

Terms & Conditions of Purchase



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1. Definitions

"The Company" is NSF Controls Ltd.

"The Supplier" means the person, firm or company to whom the Purchase Order is addressed.

"The Goods" means the goods or work and materials, or services specified in the Purchase Order.

"Additional Terms" are conditions of purchase specified by the Company from time to time relating to the Company's purchase of particular types of goods and referred to in the Company's Purchase Order, copies of such terms will normally be attached to the order referring to them.

"Conditions of Purchase" means the terms and conditions set out herein together with the terms stated and any Additional Terms referred to in the Purchase Order.

"A Purchase Order" means a properly signed, printed and numbered order form issued by the Company.

2. Formation of Contracts

(a) All contracts of purchase made by the Company shall be governed exclusively by the Conditions of Purchase.

(b) The Conditions of Purchase may be varied only by a supplementary Purchase Order or other document in writing signed by the Company Purchasing Manager and/or his authorised deputies and not by an act or statement by any person acting or purporting to act on behalf of the Company.

(c) The Conditions of Purchase shall override and take the place of any other terms or conditions in any document or other communication used by the Supplier in concluding the contact with the Company. Acceptance of this Order constitutes a contract which incorporates the Conditions of Purchase. Without prejudice to any other mode of acceptance the commencement by the Supplier of any work on or connected with the Goods (including work done in connection with samples and tooling) will comprise acceptance by the Supplier of the Purchase Order on these Conditions of Purchase.

(d) The headings used in these Conditions of Purchase are for convenience only and shall not affect the construction thereof.

(e) The application of the Uniform Laws on International Sales shall be excluded. The construction, validity and performance of all contracts shall be governed by English law.

3. Price

(a) The prices stated in this Order are fixed prices and are not subject to alteration for any reason whatsoever.

(b) If the price of the Goods comprised in this Order is not stated but calculable the Supplier will notify the Purchasing Manager of the agreed monetary amount as soon as possible after receipt of the Purchase Order, or must be prepared to accept delay in payment.

(c) The prices on the Purchase Order exclude Value Added Tax.

4. Payment

Unless otherwise agreed in writing the Supplier will render a Statement of Account to the Company at the end of the month in which delivery of the Goods is made or the service rendered as the case may be. Unless otherwise agreed in writing payment by the Company will be within two calendar months from the end of the month in which the Account is received. Any delay in payment due to the Supplier's failure to render such Account will not prejudice the Company's entitlement to any special discounts that may be agreed.

5. Title Quality and Rejection

(a) The Supplier hereby agrees that as conditions of this Order:-

(i) the Supplier has the right to sell the Goods and the Goods are and will remain until property therein passes to the Company, the absolute property of the Supplier free of any lien, charge or other encumbrance and the Company will enjoy quiet possession thereof;

(ii) all Goods ordered shall correspond strictly with description and specification and with any sample, shall be in every respect fit for the purpose for which the Company has expressly or by implication made known that it requires the same and shall be of merchantable quality which is also of a standard not less than that of previous supplies, (if any) approved by the Company. The Supplier's obligations under this Condition shall be in no way affected by whether or not the Goods are bought by description, or the Supplier deals in goods of the same description, or the Goods are specified under a patent or trade name, or the Company has examined the Goods or the sample or the defect would have been apparent had it done so; and

(iii) the Company shall not be bound to accept and pay for any goods unless the same are specified in a Purchase Order on the Conditions of Purchase and the Company will not accept responsibility for the safe custody or protection of goods left at its premises and the risk shall pass only when delivered to the address and in the place and manner specified in the Purchase Order and the signature of an authorised member of the Company's goods receiving department is obtained on a document quoting the number of a Purchase Order on the Conditions of Purchase. The Company will not accept goods until it has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(b) If the Company rejects or refuses to accept any goods having the right so to do it shall not be bound to return them to the Supplier but if it nevertheless decides to return them, the Goods shall be returned at the risk and expense of the Supplier. Where the Company is entitled to reject or refuse to accept any Goods, the Supplier shall, at the option of the Company and without prejudice to any other remedies to which the Company may be entitled, repair or replace the Goods, reimburse the Company in full for the cost of repair carried out by the Company or any third party at the Company's direction, or refund the full purchase price.

(c) The Company reserves the right by written notice to require changes in the designs and/or the specifications applicable to the Goods.

(d) The Supplier shall not make any changes in the design or composition of the Goods without the Company's prior written consent.

(e) If the Goods have a determinable shelf life, the Supplier shall inform the Company of the storage conditions recommended for the longest possible shelf life and the minimum duration thereof.

