

## CONDITIONS OF SALE OF Nama Germany GmbH

written notice to Nama [and obtain a refund of any amounts already paid to Nama in respect of the Goods in question]. Other contracts then in force between Nama and the Buyer shall not be affected.

- 5.3 If the Buyer:
- (a) fails to give all the necessary instructions and documents for the Goods or otherwise causes or requests a delay; or
  - (b) fails to take delivery of the Goods on the date of delivery,

Nama will be entitled (but not obliged) without prejudice to its other rights to store the Goods at the Buyer's risk and the Buyer shall pay all reasonable costs and expenses of such storage and any additional costs of carriage incurred.

- 5.4 The Buyer shall accept the supply of such quantity and, in any event, a deviation of up to +/- 5% of the Contract amount, of the Goods (whether more or less) as reasonably approximates to the amount stipulated in the contract.
- 5.5 Where, pursuant to the Order Acceptance, Nama is responsible for the transportation of the Goods, any claim by the Buyer in respect of non-delivery, loss and/or damage to the Goods shall be notified to Nama as soon as the Buyer becomes aware (or ought reasonably to have become aware) of such non-delivery, loss or damage.

## 6 Risk and title

- 6.1 Unless otherwise stated in the Contract, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods in accordance with clause 5.1.
- 6.2 Nama shall retain title to and ownership of the Goods until it has received payment in full of all sums due under the relevant Contract and any other contract between Nama and the Buyer. If payments received from the Buyer are not stated to refer to a particular invoice Nama may appropriate such payments to any outstanding invoice.
- 6.3 Until payment of the purchase price for any Goods (or, if earlier, the Buyer's proper use of the Goods in the ordinary course of the Buyer's business) the Buyer shall keep such Goods free from any charge, lien or other encumbrance and shall store such Goods in such manner as makes such Goods clearly identifiable as being Nama's property.
- 6.4 The Buyer may (acting on its own account) use or re-sell any Goods in the ordinary course of its business, provided that Nama has not exercised any of its rights under Condition 6.5.
- 6.5 If the Buyer fails to make any payment to Nama when due, enters into voluntary or compulsory liquidation or has an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets, or if Nama has reasonable cause to believe that any of these events is likely to occur, the Buyer grants Nama the right, without prejudice to any other remedies under the relevant Contract:
- (a) to enter any premises where Goods owned by it may be, and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under any Contract; and
  - (b) to require the Buyer not to resell or take possession of any Goods owned by Nama until the Buyer has paid in full all sums owed by it to Nama under any Contract.

## 7 Warranty

- 7.1 Nama warrants that:
- (a) for a period of 3 months from the date of delivery to the Buyer (or for such other period as is expressly stated in the Contract or the Specification), the Goods shall meet all of the requirements of:
    - (i) the Specification; and
    - (ii) any Written Statement;
  - (b) any Services shall be provided with reasonable care and skill;
  - (c) it will pass good title in the Goods to the Buyer;
  - (d) the sale of the Goods by Nama to the Buyer shall not result in the infringement of any patent, trade mark, registered design or design right of any third party (but no such warranty is given in respect of the use by the Buyer of the Goods after such sale by Nama);
  - (e) the manufacture of the Goods shall be in compliance with all relevant laws and regulations governing the manufacture of such Goods in the European Union;
- 7.2 Nama will, free of charge, either replace (and, where applicable re-perform the Services) or refund the purchase price of any Goods which (whether or not as a result of Nama's negligence) are in breach of any of the warranties given in condition 7.1 provided that:
- (a) the Buyer makes a full inspection of the Goods within 7 days after delivery and does not tamper with, use or incorporate the Goods into any manufacturing process where it knows, or should reasonably have known, that such Goods were in breach of any of the above warranties;
  - (b) the Buyer notifies Nama if it becomes aware of any breach of such warranties;
  - (c) the Buyer has used and stored the Goods in accordance with any directions set out in the Specification; and
  - (d) the Goods are either made available to Nama for inspection or returned to Nama at the Buyer's own expense, as Nama may request.
- 7.3 Except as expressly provided for in these conditions, all warranties, (whether express or implied by statute or common law or howsoever) are excluded, including but without limitation:
- (a) those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Nama); and
  - (c)

- (d) any aspect relating to the performance, composition or attributes of the Goods other than as expressly stated in the Specification or in any Written Statement.

