

12th September 2022

Terms and conditions for the sale of products to business customers- non website

Relating to NVC Lighting Limited

Version dated September 2022 Update

Contents

1	Definitions and interpretation	1
2	Application of these Conditions	4
3	Price	5
4	Payment	6
5	Credit limit	6
6	Delivery and performance	6
7	Risk	7
8	Title	7
9	Warranty	8
10	Anti-bribery	10
11	Anti-slavery	10
12	Indemnity and insurance	11
13	Limitation of liability	11
14	Intellectual property	12
15	Confidentiality and announcements	13
16	Processing of personal data	14
17	Force majeure	14
18	Termination	14
19	Dispute resolution	15
20	Notices	16
21	Cumulative remedies	17
22	Time	17
23	Further assurance	17
24	Entire agreement	17
25	Variation	17
26	Assignment	17
27	Set off	18
28	No partnership or agency	18
29	Equitable relief	18
30	Severance	18
31	Waiver	18

32	Compliance with law	19
33	Conflicts within contract	19
34	Costs and expenses	19
35	Third party rights	19
36	Governing law	19
37	Jurisdiction	19
	Schedule 1	20
	Part 1 (Data processing details)	20

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

"Affiliate"	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
"Bribery Laws"	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
"Conditions"	means the Supplier's terms and conditions of sale set out in this document;
"Confidential Information"	means any commercial, financial or technical information, information relating to the Products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Supplier in performing its obligations under, or otherwise pursuant to the Contract;
"Contract"	means the agreement between the Supplier and the Customer for the sale and purchase of the Products incorporating these Conditions and the Order;
"Control"	has the meaning given to it in section 1124 of the Corporation Tax Act 2010 OR means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company
"Controller"	shall have the meaning given in applicable Data Protection Laws from time to time;
"Core Range Products"	the products so described in the Supplier's website at www.nvcuk.com ;
"Customer"	means the person who purchases the Products from the Supplier and whose details are set out in the Order;
"Data Protection Laws"	means, as binding on either party: (a) the GDPR;

- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"Data Subjects" has the meaning given in the Data Protection Laws;

"Force Majeure" means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

"GDPR" means the General Data Protection Regulation, Regulation (EU) 2016/679;

"Intellectual Rights" **Property** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

"Location" means the address(es) for delivery of the Products and performance of the Services as set out in the Order save with the express prior agreement of the Supplier the Location must be in the United Kingdom, the Republic of Ireland, Denmark, Sweden, Norway or Finland;

"Modern Slavery Policy"	means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;
"MSA Offence"	has the meaning given in clause 11.1.1;
"Order"	means the Customer's order for the Products;
"Personal Data"	has the meaning given in the applicable Data Protection Laws from time to time;
"Price"	has the meaning given in clause 3.1;
"processing"	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including "process" , "processed" , and "processes" shall be construed accordingly);
"Products"	means the products (including Core Range Products, Contractor Range Products and Rebranded Product Range) and related accessories, spare parts and documentation and other physical material supplied or to be supplied by the Supplier to the Customer from time to time at the request of the Customer;
"Professional Range Products"	the products so described in the Supplier's website at www.nvcuk.com ;
"Rebranded Product Range"	Products which have been rebranded for a third party;
"Specification"	means the description or specification of the Products so described in the product data sheet at www.nvcuk.com ;
"Supplier"	means NVC Lighting Limited, Nvc Park 201 Hollymoor Way, Rubery, Birmingham, England, B31 5HE VAT number 906183432
"Supplier Personnel"	all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;
"VAT"	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Products; and
"Warranty Period"	has the meaning given in clause 9.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form including email if sent to the Supplier or if sent to the Customer at the email address specified in clause 20.2.4;
- 1.2.10 without prejudice to the provisions of clause 16, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of the Supplier under the Contract; and
- 1.2.11 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise expressly agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.

- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Products concerned subject to these Conditions. Orders must be submitted in writing by post, fax or email. In the case of email to sales@nvcuk.com. If by fax then to 0121-453-1325.
- 2.5 An Order may be withdrawn or amended by the Customer under clause 2.6 at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer without undue delay.
- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier until withdrawn by the Customer giving written notice to the Supplier.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products shall arise, until the earlier of:
- 2.7.1 the Supplier's written acceptance of the Order; or
- 2.7.2 the Supplier despatching the Products or notifying the Customer that they are ready to be delivered,
- when a Contract shall come into force.
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Products and are incapable of being accepted by the Customer.
- 2.10 Marketing and other promotional material relating to the Products are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Products and any ancillary charges shall be as set out in the Supplier's quotation if any and otherwise on the Supplier's website at .
- 3.2 The Prices are inclusive of delivery to a Location for Orders over £250 but exclusive of delivery to a Location for Orders under £250 and in any event exclusive of VAT. Prices for delivery of such Orders are available by contacting the Supplier's sales office on 0121-457-6340 in any event clause 3.3 applies.
- 3.3 Where the Location is outside the United Kingdom of Great Britain and Northern Ireland ("UK") the Customer is entirely responsible for the payment of any and all duties tariffs and taxes of any sort charged on or arising out of the or connected with export of such Products from the UK and their import into the country in which the Location is situated.
- 3.4 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.5 The Supplier may increase the Prices at any time and shall give Customers which have purchased Products from the Supplier in a period of six months prior to the date of such

notice not less than 15 Business Days' notice in writing by email or otherwise of such increase. .

- 3.6 Notwithstanding clause 3.5, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Products which exceeds 15% and which is due to any factor beyond the reasonable control of the Supplier.

4 **Payment**

- 4.1 The Supplier shall invoice the Customer for the Products at any time on or after delivery of the Products.

- 4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within 30 days of the end of the month of the invoice unless otherwise expressly agreed in writing by the Supplier; and

4.2.2 to the bank account nominated by the Supplier in writing on the applicable invoice or otherwise.

- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year, compounded monthly, above the base rate of Lloyds Bank plc from time to time in force, and

4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

- 4.4 Any invoice queries must be raised within 10 Business Days of the date of the relevant invoice.

- 4.5 In any case if the Customer is in breach of any of its payment obligations, the Supplier may without prejudice to its other rights and without thereby incurring any liability to the Customer, suspend its performance under any Contract.

5 **Credit limit**

The Supplier at its absolute discretion may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit. In order to be granted credit the Customer must complete and provide to the Supplier a credit account application in a form prescribed by the Supplier from time to time.

6 **Delivery and performance**

- 6.1 The Products shall be delivered by the Supplier to the Location on the dates specified in the Order (subject to clause 6.4) or if none is specified then within a reasonable time in the ordinary course of the Supplier's business. The Products shall be deemed delivered by the Supplier on arrival of the Products at the Location.

- 6.2 The Supplier may deliver or perform the Products in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.3 Each delivery or performance of the Products shall be accompanied by a delivery note stating:
- 6.3.1 the date of the Order and the Order number;
 - 6.3.2 the relevant Customer and Supplier details;
 - 6.3.3 Supplier Product stock code and type and quantity of Products in the consignment;
- 6.4 Time is not of the essence in relation to the delivery of the Products. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only. In any event delivery timescales are subject to the availability of the Products concerned.
- 6.5 In any event the Supplier shall not be liable for any delay in or failure of performance caused by:
- 6.5.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for the Products or (iii) provide the Supplier with adequate instructions for delivery ;
 - 6.5.2 Force Majeure.

7 **Risk**

Risk in the Products shall pass to the Customer on delivery.

