

CONDITIONS OF BUSINESS

1. DEFINITIONS

In these Conditions the following expressions shall have the following meanings:

"the Company" - means Normec (Manchester) Limited and also where the context permits its assigns and any subcontractor for the said company;

"Goods" - means the articles or things to be supplied by the Company to the Client under the terms of the contract;

"Services" - means the services to be provided by the Company to the Client under the terms of the Contract and "Service" shall be construed accordingly;

"the Client" - means the person firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such person firm or company;

"Company's Premises" - means the premises mentioned in the Contract or if not so mentioned means the Company's premises at Westwood Industrial Estate, Arkwright Street, Oldham. OL9 9LZ.

"Contract" - means the contract [attached hereto] between the Company and the Client under which the Services and/or Goods are to be supplied by the Company to the Client.

2. GENERAL

These Conditions shall be deemed to be incorporated in all Contracts and in the case of any inconsistency with any order or letter or form of contract sent by the Client to the Company or any other communication between the Client and Company whatever may be their respective dates the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a director on behalf of the Company. Any concession made or latitude allowed by the Company to the Client shall not affect the rights of the Company under the Contract. If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

3. OBLIGATION TO PROVIDE SERVICES AND/OR GOODS

3.1 Notwithstanding that the Company may have given a detailed quotation no request for the provision of Services and no order for the supply of Goods shall be binding on the Company unless and until it has been accepted in writing by the Company.

3.2 The Company's catalogues, brochures, leaflets or correspondence are not binding and reasonable variations may be made to the Services and/or as the case may be the Goods without notice and the Services and/or the Goods so varied shall be accepted as complying with the Contract.

4. PRICES

4.1 The price payable for the Services shall unless otherwise stated in the Contract be the fee chargeable by the Company for such Service current at the date of the provision of the Services and, in the case of the provision of Services over a period of time, the price payable shall, at the option of the Company, be either:

4.1.1 the fee current at the date of the provision of the Service in question unless otherwise expressly stated to be firm for a period; or
4.1.2 the fee current at the date of any invoice sent pursuant to Condition 7.3.

4.2 The price payable for Goods shall unless otherwise stated in the Contract be the list price of the Company current at the date of despatch and in the case of an order for delivery by installments the price payable for each installment shall, at the option of the Company, be either:

4.2.1 the list price current at the date of the supply of the Goods in question unless otherwise expressly stated to be firm for a period; and
4.2.2 the list price current at the date of any invoice sent pursuant to Condition 7.4.

4.3 Unless otherwise expressly stated to be firm for a period the Company's charges in respect of the Services and/or the Goods are subject to amendment to take account of variations in wages, materials or other costs since the date of the Contract. The Company accordingly reserves the right to adjust the sum payable by the Client for the Services and/or the Goods by the amount of any increase in such costs after the sum due is quoted and the sum so adjusted shall be payable as if it were the fee stated as being payable in Contract.
4.4 All prices are exclusive of Value Added Tax and this will be charged at the appropriate rate.

5. ADDITIONAL COSTS

The Client agrees to indemnify the Company on demand against any loss or extra cost incurred by the Company through the Client's instructions or lack of instruction through any act or default on the part of the Client its servants or employees.

6. INTELLECTUAL PROPERTY

6.1 The Client shall indemnify the Company against all costs claims and damages incurred or threatened arising out of any alleged infringements of patents, trademarks, registered designs, design right or copyright occasioned by the provision of the Services where such Services are provided to the specification or special requirements of the Client and/or by the manufacture or sale of Goods made to the specification or special requirements of the Client.

6.2 All written information, drawings, diagrams, videos and audio tapes and any other information (however stored) prepared by the Company in relation to the provision of the Services and/or the supply of Goods and the copyright therein shall remain the property of the Company and shall be returned by the Client on demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Company.

6.3 The Client shall ensure that its employees and all those under the Client's control and supervision shall comply with the obligations of confidentiality contained at clause 6.2.

