

Neu-Servo Repairs LTD
GENERAL TERMS AND CONDITIONS

In these Conditions "the Seller" means Neu-Servo Repairs LTD "the Buyer" means the person, firm or company purchasing the Goods; "the Goods" means the Goods, services or materials the subject of the contract between the Buyer and Seller.

1. CONDITIONS APPLICABLE

Unless otherwise agreed in writing every order for Goods placed with the Seller shall be subject to these conditions which shall override any standard or other ordinary terms or conditions stipulated incorporated or referred to in the Buyer's order. No conduct by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer. The acceptance by the Seller of any order from the Buyer shall be deemed to incorporate all the terms of these conditions.

2. OFFER AND ACCEPTANCE

2.1. Unless previously withdrawn the Seller's quotation is open to acceptance within the period stated therein and where no period is stated within 30 days after its date. The acceptance of the quotation must be accompanied by sufficient information to enable the Seller to proceed forthwith otherwise the Seller may amend the quotation prices at its discretion.

2.2. Specifications

2.2.1. The quality, quantity 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). 2.2.2. A Buyer's orders for Goods are only accepted by the Seller on the basis that the price of the Goods will be that at the date of the receipt of the order except where formal written quotations have been given.

2.3. VARIATION

2.3.1. At no time after any order (whether written or otherwise) has been placed and accepted will the Seller accept the Buyer's cancellation or variation thereto.

3. INSTALMENTS

3.1. Where delivery of the Goods is to be made by instalment each delivery shall be treated as a separate contract and failure, suspension or delay in any delivery for any reason whatsoever or defects in the Goods delivered shall not vitiate the contract as to those or other deliveries.

3.2. Such failure, suspension, delay in delivery or non-delivery when, payment is due shall entitle the Seller to withhold further deliveries.

3.3. Failure by the Buyer to pay for any instalment or delivery when payment is due shall entitle the Seller to withhold further deliveries.

3.4. No contract between the Seller and the Buyer shall be deemed a sale by sample if a sample has been provided for the Buyer's general guidance only.

4. DELIVERY

4.1. Unless otherwise expressly agreed no times quoted, specified or agreed for delivery of Goods by the Seller shall be the essence of the contract. All delivery dates are estimated only and the Seller shall not be liable in damages for any delay in delivery nor shall the buyer be entitled to refuse to accept delivery except where delay or an unreasonable length has occurred due to circumstances within the Seller's control. The following circumstances shall without limitation be deemed not to be within the Seller's control: inability to secure labour, materials or supplies as a result of Acts of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, flood, drought, force majeure, breakdowns, interruptions of transport, Government action and delay in the delivery by the Seller's suppliers or any other cause beyond the Seller's control.

4.2. The Seller may by notice in writing if prevented hindered or delayed by force majeure in making delivery of any Goods either:

4.2.1. Cancel the Seller's obligations to deliver the Goods in which case the Seller shall not be deemed to be in breach of contract and shall not be liable for loss or damages whatsoever arising out of such cancellation; or

4.2.2. Extend the time for delivery of the Goods outstanding by such period as is reasonable and 'as may be agreed in writing between the Seller and the Buyer provided that the Seller shall not be in breach of contract and the Seller may cancel the outstanding obligations as aforesaid.

4.2.3. The foregoing provisions shall be without prejudice to the right of the Seller to recover the price of the Goods the risk in which has passed to the Buyer.

4.3. In the event that the Seller agrees to arrange for delivery of the Goods then such agreements shall be subject to an additional charge and any such carriage will be made at the Buyer's own risk and notwithstanding the Seller's agreement to arrange such carriage property and risk in the Goods shall pass to the buyer according to clause 11 below.

5. PRICE AND PAYMENT

5.1. Unless otherwise agreed payment for the Goods shall be made 30%, deposit with order and 70% balance shall be made prior to delivery and time shall be of the essence. If no price has been agreed between the Seller and the Buyer the price payable shall be the current price on the date of despatch of the Goods and unless otherwise stated the package costs are included. Without prejudice to the Seller's rights in respect of late payment (other than to receive compensation therefore) if the Buyer fails to make payment on the due date the Seller shall be entitled in addition to the purchase price to interest thereon at the rate of 5% per annum above HSBK Bank Plc base lending rate from time to time applying from the due date of payment until payment is received by the Seller.