8 **Title**

- 8.1 Title to the Products shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Products.
- 8.2 Until title to the Products has passed to the Customer, the Customer shall:
- 8.2.1 hold the Products as bailee for the Supplier;
 - 8.2.2 take all reasonable care of the Products and keep them in the condition in which they were delivered;
 - 8.2.3 insure the Products from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price;
 - 8.2.4 not remove or alter any mark on or packaging of the Goods;
 - 8.2.5 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.10; and

- 8.2.6 on reasonable notice permit the Supplier to inspect the Products during the Customer's normal business hours and provide the Supplier with such information concerning the Products as the Supplier may request from time to time.
- 8.3 Notwithstanding clause 8.2, the Customer may use or resell the Products in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.10 has occurred or is likely to occur.
- 8.4 If the Customer resells the Products in accordance with clause 8.3, title to the Products shall pass to the Customer immediately prior to the resale.
- 8.5 If, at any time before title to the Products has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.10, the Supplier may without prejudice to any other right it may have:
- 8.5.1 require the Customer at the Customer's expense to re-deliver the Products to the Supplier; and
- 8.5.2 if the Customer fails to do so promptly, enter any premises where the Products are stored and repossess them.

9 **Warranty**

- 9.1 Subject to the provisions of this clause 9, the Supplier warrants the Products for the warranty periods as follows:
- 9.1.1 Core Range Products are supplied with a 5 year, or 20,000 hour (whichever comes first) warranty. [L70B20 50,000 hours *] excluding batteries.¹
- 9.1.2 Rebranded Range Products are supplied with a 5 year, or 20,000 hour (whichever comes first) warranty. [L70B20 50,000 hours *] excluding batteries.
- 9.1.3 Professional Range Products are supplied with a 7 year unlimited hour warranty. [L80B10 100,000 hours *].
- 9.2 In this clause 9 reference to a "Claimant" is to either the Customer or the purchaser from the Customer or that purchaser's end user customer but any warranty claim can only be made by one of such persons.
- 9.3 Subject to the other provisions of these Conditions, the Supplier will offer to rectify, repair, replace or at its discretion credit up to the purchase price paid to the Supplier of any Product that has a manufacturing fault that becomes evident during the applicable warranty period, provided the Product has:
- 9.3.1 been correctly installed as per the installation instructions accompanying the Product,

¹ *The words in square brackets are for information purposes only*

- 9.3.2 been used for the purposes intended by the Supplier in a suitable electrical, thermal and atmospheric environment,
- 9.3.3 not been used following the identification of any potential warranty failure by the Claimant or its agents.
- 9.4 Any Product that has been repaired, rectified or replaced will continue to be warranted for the unexpired duration of the original warranty.
- 9.5 The Supplier may at its discretion, visit site to inspect Products where the failure rate is above 3%. The Claimant must allow and facilitate any such inspection, this is in order to aid diagnosis of fault, which can be caused by site or environmental conditions. Where access for this inspection visit is required above 3m from ground level, safe access equipment must be provided (or procured) by the Claimant to allow the inspection. The Claimant must co-operate in and procure the cooperation of its employees servants and agents in order to facilitate any such inspection.
- 9.6 Products that are modified in any way after purchase from the Supplier are not covered by the warranty. Modifications include but are not limited to such changes as added emergency gear, change to drivers, added sensors and controls. The warranty does not cover fair wear and tear or any consumable items which includes nicad batteries.
- 9.7 The warranty commences from the date of sale by the Customer regardless of whether the Claimant is the purchaser or the end user. In order to make a claim under this warranty, the Product(s) concerned must be returned to the Supplier with a written description of the alleged defect so that it may inspect the Product(s) concerned to ascertain whether it has been used and installed correctly and effect remedy for qualifying claims. The claim must be accompanied by clear evidence (invoice) of where and when the Product was purchased by the Customer where the Customer is the Claimant or from the Customer when the Claimant is the purchaser from the Customer or that purchaser's end user customer.
- 9.8 The warranty does not include Supplier visits to site, delivery costs, cost of plant equipment, and/or labour charges for which the Supplier is entitled to charge the Claimant at a cost pre agreed with the Claimant. The Claimant will pay such cost (and VAT thereon) to the Supplier promptly on receiving an invoice for the same.
- 9.9 LED lamps by their nature are subject to small fluctuations in colour and output through life. The warranty does not cover this. In addition it does not cover normal deterioration through life, which can include the failure of a percentage of individual LED's.
- 9.10 Product software is not covered by the warranty.
- 9.11 Lithium batteries installed in the Professional Product Range have a seven year warranty as long as they have not been damaged and are tested in accordance with BS EN 5266-8-2004. Testing more frequently than the standard may reduce the life of the batteries and will void the warranty.
- 9.12 The Customer's rights under statute are not affected by the terms of this warranty.

