

NEWPORT INDUSTRIES LIMITED
STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following words and phrases shall have the following meanings:

Customer means the person, the firm or company whose Order for the Goods is accepted by Newport;

Carrier means any person who has entered into a contract with the Customer or with Newport on the Customer's behalf to arrange the carriage of the Goods;

Contract means any contract between Newport and the Customer for the sale and purchase of the Goods incorporating these Terms and Conditions;

Ex-works has the meaning given in Incoterms 2010;

Goods means the goods which Newport is to supply to the Customer pursuant to these terms and conditions;

Group means Newport and any means any company or other entity which directly or indirectly controls, is controlled by or is under common control with Newport, where **control** means majority equity ownership or other legal power to direct such company or other entity;

Newport means Newport Industries Limited, a company registered in the United Kingdom under number 03407212, the registered office of which is at 2nd Floor, Spencer House, 23 Sheen Road, Richmond-upon-Thames, Surrey. TW9 1BN; and

Order means any once-off specific order placed for Goods as well as any longer-term agreement where a specified quantity of Goods are ordered which will be called off in smaller quantities either verbally or in writing over a period of time.

Price means the price payable under the Contract for the Goods.

1.2 In these Terms and Conditions any reference to any legislation is to that legislation, and any successor or subordinate legislation as updated, re-issued or amended from time to time.

1.3 In these Terms and Conditions words following the words **including**, **includes**, and **in particular** shall be construed as illustrative and not exhaustive.

2. BASIS OF CONTRACT

2.1 These Terms and Conditions shall apply to all sales of Goods by Newport to the Customer. The Contract shall be on these Terms and Conditions to the exclusion of all other terms and conditions (including any which the Customer purports to apply under any purchase order or other document) unless contained in a document expressly agreed between the parties, expressed to take priority over these terms and conditions, and signed by a director of Newport. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Terms and Conditions.

2.2 Each Order for Goods by the Customer to Newport shall be deemed to be an offer by the Customer to purchase the Goods subject to these terms and conditions. No Order submitted by the Customer shall be deemed to be accepted by Newport until the earlier of a written acceptance of the Order being sent to the Customer, or Newport's confirmation that the Goods are ready for collection or delivery (whichever is applicable).

2.3 Any quotation is valid for a period of three (3) days only from the date of the quotation unless otherwise stated, provided that Newport has not previously amended or withdrawn the quotation.

2.4 Newport's marketing documentation, website, manuals, specifications, quotations and price lists (**Documentation**) do not constitute offers. Except as expressly provided otherwise, Newport's Documentation does not form part of the Contract and Newport may withdraw or amend any Documentation at any time.

2.5 Unless expressly agreed otherwise, all descriptions, recommendations and suggestions relating to the handling, storage and use of the Goods made by Newport in reply to a specific request or otherwise are given in good faith but the Customer shall be solely responsible for ensuring the suitability of the Goods for its own particular purposes.

