

GENERAL CONDITIONS OF SALE

NCT Holland B.V.

Article 1 – Interpretation

- 1.1 In these Conditions :
"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.
"Seller" means (NCT Holland B.V.).
"Conditions" means the standard terms and conditions of sale set out in this document below and includes any special terms and conditions agreed in writing between the Buyer and Seller.
"Contract" means the contract for the purchase and sale of the Goods.
"Writing" includes telex cable facsimile transmission and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

Article 2 – Basis of Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing by the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 The descriptions illustrations specifications and other data and information contained in the Seller's catalogues price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the Contract or any of its terms or constitute a representation by the Seller.
- 2.6 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

Article 3 – Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted to the Buyer the Buyer shall indemnify the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are to be supplied to the Seller's specifications which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

Article 4 – Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted the price listed in the Seller's published price list current at the date of acceptance of the order.
- 4.2 The Seller reserves the right (by giving notice to the Buyer) at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alternation of duties significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to

pay the Seller's charges for transport packaging and insurance.

- 4.4 The price of the Goods is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

Article 5 – Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (without any deduction or set off) within 60 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled without any liability to the Buyer to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 1 (one) per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

Article 6 – Delivery

- 6.1 Delivery of the Goods shall be made by the Seller, ex works or ex warehouse as notified by the Seller, to the Buyers Premises or, if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place.
- 6.2 The Seller shall be entitled to decide the mode and means of transport to the place of delivery and to appoint the carrier(s). Any special or alternative means of transportation required by the Buyer must be agreed with the Seller in advance and will be at the Buyers' sole cost and risk.
- 6.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.4 The measurement and weightings as shown on the certificate of measurement or weight submitted by the Seller to the Buyer shall be conclusive evidence of the quantity of the Goods supplied and shall be binding on the Buyer. The Buyer shall however be entitled to be present or represented at the measurement or weighing of the Goods so as to confirm the certificate and the Seller reserves the right to comply within any tolerances usual or customary within the trade of the Seller.
- 6.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.7 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 incurring any liability whatsoever or being in breach of its obligations under the Contract and without prejudice to any other right or remedy available to the Seller the Seller may:
- 6.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage 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; and or
- 6.7.3 suspend or cancel further execution of the Contract or any contract between the Seller and the Buyer for the sale and purchase of any goods whatsoever.

Article 7 – Risk, Property and Retention of Title

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer
- 7.1.1 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
- 7.1.2 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.
- 7.2 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 Seller has received in cash or cleared funds payment in full of the price of Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due and until the Buyer has fulfilled all his other obligations towards the Seller pursuant to the Contract and these Conditions.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods sepa-

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rate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

- 7.4** Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5** The Buyer shall not be entitled to 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

Article 8 – Guarantees and Liabilities

- 8.1** Except as expressly provided in these terms and conditions the Seller gives no guarantees with respect to the Goods whatsoever.
- 8.2** Subject to the conditions set out below, the Seller guarantees that the Goods will correspond with the standard specifications as maintained by the Seller at the time of delivery of the Goods as well as the contents of any other written guarantee given by the Seller for the benefit of the Buyer with respect to the Goods.
- 8.3** The above guarantee is given by the Seller subject to the following conditions:
- 8.3.1** the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;
- 8.3.2** the Seller shall be under no liability in respect of any defect arising from wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Seller's approval.
- 8.3.3** the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.3.4** the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;
- 8.3.5** where the Goods are processed by the Buyer or any third party or used by the Buyer or any third party to manufacture other goods or products, the above guarantee shall only apply to the Goods in their unprocessed state and the Seller shall not be liable in any way whatever in respect of the Goods as processed, remanufactured or used whether in combination with other goods or products or alone or of any subsequent product arising out of such manufacturing or process and the Buyer shall hold the Seller harmless from and fully and effectively indemnify the Seller and keep the Seller indemnified against any claims by the Buyer or any third party of whatever nature arising out of or in connection with the Goods as processed or manufactured by the Buyer or any subsequent product arising out of such manufacturing or processing of the Goods by the Buyer.
- 8.4** The Seller shall not be liable in any way whatsoever with respect to the use of the Goods by the Buyer whether the Goods are used in combination with any other goods or products or alone.
- 8.5** Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law customs of the trade or otherwise are excluded to the fullest extent permitted by law.
- 8.6** Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.
- 8.7** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 21 days from the date of delivery (or where the date of delivery has been delayed by the Buyer, from the date originally agreed between the Buyer and the Seller for delivery). If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the buyer shall be bound to pay the price for the Goods as if the Goods had been delivered in accordance with the Contract.
- 8.8** Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer. The Buyer shall not be entitled to return the Goods or any of them to the Seller except with the prior written consent of the Seller.
- 8.9** Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation, statements or any implied warranty condition statements or other term or any duty at common law, under statute or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use of resale by the Buyer except as expressly provided in these Conditions.
- 8.10** The Buyer shall indemnify and keep the Seller fully and effectively indemnified from and against any liability of any kind whatsoever to any third party howsoever arising (whether in contract, tort or otherwise) following delivery of the Goods to the Buyer arising out of, in respect of or in connection with:
- 8.10.1** any defect in the Goods; and/or
- 8.10.2** any loss, injury or damage of any kind (whether direct, indirect or otherwise and including but not limited to any loss of profit and/or any consequential or special loss or damage of any description) arising out of, in respect of or in connection with the supply of the Goods or their use or resale.

