

**1. FORMATION OF CONTRACTS**

- 1.1. All contracts made by Newtons4th Ltd. (referred to herein as "the Company") for the sale of its products (referred to herein as "the Products") shall be deemed to incorporate these terms and conditions. No variation of or addition to these terms and conditions shall form part of any contract unless made or specifically accepted by the Company in writing.
- 1.2. These terms and conditions shall override and take the place of any other terms and conditions in any document or other communication used by the Customer in concluding the contract with the Company.
- 1.3. No contract shall come into effect until the Customer's order has been accepted in writing to the Company.

**2. PRICES**

- 2.1. Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that the price quoted is exclusive of any value added tax special packaging materials carrier's charges or customs duties.

**3. PAYMENT**

- 3.1. Unless otherwise specified, payment will be by irrevocable letter of credit or payment in advance.
- 3.2. If the Customer shall fail to make payment in full in accordance with sub-paragraph 3.1. of this Condition then:-
- 3.2.1. the Company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Customer provided always that in any event the Customer shall not in any respect be released from its obligation to the Company under that or any such other contract; or
- 3.2.2. in lieu of suspension in accordance with sub-paragraph 3.2.1. above the Company shall be entitled to terminate the relevant contract and/or any other contract with the Customer in accordance with Condition 11 below and to claim damages from the Customer.
- 3.3. Where carriage packing or other charges are stated separately from the price they will nevertheless be payable by the Customer at the same time as if they formed part of the price and shall be treated as such.
- 3.4. Time for payment is of the essence of these terms and conditions.

**4. DESPATCH AND DELIVERY**

- 6.1. Unless otherwise specified on the Company's acknowledgement of order delivery of the Products will take place at the premises of the Customer.
- 4.2. Whilst the Company will use all reasonable endeavours to adhere to any stated date for delivery these dates are intended as estimates or statements of expectation only. The Customer shall accordingly accept delivery of the Products when tendered and time of delivery shall not be of the essence of contract. The failure by the Company to adhere to any stated date of delivery shall not constitute a breach of the contract and the Customer shall not be entitled to treat the contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- 4.3. The risk in the Products sold shall pass to the Customer on dispatch.
- 4.4. The Customer shall keep the Products fully insured against all risks normally insured against by a prudent person carrying on a similar business as the Customer throughout the period between the risk therein passing to the Customer and the property therein ceasing to remain with the Company.
- 4.5. In cases where the Company expressly agrees to conclude the contract of carriage and/or arrange for the insurance of the Products during transit the Company shall be deemed to be acting solely as agent of the Customer and sub-sections 2 and 3 of Section 32 of the Sale of Goods Act 1979 shall not be applicable.
- 4.6. The Customer undertakes to inspect the Products at the earliest opportunity after delivery and in any event within forty-eight hours of delivery. Any claim for shortfall in a delivery of the Products or claim that the Products do not comply with the order confirmed by the Company must be notified in writing within three days of delivery. Failure to make any such claim within such period shall constitute unqualified acceptance of the Products and waiver by the Customer of all claims relating to non-delivery of the Products or delivery of the wrong Products or error on the Company's invoice as the case may be.

**5. PROPERTY**

- 5.1. Notwithstanding delivery of the Products (or of any documents representing the Products) the property in the Products shall remain with the Company until the Customer has paid the Company in full for the Products and the Customer shall hold such Products as bailee
- 5.2. The Customer shall (unless otherwise agreed by the Company in writing) ensure that all Products which are in the possession or control of the Customer and the property which remains with the Company are labelled or otherwise marked so that they may be readily identified.
- 5.3. The Company may maintain an action for the price of the Products notwithstanding that property in the Products may not have passed to the Customer

**6. SPECIFICATION DESCRIPTIONS**

- 6.1. All specifications and descriptions of Products wherever contained are approximate only being intended to serve merely as a guide and accordingly the Company shall not be liable for their accuracy

**7. INTELLECTUAL PROPERTY**

- 7.1. All copyright and intellectual property rights of whatever nature in the whole or any part of the Products shall remain the property of the Company
- 7.2. The Customer shall not:-
- 7.2.1. copy or duplicate the whole or any part of the software programs or the electrical designs embodied in the Products (referred to herein as "the Software" and "the Designs" respectively);
- 7.2.2. alter modify disassemble or decompile the whole or any part of the Software;
- 7.2.3. alter or modify the Designs
- 7.2.4. Sell, transfer or otherwise dispose of the products except to the extent otherwise allowed by law to any third party on terms which purport to transfer or assign any intellectual property rights comprised in the Products.