6. Delivery

(a) All Goods to be delivered carriage paid (which expression shall for the purposes of such orders have the meaning assigned to it by Incoterms 2010) to the place of delivery specified in the Order.

(b) The time stipulated for delivery of the Goods shall be of the essence of the Order. Should the Supplier fail to deliver the Goods within the period specified the Company (without prejudice to any other remedies to which it may be entitled) reserves the right to:

(i) cancel that part of the Order which is undelivered at the end of the specified period; and

(ii) charge to the Supplier any additional costs, losses or expenses in which they may be involved due to the Supplier's failure to deliver the Goods at the stipulated time.

(c) Goods delivered in excess of specified requirements may be returned to the Supplier at no risk or expense to the Company.

(d) The Company shall be entitled to regulate the rate of delivery of the Goods by means of delivery schedules.

(e) The Company reserves the right by written notice to require changes in the method of carriage and place of delivery.

7. Inspection

(a) The Company reserves the right at any time to inspect the Goods but such inspection shall neither relieve the Supplier of any obligation under the Order nor impose any obligations on the Company.

(b) If required by the Company the Supplier shall submit samples for approval and the manufacture of the bulk of the Goods shall not be started until the Company has communicated its approval in writing. The Company may retain the samples until the whole of the Goods are delivered.

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- (c) Any person duly authorised by the Company shall not unreasonably be refused permission by the Supplier to enter any works, warehouses or other premises under the Supplier's controls to inspect any tools or materials procured or used for the manufacture of the Goods or the process of manufacture carried out by the Supplier or the completed Goods themselves before despatch.
- (d) Any person duly authorised by the Company shall be entitled to remove samples of tools and Goods in process of manufacture and completed Goods and if any changes, adaptations, modifications or improvements are required by the Company to bring the Goods up to specification the Supplier shall carry out the same immediately.
- 8. Packaging**
- (a) Where cases or packing of a durable nature are charged extra by the Supplier, they will be charged at not more than their actual value at the date of contract and will be invoiced on a separate invoice to be credited in full upon return by the Company to the Supplier or its carrier. Such cases or packing are to be clearly marked "Returnable" and are to show the Supplier's name.
- (b) The Company reserves the right by written notice to require changes in the method of packing.
- 9. Property and Risk**
- The property in the Goods shall pass to the Company on payment of the price invoiced for the Goods or on acceptance, whichever first occurs. The Goods shall remain at the risk of the Supplier until the property in the Goods passes to the Company. If any Goods are rejected by the Company the property and the risk therein shall remain with or thereupon revert to the Supplier.
- 10. Sub-letting and Assignment**
- The Supplier shall not assign or sub-let this contract or any part of it without the written permission of the Company. The Company may assign the contract to other subsidiary or associated companies or other unconnected companies or persons.
- 11. Health and Safety at Work**
- As required by the Health and Safety at Work etc. Act 1974 all Goods to be supplied must be designed, tested and constructed so as to be safe and without risks to health when used at work and all necessary information and instructions for the safe and proper use of the Goods must be supplied to the Company prior to delivery of the Goods. Any exemption from the foregoing must be requested in writing and must be specifically agreed to by a statement on the Purchase Order or supplementary Purchase Order. In particular the Supplier must specify in his quotation or as soon as identified any operational or health risk which may arise during handling, storage, use or disposal after use, including known mis-uses of the Goods.
- 12. Patents and other Intellectual Property Rights**
- The Supplier warrants that Goods and parts of Goods not of the Company's design do not infringe any patent, trade mark, registered design or any other like protection or the provision of any statute, statutory instrument or regulation for the time being in force in any country and agrees to indemnify and hold harmless the Company against all judgements, decrees, cost and expenses and at its own expense and at the Company's request defend or assist in the defence of any action which may be brought against the Company or those Selling or using any of the Company's products resulting from any infringement or alleged infringement.
- 13. Injury and Damage**
- (a) The Company hereby gives notice that the business of the Company is such that any defect in the Goods which the Supplier supplies is liable to cause serious financial loss and/or physical injury.
- (b) The Supplier will at all times maintain product liability insurance cover in respect of the Goods of a kind and in an amount satisfactory to the Company. The Company shall on demand be entitled to inspect and receive copies of all documents relating to the said insurance cover.
- (c) If any claim is made against the Company by any of its customers or employees or by a third party in respect of injury, liability, claim proceedings, loss or damage of any kind (including any liability or loss incurred by the Company resulting from the failure of, or stoppage of, or interference with the production or manufacture of any equipment, goods or stock) due or alleged to be due to a defect in the materials, workmanship or (save where the same has been stipulated by the Company) design of the Goods, the Supplier will provide all facilities, assistance or advice required by the Company for the purpose of contesting or dealing with such claim and the Supplier will indemnify and hold harmless the Company against any damage, loss, cost or expense incurred in connection therewith.
- (d) If any such claim is made against the Supplier, the Company shall be promptly notified thereof and shall have full power and authority (if it thinks fit) to take over the matter and to make any disposal or settlement thereof as agent of the Supplier, as may seem to the Company in its absolute discretion to be meet, proper or convenient.
- (e) The Supplier shall if so requested by the Company accept as final and binding the decisions of any English or foreign court in relation to such liability, claim, proceeding, loss or damage.
- 14. Default**
- (a) The Company may by notice in writing to the Supplier terminate any contract forthwith either in its entirety or to the extent Goods are undelivered and in any event without prejudice to any other rights of the Company if:-
- the Supplier shall commit any breach of the terms of that or any other contract with the Company and on its part to be observed or performed PROVIDED that if such breach is remediable the Company has given notice thereof to the Supplier and the same has not been remedied within seven days thereafter.
 - the Supplier is, or for statutory purposes is deemed or appears to be, unable to pay its debts as they become due or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities), or the Supplier otherwise becomes insolvent or suspends payment or threatens to do so;
 - steps are taken to (i) propose any composition, scheme of arrangement, compromise or arrangement involving the Supplier and its creditors generally; (ii) obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, the Supplier or any of its property; (iii) enforce any charge or other security over the Supplier's property; (iv) repossess any goods in the Supplier's possession under any agreement; or (v) wind up or dissolve the Supplier;
 - where the Supplier is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or
 - outside England and Wales, anything corresponding to any of the above occurs.
- (b) Without prejudice to any other rights or remedies possessed by the Company it is entitled to recover damages for:-
- any delay in the Company's business due to late delivery by default of the Supplier from whatever cause including but not limited to rejection by the Company for non-compliance and subsequent sorting, alteration, repair or replacement;
 - Non-delivery due to the fault of the Supplier.
- (c) Without prejudice to any other rights or remedies possessed by the Company, the Company shall be entitled to reject any Goods or a part of any Goods delivered to it if the same do not comply exactly with any drawings, specifications or instructions supplied or given by the Company or with any sample produced by the Supplier or if the Supplier is in breach of any of the Conditions of Purchase, but if the Company does accept any such Goods which it is entitled to reject it reserves the right to pay a reduced price for them. Rejected Goods may be returned by the Company to the Supplier at the Supplier's risk and expense.