Article 9 – Force Majeure

- 9.1** The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. In such a case, the Seller will have

the right in its sole discretion to either:

- 9.1.1** suspend the fulfilment of the Contract; or
- 9.1.2** to cancel the Contract completely or with respect to that part of the Contract which has not been carried out.
- 9.2** Without prejudice to the generality of clause 9.1, the following shall be regarded as caused beyond the Seller's reasonable control;
- 9.2.1** Act of God explosion flood tempest fire, accident or illness;
- 9.2.2** War or threat of war sabotage insurrection civil disturbance or requisition;
- 9.2.3** acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 9.2.4** import or export regulations or embargoes;
- 9.2.5** strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.2.6** difficulties in obtaining raw materials labour fuel parts or machinery;
- 9.2.7** power failure or breakdown in machinery.

Article 10 – Indemnity

- 10.1** If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent copyright design trade-mark or other industrial or intellectual property rights of any other person the Seller shall indemnify the Buyer against all loss damages costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
- 10.1.1** the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 10.1.2** the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3** except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 10.1.4** the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.1.5** the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 10.1.6** without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

Article 11 – Default or insolvency of Buyer

- 11.1** This clause applies if:
- 11.1.1** the Buyer is in breach of any of its obligations under these Conditions or any other provision of the Contract or any other contract between the Buyer and the Seller; or
- 11.1.2** unforeseen events including (without prejudice to the generality hereof) those referred to in clause 9.2 above materially affect the commercial effect of the Contract;
- 11.1.3** the Buyer becomes bankrupt, goes into liquidation, has a receiver, administrative receiver or administrator appointed over any of its property or assets or is otherwise insolvent;
- 11.1.4** the Buyer ceases or threatens to cease or carry on business; or
- 11.1.5** the Seller reasonably apprehends any of the events mentioned in paragraph 11.1.3 or 11.1.4 is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- 11.1.6** the Seller receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringe any patents, copyrights, design right, trade mark or other industrial or intellectual property rights of any other party.
- 11.2** If the clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods or any other goods or services have been delivered but not paid for the price for the Goods and all other outstanding invoices from the Seller to the Buyer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

Article 12 – Expenses

- 12.1** The Seller shall be entitled to charge the Buyer such fees, charges, costs (including legal costs on a full indemnity basis) and expenses from time to time as the Seller shall incur or deem reasonable (including but not limited to any taxes, duties or customs, or any administration, legal or storage fees, charges or expenses) which arise out of or in connection with or incidental to:
- 12.1.1** any default or breach by the Buyer of these Conditions or any other term of the Contract;
- 12.1.2** any request by the Buyer to vary, modify, change, delay or suspend any of these Conditions or any other term or provision of the Contract;
- 12.1.3** the Seller perfecting or enforcing the Contract or any part of it (including these Conditions) and/or protecting its property and rights in or over the Goods.
- 12.2** and the Buyer shall punctually pay any such fees and expenses as set out in clause 12.1 above within 60 days of the date of any invoices issued by the Seller relating to such fees, charges or expenses.

Article 13 – General

- 13.1** Any notice required or permitted to be given by either party to the other at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.4** The Contract shall be governed by the law of England.
- 13.5** Any proceedings arising out of or in connection with the Contract and these Conditions may be brought in any court of competent jurisdiction in England but the submission by the Buyer and the Seller to such jurisdiction shall not limit the right of the Seller to commence any proceedings arising out of or in connection with the Contract or these Conditions in any other jurisdiction it may consider appropriate.