5.2. Exchange Rates

5.2.1. The Seller reserves the right that in the event of any increases in the cost to the Seller of any materials, labour, overheads or any increase in tax or duties or any variation in the international currency exchange rates which the Seller determines are applicable to the contract the Seller may in his sole discretion increase the price payable under the contract.

5.2.2. Where prices are quoted in pounds sterling calculated at a specific exchange rate the Seller reserves the right to make an adjustment between the quoted and the actual exchange rate prevailing at the date of delivery. The actual exchange rate will be the mid-point rate as quoted in the Financial Times. 5.3. The Seller may appropriate any payment made by the Buyer and apply it in total or partial satisfaction of any debt then due from the Buyer to Seller.

5.4. Where the amount paid by the Buyer is less than the amount due to the Seller under the contract to which it is appropriated the Seller may appropriate the payment to any individual Goods or items supplied under that contract.

6. INSOLVENCY

6.1. If the Buyer shall fail to make or suspend any payment on the due date or becomes bankrupt or enters into liquidation (other than for the purposes of amalgamation or reconstruction) or makes any composition or arrangement with Creditors or has a receiver or administration appointed of its undertaking property or assets or any part thereof or becomes subject to an interim order under Section 252 of the Insolvency Act 1986 the Seller shall have the option to withhold or cancel further deliveries provided that failure on the part of the Seller to exercise such option in respect of one or more deliveries shall not affect the right to exercise it in respect of other deliveries. Notwithstanding any other terms stated herein cash shall be paid before delivery if required. In the event of bankruptcy, liquidation, compositional arrangement with Creditors or appointment of a Receiver, then the purchase price of all Goods invoiced or despatched by the Seller shall become forthwith due and payable by the Buyer and the Seller shall further be entitled to treat as cancelled every contract made between the Seller and the buyer or, at the Seller's Option, suspend or continue delivery of Goods there under without prejudice to any other rights of the Seller. The Seller reserves the right to vary unilaterally the terms and conditions upon which the Seller shall perform all or any part of the contract as he shall in his absolute discretion determine if the arrangements for payment of the credit of the Buyer shall appear to be or become unsatisfactory.

7. LOSS AND DAMAGE

7.1. Goods will be delivered to the agreed place of delivery but the Buyer will be responsible for unloading. 7.2. Damage, shortage and pilferage in transit must be reported to the carriers in writing within 3 days after delivery of the Goods and a copy sent to the Seller to enable (where applicable) the necessary claim to be made. In the case of breakages the Buyer must retain the damaged Goods and packing material for inspection. The Seller must be advised immediately of non-delivery within 14 days of the date of despatch or in the case of exports within 3 days of the anticipated delivery date. If the Buyer's non-compliance with this clause causes any subsequent claim to be refused by the carriers the entire loss shall be borne by the Buyer.

7.3. When delivery is made by a carrier on the Seller's behalf the Seller will only accept responsibility for loss or damage in transit if given written notification of non-delivery or damage within such time as to enable the Seller to comply with the carrier's conditions of carriage relating to loss or damage in transit.

8. ACCEPTANCE OF THE GOODS

8.1. The Buyer shall inspect the Goods immediately upon delivery and shall within 7 working days of such delivery give notice in writing to the Seller of any matter or thing by reason whereof the Buyer alleges that the Goods are not in accordance with the contract whether as to quantity, quality or otherwise and time for performance of the Buyer's obligation to take delivery shall be of the essence. If no such notice is served by the Buyer upon the Seller the Goods shall be deemed to be in accordance with the contract in all respects and the Buyer shall be deemed to have accepted them.

8.2. The Seller may in his absolute discretion repair or replace or refund the purchase price at any Goods that the Seller shall be satisfied were defective in material provided that the Buyer has not in any way dealt with the Goods after delivery.

8.3. Where the Goods delivered do not comply with the contract the Buyer shall afford the Seller a reasonable time and opportunity to act in accordance with sub-clause 8.1 above and the Seller shall not be liable for any loss whether of a direct or indirect nature.

9. WARRANTIES AND LIABILITIES

9.1. If the Goods to be supplied by the Seller are new the following provisions shall have effect.

9.1.1. This Agreement and the delivery of the Goods shall be subject to any terms and conditions which the manufacturer may from time to time lawfully attach to the supply of the Goods or the re-sale of such Goods by the Seller and the Seller shall not be liable for any failure to deliver the Goods occasioned by his inability to obtain them from the manufacturer or by his compliance with such terms or conditions.