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- (d) Where the Supplier delivers or the Company accepts a part of any Goods the Company shall be entitled to pay only for the part of the Goods actually accepted and may claim any applicable remedy.
- (e) Where Goods or a part of Goods have been taken and used in the business of the Company and the Supplier has not notified the Company of any new agreed price, the price payable shall be that specified on the Purchase Order, but if no price appears on the Purchase Order the Company reserves the right to pay a reasonable price calculated by reference to other prices paid to the Supplier for similar goods.
- (f) If the Supplier fails to accept and comply with any reasonable delivery schedule submitted by the Company the Supplier shall be deemed to be in breach of the Conditions of Purchase and shall pay to the Company as damages for the breach all costs and expenses incurred by the Company as a result thereof and in particular but without prejudice to the generality of the foregoing all sums expended by the Company in securing alternative supplies of any or all the Goods (including any sum expended by reason of any increase in the price thereof) and any loss suffered by the Company as a result of delays in their production.
- (g) If the Company shall receive any information which leads it reasonably to believe that the Supplier will be unable, because of lack of cash or credit facilities, to complete the contract satisfactorily and on time, the Company may give notice under this sub-clause to the Supplier with a copy of the information and may either:-
 - (i) vary the Purchase Order so that only completed items may be delivered provided that they are paid for at the rate agreed, or
 - (ii) cancel the Purchase Order summarily by notice in writing without compensation to the Supplier.The exercise of this Clause shall not prejudice any rights of the Company under the Conditions of Purchase or the law related to insolvency.
- (h) Any excess Goods delivered which are not accepted by the Company will remain at the Supplier's own risk and expense and the Company may at any time return the same to the Supplier at such risk and expense. The Company may notify the Supplier in writing of the price at which it would be willing to accept Goods in excess of the quantities specified in the Purchase Order and such notice shall not constitute acceptance of the Goods unless the Supplier agrees the price notified.

