

KNF NEUBERGER UK LTD

TERMS & CONDITIONS OF SALE

1. CONTRACT

In these Conditions "the Company" means KNF Neuberger UK Ltd, Station Lane Industrial Estate, Witney, Oxfordshire, OX28 4FA ("the Premises") and "the Buyer" means any person placing an order with the Company for the purchase of goods or the provision of services as specified overleaf (together defined as "Goods"). In relation to the provision of services, selling and delivery (and cognate words) shall mean supply.

A contract under which the Company shall sell Goods to the Buyer shall only come into existence once the Company has:

- (a) received the Buyer's order which, if a quotation has been issued, must be within any time specified in it; and
- (b) sent the Company's Acceptance of Order form to the Buyer; and until such time the Company shall be under no obligation to the Buyer.

The contract comprised by these Conditions and any document referred to overleaf and the particulars shown overleaf and upon the Company's Quotation and/or Acceptance of Order Forms ("The Contract") shall comprise the entire contract between the Company and the Buyer. Any other terms, conditions or provisions whether proposed by the Buyer orally or in writing shall be of no effect and the terms of this Contract shall override and supersede any previous agreement or arrangement between the Company and the Buyer in relation to the supply of the Goods.

The Company shall accept the Buyer's order and supply Goods in it on the terms of this Contract and on none other unless expressly stated in writing and signed by a director of the Company. In particular:

- (a) no employee, agent representative or consultant of the Company is authorised to make any representation on behalf of the Company in respect of any matter to which the Contract relates and no such representation shall impose any obligation upon the Company whether in respect of negligence or otherwise;
- (b) directors of the Company are only authorised to make written representations on behalf of the Company in respect of any matter to which the Contract relates;
- (c) any oral representation made by or on behalf of the Company prior to the date of this Contract is withdrawn;
- (d) information contained in the Company's publicity material, photographs, advertisements and catalogues and in correspondence between the Company and the Buyer before the date of this Contract shall not unless specifically agreed in writing and signed by a director of the Company, form part of this Contract

Unless stated in this Contract or expressly agreed in writing and signed by a director of the Company, no term, condition or warranty (whether express or implied) as to the nature, quality or fitness of the Goods or their conformity with any sample shall be part, or a collateral term of, any contract between the Company and the Buyer.

Any performance figures or details of capacity or consumption of the Goods which do form part of this Contract are approximate only and are not guaranteed.

The Company may assign the benefit of sub-contract, delegate or transfer any obligation contained in this Contract.

2. PRICES

The Company will endeavour to maintain the prices shown overleaf, but may alter its prices without notice both before and after acceptance of the Buyer's order to take account of changes in the Company's costs. All Goods will be charged for at prices current at time of delivery.

The Company shall, in particular, have the right to increase prices to reflect any increase in its costs resulting from:

- (a) any alteration in or addition to the Buyer's requirements;
- (b) the Buyer's instructions or lack of instructions;
- (c) any interruptions, delays or additional or overtime work arising from causes for which the Company is not directly responsible;
- (d) any increase in (or new) tax, duties or levies (including VAT) imposed on the Goods;
- (e) fluctuations in foreign exchange rates.

The prices shown overleaf do not include any applicable VAT or other duties or taxes which may be chargeable in connection with the supply of the Goods to the Buyer which the Buyer shall pay in addition to the price. These prices are (unless otherwise specified overleaf) ex-works the Company and exclude any carriage, packing, insurance, delivery or transportation charges.

3. DELIVERY

The Company shall use its best endeavour to deliver (or arrange for the delivery of) the Goods on the date and in the manner specified overleaf but time shall not be of the essence in relation to delivery. The Company shall not be liable to the Buyer for loss or damage resulting from delay in delivery or failure to deliver from any cause including negligence.

If the Goods are not available for delivery to the Buyer on the agreed date of delivery, then the Company shall have the right to substitute other Goods of similar or equivalent nature and to vary the price accordingly.

The Company shall pack and secure the Goods in such a manner as to reach the agreed point of delivery in good condition under normal conditions of transport.

Unless otherwise agreed in writing the Company may use any means it may select for the transportation of the Goods and will deliver the Goods in such batches as it considers expedient.

If this Contract is for the delivery of the Goods by instalments then failure by the Company to deliver one or more instalments shall not entitle the Buyer to terminate or suspend this Contract and/or reject those or subsequent deliveries.

If the Buyer agrees to collect the Goods from the Premises, delivery shall be effected and risk shall pass when the Goods are handed to the Buyer or its carrier at the Premises. The Company will notify the Buyer when the Goods are ready for collection and the Buyer agrees to collect the Goods within three working days of such notice.