9.1.2. The Seller undertakes that he will ensure that any pre-delivery work specified by the manufacturer is performed and that he will use his best endeavours to obtain for the Buyer from the manufacturer the benefit of any warranty or guarantee given by him to the Seller or to the Buyer in respect of the Goods subject always to clause 9.4 below.

9.1.3. Where the Seller supplies Goods that the Seller in part or in whole manufactured the Seller warrants (subject to the conditions set out below) that the Goods will correspond with the Seller's manufacturer in material and workmanship for the period designated by the Seller of the Goods.

9.2. Payment

9.2.1. The Seller shall be under no liability under the above warranty (or any other warranty, condition or

guarantee) if the total price for the Goods has not been paid by the due date for payment.

9.3. Defects

The above warranty is given subject to the following conditions:-

9.3.1. The Seller shall be under no liability to the Buyer in respect of any defect unless the Buyer immediately gives the Seller notice in writing of the defect complained of with full details of the operating condition under which the defect became apparent and return the Goods complained of carriage paid to the Seller's works.

9.3.2. Any items returned to the Seller shall be at the Buyer's risk at all times in transit to and from the Seller's works.

9.3.3. The Seller shall be under no liability in respect of any defect in the Goods: 9.3.3.1. Arising

from any drawing design or specification supplied by the Buyer, or

9.3.3.2. Arising from any purpose other than for which they were designed or otherwise than in strict accordance with the Seller's instructions for use, or

9.3.3.3. Arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instruction (Whether oral or in writing) or alteration or repair of the Goods without the Seller's approval, or

9.3.3.4. If the Goods have had any of their identification marks altered or removed or 9.3.3.5. As

result of use or operation after any defect in them has become apparent

9.3.4. Where any valid claim is made in respect of the Goods that they are defective the Seller will make good by repair or at its option replace them free of charge or refund the price of those Goods but the Seller shall have no further liability to the buyer. Where the Goods are replaced free of charge carriage costs shall be at the Buyer's expense.

9.4. Consumer

9.4.1. 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 Terms in Consumer Contracts Regulation 1994) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4.2. Where the Goods are sold to a consumer (as defined above) the statutory rights of the Buyer are not affected by these conditions.

9.5. General

9.5.1. The express benefits of the warranty set out in this clause 9 represents the entire responsibility and liability of the Seller in respect of all conditions and warranties express or implied whether statutory or otherwise and any obligations and liabilities whatsoever of the Seller relating to the Goods or advice or information supplied in relation thereto whether in contract, tort or otherwise except liability for death or personal injury arising out of negligence by the Seller is excluded.

9.5.2. Without prejudice to the foregoing conditions and terms of this contract any liability of the Seller to the Buyer for any loss or expense occasioned by the delivery of Goods which do not comply with the Contract shall be limited to and shall not exceed a sum equal to the contract price of that part of the Goods in respect of which the default has been made, whichever is the lower and the Seller shall not be liable to the Buyer for any indirect special consequential or economic loss or any loss of contracts goodwill revenue profits anticipated savings or other benefits or any loss arising out of claims against the Buyer by third parties.

10. FAILURE TO TAKE DELIVERY

10.1. If the Buyer fails to take delivery in accordance with the provisions of this clause the following provisions shall apply:-

10.2. Delivery of any consignment shall be deemed to take place when the Goods comprised therein are despatched or collected from the Seller's works. In all cases where the Seller has not undertaken to arrange for carriage or transport of the Goods from its works the Buyer shall collect the Goods from the Seller's works within seven days of receipt of notice from the Seller that the Goods are ready for collection, and if the Buyer fails or neglects to take delivery at the Seller's works of the Goods within that time, the Seller may, as agent for the Buyer, but without surrendering its lien or right of resale as an unpaid Seller, arrange for the Goods to be stored at its works or elsewhere, and the Buyer will pay and indemnify the Seller against all storage charges, insurance and other costs, expenses and charges arising from the Buyer's failure or neglect.

10.3. The Buyer will bear the risk of any loss of or damage to the Goods after expiry of the time for their collection.

10.4. The Seller may immediately or at any time after expiry of the time for collection of the Goods treat the contract as repudiated by the buyers breach and make such arrangements as it thinks appropriate for the disposal of the goods

10.5. The Buyer will in any case be liable and compensate the Seller for any losses and costs incurred by the Seller as a result of the Buyer's breach or the termination of the contract.

11. RISK

11.1. Risk of loss or damage to the Goods shall pass to the Buyer at the time of delivery.

11.1.1. The property in the Goods shall not pass until all sums due of owing to the Seller by the Buyer on account have been paid and until payment the following provisions of this Clause 11 shall apply.