3. ORDERS AND THE GOODS

- 3.1 The written specification (if any), quantity and quality descriptions for the Goods shall be those set out in Newport 's quotation or in the Customer's Order as applicable. The Customer shall ensure that the quotation and/or its Order, including the description, specification and other details of the Goods, is complete and accurate. The Customer shall promptly provide Newport with any information relating to the Goods reasonably requested by Newport to enable Newport to perform its obligations under the Contract.
- 3.2 Pursuant to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (the **Act**), Newport hereby gives notice to the Customer that Newport has available product information and documentation, including safety data sheets, to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly handled, transported, stored and used by the Customer's employees, servants or agents at work. The Customer shall ensure it requests and obtains this documentation from Newport if the Customer is not already in possession of it.
- 3.3 The Customer hereby undertakes pursuant to section 6(8) of the Act to take such measures as are communicated to it under the Contract or otherwise and take such other steps as are reasonably necessary to ensure, so far as is practicable, that the Goods will be safe and without risk to health at all times when handled, transported, stored and used by the Customer, its employees, servants and agents.
- 3.4 The Customer shall indemnify Newport against all claims, losses, damages, costs and expenses (including fines and penalties) incurred directly or indirectly by Newport under the Act or any other legislation relating to health and safety arising from the Customer's breach of this clause 3.
- 3.5 The Customer may not cancel or postpone its Order without Newport's agreement, which may be subject to reasonable conditions. In particular, Newport shall be entitled to recover all costs incurred up to the date of cancellation or postponement.
- 3.6 The Goods are typically supplied by Newport with a certificate of analysis, safety data sheet and sample. Any sampling of the Goods by the Customer, the making and testing of samples and interpretation of results must be carried out in accordance with applicable ISO standards for such matters.
- 3.7 If the parties have identified that is necessary for the Customer to obtain any import licence or consent to receive the Products (in particular where Newport has not already obtained one), the Customer shall obtain such licences or consents and, if required by Newport, make them available to Newport prior to the relevant shipment.

4. COLLECTION AND DELIVERY

- 4.1 Unless otherwise agreed between the parties, Goods sold on an ex-works (Incoterms 2010) basis shall be collected by the Customer at a location nominated by Newport.
- 4.2 Where collection of the Goods is to take place at a location nominated by Newport:
 - 4.2.1 the Goods shall be collected and loaded onto the Customer's vehicle by the Customer or its representatives at a suitable collection point at the location as directed by Newport 's representative;
 - 4.2.2 while at the location Customer and its representatives shall obey the site rules and the instructions of Newport 's representative; and
 - 4.2.3 the Customer shall be responsible for loading the Goods, including the condition of any relevant vehicle, and Newport shall not be liable in any way for loss or contamination of the Goods resulting from the loading of the Goods and/or condition of such vehicle. The Customer shall indemnify Newport against any claims, losses, damages, costs and expenses suffered by Newport due to any injury or damage to Newport's or its suppliers' or landlord's personnel, plant, equipment, vehicles or other property caused by the Customer or its representatives.
 - 4.2.4 all collections are conducted at the Customer's cost and risk and Newport shall have no liability for any loss or damage caused during transit.
- 4.3 Where Newport has expressly agreed to deliver the Goods, Newport is responsible for arranging for the Goods to be delivered to the Customer's premises or another location nominated by the Customer. In those circumstances Newport shall be responsible for loading the Goods, including the condition of any relevant vehicle, and Newport shall be liable for loss or contamination of the Goods resulting from the loading of the Goods and/or condition of such vehicle or otherwise arising during transit.
- 4.4 Any time, period or date for collection agreed to in accordance with the Customer's Order or contained in

Newport's acknowledgment of the Order is an estimate only and Newport shall not be liable for any damages or losses arising out of failure to meet such time, period or date.

- 4.5 Where the Goods are to be delivered in instalments each instalment shall be deemed to be the subject of a separate Contract and any failure or delay in deliver, or defect in, any instalment shall not entitle the Customer to any remedies in relation to any other instalment.
- 4.6 The Customer must satisfy itself as to the condition of the Goods at the time of collection or delivery and shall inspect and accept them in writing at that time. In the event of any defect in the Goods attributable to Newport, clause 8 may apply.
- 4.7 Newport shall have no liability for short weight or measures of Goods of 10% or less than that which was ordered by the Customer. In circumstances of short weight or measures of greater than 10%, the Customer's sole and exclusive remedy shall be for Newport to, at its option, either make an additional supply of the Goods to make up the shortfall, or refund the a proportion of the Price of the relevant Goods equivalent to the relevant shortfall, and if Newport provides either such remedy it shall have no further liability to the Customer. Newport shall have no liability in respect of the short weight or measure if notification is given later than 24 hours after collection or delivery of the Goods (as applicable).
- 4.8 The Customer shall reimburse Newport for all costs and expenses incurred by Newport as a result of any delay in the collection of the Goods resulting from the acts or omissions of the Customer or its representatives.
- 4.9 Without limiting Newport's other rights and remedies, additional charges may be made if:
 - 4.9.1 the Customer requires collection or delivery of the Goods (whichever is applicable) in quantities less than such minimum loads as may be notified to the Customer by Newport from time to time; or
 - 4.9.2 the Customer requires to collect the Goods outside Newport 's normal working hours; or
 - 4.9.3 the Customer fails to collect or take delivery of the Goods or
 - 4.9.4 the Customer requests that collection or delivery be deferred.

