

**STANDARD TERMS AND CONDITIONS OF SUPPLY OF NOONAH MARKETING LIMITED**

**PLEASE NOTE THE LIMITATION OF LIABILITY PROVISIONS IN CONDITION 12.**

**1. DEFINITIONS & INTERPRETATION**

1.1 In these terms and conditions, the following words and phrases shall have the meanings ascribed to them below:

“**Conditions**” means these terms and conditions;

“**Contract**” means the contract between Noonah and the Customer relating to the sale and purchase of the Goods, incorporating the Conditions and (where provided) the Sales Order;

“**Customer**” means the company, person or party detailed in the Sales Order or from whom the Deposit is paid and who purchases Goods from Noonah;

“**Delivery Site**” means the location detailed in the Sales Order;

“**Deposit**” means the non-refundable sum payable by the Customer on entering into this Contract, and detailed in the Sales Order;

“**Goods**” means the goods detailed in the Sales Quotation, Sales Order or Sales Invoice to be supplied to the Customer by Noonah;

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“**Noonah**” means Noonah Marketing Limited, (company number 07619471) whose registered office is at Underwood Cottage Bar Road, Baslow, Bakewell, Derbyshire, UK, DE45 1SF;

“**Price**” means the price payable for the Goods, detailed in the Sales Order;

“**Sales Invoice**” means the document confirming the Price of the Goods;

“**Sales Order**” means the document confirming the particulars of the Contract, including (where applicable) the Goods, any specification and the Price;

“**Sales Quotation**” means the document providing a quotation of the Price;

“**Software**” means the mathematical computer code, programs, routines, and other functions that controls the functioning and operation of the Good’s hardware;

“**Software Licence**” means the licence provided by the software provider(s) (accessible using the following link: <http://noonah.co.uk/software-license/>) containing the terms on which the Customer has agreed to utilise the Software;

“**Special Conditions**” means the special terms and conditions (if any) detailed in the Sales Order;

“**User Manual**” means the documents made available by Noonah to the Customer detailing the functionality of the Goods;

“**Warranty Certificate**” means the manufacturer’s warranty accessible using the following link: <http://noonah.co.uk/warranty-certificate.pdf>;

“**Warranty Period**” means twelve (12) months from date the Customer receives the Goods in accordance with clause 6.1;

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to the parties shall be a reference to Noonah and Customer.

1.5 Condition headings do not affect the interpretation of these terms and conditions.

**2. APPLICATION OF CONDITIONS**

2.1 Subject to any variation under condition 2.2, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase document, confirmation of order, specification, other document, trade custom, practice or course of dealing), which, together with the Sales Order, or in the absence of a Sales Order along with the payment of the Deposit, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it, superseding any previous agreement between the parties relating to such matters.

2.2 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Noonah.

2.3 If there is any conflict, inconsistency or ambiguity when interpreting the Contract, the following order of precedence shall always apply:

- (a) firstly, any Special Conditions;
- (b) secondly the Conditions; and
- (c) finally (if provided) the Sales Order.

**3. BASIS OF SALE**

3.1 If provided, a Sales Order is valid for a period of thirty (30) days only and Noonah may withdraw it at any time by written notice to the Customer.

3.2 A binding Contract shall only come into existence between Noonah and the Customer once the Customer has either:

- (a) counter signed the Sales Order, acknowledged or returned it, or
- (b) paid the Deposit whichever is the sooner.

3.3 The Customer acknowledges that:

- (a) the Deposit is non-refundable and the Goods go into manufacturing immediately on Noonah receiving the deposit.
- (b) it has not relied on any statement, promise or representation made or given by or on behalf of Noonah which has not been set out in the Sales Order (where a Sales Order is provided); and
- (c) it has satisfied itself that the Goods are suitable for its own requirements.

3.4 Any advice or recommendation given by Noonah or its employees, contractors or agents to the Customer or its employees, contractors or agents about the design, installation, storage, application or use of the Goods is to be followed or acted upon entirely at the Customer’s own risk.

**4. LICENCE AND SOFTWARE**

4.1 Subject always to the Customer making payment of the Price in accordance with condition 8.1 or 8.2, the Customer is granted a Software Licence to utilise the Software contemplated by the Sales Order.