If the Company agrees to deliver (or to arrange delivery of) the Goods to the Buyer's premises, delivery shall be effected and risk shall pass when delivery is tendered at the Buyer's premises during normal working hours.

If the Company agrees to deliver for Goods FOB named United Kingdom port, then:

- (a) The Buyer will at its own expense charter a vessel or ensure the necessary space on board a vessel ("the Vessel") and give the Company notice of its name, loading berth and loading dates in accordance with the terms of this Contract.
- (b) The Company shall deliver the Goods on board the Vessel on the date or within the period agreed, and delivery shall be effected and risk in the Goods shall pass to the Buyer when the Goods have passed the Vessel's rail at the named port of shipment.
- (c) The Buyer will bear all costs relating to the carriage of the Goods incurred prior to their passing the Vessel's rail. The Company will at the Buyer's expense obtain any export licence or governmental authorisation needed for the export of the Goods from the United

Kingdom, and the Buyer will provide the Company at its expense with any documentation or information needed therefore. The Buyer will bear all costs relating to the carriage of the Goods incurred after their passing the Vessel's rail, and will at its expense obtain any import licence or other government authorisation needed for the import licence of the Goods into countries of transit or destination. The Buyer will furnish details thereof to the Company, which until receipt of such information will not be obliged to deliver the Goods.

4. STORAGE AND CARRIAGE

If the Buyer does not accept delivery of the Goods in accordance with paragraph 3 above, the Company may arrange for the storage of the Goods on the Buyer's behalf but without liability for any loss or damage occurring after the agreed delivery date. The Buyer shall, in addition to the price, pay on demand all reasonable charges for storage, insurance and transport occasioned by its failure to take delivery.

The Company shall not (unless the Goods are collected by the Buyer from the Premises) be liable for any storage on receipt by the Buyer or (in any event) for any loss or damage to Goods in transit. If, however, the company is notified of a claim relating to loss or damage to Goods in transit within such time limit as the carrier may impose it will endeavour to pass onto the Buyer the benefit of any claim the Seller may have against the carrier.

5. RESERVATION OF TITLE

The risk in the Goods supplied to the Buyer shall pass to the Buyer on the date of delivery as provided in paragraph 3.

Until full payment (together with VAT) has been received by the Company for the Goods:

- (a) the property in and ownership of the Goods shall remain in the Company and the Buyer may only hold the Goods on the terms of this Contract and in a fiduciary capacity as bailee for the Company;
- (b) the Buyer shall keep and store the Goods separately and in such a manner as to enable them to be identified as the Company's property. The Buyer shall keep the Goods in good condition and shall fully insure them on the Company's behalf for an amount which is not less than the purchase price. The proceeds of such insurance shall be held on trust for the Company;
- (c) the Buyer shall have a licence ("the licence") to sell the Goods in the ordinary course of its business until the happening with reference to the Buyer of one or more of the events referred to in paragraph 12.
- (d) the following provisions shall apply to this Licence:
 - (i) the Buyer shall sell the Goods as agent for the Company and the proceeds of sale shall forthwith be paid to the Company and, pending payment, shall be held on trust for the Company in a separate bank account; and
 - (ii) The Company may terminate this Licence at any time by giving written notice to the Buyer; and
 - (iii) the Buyer's terms of sale shall be such that the company is not liable to the Buyer or to any third party for any defects in the Goods or for any loss or damage arising out of the use, possession or re-sale of the Goods.
- (e) The Company may at any time repossess the Goods and, for this purpose, the Buyer grants the Company an irrevocable licence to enter any of the Buyer's premises and to remove the Goods. All costs incurred by the Company in repossessing the Goods, shall be borne by the Buyer.

6. PROPRIETARY RIGHTS

All patent, trademark, registered design, copyright, trade secret and other proprietary and intellectual property rights in the Goods and in other written or oral information provided by the Company to the Buyer for the purposes of this Contract shall at all times remain vested in the Company. The Buyer shall not directly or indirectly acquire any present or subsequent acquired right in relation to the Goods.

The Buyer undertakes to treat as confidential all confidential information contained or embodied in the Goods together with all other confidential information which the Company may make available to it (together defined as "the information").

The Buyers agrees that it will not use or exploit any part of the information for any commercial gain other than for purposes specifically related to the Buyer's use of the Goods.