5. PRICE

- 5.1 The Price shall be the price quoted by Newport. Where no price has been quoted by Newport, the Price shall be supplied at Newport's prices in force at the date of collection or delivery (whichever is applicable), which are available upon request. Unless otherwise agreed by Newport, all prices quoted shall be ex-works and shall be exclusive of VAT, carriage costs, insurance costs and any other ancillary costs, which if incurred by Newport shall be recoverable from the Customer. The Price is inclusive of duties and taxes, except that Newport reserves the right to increase the Price by written notice to the Customer, or charge the Customer retrospectively, if any duties or taxes are introduced which were not in force at the time the Price was quoted or if by error any such duties or taxes were not included or were incorrectly calculated when calculating the originally quoted Price.
- 5.2 Newport reserves the right to increase the Price by prior written notice to the Customer at any time following acceptance of the Customer's Order until seven (7) days prior to collection or delivery (whichever is applicable) if in Newport's determination the price originally quoted is no longer commercially reasonable (including without limitation due to changes in Newport's underlying costs, in currency exchanges or in relevant tariffs or duties). If Newport notifies the Customer of any such increase in the Price, the Customer may either: i) cancel the relevant Order by written notice within seven (7) days after receiving notice from Newport of the Price increase, in which case the Customer shall be entitled to a refund of any pre-paid sums; or ii) accept the Price increase (and the Customer shall be deemed to have accepted the Price increase unless it has notified Newport to the contrary).
- 5.3 The Price shall be subject to VAT and any other government duty, tax or levy applicable, which shall be recoverable by Newport from the Customer in addition.

6. PAYMENT

- 6.1 Unless otherwise agreed by Newport, payment of the Price shall be due before collection or delivery (whichever is applicable) and Newport shall not release the Goods until payment has been made.
- 6.2 Newport may at its discretion offer credit terms, in which case payment shall be made within thirty (30) days after the date of issue of Newport's invoice. Newport reserves the right to withdraw credit at any time. In particular, if the Customer fails to may any payment by the due date any credit terms shall cease to apply and all sums outstanding shall fall due immediately.
- 6.3 If the Customer fails to make any payment on the due date then, without limiting its other rights and

remedies, Newport may:

6.3.1 suspend and/or cancel the Customer's Order; and/or

6.3.2 charge the Customer interest (both before and after any court judgment) on the amount unpaid at the rate of 5% per annum above Barclays Bank PLC 's base rate from time to time, accruing daily, until payment in full is made.

6.4 Payment shall be made in the currency of Newport's invoice and made without any deduction or set-off.

7. RISK AND TITLE

7.1 Where delivery is ex-works risk of damage to or loss of the Goods shall pass to the Customer on collection and loading of the Goods onto the Customer's or any Carrier's vehicle at the applicable location for collection. Where Newport has agreed to deliver the Goods to a specific location risk shall pass when the Goods are delivered.

7.2 Title in the Goods shall not pass to the Customer until the earlier of:

7.2.1 the price of the Goods and every other sum due from the Customer to Newport (whether pursuant to the Contract or otherwise) has been paid in full; or

7.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer as specified in clause 7.4.

