



**1. Interpretation**

- 1.1 The following definitions and rules of interpretation apply in these conditions: "Buyer" the person, firm or company who purchases the Goods and/or Services from the Company; "Company" NCMT, LIMITED; "Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these conditions and the Quotation; "Delivery Point" the place where delivery of the Goods or performance of the Services is to take place under condition 4.1; "Goods" any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); "Quotation" the quotation in respect of the sale of the Goods or supply of the Services provided by the Company to the Buyer; "Services" the Services to be supplied by the Company to the Buyer under the Contract.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

**2. Application Of Terms**

- 2.1 Subject to any variation under condition 2.1 the Contract shall be on these conditions and the Quotation to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2 These conditions apply to all the Company's sales and any variation to these conditions or the Quotation and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Quotation.
- 2.3 Each order or acceptance of a Quotation by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to the Quotation and these conditions.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer or performs the Services.
- 2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6 Any Quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any Quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it, or as otherwise agreed in writing. A Quotation may vary the terms of these conditions and in the event of a conflict between the terms of the Quotation and these conditions, the terms of the Quotation shall prevail.

**3. Description**

- 3.1 The quantity and description of the Goods and the nature of the Services shall be as set out in the Quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.

**4. Delivery of the Goods and/or Performance of the Services**

- 4.1 Unless otherwise agreed in writing by the Company and subject to proper performance of the Buyer's obligations pursuant to clause 11, delivery of the Goods or the performance of the Services shall take place at the Delivery Point notified to the Company by the Buyer when the order for the Goods or Services is placed.
- 4.2 Any dates specified by the Company for delivery of the Goods or performance of the Services are intended to be an estimate and time for delivery or performance shall not be made of the essence by notice. If no dates are so specified, delivery or performance shall be within a reasonable time.
- 4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
  - 4.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - 4.4.2 the Goods shall be deemed to have been delivered; and
  - 4.4.3 the Company may store the Goods until actual delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Without prejudice to any of the Company's rights under these conditions or otherwise the failure or refusal by the Buyer to take delivery or to pay for any

one or more of the said instalments of the Goods on the due dates for payment shall entitle the Company to suspend further delivery of the Goods pending payment by the Buyer.

Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

- 4.7 If for any reason the Buyer is not ready for or declines to accept performance of the Services on the due date for performance, the Company reserves the right to demand or retain (as the case may be) payment in full.

**5. Non-Delivery**

- 5.1 The Company shall not be liable for any non-delivery of Goods or non-performance of Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company within 3 working days of the date when the Goods would in the ordinary course of events have been received or the Services performed.
- 5.2 Any liability of the Company for non-delivery of the Goods or non-performance of Services shall be limited to replacing the Goods or performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

**6. Risk/Title**

- 6.1 The Goods are at the risk of the Buyer from the time of delivery, notwithstanding that installation of the Goods has not been completed.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
  - 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
  - 6.4.1 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 documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), 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
  - 6.4.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company 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
  - 6.4.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.6 The Buyer grants the Company, 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.
- 6.7 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 5.2 shall remain in effect.

**7. Price**

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price specified in the invoice raised by the Company.
- 7.2 The price for the Goods and/or Services will be supplied in the Quotation and is fixed subject to any fluctuating exchange rate where the Quotation states the price is subject to exchange rate fluctuation and what exchange rate will apply. The Company reserves the right to increase the price of the Goods and/or Services at any time before delivery and/or performance to reflect any increase in cost to the Company for whatever reason.
- 7.3 The price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

**8. Payment**

- 8.1 Subject to condition 8.4 payment of the price for the Goods and/or Services is due in pounds sterling in accordance with the terms set out in the Quotation. Without prejudice to the Company's rights whether pursuant to these conditions, the Quotation or otherwise, any deposit paid to the Company by the Buyer pursuant to the Quotation shall not be refundable in the event that the Buyer purports to cancel an order for Goods or Services contrary to condition 13.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision
- 8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise



- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
9. **Quality**
- 9.1 The Company is not the manufacturer of the Goods and shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these conditions):-
- 9.2.1 upon delivery, and, unless otherwise agreed by the Company in writing, for a period of 12 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.2.2 the Services will be performed with reasonable skill and care.
- 9.3 The Company shall not be liable for a breach of the warranties in condition 9.2 unless:
- 9.3.1 the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 3 working days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods or reviewing the Services performed.
- 9.4 The Company shall not be liable for a breach of the warranty in condition 9.2.1 if:
- 9.4.1 the Buyer makes any further use of such Goods after giving such notice; or
- 9.4.2 the defect arises from wilful damage, negligence, abnormal working conditions, failure to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods and/or Services do not conform with the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods and/or Services at the pro rata Contract rate.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods and/or Services.
- 9.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
10. **Limitation Of Liability**
- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these conditions and/or the Quotation;
- 10.1.2 any use made or resale by the Buyer of any of the Goods; and
- 10.1.3 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.
- 10.3 Nothing in these conditions or the Quotation excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
- 10.3.2 under section 2(3), Consumer Protection Act 1987; or
- 10.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.4 for fraud or fraudulent misrepresentation
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4**
- 10.4 Subject to condition 10.2 and condition 10.3
- 10.4.1 the Company'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 the Contract shall be limited to the Contract price; and
- 10.4.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
- 10.4.3 to the best of the Company's knowledge, the Goods do not infringe any existing patent, registered design or copyright but no condition or warranty is expressed or implied in this respect and the Company shall not be liable for any loss or damage incurred by the Buyer in the event of such infringement or purported infringement.
11. **Buyer's Obligations**
- 11.1 The Buyer shall:
- 11.1.1 co-operate with the Company in all matters relating to the Services and appoint a named contact in relation to the Services, who shall have the authority contractually to bind the Buyer on matters relating to the Services;
- 11.1.2 provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Delivery Point and such facilities at the Delivery Point as may be reasonably requested by the Company in order for it to perform the Services;
- 11.1.3 provide, in a timely manner, such information as the Company may request and ensure that it is accurate in all material respects;
- 11.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises at the Delivery Point for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of its obligations and actions under this condition 11.1.4;
- 11.1.5 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Point;
- 11.1.6 ensure that all Buyer's equipment to be used in relation to the Services is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements; and
- 11.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services insofar as such licences, consents and legislation relate to the Buyer's business, the Delivery Point, staff and equipment in all cases before the date on which the Services are to start.
- 11.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 11.3 The Buyer shall indemnify the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.
12. **Returns**  
Subject to condition 9, Goods delivered to the Buyer which are in accordance with the Contract will not be accepted for return.
13. **Cancellation**  
Once an order for the Goods and/or Services has been accepted by the Company, the Buyer shall have no right of cancellation.
14. **Assignment**
- 14.1 The Company may not assign the Contract or any part of it to any person, firm or company without Buyer's written approval.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
15. **Force Majeure**  
The Company reserves the right to defer the date of delivery or performance 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 the Company 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 or any other issues beyond the reasonable control of the Company, 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 the Company to terminate the Contract.
16. **General**  
Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.  
If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.  
Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.  
Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.  
The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.  
Any dispute of any kind whatsoever which arises or occurs between the parties in relation to the Contract and cannot be resolved by amicable discussions may be referred by either party to mediation under The Manufacturing Technologies Association's, or similar mutually acceptable organisation's, mediation scheme PROVIDED THAT where such mediation does not achieve a resolution within 30 days the Company may commence court proceedings in respect of such dispute.  
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.
17. **Communications**  
All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:  
(in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or  
(in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.  
Communications shall be deemed to have been received:  
if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or  
if delivered by hand, on the day of delivery so long as delivery occurs on a normal working day; or  
if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.  
Communications addressed to the Company shall be marked for the attention of the Company Secretary.