7. TERMS OF PAYMENT

7.1 Unless otherwise agreed by the Company in writing payment for the Services shall be due in cash as follows:

7.1.1 where the Service in question relates to the provision of consultancy services 50% of the payment shall be made no later than 7 days prior to the date upon which the consultancy service in question is to be provided and the balance on demand by the Company;

7.1.2 where the Service in question relates to the provision of maintenance services payment shall be made in full no later than 7 days prior to the date upon which the maintenance service in question is to be provided; and

7.1.3 where the Service in question relates to the installation of equipment payment shall be made in full upon the provision of test data by the Company to the Client which shows that the equipment is functioning correctly provided always that payment shall become due on demand in any event forthwith upon the occurrence of any of the events referred to in Condition 15.

7.2 Unless otherwise agreed by the Company in writing payment for Goods shall be due in cash within 30 days of the date of the invoice provided always that payment shall become due on demand in any event forthwith upon the occurrence of any of the events referred to in Condition 15.

7.3 If the Services are provided over a period of time the Company

shall be entitled to invoice the Client at regular intervals during the period of time that the Services are being provided and payment shall be due within 7 days of the date of each such invoice notwithstanding that subsequent Services are not provided or any other default on the part of the Company.

7.4 If the Goods are delivered in installments the Company shall be entitled to invoice each installment as and when delivery thereof has been made and payment shall be due in accordance with Condition 7.2 in respect of each installment whereof delivery has been made notwithstanding non delivery of other installments or other default on the part of the Company.

7.5 If upon the terms of the Contract monies due shall be payable by installments a default by the Client of the payment of any due installment shall cause the whole of the balance of the sums due to become due forthwith.

7.6 The sums due to the Company under the Contract shall be due in full to the Company in accordance with the terms of the Contract and the Client shall not be entitled to exercise any set-off lien or any other similar right or claim.

7.7 The time of payment shall be of the essence of the Contract.

7.8 Without prejudice to any other rights it may have the Company is entitled to charge interest at 2% above the Current Base Rate of National Westminster Bank plc on overdue payments such interest to run from the due date for payment until payment in full is received whether before or after judgement.

8. DELIVERY OF GOODS

8.1 The period for delivery of Goods shall be the period within which the Goods are intended to be despatched from the Company's Premises and shall be calculated from the time of the receipt by the Company of the Client's order or from the receipt of all necessary information to enable the Company to manufacture or procure the manufacture of the Goods whichever shall be the later and the Client shall take delivery of the Goods within that period.

8.2 All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of the Contract nor shall the Company be under any liability for any delay beyond the Company's control.

8.3 Where the Goods are handed to a carrier for carriage to the Client or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not the Client for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.

8.4 Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.

8.5 No liability for non-delivery loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company unless claims to that effect are notified in writing by the Client to the Company (and in the case of claims for non-delivery loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):

8.5.1 within two days of delivery for loss damage or non-compliance with the Contract; or

8.5.2 within ten days of the date of the invoice for non-delivery.

8.6 In the event of a valid claim for non-delivery loss damage or non-compliance with the Contract the Company undertakes at its option either to re-supply or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.

8.7 If the Client shall fail to give notice in accordance with Condition 8.5 the Goods shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Client it shall be bound to accept and pay for the same accordingly.

8.8 If for any reason the Client is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its further rights store the Goods at the risk of the Client and take all reasonable steps to safeguard and insure them at the cost of the Client provided that the Client shall be immediately informed thereof.

8.9 The Company shall have the right to make delivery by installments of such quantities and at such intervals as it may decide, and any express provision as to installments in the Contract shall be in addition to and not in derogation of this right.

8.10 Unless otherwise stated prices are exclusive of carriage and insurance to the Client's premises and delivery shall take place at the Company's Premises.

9. RETURNS OF GOODS

Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Client's expense.

10. PASSING OF TITLE TO AND RISK IN GOODS

10.1 From the time of delivery the Goods shall be at the risk of the Client who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments under the Contract have been made in full and unconditionally.

10.2 Until title to the Goods has passed under Condition 10.1 the following shall apply:

10.2.1 the Client shall keep the Goods separate and identifiable from all other goods in its possession as bailee for the Company;

10.2.2 in the event of any resale by the Client of the Goods any such sale shall be deemed to have been effected by the Client as agent for the Company and the Company shall (without prejudice to the rules of equity relating to tracing) be beneficially entitled to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until subject to such assignment shall be held on trust in a separate identified account for the Company by the Client who will stand in a strictly fiduciary capacity in respect thereof;

10.2.3 the Company shall have the power to re-sell the Goods such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Client to remove the Goods;

10.2.4 the Client shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods have been supplied in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

11. CONDITIONS AND WARRANTIES RELATING TO SERVICES

11.1 Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the Services are hereby expressly negated.

