

# NOJERM LTD. TERMS AND CONDITIONS OF BUSINESS; TERMS AND CONDITIONS OF SALE 11.1.2021

In these Conditions of Sale

- 1.1 "the Supplier" means Nojerm Ltd., "the Buyer" means any person, firm, company or corporation purchasing Goods from the Supplier;
- "Goods" means each and every product, article or thing and any part thereof supplied or to be supplied by the Supplier;
- "the Contract" means the contract of sale (including the provision of services incidental thereto) subject to these Conditions of Sale.
- 1.2 No person who is not a party to this Agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 2.1 The Supplier offers Goods for sale subject to these Conditions of Sale which shall apply to and be incorporated into all contracts made by the Supplier for the sale of Goods, to the exclusion of any other terms and conditions. Any written, printed or standard terms or conditions contained in any document emanating from the Buyer shall have no legal effect whatsoever and the Buyer waives any right he may otherwise have to rely on such terms or conditions. However in the case of consumer transactions, the Terms and Conditions do not affect the consumer's statutory rights.
- 2.2 No servant or agent of the Supplier has authority to modify, amend or exclude any of these Conditions of Sale, to sell or enter into an agreement to sell otherwise than subject exclusively to these Conditions of Sale or to make any representation or warranty (save as provided herein) without the express authority in writing of a director of the Supplier and no modification, amendment or exclusion of these Conditions of Sale or any part thereof shall be binding on the Supplier unless otherwise agreed in writing by a director of the Supplier.
- 2.3 These Conditions of Sale replace all previous conditions of sale of the Supplier.
- 2.4 The Buyer acknowledges that he has not entered into the Contract in reliance upon any representation made by or on behalf of the Supplier other than that is contained in the Offer Document or these Conditions of Sale or is notified to the Supplier in writing before the date of acceptance as being a representation upon which reliance is placed.
- 3.1 Statements in the Supplier's publications, price lists, catalogues and advertisements shall not constitute an offer to sell and shall not form part of the Contract. Quotations issued by the Supplier shall constitute an offer to sell Goods on the terms there stated and subject to these Conditions of Sale.
- 3.2 Unless otherwise stated in writing, an offer of sale by the Supplier contained in any quotation may be accepted within a period of thirty days from the date thereof. In any event and notwithstanding the foregoing, any offer by the Supplier shall be subject to the right of the Supplier to revoke any offer at any time prior to acceptance by notice to the offeree.
4. These Conditions shall be without prejudice to any legal prohibition against exclusion or restriction of obligations or liability contained in the Unfair Contract Terms Act 1977 or any other statute and shall not apply where and to the extent that their effect is legally prohibited.
- 5.1 The price of Goods supplied shall be the price stated in the Supplier's quotation.
- 5.2 Unless otherwise agreed in writing in accordance with Condition 2.2, prices are for delivery ex works and do not include carriage or packing. Where prices are agreed to be delivered packs, this applies only to non-express deliveries within the United Kingdom mainland. Express or next-day delivery and/or delivery outside the United Kingdom mainland will be charged extra.
- 5.3 Unless otherwise agreed in writing in accordance with Condition 2.2, the price of all Goods shall exclude value added tax and all applicable taxes and duties, the cost of which shall be determined at the date of the invoice and shall be payable by the Buyer.
- 5.4 The Buyer shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim unless both the validity and the amount thereof have been expressly admitted by the Supplier in writing.
- 6.1 Time of payment is of the essence of the Contract.
- 6.2 Unless otherwise agreed in accordance with Condition 2.2 or unless the Buyer has an account with the Supplier, the price of the Goods and any additional charges will be paid in sterling in full in cash with order.
- 6.3 Where the Buyer has an account with the Supplier, the price of the Goods and any additional charges will be paid in sterling in full not later than 30 days following the date of the invoice.