9.13 Except as set out in this clause 9:

9.13.1 the Supplier gives no warranty and makes no representations in relation to the Products; and

9.13.2 shall have no liability for the failure of any Product to comply with the warranty in this clause 9,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Products and Services Act 1982 and ss 13–15 of the Sale of Products Act 1979), whether express or implied by statute, common law or otherwise are excluded to the full extent permitted by the applicable law.

10 **Anti-bribery**

10.1 For the purposes of this clause 10 the expressions ‘adequate procedures’ and ‘associated with’ shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

10.2.1 all of that party’s personnel;

10.2.2 all others associated with that party; and

10.2.3 all of that party’s subcontractors;

involved in performing the Contract so comply.

10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 10.

11 **Anti-slavery**

11.1 The Customer undertakes, warrants and represents that:

11.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:

(a) committed an offence under the Modern Slavery Act 2015 (an MSA Offence);

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

11.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

11.1.3 it shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Customer's obligations under clause 11.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

11.2 Any breach of clause 11.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

12 Indemnity and insurance

12.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

12.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

13 Limitation of liability

13.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.

13.2 The Supplier's liability to the Customer for damage to or loss of property (other than the Products themselves) arising in any way out of negligence on the part of the Supplier or its servants or agents, shall be limited to £5,000,000.00 per claim or a series of related claims.

13.3 For claims not falling under clause 13.2 and subject to clauses 13.4 to 13.7 inclusive, the Supplier's total liability in connection with any Order or sales of connected Orders shall not exceed the greater of £100,000 or the price paid by the Customer for the Products comprised in such Order(s).

13.4 Subject to clause 13.6 and without prejudice to clause 13.7, the Supplier shall not be liable for consequential, indirect or special losses.

13.5 Subject to clause 13.6 and without prejudice to clauses 13.2 13.3 and 13.7 the Supplier shall not be liable for any of the following (whether direct or indirect) suffered or incurred by the Customer and whether arising out of any breach of contract by the Supplier tort including negligence or otherwise howsoever :

- 13.5.1 loss of profit;
 - 13.5.2 loss or corruption of data;
 - 13.5.3 loss of use;
 - 13.5.4 loss of production;
 - 13.5.5 loss of contract;
 - 13.5.6 loss of opportunity;
 - 13.5.7 damages for delay in delivery
 - 13.5.8 loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 13.6 The limitations and exclusions of liability set out in clauses 13.3 to 13.5 inclusive shall not apply in respect of any indemnities given by either party under the Contract.
- 13.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 13.7.1 death or personal injury caused by negligence;
 - 13.7.2 fraud or fraudulent misrepresentation;
 - 13.7.3 any other losses which cannot be excluded or limited by applicable law;

14 **Intellectual property**

- 14.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Products infringes the Intellectual Property Rights of any third party (IPR Claim), provided that the Supplier shall have no such liability if the Customer:
- 14.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 14.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 14.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 14.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 14.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the

provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.

- 14.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 14.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Products; or
 - 14.2.2 modify or replace the infringing part of the Products so as to avoid the infringement or alleged infringement, provided the Products remain in material conformance to their Specification.

- 14.3 The Supplier's obligations under clause 14.1 shall not apply to the following:

- 14.3.1 Products produced by the Supplier to the Customer's design or specification;
- 14.3.2 Products modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions;

The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use and/or from any design or specification provided by the Customer

15 **Confidentiality and announcements**

- 15.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

- 15.1.1 any information which was in the public domain at the date of the Contract;
- 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 15.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
- 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

except that the provisions of clauses 15.1.1 to 15.1.3 shall not apply to information to which clause 15.4 relates.