12. CONDITIONS AND WARRANTIES RELATING TO GOODS

12.1 The Contract shall not constitute a sale by description or sample.

12.2 Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

13. DEFECTIVE GOODS

13.1 In substitution for all rights which the Client would or might have but for these Conditions the Company undertakes in the case of Goods supplied by the Company that if within the period of 90 days from the date of despatch of the Goods by the Company a serious defect in materials or workmanship appears in them it will at its own discretion either credit to the Client in full the price paid by the Client to the Company for them or repair them or supply a replacement for the Goods free of charge at the place of delivery specified by the Client for the original Goods provided that in any case they have been accepted and paid for.

13.2 The Company's obligations contained in Condition 13.1 are subject to:

13.2.1 the Goods having been used in an appropriate manner and/or as prescribed in the operating instructions (if any);

13.2.2 faulty parts being returned to the Company at the Client's expense if so requested;

13.2.3 the Goods not having been modified or repaired otherwise than by the Company or otherwise interfered with.

13.3 Where the Company's liability under this Condition 13 can be fulfilled by the supply of a replacement part it will arrange for delivery and undertake liability for loss or damage in transit or otherwise to the same extent as for the Client's original order. Any other costs involved must be borne by the Client. In order to exercise its right under this Condition 13 the Client shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall return the defective Goods carriage paid to the Company's Premises.

13.4 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts omissions negligence or default of the Client its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Client to comply with any recommendations of the Company as to storage and handling of the Goods.

13.5 Where the Goods are for delivery by installments any defect in any installment shall not be a ground for cancellation of the remainder of the installments and the Client shall be bound to accept delivery thereof.

13.6 Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

13.7 No guarantee whatsoever is given in respect of items supplied by the Client or a contractor to the Client which are incorporated in Goods at the direction of the Client.

14. CONSEQUENTIAL LOSS

The Company shall not be liable for any costs claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits income production or accruals or loss of such profits income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.

15. DEFAULT OR INSOLVENCY OF CLIENT

If the Client shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Client's property or assets or if the Client shall make or offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any bankruptcy petition will be presented against him or (if the Client is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a receiver administrator or liquidator or administrator of the whole or any part of such Company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Client or may (without prejudice to the Company's right subsequently to determine the Contract for the same clause should it so decide) by notice in writing suspend the Services until any defaults by the Client be remedied.

16. LIMITATION OF LIABILITY

16.1 Where the Contract relates to the provision of Services the liability of the Company to the Client for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price payable for the Services.

16.2 Where the Contract relates to the supply of Goods the liability of the Company to the Client for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price payable for the Goods.

16.3 The Company shall not be liable for imperfect work caused by any inaccuracies on any drawing, bills of quantities or specifications supplied by the Client.

17. REPRESENTATIONS

17.1 Where any provision of the Contract is inconsistent with any of these Conditions, the provision in the Contract shall be paramount.

17.2 Subject to the terms of Condition 17.1 no statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to enlarge vary or override in any way any of these Conditions or the Contract.

18. FORCE MAJEURE

18.1 The Company shall be entitled to delay or cancel or if it is prevented from or hindered in or delayed in the provision of Services or as the case may be the supply of Goods through any circumstances beyond its reasonable control including but not limited to strikes lock-outs accidents or warfare.

19. CANCELLATION

19.1 Save as provided in Conditions 15 and 18 hereof the Contract may not be cancelled except by agreement in writing of both parties and upon the payment to the Company by the Client by way of agreed damages of an amount equal to the aggregate of:

19.1.1 all expenses incurred and lost suffered by the Company in relation to the provision of the Services and/or as the case may be the supply of Goods; and
19.1.2 all sums due from the Client to the Company under the Contract.

20. SUBCONTRACTING

The Company may assign or subcontract the whole or any part of the Contract to any person firm or company.

21. HEADINGS

The headings in these Conditions are intended for reference only and shall not affect their construction.

22. PROPER LAW

The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Client and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.