## 8 Limitation of Liability

- 8.1 Nothing in these Conditions shall exclude or limit Nama's liability for loss arising from death or personal injury caused by its negligence.
- 8.2 Subject to clause 8.1 the aggregate liability of Nama to the Buyer in respect of any claim or claims, whether such liability arises in contract, tort (including negligence) or breach of statutory duty or otherwise shall be limited to direct losses of the Buyer up to an amount equal to the lower of:
- (a) 50% of the aggregate price of all Goods purchased by the Buyer from Nama during the six months period prior to the date of delivery of the Goods giving rise to the liability in question; and
  - (b) The value of the order.
- 8.3 Subject to clause 8.1 Nama shall under no circumstances be liable for:
- (a) any indirect, special or consequential loss;
  - (b) any loss of anticipated profit or loss of business; or
  - (c) any third party claims against the Buyer;
- whether such liability would otherwise arise in contract, tort (including negligence) or breach of statutory duty or otherwise.

## 9 Regulations

- 9.1 The Buyer shall be responsible at its own cost for compliance with all relevant laws and regulations and for obtaining and maintaining any necessary import or export licences, customs clearance, exchange control consent or other authorisations and permits in relation to the purchase of the Goods.

## 10 Termination

- 10.1 If the Buyer:
- (a) defaults in any payment or is otherwise in breach of any of its obligations to Nama under the Contract or any other contract with Nama (and fails to remedy the breach having been given 14 days written notice of such failure); or
  - (b) enters into voluntary or compulsory liquidation or has an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets,
- Nama may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith suspend or cancel any uncompleted part of the Contract or stop any Goods in transit or require payment in advance or satisfactory security for further deliveries under the Contract.

## 11 Force majeure

- 11.1 Nama shall not be liable to the Buyer for any loss or damage suffered by the Buyer as a direct or indirect result of the supply of the Goods by Nama being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of Nama including, without limitation, circumstances affecting the provision of all or any part of the Goods by Nama's usual source of supply or delivery.

## 12 Severability

- 12.1 The parties intend that every provision of these Conditions shall be and remain valid and enforceable to the fullest extent permitted by law. If such provision is or at any time becomes to any extent invalid, illegal or unenforceable, it shall to that extent be deemed not to form part of the Contract but (except to that extent in the case of that provision) it and all other provisions of the Contract shall continue in full force and effect.

## 13 Governing law

- 13.1 The construction, validity and performance of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts. Notwithstanding the foregoing, such submission shall not (and shall not be construed to) limit the right of Nama to proceed against the Buyer in any other court of competent jurisdiction and proceeding in any one or more jurisdictions shall not preclude proceedings in any other jurisdiction (whether concurrent or not) if and to the extent permitted by applicable law.

**IMPORTANT NOTE:** THESE CONDITIONS OF SALE CONTAIN PROVISIONS LIMITING OUR LIABILITY. IN ORDER TO SPREAD THE RISK WHICH, IF INSURED, WOULD BE LIKELY TO INCREASE THE COST OF THE GOODS, WE CONSIDER THAT IT IS REASONABLE FOR US TO LIMIT OUR LIABILITY IN THE MANNER SET OUT IN CONDITION 8.

## 1. Definitions

In these Conditions the following words and expressions shall have the meanings ascribed beside each:

- "Buyer" means the person, firm or company placing an order with Nama;
- "Contract" means the contract for the supply of specified Goods formed by Nama's acceptance of the Buyer's order for such Goods through the Order Acceptance;
- "Nama" means Nama Germany GmbH;
- "Goods" means all those goods and materials which are the subject of the Buyer's order;
- "in writing" or "written" means written on any paper document or electronic communication;
- "Order Acceptance" means any written document from Nama to the Buyer setting out the terms on which the Buyer's order is accepted by Nama or, where no such written document is supplied, the delivery of the Goods to the Buyer;
- "Services" means any such services as may be provided by Nama in relation to the supply of the Goods;
- "Specification" means Nama's standard specification for the Goods or such other specification agreed in writing by Nama;
- "Written Statement" means any description, representation, recommendation, statement or warranty relating to the Goods, made in writing and signed by a director of Nama.

