

TRADING CONDITIONS

- 1 Unless otherwise agreed, these conditions apply to all goods and services supplied by the Seller.
- 2 INTERPRETATION**
- 2.1 In these conditions:-
"BUYER" means the person who accepts a quotation of the Seller for the sale of the goods or the supply of services or whose order for the goods or services 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 Nilfisk-Advance Limited.
"SERVICES" means the services which the Seller is to supply in accordance with these Conditions.
"CONDITIONS" means the trading conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
"CONTRACT" means the contract for the purchase and the sale of the goods or services.
"WRITING" includes e-mail, facsimile, cable, telex and comparable means of communication.
- 2.2 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.
- 2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 3 BASIS OF THE TRANSACTIONS**
- 3.1 The Seller shall sell and the Buyer shall purchase the goods or services 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 will govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 3.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Seller.
- 3.3 The Seller's employees or agents are not authorised to make any representations concerning the goods or services unless confirmed by the Seller in writing. 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.
- 3.4 Any advice or recommendation given by the Buyer or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods or the suitability of services 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.
- 3.5 Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 4 ORDERS AND SPECIFICATIONS**
- 4.1 The quantity, quality and description of and the specification for the goods or services shall be those set out in the Seller's quotation (if accepted by the Buyer).
- 4.2 The Seller reserves the right to make any changes in the specification of the goods or services which are required to conform with any applicable safety or other statutory requirements or, where the goods or services are to be supplied to the Seller's specifications, which do not materially affect their quality or performance.
- 4.3 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 charges and expenses incurred by the seller as a result of cancellation subject to provisions of condition 7.5.
- 5 PRICE OF THE GOODS AND SERVICES**
- 5.1 The price of the goods and services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of dispatch of the goods to the Buyer or the commencement of the services. All prices quoted are valid for thirty days only or earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 5.2 Except as otherwise stated under the terms of any quotation or 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 subject to the provisions of condition 7.1.
- 5.3 The price is exclusive of any Value Added Tax which the Buyer shall be additionally liable to pay to the Seller.
- 6 TERMS OF PAYMENT**
- 6.1 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 goods on or at any time after delivery of the goods and for the price of services on or at any time after completion of the same.
- 6.2 The Buyer shall pay the price of the goods and services (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days (unless otherwise agreed in writing) from the end of the month of invoicing. The time of payment of the price shall be of the essence of the contract.
- 6.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right of remedy available to the Seller, the Seller shall be entitled to:-
- 6.3.1 cancel the contract or suspend any further deliveries to the Buyer or the supply of any further services to the Buyer;
- 6.3.2 appropriate any payments made by the Buyer to such of the goods (or the goods supplied under any other contract between the Buyer and the Seller) or to such of the services (or the services provided in any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and;
- 6.3.3 charge the Buyer interest (both before and after any judgement) in the amount unpaid, at the rate of 5% per annum above Barclays Bank Base Rate from time to time, until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).
- 7 DELIVERY OF GOODS AND SUPPLY OF SERVICES**
- 7.1 Delivery of the goods shall be arranged by the Seller to the Buyer's place of business or by the Buyer collecting the goods from the Seller's premises at any time after the Seller has notified the Buyer that the goods are ready for collection.
- 7.2 Any dates quoted for the delivery of the goods or the supply of services are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery or supply shall not be of the essence unless previously agreed by the Seller in writing.
- 7.3 Where the goods are to be delivered in instalments or the services to be supplied on different occasions, each delivery or supply shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments or supply any part of the services 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.
- 7.4 If the Seller fails to deliver the goods or the supply of the services 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 or services not performed over the price of the goods or services.
- 7.5 In the event that goods have been delivered in accordance with the contract and are returned by the Buyer to the Seller, a handling charge of 15% of the invoiced value will be invoiced to the Buyer to offset administration charges.
- 7.6 These goods have been despatched from our warehouse. If the consignment has not been received by yourselves, Nilfisk-Advance Ltd. must be notified in writing within 21 days of the date of this invoice. Claims received outside this period will not be entertained by Nilfisk-Advance Ltd. and full settlement of the invoice will become due as stated in the terms of payment.
- 8 RISK AND PROPERTY**
- 8.1 Risk of damage to or loss of the goods shall pass to the Buyer: 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.
- 8.2 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 the goods and all the other money from the Buyer for which payment is then due.
- 8.3 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 separate from those of the Buyer and third parties and properly stored and protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to re-sell 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, including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties.
- 8.4 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 re-sold) 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, enter upon any premises of the Buyer or any third party where the goods are stored and re-possess the goods.
- 8.5 The Buyer shall not be entitled to pledge or in 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9 WARRANTIES AND LIABILITIES**
- 9.1 Subject to the conditions set out below, the Seller warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from delivery.
- 9.2 Subject to the conditions set out below, the Seller warrants that the Seller shall perform all services in a good and workmanlike manner.
- 9.3 The above warranties are given to the Buyer subject to the following conditions:-
- 9.3.1 The Seller shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification submitted by the Buyer.
- 9.3.2 The Seller shall be under no liability in respect of any defect arising from fair 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.
- 9.3.3 The Seller shall be under no liability under the warranties (or any other warranty condition or guarantee) if the total price for the goods or services has not been paid by the due date for payment.
- 9.3.4 The warranty under condition 9.1 does not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Buyer will be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 9.4 Subject as expressly provided in these conditions, and except where the goods or services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and/or any legislation under Directive 1999/44/EC, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.5 When the goods or services are supplied 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.
- 9.6 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 the specification or claims in the case of services about workmanship shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and 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 as if the goods or services had been delivered or supplied in accordance with the contract.
- 9.7 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 specifications is notified to the Seller in accordance with these conditions or for defective services, the Seller shall be entitled to replace the goods (or part in question) or redo the services free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the goods or services (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 9.8 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 or any implied warranty condition or other term or any duty of common law or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees agents or otherwise) which arise out of or in connection with the supply of the goods or their use for re-sale by the Buyer or the supply of the services, except as expressly provided in these conditions.
- 9.9 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 or services if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 10 INSOLVENCY OF BUYER**
- 10.1 This condition applies if:-
- 10.1.1 The Buyer makes any voluntary arrangement with its creditors or suffers administration, bankruptcy or liquidation (otherwise than for the purpose of amalgamation or reconstruction) or;
- 10.1.2 An Encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or;
- 10.1.3 The Buyer ceases or threatens to cease to carry on business or;
- 10.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this 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 or supplies under the contract without any liability to the Buyer, and if the goods have been delivered or the services supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11 GENERAL**
- The contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.