

**1. Interpretation**

- 1.1. In these Conditions:
- "Goods" means the goods (including any instalment of the goods or any parts for them) and/or the services and work which the Company is to provide or carry out in accordance with these Conditions
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer
- "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.

2. These conditions apply to all orders and contracts for the supply and/or installation and/or serving of any goods by J. D. Neuhäus Limited ("the Company") to the Company's customers ("the Customer") and no variation of these conditions is to have any effect unless accepted in writing by the company.

3. These conditions and any contract made in accordance with them shall be subject to and construed in accordance with English Law.

4. All quotations made by the Company shall be invitations to treat and orders placed by Customers if in writing shall be subject to acceptance by the Company either by acknowledgement or by commencement of processing of the order.

**5. Guarantee**

- 5.1. All new goods sold by the Company are guaranteed free from defects in manufacture or materials for a period of 12 months from the date of delivery to the Customer save that:-
- 5.1.1. in respect of replacements to defective parts of goods the guarantee period expires on the expiry of the original guarantee for the goods when initially installed or (in respect of parts replaced) at the expiry of six months from the date of replacement if later; and
- 5.1.2. this guarantee will only apply when notice is given in writing to the Company of any defects arising within 10 days of it becoming apparent to the Customer; and any parts removed by the Company under this guarantee become the property of the Company; and
- 5.1.4. the Company will not be responsible for any defects which arise due to unsuitable or improper use, faulty assembly and/or operational set up of the goods by the Customer or any third party or as a result of natural wear or defective or careless handling or unsuitable operation or repair work carried out by or on behalf of the Customer or use of replacement material which is not supplied as new and guaranteed by the Company or faulty building work or unsuitable erection bases or chemical, electro-chemical or electrical influences in so far as they are not traceable to the fault of the Company
- 5.2. The liability of the Company under this guarantee shall be limited:-
- 5.2.1. to repair or (at the option of the Company) the replacement of parts of any goods to which this guarantee applies; and further
- 5.2.2. to the cost of the replacement part of parts used in carrying out the repair and shall not extend to labour or transportation costs; and
- 5.2.3. so that in respect of goods which have not been manufactured by the Company (or its parent company) this guarantee shall not apply and the rights of the Customer shall be determined in accordance with the guarantee offered by the manufacturer.
- 5.3. This guarantee is given in addition to and not in substitution for the legal rights of the Customer by statute or at common law.

**6. Specification**

- 6.1. All documentation provided either by the Company or the Customer in connection with the preparation of quotations including diagrams and sketches for identification purposes only and all details of weights and measurements therein are approximate only.
- 6.2. The Company reserves the right to alter the specifications of any goods without prior reference to the Customer provided that such alteration does not reduce the standard of the previous specification.
- 6.2.1. In the case of damaged goods or shortage of delivery or non-conformity with order, written notice must be given by the Customer to the carrier concerned within five days, followed by a complete claim in writing within seven days, both from the date of delivery.
- 6.2.2. Where goods are accepted from the carrier concerned without being checked, the delivery document must be signed "not examined".
- 6.2.3. In case of loss of goods notice in writing must be given to the carrier and to the Company within seven days of the date of consignment.
- 6.2.4. In default of compliance with the foregoing provisions of this clause the Customer shall not be entitled to refuse to take delivery of the goods or any part of them.
7. Where the contract is for delivery in instalments defects in quality or dimensions in any delivery shall not be a ground for cancellation of the remainder of the contract.

**8. Installation, Service and Repair**

- 8.1. In all contracts which include or comprise the installation, servicing or repair of any goods for the Customer:-
- 8.1.1. the Customer shall at all times provide for the Company free of any cost to the Company on site all necessary facilities for the Company's personnel or their sub-contractors to carry out such installation, servicing or repair work including the provision of a work-shop, any necessary crane tools, a power and water supply and any other equipment specified by the Company in its quotation;
- 8.1.2. subject to the observance by the Company's representatives of the Customer's safety regulations for the site the Customer shall take all such steps as may be necessary to ensure the safety on site of the Company's representatives;
- 8.1.3. the Customer will at its own cost maintain comprehensive insurance relating to the site including accident cover for the Company's representatives;
- 8.1.4. where goods are to be installed upon or repairs or service carried out on an existing structure the Customer will ensure that the structure is properly prepared for the carrying out of such works and that the site for such purposes;
- 8.1.5. unless otherwise expressly agreed in writing by the Company in its quotation the Customer shall be solely responsible for all foundations, building and civil engineering work necessary or appropriate to prepare the site for working and will comply with the reasonable requirements of the Company's representatives and in the event of the Company agreeing to carry out any work in that connection the Customer will re-imburse the Company in addition to the contract price as its usual charge out rates for such additional work;
- 8.1.6. the Customer will guarantee to the Company and its representatives full free and safe access to the site at all times;
- 8.1.7. the Customer will at its own expense provide and erect all other plant machinery and handling facilities which the Company may specify as being required for its

use in carrying out the installation repair or service work. The Customer shall be solely responsible for loss or damage to such equipment or to any person or equipment in or in the vicinity of the same howsoever arising and would ensure that all such equipment is in a safe condition and that the use of the same conforms in all respects to the requirements of the Health and Safety at Work, etc. Act 1974;