4.2 The Software is to be used by the Customer only for the purposes as contemplated by the Sales Order and the Software Licence.

4.3 The Client shall follow all reasonable instructions given by Noonah from time to time with regard to the use of the Software.

4.4 Except for the purposes of interoperability (as defined in Section 50B of the Copyright, Designs and Patents Act 1988) the Customer shall not disassemble, decompile or reverse engineer the Software.

4.5 The rights provided for under this condition 4 are granted to the Customer only.

4.6 In relation to the Software, any third party proprietary software and the User Manuals supplied to the Customer (with or without the Goods), the Customer acknowledges that:

- (a) it is buying only the media on which the Software is recorded and the accompanying User Manuals;
- (b) nothing in these Conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or User Manuals;
- (c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and User Manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

**5. DESCRIPTION**

5.1 The description and/or quantity of the Goods shall be as set out in the Sales Order. Where a Sales Order is not provided then on the Sales Invoice.

5.2 All samples, drawings, descriptive matter, specifications and advertising issued by Noonah, and any descriptions or illustrations contained in Noonah’s catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.

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

5.4 Noonah’s employees, contractors and agents are not authorised to make any contractually binding representations concerning the Goods. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Noonah. However, nothing in these conditions limits Noonah’s liability for fraudulent misrepresentation.

**6. DELIVERY**

6.1 Subject to the Customer meeting its obligation pursuant to clause 8.1 or 8.2, Noonah shall deliver the Goods to the Delivery Site or the Customer shall collect the Goods from Noonah’s premises.

6.2 Any dates specified by Noonah for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

6.3 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Noonah is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by Noonah’s negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) Noonah may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.4 If Noonah is requested to re-deliver the Goods following a failed delivery in accordance with condition 6.3, Noonah reserves the right to make an additional charge for such re-delivery.

6.5 Noonah may deliver the Goods by separate instalments. Each separate instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

**7. PRICE**

7.1 If the Sales Order does not include details of the Price or if a Sales Order is not provided, the price for the Goods shall be the price set out in Noonah’s Sales Quotation and/or Sales Invoice.

7.2 The Price shall be deemed to be in GBP £s (Sterling) and unless expressly stated otherwise, shall exclude any applicable sales taxes (where applicable) at the applicable current rate and delivery charges (to the Delivery Site), which shall be detailed in the Sales Order and shall be payable in addition.

**8. PAYMENT TERMS**

8.1 The Customer shall pay the Price for the Goods in accordance with the payment terms stipulated in the Sales Order.

8.2 In the absence of any such payment terms, the Customer shall ensure Noonah receives payment of the Price:

- (a) before collection or delivery of the Goods; or (unless specified otherwise in writing)
- (b) within sixty (60) days of the date of the Sales Order or the date the Deposit is paid .

whichever is the earlier.

8.3 Time for payment of the Deposit, Price, or any instalment shall be of the essence.

8.4 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Noonah to the Customer.

8.5 If the Customer fails to pay Noonah any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Noonah on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. Noonah reserves the right to claim interest, compensation and costs under the Late Payment of Commercial Debts (Interest) Act 1998.

**9. RISK & RETENTION OF TITLE**

9.1 The Goods are at the risk of Noonah, until delivery in accordance with condition 6.1, whereupon risk in the Goods shall transfer in full to the Customer.