- 6.4 Without prejudice to any other rights of the Supplier, however arising, in the event that the Buyer fails to pay the price or any part thereof or any other sums due under the Contract in accordance therewith, the Supplier shall be entitled:-
  - (i) to charge interest at the rate of 2% per month or part month, or at the rate of 4% per annum above the Barclays Bank Plc base rate from time to time in force, whichever is the higher, on all sums which remain payable by the Buyer from the date on which the sums became payable until payment in full has been received by the Supplier;
  - (ii) to refuse to make delivery of any Goods ordered by the Buyer whether under the same or any other Contract with the Supplier without incurring any liability whatsoever to the Buyer, until payment is made in full of all sums due from the Buyer to the Supplier.
  - (iii) to recover all costs and expenses incurred by the Supplier in the collection or recovery of sums due and the Buyer hereby agrees to indemnify the Supplier in respect of all such costs and expenses;
  - (iv) to terminate with or without notice the Contract insofar as it remains unperformed, whereupon the Buyer shall be liable to pay to the Supplier all sums due at termination, plus the amount of any loss whatsoever sustained by the Supplier by reason of the said termination.
- 6.5 The Supplier shall be entitled to dose or suspend any account, at any time, in its sole discretion. In that event, the balance of the account shall be payable forthwith.
- 6.6 The Supplier shall at any time be entitled to appropriate any payment made by the Buyer in settlement of any debt of the Buyer as the Supplier in its absolute discretion thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- 7.1 The Buyer acknowledges that before entering into an agreement to purchase Goods from the Supplier he has expressly or by placing an order impliedly represented and warranted that:
  - (i) he is not insolvent;
  - (ii) he has not committed an act of bankruptcy;
  - (iii) being a company with limited or unlimited liability, it knows of no circumstances which would entitle a debenture holder, secured creditor or any other person to appoint a receiver, to petition for its winding up or to exercise any other rights over or against its assets.
- 7.2 All Goods shall be at the Buyer's risk from the time of delivery to the Buyer, save that if property passes to the Buyer prior to delivery the Goods shall be at the Buyer's risk from the time when property passes to the Buyer, in which case, a carrier shall be deemed to be the agent of the Buyer. The Buyer shall ensure that Goods the property of the Supplier are at all times when at the risk of the Buyer the subject of insurance cover for full value and against all risks, shall note the Supplier's interest on the insurance policy and shall produce such policy and the latest premium receipt to the Supplier on demand.
- 7.3 Until such time as the Buyer shall have paid the Supplier in full the price and all additional charges in respect of Goods supplied under the Contract (and/or under any other contract between the Buyer and the Supplier on any account whatsoever):
  - (i) such Goods shall remain the sole and absolute property of the Supplier as legal and equitable owner and the Supplier shall reserve the right to dispose thereof;
  - (ii) the Buyer shall be in possession of the Goods solely as bailee of the Supplier.
  - (iii) the Buyer shall store the Goods on his premises, separately from his own goods and those of any other person in a manner which makes them readily identifiable as the property of the Supplier and marked with the Supplier's name, the date received and the invoice number (or delivery note number if the invoice number is not known).
- 7.4 Subject to the terms hereof, the Buyer is licensed by the Supplier to sell the Goods in the ordinary course of the Buyer's business for the account of the Supplier, notwithstanding that ownership of the Goods has not passed to the Buyer. Such a sale shall, as between the Supplier and the Buyer only, be made by the Buyer as agent of the Supplier (save that the Buyer shall not hold himself out as such) and bailee for the Supplier. The Buyer shall owe a fiduciary duty to the Supplier and such part of the proceeds of sale as represents or is equal to the price and additional charges at which the Goods sold were invoiced by the Supplier to the Buyer shall be held on trust absolutely and indefeasibly for the Supplier and shall not be mingled with any other monies or paid into any overdrawn bank account and shall at all times be held in a separate account and shall be identifiable as the Supplier's monies in the beneficial ownership of the Supplier and the Supplier shall have the right to trace the said part of the proceeds. The parties hereby declare that the Buyer's duty to account arises from his acknowledged fiduciary character as bailee and not from the contract alone.