- 8.1.8. no person other than the Company and its representatives shall have any right to use or interfere with;
- 8.1.9. any goods supplied hereunder until final handover; or
- 8.1.10. any equipment provided by the Company for the purpose of carrying out installation works and the Customer will indemnify the Company from and against all liability arising out of any breach by the Customer or its personnel of this obligation.
- 8.1.11. the Company shall have the right at all times to deliver to or remove from the site the Company's equipment;

**9. Time for delivery**

- 9.1. The Company reserves the right to make part deliveries.
- 9.2. Although the Company will use its reasonable endeavours to deliver goods at the rate and at the time quoted for delivery, it shall not be liable for any loss or damage arising from its failure to do so. There is added to the delivery period the period of any delay on the part of the Customer in providing documentation or other information required by the Company to carry out the contract

**Liability and Indemnity**

- 10.1. The Company shall not be liable to the Customer and the Customer shall indemnify the Company from and against all actions, costs, claims and demands of whatever nature made against the Company for any loss and damage including consequential loss or damage caused;
- 10.1.1. by the failure of the Customer or its employees to observe the directions and advice given by the Company and their installation and maintenance instructions in relation to any goods supplied;
- 10.1.2. by any defect arising out of the use or in the quality of any goods supplied or in such goods not being fit for any purpose unless such use quality or fitness for purpose was indicated in the Company's specifications for goods of their description;
- 10.1.3. by any failure of the goods supplied to accord with any recommendation of the Company made in good faith but not contained in the Company's specifications or any special requirement contained in the Customer's order accepted in writing by the Company;
- 10.1.4. by any defect or deficiency in the goods where the failure of the Customer to comply with the conditions for acceptance and delivery contained in Clause 7. hereof has prevented a proper verification and proof of such defect or deficiency; as a result of work done in accordance with the Customer's specification which involves the infringement of any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of the contract or in the subsequent use of any goods supplied by the Company;
- 10.1.6. by the Customer or any person acting on behalf of the Customer attempting to rectify any defect which would otherwise be the responsibility of the Company it being agreed that the Company shall be given adequate time and opportunity to rectify any such defects itself save in cases of emergency.

**Passing of Risk**

- 11.1. Where goods are sold "ex-works" risk in the goods shall pass to the Customer immediately at the date and time of the appropriation of the goods by the Company to the Customer's order; and
- 11.2. in all other cases risk in the goods shall pass in accordance with the terms of the Contract.

**Passing of Property**

- 12.1. Property in the goods shall not pass to the Customer and the full legal and beneficial ownership of the goods shall remain with the Company unless and until the Company has received payment in full both for the goods the subject of this Contract and for all other goods the subject of any other Contract between the Customer and the Company which at the time of payment of the full price of the goods sold under this Contract have been delivered to the Customer but not paid in full.
- 12.2. Until property in the goods has passed to the Customer in accordance with the preceding sub-clause and without prejudice to the Company's rights:-
- 12.2.1. the Customer shall insure the goods which are on or at the Customer's premises or have been delivered elsewhere on the instructions of the Customer against all usual comprehensive risks and shall, if required to do so in writing by the Company prove to the Company that such insurance has been effected;
- 12.2.2. the Customer shall if required to do so in writing by the Company keep goods marked and apart from all other goods;
- 12.2.3. the Customer shall retain the goods in a fiduciary capacity as bailee for the Company until such time as the goods are sold by the Customer to the Customer's purchasers by way of bona fide sale at full market value;
- 12.2.4. if the Customer sells the goods:-
- 12.2.4.1. the Customer shall as between itself and its purchaser sell as principal and not as agents but as between the Company and the Customer the Customer shall be deemed to act as the agent of the Company
- 12.2.4.2. the Customer shall hold the proceeds of such sale on trust for the Company
- 12.2.4.3. the Customer shall (if required to do so in writing by the Company) transfer the proceeds of such sale into a joint Bank Account nominated by the Company in the names of the Company and the Customer
- 12.2.5. the Company shall be entitled to immediate re-delivery of the goods and to re-sell the goods at any time after the due date for payment or before such date in the case of the occurrence of any of the events referred to in conditions 14.1 or 15 hereof and for the purpose of such recovery and/or re-sale of the goods the Company shall be entitled and the Customer hereby grants to the Company its Officers, Servants and Agents a licence to enter upon the premises of the Customer during normal business hours and to remove the Goods (including severance from the reality when necessary).
- 12.3. Should the Goods (or any of them) be mixed with other goods or converted into a new or modified product, whether or not such mixture or conversion involves the addition of any other goods or thing whatsoever and in whatever proportions the mixture or conversion shall be deemed to have been effected on behalf of the Company and the Company shall have the full and legal and beneficial ownership of the new product and the rights and powers of the Company hereinbefore set out shall extend to the new product.
- 12.4. The exercise by the Company of its rights against the Customer under this clause shall be without prejudice to any rights of the Company to claim against the Customer for additional losses suffered by the Company as a result of the Customer's breach of contract and this clause shall not prejudice or affect the right of the Company to claim from the Customer the price of the goods.

