



Novia Terms & Conditions of Sale

1. Interpretation

The following definitions and rules of interpretations apply in these Conditions.

1.1 Definitions:

Business Day: A Day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

Business Hours: The period from 8.30 am to 4.45 pm on Monday, Tuesday, Wednesday, and Thursday and 8.30 am to 4.00pm on Friday.

Conditions: The terms and conditions set out in this document as amended from time to time in accordance with clause .

Contract: The contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Credit Arrangement: means the credit account as may be confirmed by the Supplier under which the Customer will be given the period from the date of the invoice until the end of the next-following calendar month within which to make full payment for the Goods.

Customer: The person or firm who purchases the Goods from the Supplier.

Delivery Location: Has the meaning given in clause 4.2.

Force Majeure Event: Has the meaning given to it in clause 11.

Goods: The goods (or any part of them) set out in the Order.

Non-Standard Product Agreement: The agreement appended to these Conditions or provided with the Contract outlining an order for Goods that are specialist and/or bespoke.

Order: The Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Order Confirmation: The Supplier's confirmation of the Customer's Order provided either verbally or in writing.

Proforma Basis: Means payments which must be made with the Customer's Order or with the Customer's acceptance of the Supplier's quotation before dispatchment of the Goods.

Proforma Payment: Means payment(s) as required by the Supplier prior to it setting up any Credit Arrangement.

Specification: Any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Novia Limited (registered in England and Wales with company number 03229379).

1.2 Interpretation:

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.

2.2 A quotation by the Supplier shall constitute an invitation to trade but not an offer. The Supplier may withdraw or amend a quotation at any time prior to the Seller's acceptance of the Customer's Order.

2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.4 The Order shall only be deemed to be accepted when the Supplier issues the Order Confirmation, at which point the Contract shall come into existence.

2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any documents of the Customer that is inconsistent with these Conditions unless such other terms or conditions are agreed in writing by the Supplier.

2.6 Any samples, drawings, or advertising produced by the Supplier and any descriptions and illustrations contained in the Supplier's pricelist are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.7 Any estimates in respect of quantities needed, or advice as to the suitability of fitness of any of the Supplier's products for any particular purpose given by the Supplier or its servants or agents will be treated

as without obligation or responsibility on the part of the Supplier and the Customer will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.

2.8 The Supplier may in its sole discretion accept or reject the cancellation of any order once such order has been accepted by the Supplier. Except in the instance where an order is subject to a Non-Standard Product Agreement, whereby cancellations are payable in full, and subject to the terms of clause 7.

3. Goods

3.1 The Goods are described in the Supplier's pricelist, as modified by the Specification.

3.2 The Customer subject to a Non-Standard Product Agreement shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note, that shows the date of the Order, the type and quantity of the Goods.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready, but not yet dispatched by the Supplier.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a third-party delivery partners, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to receive the Goods within the time specified for the expediated service, the Supplier shall, at its discretion, issue a refund to the Customer the fee for the expediated service.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a third party delivery partner, a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods, delivery of the Goods shall be deemed to have been completed at 9am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready.

4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 The Supplier warrants that on delivery, the Goods shall:

(a) Conform with the Order, the Specification and/or the Non-Standard Product Agreement (as the case may be); and

(b) Be free from material defects in design, material, and workmanship.

5.2 Subject to clause 5.3, if:

The Customer gives notice in writing to the Supplier within two Business Days that some or all of the Goods do not comply with the warranty set out in clause 5.1(b);

(a) The Supplier is given a reasonable opportunity of examining such Goods; and

(b) The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) There is a shortage of Goods on delivery and the Customer fails to notify the Supplier in writing of any claim for short delivery within two Business Days of the delivery to the Customer or to the Customer's instructions. In such circumstances where the Supplier has been notified of a short delivery within two Business Days of delivery, the Supplier's liability shall be restricted to making good the shortage;

(b) The Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

(c) The defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(d) The defect arises as a result of the Supplier following the Specification, any drawing, design or any other specification supplied by the Customer;

(e) The Customer alters or repairs such Goods without the written consent of the Supplier;

(f) The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(g) The Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) Not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods;

(c) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) Notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and

(e) Give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(i) The Goods; and

(ii) The ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time, it does so as principal and not as the Supplier's agent and title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

(a) By notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

(b) Require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price contained in the Supplier's price list, unless otherwise agreed by the Supplier in its quotation to the Customer.

7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) Any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, overheads, carriage charges including fuel surcharges, materials, and other manufacturing costs);

(b) Any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) Any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 Without limiting its rights under clause 7.2, the Supplier reserves the right to make alterations to its published price list from time to time as it deems appropriate.

7.4 The price of the Goods:

(a) Excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) Unless otherwise agreed by the Supplier in writing, excludes the costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer.

7.5 The Supplier may invoice the Customer for the Goods on the completion of the Good being dispatched from the Supplier's premises.

7.6 The Customer shall pay for the Goods either:

(a) On or before the last Business Day of the calendar month next following the calendar month in which the invoice was raised, in accordance with the terms of the Credit Arrangement (if one is in place); or

(b) At such time as placing the Order for the Goods but no later than dispatchment of the Goods on the Proforma Basis (in the absence of a Credit Arrangement); or

(c) At any other such time on terms agreed by the Supplier and confirmed in writing to the Customer.

In all instances, payment shall be due in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.