7.2.3 and until such payment, Newport shall be entitled to enter the Customer 's premises to recover the Goods.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

7.3.1 store the Goods separately so that they remain readily identifiable as Newport's property;

7.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks;

7.3.3 notify Newport immediately if it becomes subject to any of the events listed in clause 10.1.2; and

7.3.4 give Newport such information relating to the Goods as Newport may require from time to time.

7.4 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Newport receives payment for the Goods. However, if the Customer resells the Goods before that time:

7.4.1 it does so as principal and not as Newport's agent; and

7.4.2 title to the Goods shall pass from Newport to the Customer immediately before the time at which resale by the Customer occurs.

7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1.2 then, without limiting its other right and remedies:

7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

7.5.2 Newport may at any time require the Customer to deliver up all Goods in its possession or control and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. GUARANTEE

8.1 If the Customer can establish to Newport's reasonable satisfaction that the Goods are not in accordance with the written specification agreed between the parties (if any), or any sample provided by Newport for quality purposes, or otherwise not in accordance with the quality requirements of the Contract, then as the Customer's sole and exclusive remedy for such non-conformity, Newport shall at its option supply to the Customer additional Goods in the same quantity as the defective or non-compliant Goods or refund all or part (as appropriate) of the price of the relevant Goods (the **Guarantee**).

8.2 The Guarantee shall not apply, and Newport will not be liable for any alleged non-conformity in the Goods:

8.2.1 unless the Customer notifies Newport in writing of the alleged non-conformity immediately upon becoming aware of it and in any event within 10 working days of the date of collection or delivery (whichever is applicable) of the Goods;

8.2.2 if the Customer has added anything to the Goods (other than as directed by Newport);

8.2.3 if the Customer has supplied inadequate or incorrect information, specification or other data with the Customer's Order or otherwise;

8.2.4 if prior to collection or delivery the Customer took and tested samples of the Goods in accordance with clause 3.6, and the non-conformity in the Goods complained of was reasonably discoverable at the time the samples were taken and tested by the Customer;

8.2.5 where such non-conformity is due to incorrect handling, accident, failure to observe the sampling

- or testing procedures referred to in clause 3.6, abnormal or improper conditions of transportation, storage or use or any act of the Customer, its representatives or any third party (including any Carrier where delivery is ex-works;
- 8.2.6 if those Goods are removed or disposed of by the Customer without Newport 's prior written consent or if Newport is not given proper opportunity to verify the nature and cause of the alleged non-conformity in accordance with clause 8.3;
- 8.2.7 if the Customer makes any further use of the Goods after the non-conformity was, or ought reasonably to have been, apparent to the Customer or its representatives.
- 8.3 The Customer shall provide to Newport and its representatives (together with such vehicles, plant and equipment as Newport deems necessary) safe and unrestricted access, together with such other facilities and information as Newport may reasonably require, to enable Newport to verify the nature and cause of the alleged non-conformity by ISO testing methods and to carry out its obligations under the Guarantee.
- 8.4 Additional Goods supplied under the Guarantee shall be delivered to the Customer at the address at which the defective Goods were located.
- 8.5 The terms and conditions of the Contract are in place of any warranties, undertakings, obligations or conditions implied by common law, statute, trade usage, custom or otherwise, including as to the quality or the fitness for any particular purpose of the Goods, and to the fullest extent permitted by law all such terms are hereby excluded from the Contract.