- 7.5 Without prejudice to any other rights of the Supplier however arising, if the Buyer becomes insolvent or makes composition with his creditors or enters into any negotiations for an arrangement or composition with his creditors, or

- commits an act of bankruptcy or has a petition in bankruptcy presented against him, or if the Buyer does or fails to do anything which an act of failure would entitle a receiver to take possession of any of the Buyer's assets or undertakings, or if a receiver of the Buyer's assets or undertakings or any part thereof shall be appointed or if any part of the contract price of or additional charges in respect of the Goods remains unpaid after the date on which it falls due, or if the Buyer is or becomes in default of any of his obligations hereunder, or if the Buyer ceases or threatens to cease to carry on business, or if any distress or execution shall be levied upon the Buyer, or if the Buyer, being a body corporate, does or fails to do anything which an act of failure would entitle any person to present a petition for winding up, or if any resolution is proposed or petition presented to wind up the Buyer (other than in the case of a voluntary liquidation for the purpose of amalgamation or reconstruction) or if an application is made for an administration order, or if the Supplier considers that its interest in the Goods supplied to the Buyer is prejudiced in any way:
  - (i) the Buyer's right to possession shall cease,
  - (ii) the Supplier's servants or agents may enter any premises where its Goods are stored or are reasonably believed to be stored and repossess the same without prejudice to the obligation of the Buyer to purchase the Goods,
  - (iii) any and all other directors, partners or proprietors of the Buyer shall accept personal liability, jointly and severally with any and all other directors, partners or proprietors of the Buyer, for payment of all sums due to the Company,
  - (iv) the Supplier may, with or without notice, terminate the Contract insofar as it remains unperformed and the Buyer shall be liable to pay to the Supplier all sums due at termination plus the amount of any loss whatsoever sustained by the Supplier as a result of the termination of the Contract, and,
  - (v) the Buyer's right of resale under Condition 7.4 hereof shall cease.
- 7.6 The Supplier may maintain an action for the price of Goods sold notwithstanding that property in them may not have passed to the Buyer.
- 7.7 The Buyer shall have no power to create any charge, lien or other encumbrance whatsoever on the Goods or any part thereof so long as the property in and legal ownership in the same shall remain in the Supplier.
- 7.8 If the Buyer fails to pay the price of the Goods or any other sums due under the Contract, the burden of proving that any equal or lesser quantity of goods of the same description as the Goods supplied in the possession of the Buyer at any material time has been paid for in full shall fall on the Buyer.
- 8.1 Save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies, any date agreed by the Supplier for the supply or delivery of Goods will not be a contractual term but an indication of the approximate date of supply or delivery only and in the event of any failure of the Supplier to deliver or supply on such date for any reason whatsoever, whether or not resulting from the negligence of the Supplier, its servants or agents, the said failure shall not constitute a breach or repudiation by the Supplier of any agreement and the Supplier shall not be liable for any loss or damage whatsoever (including any consequential loss or damage of any nature whatsoever with the exception of death or personal injury resulting from negligence) arising therefrom or in connection therewith whether in contract, tort or otherwise.
- 8.2 Save where otherwise agreed in accordance with Condition 2.2, all sales shall be on an ex works basis and the Buyer shall accept and take delivery of the Goods at the Supplier's works at Bourne, PE10 0DJ or such other address as the Supplier may reasonably specify within 7 days of notification by the Supplier that they are ready for collection.
- 8.3 If the Buyer fails to accept delivery of any Goods when tendered, or requests a delay in a scheduled delivery date, or through non-payment causes future deliveries to be withheld, the Buyer shall be liable to make reasonable payment to the Supplier in respect of any charges thereby incurred by the Supplier and for additional handling and storage, and such Goods shall be at the Buyer's risk from the notified date of delivery.
- 8.4 The Supplier shall be entitled to deliver by instalments and where it does so each delivery is to be treated as a separate contract, and, save where and to the extent that a prohibition against exclusion or restriction of obligations or liability applies, any failure by the Supplier to make any delivery in whole or in part whether or not due to the negligence of the Supplier, its servants or agents, shall not give the Buyer any right to terminate any contract with the Supplier or to refuse further deliveries.
- 8.5 Delivery and Buyer's acceptance of the Goods shall be deemed to take place upon the occurrence of the first in time of the following:-
  - (i) the delivery of the Goods to the Buyer,
  - (ii) the delivery of the Goods to the Buyer's carrier or his agent,
  - (iii) the delivery of the Goods in accordance with the agreement.