7.7 In respect of the Credit Arrangement:

(a) The Supplier shall, at its sole discretion and subject to satisfactory credit references being obtained, agree to the Credit Arrangement; and
(b) At the request of the Supplier, the Customer shall be required to make payment of the Proforma Payment before the Supplier shall agree to the Credit Arrangement.

7.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date of more than one delivery, then, without limiting the Supplier's remedies under clause 10, the Supplier reserves the right to review or withdraw any Credit Arrangement and suspend any further deliveries until payment of the due amount is received.

7.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.11 If at any time, the Customer which is in receipt of a Credit Arrangement, shall become incorporated or amalgamated with others, it shall be the duty of the Customer to give prior written notice to the Supplier of the intended change, should the Customer wish to continue with any Credit Arrangement that is in place. Continuation of trading with the amalgamated entity or commencement of trading with a new entity shall be in the sole discretion and only deemed undertaken by the Supplier if a written acknowledgement and acceptance is issued by the Company.

8. Limitation of liability

YOUR PARTICULAR ATTENTION IS DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) Death or personal injury caused by negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) Breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) Defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, the Supplier's total liability to the Customer shall not exceed £5,000,000.
- 8.5 Subject to clause 8.3, the following types of loss are wholly excluded:
- (a) Loss of profits;
 - (b) Loss of sales or business;
 - (c) Loss of agreements or contracts;
 - (d) Loss of anticipated savings;
 - (e) Loss of use or corruption of software, data or information;
 - (f) Loss of or damage to goodwill; and
 - (g) Indirect or consequential loss.

This clause 8 shall survive termination of the Contract.

9. Returns policy

9.1 Subject to clause 9.3, where the Customer is dealing in the course of a business:

- (a) The Customer shall have no right to return Goods after delivery of the Goods is completed;
- (b) The Supplier operates a strict no-returns policy. Provided the Supplier correctly dispatched the Goods in accordance with the Order, matters such as the Customer's sales team or employees ordering the wrong product, or the Customer's own customers no longer wanting the Goods, shall not affect the Supplier's returns policy and the Supplier shall be under no obligation whether to accept returns, offer refund or otherwise.

9.2 Where the Customer is dealing as a consumer:

- (a) Subject to clause 9.2(b), the Customer shall have the right to return the Goods to the Supplier within 14 days of the Goods having been delivered to the Customer and receive a refund. The Customer shall pay the costs of return.

(b) Subject to clause 9.3, the Customer shall have no right to return Goods where the Goods are specialist and/or bespoke Goods that were ordered on the basis of a Non-Standard Product Agreement.

9.3 Where the Customer can show that the Goods were delivered with a manufacturer's fault, the Supplier shall accept return of the Goods and offer a full refund.

10. Termination

10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) The Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) The Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) The Customer suspends, threatens to suspend, ceases, or threatens to cease to carry on all or a substantial part of its business; or
- (d) The Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

11. Force majeure

In this Clause, the following definitions shall apply:

- 11.1 **Coronavirus** means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
- 11.2 **Force Majeure Event** means any circumstances not within a party's reasonable control including, without limitation:
 - (a) Acts of God, flood, drought, earthquake or other natural disaster;
 - (b) Epidemic or pandemic;
 - (c) Terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) Nuclear, chemical, or biological contamination or sonic boom;
 - (e) Any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary license or consent;
 - (f) Collapse of buildings, fire, explosion or accident;
 - (g) Any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - (h) Non-performance by suppliers or subcontractors other than by companies in the same group as the party seeking to rely on this clause;
 - (i) Any requirement for the parties to this agreement or any essential services suppliers (e.g., local planning authorities, surveyors or other related consultants, HM Land Registry providing pre-completion searches, utility connections) to comply with the Regulations, or UK Government guidance, requirements or restrictions relating to Coronavirus, including but not limited to the Regulations which impacts a party's ability to perform their obligations under the Agreement; and
 - (j) The UK financial system (or a relevant part of it) failing to deliver monies as a result of issues relating to Coronavirus.

11.3 **Non-Performing Party** means the party to the Contract that is not the Performing Party.

11.4 **Performing Party** means the party to this contract whose performance of its obligations in this contract are prevented hindered or delayed by a Force Majeure Event.

11.5 **The Regulations** means the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, or any subsequent statutory amendment, modification, or replacement thereof.

11.6 Provided the Performing Party has complied with clause 11.6, if either party is prevented, hindered or delayed in or from performing any of its obligations under this contract by a Force Majeure Event, that such party shall not be in breach of this contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations and any related obligation to complete the transaction shall be extended accordingly.

11.7 In the event of clause 11.6 of this Schedule being applicable any corresponding obligations of the Non-Performing Party will also be suspended, and its time for performance of such obligations extended, to the same extent as those of the Performing Party.

11.8 The Performing Party shall as soon as reasonably practicable after the start of the Force Majeure Event notify the Non-Performing Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the contract.

11.9 The Performing Party and Non-Performing Party shall act reasonably and use best endeavours to agree a relevant extension of time for all obligations of each party in the contract.

12. General

12.1 Assignment and other dealings.

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.3 Variation.

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4 Waiver.

(a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

(b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

12.5 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.6 Notices.

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) Delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) Sent by email to the address specified in the Order.

(b) Any notice shall be deemed to have been received:

- (i) If delivered by hand, at the time the notice is left at the proper address;
- (ii) If sent by pre-paid first-class post or other next working day delivery service, at 9am on the second Business Day after posting; or
- (iii) If sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.7 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.