9. NEWPORT'S LIABILITY

- 9.1 Nothing in the Contract shall limit or exclude Newport's liability for death or personal injury caused by its negligence, for fraud, or for any other matter for which liability cannot lawfully be limited or excluded.
- 9.2 Subject to clause 9.1, Newport's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the Contract or its subject matter:
- 9.2.1 shall not exceed a sum equal to the price of the Goods; and
- 9.2.2 shall not extend to liability for any loss of profit, loss of income, loss of revenue, loss of goodwill, loss of anticipated savings or loss of opportunity (in each case whether direct or indirect) or for any indirect or consequential loss of any kind.
- 9.3 Newport shall not be liable to the Customer in any manner or be deemed to be in breach of the Contract, and may suspend performance without liability if performance is prevented due to any cause beyond Newport 's reasonable control, including without limitation: governmental actions, war or threat of war, national emergency, civil disturbance, sabotage, acts of God, fire, explosion, flood, tempest, epidemic, accident, import or export regulations or embargoes or compliance with any governmental requirement, industrial actions or trade or labour disputes, inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour, or power failure or breakdown in machinery, including vehicles (**Force Majeure**). If performance is suspended by more than thirty (30) days, then either party may terminate the Contract without liability by written notice.
- 9.4 Newport shall use reasonable endeavours to overcome difficulties arising from any Force Majeure events but shall not be obliged to purchase the Goods from third parties.
- 9.5 Newport shall not be liable for any event unless the Customer notifies Newport that it intends to make a claim in respect of that event within 9 months from the date on which the Customer or its representatives became, or ought reasonably to have become, aware of the event having occurred. Any such notice must identify the event and the grounds for the claim in reasonable detail.

10. INSOLVENCY AND BREACH BY THE CUSTOMER

- 10.1 Newport may terminate the Contract without liability to the Customer by written notice with immediate effect if:
- 10.1.1 the Customer commits any material breach of the Contract or of any other contract between the Customer and Newport or between the Customer and any member of Newport's Group; or
- 10.1.2 the Customer ceases or threatens to cease to trade, becomes insolvent or is the subject of insolvency proceedings, enters into liquidation (except a solvent liquidation for the purposes of corporate restructuring), makes an arrangement or composition with its creditors, has a receiver and/or administrator appointed over its undertaking or is the subject of any similar or equivalent action or occurrence or of any application or petition for any similar or equivalent action, or if a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress,

execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or

- 10.1.3 Newport reasonably determines that any of the events mentioned in clause 10.1.2 is about to occur in relation to the Customer.
- 10.2 If Newport terminates the Contract under clause 10.1 then without limiting its other rights or remedies, if the Goods have been collected or delivered (whichever is applicable) but not paid for the price shall become immediately due and payable.

11. GENERAL

- 11.1 All notices between the parties under the Contract shall be in writing and delivered by hand, sent by first class pre-paid post, sent by facsimile transmission or sent by e-mail (in the case of notices to Newport) to Newport 's address, facsimile number or e-mail address shown overleaf or as notified in writing by Newport from time to time or (in the case of notices to the Customer) to its registered office (if it is a company) or (in any other case) to the last known address of the Customer or such address, facsimile number or e-mail address as shall be notified in writing to Newport by the Customer for this purpose.
- 11.2 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery, if delivered by hand; or at the time of transmission, if sent by facsimile or by e-mail, provided confirmation of transmission (in the case of fax) or receipt (in the case of email) is provided.
- 11.3 The Contract is the entire agreement between the parties and supersedes and extinguishes any prior discussions or agreements between them in relation to the Goods. Each party acknowledges that it has not entered into the Contract on the basis of any representation which is not expressly contained in the Contract.
- 11.4 No variation or amendment to the Contract shall be valid unless agreed in writing by a director of Newport and by the Customer's authorised representative.
- 11.5 No waiver by Newport of any breach of the Contract by the Customer shall valid unless express and in writing, nor be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.6 If any provision or part-provision of the Contract is found by any court or body of competent jurisdiction to be illegal, invalid, void, voidable or unenforceable it shall be deemed severable and the remaining provisions and part-provisions of the Contract shall continue in full force and effect.
- 11.7 The Customer shall not assign, sub-contract or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of Newport. Any or all of Newport 's rights or obligations under the Contract may be assigned or subcontracted by Newport.
- 11.8 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.
- 11.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and the parties submit to the exclusive jurisdiction of the courts of England and Wales.