

## Conditions of Sale

### 1. Definition

“the Company means Nyquist Limited

“the Buyer “ means the person, firm or company ordering or buying the goods from the Company.

“goods” means the whole or part of any goods and services that the Company agreed to supply to the Buyer.

“the Contract” means the supply of the goods in accordance with these Conditions.

### 2. General

- a) All quotations and orders for goods are subject to these Conditions which shall apply in place of and prevail over any terms and conditions contained in the Buyer’s order or in correspondence or elsewhere or implied by trade, custom or course of dealing unless agreed by both parties in writing and signed by a Director of the Company.
- b) The Company shall not be bound by any variation, waiver or addition to these Conditions except as agreed by both parties in writing and signed by a Director of the Company.
- c) Any concession or waiver by the Company at any time of any part of these Conditions shall not prejudice the Company’s right to enforce or rely on such Conditions subsequently.

### 3. Prices.

- a) Quotations are valid for thirty days.
- b) Prices quoted are net ex-works excluding carriage, insurance, packing, installation and Value Added Tax.
- c) The price is based on current costs at the date of the Contract. The Company reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the costs to it of materials, labour or services or of any currency fluctuations which increase the costs to it of goods imported into the United Kingdom.

### 4. Payment.

- a) All invoices are due for payment 30 days net from the date of the invoice at the Company’s office.
- b) The Company reserves the right to charge interest at the official dealing rate of the Bank of England (the base rate) + 8% on overdue accounts.
- c) The Company reserves the right to withdraw credit terms and substitute cash with order or cash on delivery terms.
- d) The Company reserves the right to suspend deliveries or cancel or suspend outstanding orders when the Buyer’s account is overdue, and furthermore when, in the Company’s absolute discretion, the Company has doubts arising about the continued credit worthiness of the Buyer.
- e) Should payments not be made in accordance with 4(a) and the Company deem it necessary to pass an account to a debt collection agency or its solicitors for collection, the total sum owed by the Buyer will become due for payment and the Buyer will be liable for all costs incurred in addition to the outstanding account.

### 5. Delivery.

- a) All delivery dates are quoted in good faith but time shall not be deemed to be of the essence. The Company shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from any delay in delivery of the goods, nor will any such delay entitle the Buyer to cancel or rescind the Contract.
- b) The delivery of the goods to a carrier for transmission to the Buyer or the prior delivery of the goods to the

stipulated place shall constitute delivery to the Buyer and the risk therein shall upon such delivery pass to the Buyer. Section 32 (2) and (3) of the Sale of Goods Act 1979 as amended shall not apply.

- c) If the goods are not received by the Buyer within six days from the date of the relevant invoice the carrier and the Company must at once be informed.
- d) Unless agreed in writing, the Company shall be entitled to make partial deliveries or deliveries by instalments and the Conditions herein shall apply to each partial delivery.

### 6. Transfer of Legal Title.

- a) The legal title in the goods shall remain in the Company until the Company has received payment in full for the goods and any other sums owing and/or due to the Company under any contract between us and until such payment is made the Buyer will hold such goods as bailee on the Company’s behalf.
- b) If the Buyer (who shall in such case act on its own account and not as an agent for the Company) shall, in the normal course of business, sell the goods prior to making payment in full for them, the beneficial entitlement of the Company therein shall attach to the proceeds of such sale or to the claim for such proceeds.
- c) As long as the legal title in the goods remains in the Company, the Company shall have the right, without prejudice to the obligation of the Buyer to buy the goods, to repossess the goods (and for that purpose go upon any premises occupied by the Buyer).
- d) The buyer shall be entitled to incorporate the goods into any product in the normal course of business on condition that ownership in the new product shall vest in the Company.
- e) Nothing in this condition shall confer any right on the Buyer to return the goods sold hereunder. The Company may maintain an action for the price notwithstanding that legal title in the goods may not have passed to the Buyer.