## 2 Formation of Contract

- 2.1 All Goods sold and Services supplied by Nama are subject to these Conditions only. It is intended, in particular, that these Conditions will prevail over any terms and conditions on the Buyer's order form or other similar document. Consequently, if the Buyer orders or accepts any Goods, or gives delivery instructions for any Goods, it shall always be on the basis that these Conditions govern the Contract.
- 2.2 Where any of these Conditions allow a matter to be "agreed in writing" by Nama then, unless otherwise stated, such agreement may be given by a representative, agent, sales or other reasonably appropriate employee of Nama.
- 2.3 Where any of these Conditions are varied, such variation must be in writing and signed by a director of Nama in order to be binding. No other representative, agent or sales person has Nama's authority to vary, amend or waive any of these Conditions on behalf of Nama.

## 3 Price and payment

- 3.1 The price and delivery terms shall be as stated in Nama's Order Acceptance (or, if not stated in the Order Acceptance, Nama's quotation). Such price shall be fixed for either the validity period stated in Nama's Order Acceptance (or, as applicable, quotation) or, if no such period is stated, for 7 days after the date of Nama's quotation.
- 3.2 Unless otherwise agreed in writing, the price shall be exclusive of the cost of delivery and packaging in accordance with clause 5.1 and exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods which shall be added to the price for the Buyer's account unless otherwise stated in the Contract.
- 3.3 Unless otherwise agreed in writing by Nama, the Buyer shall pay for the Goods, without any deduction or set-off, in the invoice currency within 20 days of the end of the month following the date of Nama's relevant invoice. Nama shall be entitled to invoice each instalment as and when delivery has been made.
- 3.3 Nama may charge interest on any late payment at a rate of three per cent per annum above the SIBOR rate prevailing at time of charge being levied both before and after any judgement in respect of such late payment. Such interest will accrue on any unpaid amount from the due date until payment in full.

## 4 Description of Goods

- 4.1 Nama gives specific warranties in relation to the description of the Goods and the performance of any Services in condition 7.1. Apart from those warranties, all specifications, descriptions, drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods and any advertising matter and sample books are, whilst given in good faith by Nama, only intended to serve as a guide. Such items should not be relied on by the Buyer or treated as forming part of the Contract unless signed by a director of Nama.
- 4.2 Unless agreed in writing by a director of Nama, no contract shall be a sale by sample and Nama does not warrant that Goods will comply with previous deliveries of similar goods.

## 5 Delivery

- 5.1 Unless otherwise agreed in writing by the parties, Nama shall be entitled to deliver the Goods in instalments. Unless otherwise stated in the Order Acceptance the Goods shall be deemed to have been delivered at the point at which they are made available for collection by or on behalf of the Buyer. Specific terms for export sales shall be as stated in the Order Acceptance.
- 5.2 Any delivery time, date or period ("timescale") shall be regarded as an estimate only and shall not be of the essence of the Contract. Nama will use all reasonable endeavours to meet any such timescale but shall not otherwise incur any liability for any loss or damage resulting from its failure to do so unless the parties have expressly agreed in writing:
- (a) that the timescale is of material importance to the Buyer; and
  - (b) the liability that Nama will incur in the event of any failure to achieve such timescale.

If Nama has reason to believe that it will be unable to achieve any timescale it shall, as soon as reasonably practicable, inform the Buyer of the possibility of delay and the steps that Nama proposes to undertake in order to minimise the risk or extent of any such delay. If, notwithstanding having taken any such steps, Nama is unable to deliver the Goods within a reasonable period of time after the timescale, the Buyer shall be entitled, as its sole remedy, to terminate the Contract immediately upon