13. If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods the Company shall be entitled to treat the Order or contract as being for goods sold "ex-works" and the Customer shall take delivery accordingly and arrange storage of the goods and the goods shall thereupon be at the Customer's sole risk. If at its discretion the Company is prepared in any particular case to provide storage facilities for the benefit of the

Customer any such is to be at the sole risk of the Customer and at a charge payable as from a date ten days after the Company notifies the Customer that the goods are ready for despatch of no less than 1/2% per month of the invoice amount and after the expiry of 28 days following notification to the Customer of readiness for despatch the Company reserves the right to dispose of the goods as it may in its absolute discretion think fit and without prejudice to any claim against the Customer for breach of contract.

**14. Prices**

- 14.1. Unless otherwise agreed all prices are quoted "ex-works" and are subject to acceptance by the Customer within thirty days;
- 14.2. All prices quoted are exclusive of and subject to the addition of VAT and are deemed to be in pounds sterling unless otherwise stated;
- 14.3. All prices are calculated on the basis of suppliers' price lists to the Company at the date of quotation. Notwithstanding anything in the quotation or these conditions contained the Company reserves the right to increase the price quoted by a sum equal to the amount of the increase in price notified to the Company by its supplier in respect of the goods at any time prior to delivery.
- 14.4. Any variation in the terms of the Customer's order (whether technical or commercial) shall have no effect unless agreed in writing by the Company and (if agreed) shall be subject to such increase in the contract price as may be agreed at that time and failing agreement the contract price shall be increased by such sum as shall re-imburse the Company (at its usual charge out rates) for all additional time (including administration time) incurred by the Company as a result of the variation together with all additional costs of materials.

**15. Terms of payment**

- 15.1.1. Unless otherwise stated on the Company's quotation or conformation or order, payment shall be net 30days from the date of invoice. The Company will be entitled to charge interest on overdue accounts at 5% above Midland Bank plc base lending rate for the time being in force calculated at monthly rests. The right of the Company to charge interest on overdue accounts shall in no way prejudice its rights to recover any monies (including accrued interest) due to it by legal proceedings at such time as the Company thinks fit and the Company shall be under no obligation to allow overdue accounts to remain outstanding on payment of interest thereon.
- 15.1.2. If the Customer cannot accept delivery when the goods are completed ready for delivery then the time when the goods are completed ready shall count as the time delivery date and payment shall be made accordingly unless otherwise agreed in writing by the Company.
- 15.1.3. Customers' orders may be treated on a PROFORMA basis at the Company's discretion on acceptance or before the delivery of the order or completion of the contract.
- 15.2. If before delivery is effected there arises reasonable grounds for the Company to believe that the Customer will not be able to fulfil its payment obligations the Company shall have the right to demand from the Customer security for payment. From the date of demand for security until the date of satisfactory provision of the same the Company shall be under no obligation to do any act or thing to implement any part of the contract. If security acceptable to the Company is not offered within such reasonable period as may be specified by the Company the Company may terminate the Contract without further liability on its part but the Customer shall be liable to the Company in respect of any losses (including loss of profit) incurred by the Company as a consequence of such determination.
- 15.3. The Company shall have a general lien on all goods and property of the Customer in the possession of the Company in respect of all sums due from the Customer to the Company but unpaid and the Company shall be entitled on giving 14 days notice in writing to the Customer to dispose of such goods or property and to apply the proceeds thereof towards reduction of such debt.
- 15.4. All payments due from the Customer hereunder shall be made in full to the Company without any claim for set-off or counterclaim or other deduction whatsoever.

**16. Safety of Goods**

- 16.1. The Customer shall forthwith provide the Company with all the information relating to any defects or safety hazards in the Goods which it has or of which it becomes aware or of which it ought reasonably to have become aware.
- 16.2. The Customer shall provide any person who uses or may use the Goods with any information (including instructions) provided by the Company.

**17. Termination of Contract**

If the Customer shall make default in or commit a breach of the contract or of any other of his obligations to the Company, or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or if the Customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) or to appoint an administrator shall be passed or presented or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed, the Company shall have the right forthwith to terminate any contract subsisting, upon written notice of such termination being posted to the Customer's registered office or (being an individual) his last known address in the United Kingdom, the contract shall be deemed to have been determined without prejudice to any claim or right the Company may otherwise make or exercise.

**18. General**

- 18.1. Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party 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.
- 18.2. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.3. 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.
- 18.4. Any dispute arising under or in connection with these conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institute of Arbitrators in accordance with the Arbitration Act 1996.

**19. Force majeure**

- 19.1. The Company shall not be under any liability for any failure to perform any of its obligations under the contract due to Force Majeure. Following notification by the Company to the Customer of such cause, the Company shall be allowed a reasonable extension of time for the performance of its obligations.
- 19.2. For the purposes of this condition, Force Majeure means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.