### 7. Warranty.

- a) Where the goods are manufactured by the Company using materials and components supplied by the Buyer, the Company warrants that the goods will be free from defects in workmanship only.
- b) Where the goods are manufactured in accordance with information and drawings supplied by the Buyer, the Company warrants that the goods will be free from defects in workmanship. For any materials or components incorporated in these goods the Buyer shall not be entitled to receive greater benefit hereunder than shall be received by the Company under any guarantee given to the Company by the manufacturers or suppliers thereof.
- c) Where the goods are designed and manufactured by the Company, the Company warrants that the goods will be free from defect in design, material or workmanship.
- d) The above warranties shall be limited solely to replacing or repairing, without charge, the defective goods and shall apply for a period of 12 months from the date of delivery provided that:
- e) The Company is notified in writing within 7 days of the discovery of any such defect by the Buyer and in any event not later than 12 months from the date of delivery.
- f) The defective goods are returned to the Company, transportation charges being prepaid by the Buyer.
- g) Examination by the Company of such goods shall disclose to its satisfaction that such defects exist and have not been caused by misuse, neglect, accident, improper storage,

## Conditions of Sale

- handling, application or installation or by repair or alteration not effected by the Company.
- h) The Buyer shall pay to the Company the cost (as certified by the Company) of any such examination and testing of such goods as a result of which the Company does not admit liability.
  - i) The warranties above shall apply only to the Buyer.
  - j) The warranties above are given in lieu of and to the exclusion of, to the extent permitted by law, all representations, guarantees, conditions, warranties or liabilities whatsoever expressed or implied, statutory or otherwise, and whether arising in tort or contract or negligence or otherwise as to the quality of the goods or their fitness for any purpose.
  - k) The Company hereby also expressly excludes any liability for consequential damage of whatever nature caused by or arising out of the use of the goods or occurring in respect of the goods howsoever arising.

### 8. Cancellation and Amendment of Orders.

The Buyer shall not be entitled to cancel or amend the Contract. The Buyer shall indemnify the Company against all losses (including loss of profits), cost and all other expenses and damages (whether direct or consequential) occasioned by such cancellation or amendment.

### 9. Force Majeure.

The Company reserves the right to cancel, vary or suspend the operation of contract of sale if events occur which are in the nature of force majeure including (without prejudice to the generality of the foregoing) fire, floods, storm, breakdown, strikes, lock-outs, non availability of services, materials or components or any other event whatsoever outside the control of the Company; and the Company shall not be held liable for any breach of contract resulting from such event.

### 10. Design Rights.

- a) Where the goods are manufactured in accordance with information and drawings supplied by the Buyer or to his design or specification or where standard goods of the Company are altered in accordance with the Buyer's instructions:-
  - i. No guarantee or warranty is given by the Company as to the practicability, efficiency, safety or otherwise of the goods (this being without prejudice to any other of the contract terms).
  - ii. The Buyer will indemnify the Company against all liability incurred by the Company as a result of such goods infringing any intellectual property right or the provision of any statute, statutory instrument or regulation as a result of any impracticability, inefficiency or lack of safety or other defects in the goods where such defects are due (whether in whole or in part) to faults or omissions in such information, drawings, design, specification or instructions.
- b) The Company shall be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any goods supplied by the Company infringe any intellectual property right or the provision of any statute, statutory instrument or regulation

- c) The Company retains full ownership of all inventions, designs, copyrights and processes relevant to the goods. Any drawings, manual, specifications and software issued by the Company are copyright and confidential and may not be reproduced or divulged to a third party without prior written consent from a Director of the Company.

### 11. Documentation.

- d) All reasonable efforts are made to ensure the accuracy of any technical data, drawings, instructions or other literature made available in relation to the goods. However, the Company accepts no liability for any damage, injury, loss or expense resulting from any error or omission in such literature and drawings.
- e) The Company reserves the right to make design changes and alter technical specifications without notice.

### 12. Proper Law and Jurisdiction.

This contract shall be subject to English law and the parties shall submit to the exclusive jurisdiction of the English courts.

### 13. Notices.

All notices shall be given or sent by pre-paid first class post or facsimile to the party concerned at the principal place of business. Notice sent by first class post shall be deemed to have been given 48 hours after dispatch and notice given by facsimile machine shall be deemed to have been given on the date of transmission.

### 14. Headings.

The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.