The Buyer agrees that it will not (save where and to the extent that it is required by law so to do the information becomes public knowledge other than as a result of any wrongful disclosure of the Buyer) without the prior consent of the Company divulge any part of the information to any person other than to

- (a) such of the Company's employees who need to know the same in order to perform their duties; or
- (b) any person engaged by the Buyer to maintain the Goods; provided that in both cases:
 - (i) such person is made aware prior to disclosure of the proprietary and confidential nature of the information; and
 - (ii) such person owes an express duty of confidence to the Buyer, which the Buyer undertakes to enforce.

7. PAYMENT

The Buyer shall make full payment for all invoices raised by the Company no later than 30 days following the date of the invoice.

The Company shall have the right to invoice the Buyer in respect of a partial delivery of the Goods.

If full payment is not made on the due date, interest shall thereafter be payable on the outstanding balance at the rate of 2 per cent per month above the HSBC Bank minimum lending rate from time to time in force compounded monthly until payment.

The Buyer shall if requested by the Company open a confirmed irrevocable letter of credit for payment of the Goods on terms satisfactory to the Company, or make such other provision for payment as the Company requests.

The Buyer shall not be entitled to withhold payment of any invoice by reason of any right of set off or any claim or dispute with the Company, whether relating to the quality or performance of the Goods or otherwise.

The Company shall have the right to suspend performance of its obligations under this Contract if it reasonably believes that the Buyer will not make payment in accordance with this paragraph 7.

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8. GUARANTEE

The Company guarantees to replace or (at its option) to repair any Goods due to faulty material and/or workmanship (which for the purpose of this paragraph 8 shall include any replacement Goods issued to the Buyer, pursuant to this paragraph), provided to its reasonable satisfaction to have failed within twelve months of delivery to the Buyer provided:

- (a) the Buyer promptly informs the Company on discovery of the alleged defect and promptly returns the Goods, carriage paid, with a full written report on the defect unless the Company agrees to inspect and replace or repair in situ; and
- (b) the Goods must have been stored, installed, maintained and used with reasonable care and in accordance with the Company's recommendation.

For any Goods to which the guarantee set out in this paragraph 8 does not or no longer applies, the Company will provide servicing facilities at the Company's tariff and on the Company's terms from time to time in force.

- (a) The Company may refuse to repair or service any Goods which in its opinion contain or have been contaminated by any human or animal substance or any dangerous substance (as defined in the Classification etc. of Dangerous Substance Regulations 1984) or a radioactive substance (as defined in the Radioactive Substances Act 1948) ("Contaminated Goods").
- (b) The Buyer agrees it will not send any Contaminated Goods to the Buyer or expose any officer or employee of the Company to contact with Contaminated Goods without first obtaining written approval of the Company.
- (c) If the approval of the Company has been obtained then the Buyer agrees that it will comply with the regulations referred to in (a).

9. LIMITATION OF LIABILITY

The Company will indemnify the Buyer

- (a) (where the United Kingdom Unfair Contract Terms Act 1977 applies to the Goods) against liability for personal injury or death directly attributable to the negligence of the Company; and
- (b) against physical damage caused to the Buyer's property directly arising from the negligence of the Company in connection with the supply of the Goods.

The Company's total liability to the Buyer under the indemnities contained in this paragraph 9 and in paragraph 10 shall not exceed the price at which the Goods were sold to the Buyer for one or more related claims.

Subject to the provisions of this paragraph 9 and of paragraph 10, the Company shall not be liable to the Buyer for any loss, expense or damage of any kind (direct, indirect or consequential and whether arising from negligence or otherwise) in connection with use or possession, supply or resale of the Goods.

The Buyer acknowledges that it is its responsibility to affect insurance cover in respect of all risks relating to the Goods which are not covered by the guarantee contained in paragraph 8 or the indemnities in this paragraph 9 and in paragraph 10.

10. INTELLECTUAL PROPERTY INFRINGEMENT

The Company shall (in lieu of any other liability in such respect) indemnify the Buyer against claims arising out of the infringement of third party wherever in the World these may be registered, copyrights or other intellectual property or proprietary rights published at the date of this Contract by the Buyer's use or possession of the goods provided the Buyer shall immediately inform the Company in writing of; and admit no liability for, any of the alleged infringements; and

- (a) make no settlement; and
- (b) permit the Company alone (at the Company's expense) to deal with and dispose of such claims and;
- (c) provide, at its expense, all assistance reasonably required for this purpose by the Company.

In the event that such infringement occurs or, in the Company's opinion, may occur, the Company shall have the right at its option to:

- (a) procure for the Buyer the right to continue using the Goods; or
- (b) modify the Goods so they become non-fringing; or
- (c) replace all or part of the Goods with equipment of similar capacity; or
- (d) purchase the Goods from the Buyer at such depreciated price as the Company may reasonably determine.