**8. GENERAL LIABILITIES**

- 8.1. The Company hereby warrants that the Products supplied are free from defects in workmanship and/or materials at the time that the risk passes to the Customer and that for a period of one year from such time the Company will repair or replace any affected Product provided always that the Company's liability under this warranty shall be limited to the repair or replacement of affected Products and is conditional upon the Customer:-
- 8.1.1. notifying the Company promptly of any such defect and in any event within such period of one year;

- 8.1.2. returning to the Company the affected Products properly and adequately packed carriage or post paid within fourteen days of such notification;
- 8.1.3. having ensured that the Products have not been tampered with modified or altered in any way;

- 8.1.4. ensuring that the Products are protected from harm or otherwise properly cared for and are retained in the possession of the Purchaser
- 8.2. The warranty contained in paragraph 8.1. of this Condition is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than relating to title to the Products. In particular but without limitation to the foregoing the Company shall not be liable for the failure of any of the Products supplied to be fit for any particular purpose for which they are required.

- 8.3. The Company shall not be liable for any loss injury or damage of any nature whatsoever (other than for death or personal injury resulting from the gross negligence of the Company) whether direct or consequential arising out of or in connection with any Products supplied.
- 8.4. Without prejudice to the generality of the foregoing nothing contained in these conditions shall operate to exclude or restrict liability for breach of any obligation arising from Sections 13, 14 or 15 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994) or the Supply of Goods and Services Act 1982 as against the Customer if he is dealing as a consumer as construed in accordance with Part 1 of the Unfair Contract Terms Act 1977.

- 8.5. The Customer shall not rely upon any representation concerning any Products supplied unless the same shall have been made by the Company in writing.
- 8.6. In the event that the Company fails or is unable to deliver the Products in accordance with the contract with the Customer by reason of circumstances beyond its control (including without prejudice to the generality of the foregoing force majeure war strike lock-out sit-in trade dispute flood accident to premises or plant or machinery or shortage of any labour) the Company shall be entitled to cancel or rescind the contract without liability of whatsoever nature for loss or damage resulting therefrom.

- 8.7. The price at which the Company agrees to supply the Products to the Customer is based on:-
- 8.7.1. the warranties given and accepted; and
- 8.7.2. the extensions and restrictions of liability imposed.
- 8.8. The Company is prepared to negotiate a different price if the Customer requires any variation of such warranties or extension of the liabilities accepted by the Company.

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**9. ASSIGNMENT**

- 9.1. The Company shall not assign any of its rights hereunder or under any contract for the purchase of Products in whole or in part without the prior written consent of the Company.

**10. EXPORT**

- 10.1. These terms and conditions shall apply to all export sales except as varied in the Company's acknowledgement of order to the Customer.
- 10.2. It is hereby expressly agreed that the Uniform Law on International Sales shall not apply to this contract.
- 10.3. Where the Products are to be delivered outside the United Kingdom:-
- 10.3.1. payment shall be made in the manner specified on the Company's acknowledgement of order to the Customer;
- 10.3.2. the Products shall be delivered upon the terms specified in the Company's acknowledgement of order to the Customer;
- 10.3.3. the Customer shall reimburse the Company for any carriage freight and insurance and other charges to the extent that any such costs incurred by the Company are not included in the price of the Products.
- 10.4. The Customer must obtain all necessary export or import licence exchange control consents and all other approvals of national and regional governments and authorities required to enable performance of the contract by both the Company and the Customer as soon as reasonably practicable and in no case later than required to enable the Company to deliver the Products on the earliest date upon which delivery of the Products can be effected.

**11. INSOLVENCY AND BREACH OF CONTRACT**

- 11.1. In the event that:-
- 11.1.1. the Customer shall commit any breach of the contract and shall fail to remedy such breach (if capable of remedy) within a period of seven days from receipt of notice in writing from the Company requesting such remedy; or
- 11.1.2. the Customer offers to make any arrangement with or for the benefit of its creditors or commits any act of bankruptcy or insolvency or being a limited company has an administrator or a receiver or an administrative receiver appointed or an analogous appointment is made of or in relation to the whole or any part of its undertaking property or assets; or
- 11.1.3. any order is made or a resolution is passed or analogous proceedings are taken for the winding-up of the Customer (save for the purposes of reconstruction or amalgamation without insolvency and previously approved in writing by the Company) then and in any such case the Company shall be entitled without prejudice to its other rights hereunder forthwith to suspend all further deliveries under any contract until the default has been made good or to determine the contract or any other contracts between the Customer and the Company or any unfulfilled part or parts thereof or at the Company's option to make partial deliveries Notwithstanding any such termination the Customer shall pay the Company for all work done materials used and Products delivered up to and including the date of termination.

**12. SEVERANCE**

- 12.1. If at any time any one or more of the provisions of these terms and conditions become invalid illegal or unenforceable in any respect under any law the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**13. HEADINGS**

- 13.1. The headings used in these Terms and Conditions are for convenience only and shall not affect the construction thereof.

**14. LAW**

- 14.1. These terms and conditions and every contract made pursuant thereto shall be governed in all respects by and in accordance with the laws of England and the Customer hereby submits to the exclusive jurisdiction of the English Courts