- 9.2 Full legal and beneficial title and ownership of the Goods shall pass to the Customer once Noonah has received in full (in cleared funds) all sums due to it in respect of:
- the Contract; and
  - all other sums which are or which become due to Noonah from the Customer under any other contract or account.
- 9.3 Until title and ownership of the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as Noonah's bailee;
  - store the Goods (at no cost to Noonah) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the property of Noonah;
  - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - maintain the Goods in satisfactory condition and keep them insured on Noonah's behalf for their full price against all risks to the reasonable satisfaction of Noonah. On request the Customer shall produce the policy of insurance to Noonah.
- 9.4 Noonah shall be entitled to recover payment for the Goods notwithstanding that legal and beneficial ownership and title of any of the Goods has not passed from Noonah.
- 9.5 The Customer's right to possession of the Goods shall terminate with immediate effect if the Contract is terminated by Noonah in accordance with condition 9 and Noonah has not been paid the price in respect of such Goods.
- 9.6 The Customer grants Noonah, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated in accordance with condition 8.5, to recover them.
- 10. EARLY TERMINATION**
- 10.1 Without prejudice to any other rights Noonah may have under the Contract, at any time prior to delivery of the Goods, Noonah shall have the right to terminate the Contract on written notice to the Customer, with immediate effect, if the Customer:
- (being a person) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
  - (being a body corporate) has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors;
  - suspends or ceases or threatens to suspend or cease, to carry on all or a substantial part of its trade or business; or
  - encumbers or in any way charges any of the Goods.
- 10.2 Every effort is made by Noonah to ensure that the Price is accurate. Notwithstanding that the Contract has been formed, Noonah shall have the right to terminate the Contract without liability to the Customer where the Goods have been mistakenly priced in the Sales Order. Noonah will always give the Customer the option of reconfirming the Contract at the correct Price.
- 10.3 Termination of the Contract (however occasioned) shall not affect any accrued rights or liabilities of either party.
- 11. WARRANTY**
- 11.1 During the Warranty Period, all Goods sold by Noonah shall benefit from the limited warranty detailed in the Warranty Certificate.
- 11.2 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care
- 12. REMEDIES**
- 12.1 Noonah shall not be liable for any non-delivery of the Goods (even if caused by Noonah's negligence) unless the Customer notifies Noonah in writing of the failure to deliver within forty eight (48) hours days after the scheduled delivery date.
- 12.2 Any liability of Noonah for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
- 13. LIMITATION OF LIABILITY**
- 13.1 The following provisions set out the entire financial liability of Noonah (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- any breach of these Conditions;
  - any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods;
  - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 Nothing in these conditions excludes or limits the liability of Noonah:
- for death or personal injury caused by Noonah's negligence;
  - under section 2(3), Consumer Protection Act 1987 or section 12 of the Sale of Goods Act 1979;
  - for any matter which it would be illegal for Noonah to exclude or attempt to exclude its liability; or
  - for fraud or fraudulent misrepresentation.
- 13.3 Subject to conditions 13.1 and 13.2:
- Noonah shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
  - Noonah's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Price.
- 14. CONFIDENTIALITY**
- 14.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Noonah or its agents, and any other confidential information concerning Noonah's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Noonah, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 14.2 All materials, equipment and tools, drawings, specifications and data supplied by Noonah to the Customer shall at all times be and remain the exclusive property of Noonah, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Noonah, and shall not be disposed of or used other than in accordance with Noonah's written instructions or authorisation.
- 14.3 For the avoidance of doubt, the identity of any Contractor shall be considered confidential within the meaning of clause 14.1.
- 14.4 This condition 14 shall survive termination of the Contract, howsoever arising.
- 15. UNFORSEEABLE DELAYS**
- 15.1 Noonah reserves the right to defer the performance of the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Noonah including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 16. REGULATORY COMPLIANCE**
- 16.1 If a licence, consent, permission or any government or other authority is required in relation to the Contract, the Customer shall obtain the licence or consent at its own expense and if requested, produce the evidence to Noonah on demand. Failure to obtain any licence or consent shall not entitle the Customer withhold or delay payment or terminate the Contract.
- 17. COMMUNICATIONS**
- 17.1 All communications between Noonah and the Customer regarding the Contract shall be in writing and delivered by hand, first class post, email or fax to:
- (in case of communications to Noonah) its registered address or any other address notified in writing from time to time; or
  - (in the case of the communications to the Customer) the address detailed in the Sales Order or any other address notified in writing from time to time.
- 18. GENERAL**
- 18.1 Noonah may assign the Contract or any part of it to any third party. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Noonah.
- 18.2 Each right or remedy of Noonah under the Contract is without prejudice to any other right or remedy of Noonah whether under the Contract or not.
- 18.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.4 Failure or delay by Noonah in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 18.5 Any waiver by Noonah of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.6 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 18.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.