This indemnity shall not extend to infringements resulting from

- (a) use or adoption by the Company of the Buyer's parts, designs, specification or specific instruction; or
- (b) use of the Goods in combination with other items where, but for such combination, infringement would not have occurred; or
- (c) use of the Goods in a manner or for a purpose not disclosed to the Company before the date of this Contract.

The provisions contained in sub-paragraph 9.2 shall apply to this indemnity.

The Buyer shall indemnify the Company against any expense or loss the Company may incur resulting from the infringement of third party patents, trademarks, registered designs, copyrights or other intellectual property or proprietary rights arising in consequence of any matter referred to in sub-paragraph 10.3.

11. FREE ISSUE PARTS

The Company will take responsible care of parts supplied to it free of charge by (or at the requested of) the Buyer for incorporation into or supply with the Goods ("Parts") while they are under the Company's control.

The Guarantee at paragraph 8 shall not apply to any claim arising out of incorporation of Parts into Goods.

12. TERMINATION OF THIS CONTRACT

The Company shall have the right to terminate this Contract forthwith (but without affecting its accrued rights) if:

- (a) the Buyer should commit any continuing or serious breach of this Contract and fails to remedy such breach (if remediable) within 30 days of the Company's notice so to do; or
- (b) the Company learns or believes upon reasonable grounds that any of the following events has occurred, or is likely to occur;

- (i) the Buyer has a petition presented against it or its assets for the appointment of an administrator or for its winding up;
- (ii) a receiver is appointed with respect to the Buyer or its assets; or
- (iii) distress or execution is levied against any of the Buyer's assets and is not paid or discharged within seven days or a judgement against the Buyer remains unsatisfied for more than seven days; or
- (iv) a winding up petition is presented against the Buyer or a resolution passed for the Buyer's winding up (otherwise than for the purposes of amalgamation or reconstruction);
- (v) the Buyer suspends payment of its debts or it is deemed unable to pay its debts under section 123 Insolvency Act 1986; or
- (vi) any event in a foreign jurisdiction analogous to, or comparable with, (i) to (v) above; or
- (vii) the Company refuses or is unable to meet sums due to the Buyer when such sums fall due to ceases to be in a position to fulfil its obligations under this Contract.

On termination of this Contract for any reason, the Company shall be discharged from any further liability to perform under the Contract, the Company is granted an irrevocable Licence to enter the Buyer's premises to recover any Goods or other materials which are Company's property.

13. GENERAL English Law

This Contract is governed by English Law and the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts.

Construction

This construction of this Contract is not affected by any heading. Reference to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders.

Variation

Any variation to this Contract shall only be binding if it is recorded in a document signed by a director of the Company.

Severability

Should any provision of this Contract become void or otherwise unenforceable for any reason, the validity of the remaining provisions, shall not be affected and the parties shall use their best endeavours to replace the provision which is void or unenforceable with a provision of similar economic effect.

Notices

Notices may be given to:

- (i) a body corporate by being handed to a director.
- (ii) an individual of a body corporate by being sent to its address set out overleaf by facsimile, recorded delivery or registered first class post and by airmail where appropriate.

Any notice posted shall be deemed to have been received 48 hours after posting, and any notice given in any other manner shall be deemed to have been received at the time when in the ordinary course it would have been received.

Waiver

Failure by the Company to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

Any express or implied waiver by the Company of any provision of this Contract or any breach or default by the Buyer may be terminated by the Company at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Company from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Contract.

Force Majeure

The Company shall not be liable for failure to perform its obligations, or for loss, damage or delay resulting from any circumstances beyond its reasonable control.

Assignment and Transfer

The Buyer may not assign the benefit of this Contract or transfer, delegate or subcontract any of its duties or obligations without the prior written consent of the Company.

Indemnity

13.10 The Buyer shall indemnify the Company against all reasonable fees, costs and other expense incurred by the Company in enforcing this Contract.

13.11 The Buyer shall indemnify the Company against any loss it may suffer or liability it may incur in consequence of a claim brought by a third party arising out of the Buyer's use, or possession or resale of the Goods, whether such claim arises out of the Company's negligence or otherwise.

Compliance and Legislation

13.12 It is the Buyer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by governmental and other authorities or corporations relating to the possession, use, supply or resale of the Goods. The Buyer shall indemnify the Company against any liability it may incur in consequence of the Buyer or a subsequent user or purchaser to which it as sold the Goods, failing to comply therewith.