds of sale applied in or towards satisfaction of every such lien, and all proper charges and expenses in relation thereto, and the Company will account to the Buyer for any balance. Any such lien shall be in addition and without prejudice to any other right the Company may otherwise make or exercise.

13. Variations

Subject to agreement by the Company, the Buyer may make variations to the Goods the subject of the Contract which, in the Company's opinion, do not significantly affect the Company's overall manufacturing programme, by giving to the Company reasonable notice in writing thereof, on receipt of which the variations will be implemented. The Company will within reasonable time of the notification of any such variation advise the Buyer of the appropriate adjustments to the Contract price and despatch date, and unless the Buyer notifies the Company in writing to the contrary within thirty days of such advice, the adjustments shall be deemed to have been accepted by the Buyer.

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14. Warranty

- 14.1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 14.2. The Company warrants that (subject to the other provisions of these conditions) upon delivery and for a period of 12 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 14.3. In the event of any of the Goods proving to the satisfaction of the Company to be defective as a result solely of the Company's faulty workmanship the Company will at its option and expense either remedy the defect or replace the Goods and where applicable return them to the Buyer carriage paid, provided that: -
- The Goods have not been used otherwise than in accordance with the conditions supplied or approved by the Company;
 - No repairs or alterations to the Goods have been affected without the Company's knowledge and approval; and
 - The Buyer has notified the Company in writing of the defect within a period of one year from date of despatch or deemed despatch of the Goods and has, if the Company so requires, returned the Goods to the Company carriage paid, or has made the Goods sufficiently accessible on site to enable the repairs or replacement of the defective parts or parts thereof to be carried out.
- 14.4. The Company will take all reasonable precautions to ensure that materials, components and finished Goods are of good quality, but where the Goods or parts thereof concerned are not of the Company's manufacture, then the Company will only be liable to the Buyer for defects therein to the extent of the Company's entitlement against the manufacturer or supplier thereof.
- 14.5. Except as aforesaid, all conditions, warranties and representations, whether express or implied, statutory or otherwise in relation to the Goods are hereby excluded and the Company shall not be responsible for any consequential losses or damages save as set out in clause 18 below.

15. Performance

- 15.1. Any performance figures are based upon the Company's experience and are such as the Company expect to achieve, but the Company cannot accept responsibility for the failure of the Goods to meet any performance figures other than those specifically guaranteed in writing by the Company in the Contract and which are not met during tests conducted by or under supervision of

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and in accordance with the reasonable requirements of the Company. In the event that the Goods fail on test to meet any such performance figures the Company shall be entitled to be given a reasonable time and opportunity to rectify the Goods.

15.2. Goods shall not be returned after having been passed by an inspection authority appointed by or on behalf of the Buyer.

16. Cancellation

Contracts may be cancelled only with the Company's prior written consent and, in the event of cancellation being accepted, the Buyer will be required to make payment for all costs incurred by the Company prior to such cancellation, including an allowance for overheads and profit on material manufactured, or partly manufactured, and for any raw material specifically obtained for the Contract required to be cancelled.

17. Determination of Contract

If the Buyer shall make default in or commit a breach of Contract or of any other of its obligations to the Company or if distress of execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Buyer is a limited Company and any resolution or petition to wind up such Company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver or administrator shall be appointed, the Company shall have the right forthwith to determine any contract then subsisting, and upon written notice of such determination being posted to the Buyer's last known address, any subsisting contracts shall be deemed to have been determined without prejudice to any right the Company may otherwise make or exercise.

18. Liability

18.1. The Company will indemnify the Buyer for any loss or damage directly arising from an accident caused by the negligent act of the Company or its agents or its employees provided that the total liability in respect of such negligent act or a series of acts arising from one negligent act shall be limited to £1,000,000.00. Nothing herein contained shall exempt the Company from liability for death or personal injury arising from the negligence of either the Company or its agents or employees.

18.2. Save as aforesaid the Company hereby excludes liability for all or any representations, terms, conditions or warranties, whether express or implied, relating to the Goods. In no event shall the Company be liable for consequential loss or damage, howsoever caused, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct,

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indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

19. Site Works

Where the Contract requires the Company, its employees, sub-contractors or agents to carry out work within the Buyer's premises or sites, the Buyer 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 Company's own rules and regulations.

20. Subcontract

The Company reserves the right to sub-contract the whole or part of the work or the supply of all or any of the equipment or material for the contract.

21. Intellectual Property

The Buyer warrants that none of the designs, specifications or instructions given to the Company by the Buyer or any person on the Buyer's behalf will cause the Company to infringe any letters patent, registered designs, trade marks, copyright or other industrial rights in the course of fulfilling its obligations under the Contract, and undertakes to indemnify the Company from all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

22. Assignment

The obligations, liabilities, rights or benefits or any part thereof arising out of any sale or Contract hereunder are not assignable without the previous consent in writing of the Company.

23. Exports

In respect of equipment or materials being supplied for export from the United Kingdom "Delivery" shall in these conditions and any variation or other document relating thereto be deemed to mean delivery F.O.B. at a United Kingdom Port of the Company's choice, where Goods are sold FOB, the responsibility of the Company shall cease immediately the Goods are placed on board Ship and the Company shall be under no obligation to give the Buyer the notice specified in Section 32 (3) of the Sale of Goods Act 1979.

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24. Information

All information of whatever nature supplied or communicated to the Buyer in connection with the Contract shall remain the Company's property and shall be regarded as confidential and shall not without the Company's consent be published or discharged to any third party or made use of by the Buyer except to such extent as is necessary for the internal assessment of the quotation and the supply, installation, operation and maintenance of the Goods.

25. Service of Notice

All notices to be served upon the Buyer 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 Buyer. Communications shall be deemed to have been received two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting).

26. Legal Construction

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.

27. General

- 27.1. 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.
- 27.2. 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.
- 27.3. Failure or delay by the Company 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.
- 27.4. Any waiver by the Company 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.

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27.5. 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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