15. Tools and Designs

- (a) Any tools, patterns, plates, drawings, specifications, free issue materials or documents or other items supplied by the Company to the Supplier, or for which the Company has provided the whole or a part of the cost, to enable the Supplier to execute this Order shall become and/or remain the property of the Company, shall be kept in good condition and be returned to the Company on demand at the Supplier's risk (in the case of items for which the Company has provided a part only of the cost, upon payment of the remainder of such cost) and shall not be used by the Supplier without the agreement in writing of the Company for any purpose other than the supply of Goods to the Company. The Supplier agrees to insure and indemnify the Company against any loss or damage to such items whilst they are in the custody of the Supplier and to procure that the interest of the Company is noted in any policy covering such items.
- (b) In addition, the Supplier shall ensure that all such tooling is maintained in good condition and shall replace any such tooling, or part thereof, lost or damaged and shall adequately insure against loss or damage thereof.
- (c) The Supplier waives any lien which it might otherwise have whether at the date hereof or subsequently on any of the Company's property for work done thereon or otherwise. The paragraph shall not be construed as a waiver of any other right of recovery of any other charges that may be due to the Supplier for such work.
- (d) The Supplier will not without the prior written authority of the Company sell, hire, use or otherwise dispose of, to or for any other person, any goods manufactured by the Supplier to the Company's designs, drawings or specifications or based upon them, or any tooling designed for use in their manufacture and the Supplier shall refer to the Company all enquiries received for such goods or tools.
- (e) The Company shall have an option which shall be exercised by written notice to pay not more than the balance of the replacement cost for the outright ownership of any materials, samples, jigs, patterns, tooling or any other item essential to the manufacture of the Goods to a design, drawing or specification supplied by the Company. At the request and cost of the Company the Supplier shall deliver any such essential item to the Company at such place and time as the Company shall stipulate. Within 30 days of receipt of the option notice the Supplier will notify the Company of the amount claimed as the said unrecovered balance and the Company will within 1 month pay the amount agreed or if it is not agreed the amount fixed by an independent Chartered Accountant acting as an expert and selected by the President for the time being of the Institute of Chartered Accountants in England and Wales.
- (f) The Supplier warrants its detailed design and application of its know-how to all patterns, designs, drawings, specification or other documents supplied by the Company to the Supplier and hereby agrees to indemnify the Company in respect of all claims arising out of the Supplier's detailed design and application of know-how.

16 Data Protection

- 16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 16.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Company is the data controller and the Supplier is data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). The Supplier shall set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of the Data Subject.
- 16.3 Without prejudice to the generality of clause 16.1, the Company will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of any period of supply.
- 16.4 Without prejudice to the generality of clause 16.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under any agreement for the supply of goods or services:
 - (a) process that Personal Data only on the written instructions of the Company unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Company of this before performing the processing required by the Applicable Laws unless those applicable laws prohibit the Supplier from so notifying the Company;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Company, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) and not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Company has been obtained and the following conditions are fulfilled:
 - i) the Company or the Supplier has provided appropriate safeguards in relation to the transfer;
 - ii) the data subject has enforceable rights and effective legal remedies;

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- iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - iv) and the Supplier complies with reasonable instructions notified to it in advance by the Company with respect to the processing of the Personal Data;
- (e) assist the Company, at the Company's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Company without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Company, delete or return Personal Data and copies thereof to the Company on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Company or the Company's designated auditor.
- 16.5** The Company does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.
- 16.6** Either party may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement)
- 16.7** The Company shall be entitled to rescind any contract for Goods which have not been delivered in whole or in part or to require the Supplier to suspend delivery for any period if the activities of the Company for which the Goods were ordered are stopped or seriously interfered with by any causes of any kind whatsoever beyond the Company's control.
- 17. Publication**
The Supplier shall not advertise or publish the fact that it is or had become a supplier to the Company without the Company's prior written consent.
- 18. Waiver**
Failure by the Company to enforce any of the Conditions of Purchase shall not be construed as a waiver of its rights hereunder.
- 19. Government Contracts**
If the whole or part of the Goods is required to fulfil a contract for a British or foreign government department that whole or part shall be the subject of a sub-contract made under the Conditions of Purchase and such sub-contract terms as may be in force from time to time under the said government department, and any right of determination exercisable by the government department in question as main contractor shall be equally exercisable by the Company in relation to the Supplier as sub-contractor subject to the same formula.
- 20. Site Access**
The Company reserves the right to refuse entry to its site to any employee of a sub-contractor.