- 15.2 This clause shall remain in force for a period of five years from the date of the Contract..
- 15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

15.4 To the extent any Confidential Information is Personal Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 16.

16 **Processing of personal data**

16.1 To the extent that the Supplier has any Personal Data relating to any employee or agent of the Customer it shall hold such data as a Controller and/or the Customer has any Personal Data relating to any employee or agent of the Supplier it shall hold such data as a Controller, such Personal Data shall be held and processed only for the purposes of the performance by the parties of their respective obligations under a Contract and matters ancillary thereto and each party shall process such data strictly in compliance with Data Protection Laws. Schedule 1 Part 1 applies.

17 **Force majeure**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30days, the party not affected may terminate this Contract by written notice to the other party.

18 **Termination**

18.1 The Supplier may terminate the Contract and or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

18.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;

18.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;

18.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or

18.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

18.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

18.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

18.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;

- 18.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 18.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 18.2.5 has a resolution passed for its winding up;
 - 18.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 18.2.7 is subject to any procedure for the taking control of its assets that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 18.2.8 has a freezing order made against it;
 - 18.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
 - 18.2.10 is subject to any events or circumstances analogous to those in clauses 18.2.1 to 18.2.9 in any jurisdiction;
- 18.3 The Supplier may terminate the Contract by notice in writing to the Customer forthwith or at the end of such period of notice as may be given if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 18.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 18, it shall immediately notify the Supplier in writing.
- 18.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

19 **Dispute resolution**

- 19.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 19.
- 19.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 19.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 19.3.1 Within seven days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
 - 19.3.2 If the dispute has not been resolved within seven days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or

persons of equivalent seniority). The chief executives (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.

- 19.4 The specific format for the resolution of the dispute under clause 19.3.1 and, if necessary, clause 19.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 19.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 19.3.2 then the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 19.6 Until the parties have completed the steps referred to in clauses 19.3 and 19.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or commence and prosecute proceedings for the payment of liquidated debt, due, payable and unpaid.

20 Notices

- 20.1 Any notice or other communication given by a party under these Conditions shall:
- 20.1.1 be in writing and in English;
 - 20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 20.1.3 be sent to the relevant party at the address set out in the Contract
- 20.2 Notices may be given, and are deemed received:
- 20.2.1 by hand: on receipt of a signature at the time of delivery;
 - 20.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
 - 20.2.3 by Royal Mail International Tracked & Signed or Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
 - 20.2.4 by email provided confirmation is sent by first class post subject to clause 20.3 the Supplier's email address for these purposes is accounts@nvcuk.com and the customer's email address is that set out in its credit account application to the Supplier or otherwise appearing on its business stationery.
- 20.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 20.1 and shall be effective:
- 20.3.1 on the date specified in the notice as being the date of such change; or
 - 20.3.2 if no date is so specified, insert figure Business Days after the notice is deemed to be received.
- 20.4 This clause does not apply to notices given in legal proceedings or arbitration.

21 **Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

22 **Time**

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

23 **Further assurance**

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

24 **Entire agreement**

24.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

24.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

24.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

25 **Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

26 **Assignment**

26.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion. In particular, the customer has no right to assign the benefit of the Warranty set out in clause 9.

26.2 Notwithstanding clause 26.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

27 **Set off**

27.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

27.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

28 **No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

29 **Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

30 **Severance**

30.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

30.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

31 **Waiver**

31.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

31.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

31.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

32 Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

33 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

34 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

35 Third party rights

35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

35.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

36 Governing law

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

37 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Products, the Contract, its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Part 1

(Data processing details)

Processing of the Personal Data by the Supplier under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Part 1 of schedule 1.

1 Subject-matter of processing:

Customer personnel contact details

2 Duration of the processing:

for such time as is necessary to administer and enforce the Contract(s) concerned or such longer period as may be required by law

3 Nature and purpose of the processing:

to communicate with the other party in order to supply the Products concerned and administer and enforce the Contract(s) concerned

4 Type of Personal Data:

contact email addresses, telephone numbers and business address

5 Categories of Data Subjects:

Employees, officers and workers of the Customer

6 Specific processing instructions:

None