

Terms & Conditions



1. INTERPRETATION

1.1 In these conditions:

BUYER means the person, firm or company entering into the Contract to purchase the Goods from the Seller;

CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

CONTRACT means the contract for the purchase and sale of the Goods;

GOODS means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

SELLER means Nautilus Designs Limited;

WRITING includes facsimile transmission and comparable means of communication.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.

2.2 The Seller's employees or agents are not authorised to make any representations, variations or waivers concerning the Goods or contracts unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed unless any such representations were made fraudulently. No waiver by the Seller of any of their rights under the contract will be considered to constitute a general waiver of those or any other such rights.

2.3 Any advice or recommendations given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed, unless such advice or recommendation was made fraudulently.

2.4 Any typographical, clerical or other error or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.5 All drawings, descriptive matter, price lists, catalogues, brochures, websites, and other promotional material of the Seller are approximate only and intended merely to give a general idea of the goods, and will not form part of the contract. Since

the Seller continuously tries to improve the quality of goods, they will also be subject to changes in design, materials, components and finishes. The Buyer will accept the goods subject such variations in size, colour and finish as are within normally accepted manufacturing tolerances.

2.6 Whilst the goods will comply with all applicable standards and other regulatory requirements in the United Kingdom, the Seller will not be responsible for ensuring that they comply with any such requirements elsewhere.

2.7 The Buyer acknowledges that all intellectual property rights, including unregistered design right, copyright, registered designs and patents in the United Kingdom, and other similar rights elsewhere, in all goods that are proprietary to the Seller and their drawings, designs and specifications, will belong to the Seller absolutely, and the Buyer will at their expense take such steps as the Seller may reasonably request to establish, prosecute and defend these rights.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be accepted or deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller's quoted price, or where no price has been quoted or a quoted price is no longer valid, the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply in the absence of a price quoted by the Seller. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

4.5 The Buyer may return all or any of the goods, provided that the Seller have agreed to their return in writing, they are returned to the Seller within 5 business days of delivery in the same condition as when delivered, and subject to the Buyer paying the Seller a re-stocking charge at the rate of 30% of the invoiced price plus any carriage incurred by the Seller and VAT

5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or, as the case may be, the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

The Buyer is not entitled to any discount for early payment. If the Buyer fails to pay any sum to the Seller on the due date, or the Buyer makes a voluntary arrangement with their creditors, have a

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receiver appointed, or a petition is presented for their administration, winding-up or bankruptcy, or the Buyer enters into liquidation or the Seller have reason to believe and notify the Buyer in writing that they will be unable to pay the Seller's debts as they fall due, all sums owed by the Buyer will become immediately due and payable, and we will be entitled to require payment prior to further manufacture or delivery of the goods, or to cancel, suspend or terminate all or any further manufacture or delivery of the goods, without incurring any liability.

5.3 All sums due to the Seller will be paid in full and without any discount, deduction or set-off whatsoever. The Seller may charge the Buyer interest on any sums not paid by the due date at the rate of 1% per whole or part month, and the Buyer will reimburse the Seller for all debt collection and legal costs and expenses incurred by the Seller in attempting to recover such sums. The Seller may treat any sums received from the Buyer as being in payment first of any such costs and expenses, then interest accrued, and then all other amounts owed to the Seller in date order, starting with the oldest, regardless of any disputes or the Buyer's attribution of payment to any particular invoices.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1 suspend all or any further deliveries to the Buyer made under that or any other contract with the Buyer and in such event the Buyer shall not be released from its obligations to the Seller under that or any other contract or cancel the Contract or any other contract with the Buyer and to claim damages from the Buyer for breach of contract;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).

5.5 The Seller may without notice set off any sums from time to time owed to the Buyer in or towards the satisfaction of all and any liabilities of the Buyer to the Seller whether or not under this Contract.

6. DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be

the quantity ordered.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods (or any instalment) for any reason, they will not be liable to any loss whatsoever caused by the late or non-delivery.

6.6 The Seller will not be liable for any shortage in the goods as delivered, unless the Seller is notified in writing within 5 business days of delivery, or complete non-delivery of the goods, unless it is notified to us in writing within 5 business days of date of receipt of invoice.

6.6 The Seller will not be liable for any damage to or deterioration of the goods as delivered, unless the Seller is notified within 24 hours of delivery, and the Buyer promptly returns the goods concerned to the Seller with the return note number obtained from the Seller.

6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) the, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable cost of storage, including insurance; or

6.7.2 sell the Goods at the best price readily obtainable and, after deducting all reasonable storage and selling expenses, account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold or agreed to be sold by the Seller to the Buyer under any other contract and until that time the Buyer will keep them separate from other goods in such a way as to indicate clearly that they remain the Seller's property and in the condition in which they were delivered. For avoidance of any doubt, the title only passes when all outstanding balances are paid. Title of goods where invoices have been paid will not pass until all other outstanding items have been paid for.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's agent or bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Seller to account for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. The Buyer is entitled to resell as part of the ordinary course of its business unless and until the Seller terminates their authority to do so by written notice, or the Seller has a petition presented for or enter into liquidation, administration or administrative receivership, on any of which events such authority shall stand revoked. The Seller may bring an action for the price of the goods and all costs of recovery even though the property in them may or may not have passed to you.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and for that purpose the Buyer hereby authorises and licences the Seller, its officers, employees and agents and to enter upon any land or building upon which the Goods are situated to recover these Goods.

7.5 The Buyer shall not be entitled to or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall, without prejudice to any other right or remedy of the Seller, forthwith become due and payable.

8. WARRANTIES AND LIABILITIES

8.1 Subject to the Conditions set out below, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 if the total price for the Goods has not been paid by the due date for payment, the Seller shall be under no liability under the above warranty, or any other

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warranty, condition or guarantee until the total price for the Goods has been paid;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specification shall, whether or not delivery is refused by the Buyer, be notified to the Seller within 7 days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller in accordance with this Condition, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of fraudulent misrepresentation by the Seller, or death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.8.4 Import or export regulations or embargoes;

8.8.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 Power failure or breakdown in machinery.

9. EXPORT TERMS

9.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

9.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions.

9.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

10. GENERAL

10.1 Neither the Buyer nor the Seller shall be entitled to assign the whole or any part of its rights and/or obligations under the Contract without the prior written consent of the other.

10.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice shall be deemed to have been received, in the case of a facsimile, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

10.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby unless such

provision goes to the root of the Contract.

10.5 The Conditions shall constitute the entire agreement in relation to the sale of the Goods and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by an authorised officer of the Seller and of the Buyer.

10.6 None of the rights granted under the Contract or these Conditions is intended to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

10.7 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

10.8 Any signatories that sign on behalf of the company are deemed to have been authorised by the company and its registered directors. In such an event the contract/terms shall hold as they would have should the signatory have been a registered director.

ACCEPTANCE OF TERMS

We agree that all good supplied by you subject to your Standard Terms and Conditions of Sale (above) in force at the time of our order, which may also be seen on your website www.nautilusdesigns.co.uk or obtained from your sales office, and acknowledge receipt of the copy of the current version overleaf or accompanying this form. We are aware that your normal payment terms (Credit Account) are 30 days from the date of invoice and that any good supplied remain the property of NAUTILUS DESIGNS LTD until all goods have been paid for.

By signing the below I confirm that I am an authorized signatory of the company: I agree to the above terms and conditions:

Name:
Company:
Position:
Signature:
Date: