

TERMS AND CONDITIONS OF SALE OF NEWSON GALE LIMITED

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4

1. INTERPRETATION

In these conditions the following words have the following meaning: **the Buyer** means the person(s), firm or company who purchases the Goods from Newson Gale; **Newson Gale** means Newson Gale Limited, a company incorporated in England and Wales whose registered office is Regent House, Clinton Avenue, Nottingham, NG5 1AZ (Company no: 2281932); **Contract** means any contract between Newson Gale and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; **Delivery Point** means the place where delivery of the Goods is to take place under condition 4.1; and **Goods** means any goods agreed in the Contract to be supplied or actually supplied to the Buyer by Newson Gale (including any part or parts thereof); references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, replaced or interpreted; references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; headings will not affect the construction of these conditions.

2. APPLICATION OF TERMS

2.1 These conditions shall apply to and be incorporated into all quotations, offers, orders, acceptances and Contracts for the sale of any Goods by Newson Gale and shall prevail over any other term of the Contract unless otherwise agreed by Newson Gale in writing. All terms and conditions of the Buyer are excluded.

2.2 No order placed by the Buyer shall be deemed to be accepted by Newson Gale until a written (which for the purposes of this condition 2 includes email) acknowledgement of order is issued by Newson Gale or (if earlier) Newson Gale delivers the Goods to the Buyer.

2.3 Any quotation is given on the basis that no contract will come into existence until Newson Gale issues an acknowledgement of order to the Buyer. Any quotation is (without prejudice to condition 2.1), valid for a period of 30 days only from its date, provided that Newson Gale has not previously withdrawn it.

3. DESCRIPTION

3.1 The description of the Goods shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by Newson Gale and any descriptions or illustrations contained in Newson Gale's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

4. DELIVERY

4.1 Unless otherwise agreed in writing by Newson Gale, delivery of the Goods shall take place at Newson Gale's place of business as notified to the Buyer from time to time.

4.2 The Buyer will take delivery of the Goods within 14 days of Newson Gale giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by Newson Gale for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4 Subject to the other provisions of these conditions Newson Gale will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Newson Gale's negligence).

4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery:

- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by Newson Gale's negligence);
- (b) the Goods will be deemed to have been delivered; and

(c) Newson Gale may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by Newson Gale upon despatch from Delivery Point shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 Any liability of Newson Gale for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against the price for such Goods.

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until Newson Gale has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to Newson Gale from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

- (a) hold the Goods on a fiduciary basis as Newson Gale's bailee;
- (b) store the Goods (at no cost to Newson Gale) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Newson Gale's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on Newson Gale's behalf for their full price against all risks to the reasonable satisfaction of Newson Gale. On request the Buyer shall produce the policy of insurance to Newson Gale; and
- (e) hold the proceeds of the insurance referred to in condition 6.3(c) on trust for Newson Gale and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.4 The Buyer may resell the Goods before ownership has passed to him/it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of Newson Gale's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between Newson Gale and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

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6.6 Newson Gale shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Newson Gale.

6.7 The Buyer grants Newson Gale, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. PRICE

7.1 Unless otherwise agreed by Newson Gale in writing the price for the Goods shall be the price set out in the Contract.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to carriage and insurance (if carriage required) all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

8. PAYMENT

8.1 Payment of the price for the Goods is due prior to delivery unless agreed otherwise in writing. Time for payment shall be of the essence.

8.2 No payment shall be deemed to have been received until Newson Gale has received cleared funds. Payment shall unless agreed otherwise by Newson Gale, in writing, be in pound sterling and shall be made by such method as is determined by Newson Gale.

8.3 All payments payable to Newson Gale under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.4 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Newson Gale to the Buyer.

8.5 If the Buyer fails to pay Newson Gale any sum due pursuant to the Contract the Buyer will be liable to pay interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

9.1 Newson Gale warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 3 months from the date of delivery or such other period stated otherwise by Newson Gale in writing, the Goods will:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
- (b) be reasonably fit for the purpose for which the Goods of that type were made or ordinarily.

For the avoidance of doubt, Newson Gale does not give any technical advice or warrant any advice relating to the suitability of any Goods.

9.2 Newson Gale shall not be liable for a breach of any of the warranties in condition 9.1 unless:

- (a) the Buyer gives written notice of the defect to Newson Gale, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) Newson Gale is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Newson Gale) returns such Goods to Newson Gale's place of business at Newson Gale's cost for the examination to take place there.

9.3 Newson Gale shall not be liable for a breach of any of the warranties in condition 9.1 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow good trade practice and (where in place) the instructions of Newson Gale as to the storage, installation, commissioning, use or maintenance of the Goods ; or
- (c) the Buyer alters or repairs such Goods without the written consent of Newson Gale.

9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 Newson Gale shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if Newson Gale so

requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to Newson Gale.

9.5 If Newson Gale complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

9.6 Any Goods replaced will belong to Newson Gale and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the warranty period.

10. LIMITATION OF LIABILITY

10.1 Subject to condition 9.4, the following provisions set out the entire financial liability of Newson Gale (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. No warranties or conditions are given in relation to any opinion or advice given by Newson Gale. The Buyer must satisfy itself onto the suitability of the Goods for any particular purpose.

10.3 Nothing in these conditions excludes or limits the liability of Newson Gale for death or personal injury caused by Newson Gale's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3:

- (a) Newson Gale's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid for the Goods under the Contract; and
- (b) Newson Gale shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. FORCE MAJEURE

Newson Gale reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Newson Gale including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to Newson Gale to terminate the Contract.

12. GENERAL

12.1 Each right or remedy of Newson Gale under the Contract is without prejudice to any other right or remedy of Newson Gale whether under the Contract or not.

12.2 Failure or delay by Newson Gale in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

12.3 Any waiver by Newson Gale of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

12.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

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