11.2. The whole of the price shall not be treated as paid until any cheque bill of exchange or other Instrument of payment given by the Buyer has been met on presentation or otherwise honoured in accordance with its terms. The Seller may sue for the whole of the price at any time after it has become payable.

11.3. The Buyer shall not

11.3.1. pledge the Goods or documents of title thereto or allow any lien to arise

11.3.2. process the Goods

11.3.3. deal with or dispose of the Goods or documents of title thereto or any interest therein

11.4. The Buyer shall hold the Goods as the Seller's fiduciary agent and 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

11.5. If the Buyer defaults in the punctual payment of any sum owing to the Seller then the Seller shall be entitled to the immediate return of all Goods sold by the Seller to the Buyer (or the documents of title thereto) in which the property has not passed to the Buyer. Demand for or recovery of the Goods or documents by the Seller shall not in itself discharge the Buyer's liability to pay the whole of the price and take delivery of the Goods or the Seller's right to sue for the whole price.

11.6. The Buyer's right to Possession of the Goods shall cease if the Buyer fails to make payment in accordance with these Conditions of Sale and the servants or agents of the Seller shall be entitled to enter upon the premises of the Buyer to repossess the Goods. The Buyer shall, if so required, store mark or designate all Goods referred to in sub-clause 11.4 above so as to show clearly that they are the property of the Seller and they shall be kept separately from other property.

11.7. If the Buyer shall default in the punctual payment of any sums due to the Seller whether under this contract or otherwise then the Seller shall be entitled forthwith to repossess any Goods which remain the property of the Seller and the Buyer shall, for that purpose at his own expense afford the Seller access to and the Seller shall be entitled to enter any premises of which the Buyer is in occupation or to which he has access and where any such Goods then may be and the Buyer hereby grants the Seller his agents and employees licence to enter such premises where the Goods are stored in order to repossess them or inspect them at any time.

12. DESCRIPTION OF GOODS

12.1. The descriptions and illustrations contained in the Seller's literature and price lists and other advertising material are intended merely to represent the Goods and services described and do not form part of the contract.

12.2. Performance figures provided by the Seller are not warranted nor guaranteed to be accurate and the Buyer assumes responsibility for the capacity performance and properties of the Goods supplied as being sufficient and suitable for the Buyer's purpose.

13. SELLER'S UNDERTAKINGS

13.1. The Seller undertakes that all charges and encumbrances known to the Seller and not known to the Buyer have been disclosed to the Buyer before the contract is made.

13.2. The Seller further undertakes that the Buyer's quiet possession will not be disturbed by the Seller or where the parties intend the Seller to transfer the title of a third party, that party or any person claiming through the Seller or that third party where they claim under a charge on an encumbrance disclosed or known to the Buyer and disclosed to the Seller before the contract is made.

14. INTELLECTUAL PROPERTY

14.1. The Seller will not indemnify the Buyer against any claims for infringement of letters, patent, registered design, trademark or similar Industrial property or proprietary right arising out of the use or sale of any Goods by the Seller to the Buyer.

14.2. The Buyer hereby assigns or agrees to assign to the Seller any design right in the Goods or the designs for those Goods which arises as a result of the performance by the Seller of this contract.

14.3. The Buyer shall keep the same confidential and shall not use them for any other purpose than for which they were supplied.

15. UNFAIR CONTRACT TERMS ACT 1977

15.1. If the Unfair Contract Terms Act 1977 applies and the test of reasonableness is not satisfied in so far as any condition seeks to impose a restriction or limitation of liability to any specified sum or percentage then the restriction shall not be disregarded but a Substituted clause allow for a greater minimum specified sum or percentage of the price of the Goods as would be in the opinion of the court or arbitrator shall be given effect accordingly.

16. ARBITRATION

16.1. All disputes differences or questions at any time arising between the parties as to the construction of the contract or as to any matter or thing arising out of the contract or in any way connected therewith shall at the discretion of the Seller be referred to the arbitration of a single arbitrator acting as an expert who shall be agreed between the parties or who failing such agreement (within one month) be appointed by the President of the Law Society of England and Wales.

17. WAIVER

17.1. 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 provision.

17.2. 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.

18. PROPER LAW

18.1. This contract for the sale of Goods and all agreements made pursuant to it shall be governed by and interpreted in accordance with English law and the Buyer submits to the non exclusive jurisdiction of the High Court of Justice of England.