- 8.6 Before signing for receipt of the Goods, the Buyer or his agent shall inspect and check the Goods immediately upon delivery for damage which might have been caused in transit. In the case of fireproof Goods the Buyer or his agent shall first unwrap the Goods before inspection.
- 8.7 Save where and to the extent that a prohibition against exclusion or restriction of obligations or liability applies, the Supplier shall not be liable:
  - (i) for partial loss, partial mis-delivery, shortage, or damage to Goods supplied unless the Supplier is advised thereof by the Buyer's or consignee's signing and annotating the carrier's or consignee's delivery note to that effect, reporting the same to the Supplier immediately by telephone and further confirming such reports by email or in writing to the Supplier within one working day of receipt of the Goods;
  - (ii) for loss or non-delivery of the whole consignment or any separate package or container forming part of the consignment, unless the Supplier is advised of the loss or non-delivery in writing within 7 days of the invoice date or the expected date of delivery, whichever is the sooner,whether or not due to the negligence of the Supplier, its servants or agents.
- 8.8 If, notwithstanding condition 8.1, a stated delivery date has contractual effect and the Supplier fails to deliver the Goods by such date, save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies, any liability whatsoever of the Supplier whether in contract, tort or otherwise howsoever and whether or not resulting from any negligence on the part of the Supplier, its servants or agents, in respect of or in connection with such failure shall not exceed 2% of the purchase price of the portion of the Goods delivered late for each week of the delay, and shall not, in any event, exceed in total 50% of the price of the portion of the Goods delivered late.
9. Save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies, if the Supplier is prevented, hindered or delayed, whether directly or indirectly, from making delivery of Goods or any part thereof in accordance with the terms of any agreement or from otherwise performing such agreement or any part thereof by reason of an act of God, war, embargo, riot, strike, lock-out, trade dispute, fire, breakdown, inclement weather, interruption of transport, government action, delay in delivery or non-delivery of any Goods or materials or by any cause whatsoever (whether or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever whether in contract, tort or otherwise howsoever to the Buyer and shall be entitled at its option, to be notified in writing to the Buyer, either to cancel the contract or, without any liability, to extend the time of such performance by a period equivalent to that during which performance has been prevented, hindered or delayed, as aforesaid.
10. Goods supplied on sale or return shall be deemed to have been bought subject to these Conditions if not returned to the Supplier within 60 days of dispatch from the Supplier, and payment for these Goods shall be made not later than 10 days thereafter, notwithstanding any account facility of the Buyer.
11. Save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies, and without prejudice to any other Condition, all descriptions and specifications of the Goods where given by the Supplier are provided for guidance but are not precise and shall not be contract terms and the Supplier shall have the right without notice to make any changes in material, specification, dimensions or design as it considers reasonable or desirable.
- 12.1 The Buyer undertakes that:
  - (i) it will, if practicable on receipt, else at the time of unpacking, installation or first use, whichever occurs first, examine all goods for patent defects.
  - (ii) on discovering any defect in the Goods whether on or after delivery it will give immediate notice thereof to the Supplier by telephone and confirm it by email or in writing within one working day of such discovery;
  - (iii) it will comply with all instructions of the Supplier concerning the return of the Goods to the Supplier for inspection and testing; and
  - (iv) it will prevent further use or distribution of defective Goods, unless subsequently advised to the contrary in writing by the Supplier.
- 12.2 The Supplier undertakes that it will, at its option, either rectify, replace or refund the contract price of any part or Goods

- supplied which are defective at the time of delivery or do not conform with their contract description or sample, provided that the Supplier shall be under no such obligation:
  - (a) unless the Buyer has performed its obligations under Condition 12.1, and
  - (b) in cases of damage on delivery, unless the conditions stated in Condition 8.7(i) have been satisfied by the Buyer or consignee; and
  - (c) in any event, unless the Supplier has been advised of the defect in that specific single part or good within 12 months of its delivery.
- The Supplier shall not be liable for the costs of removing the defective goods, nor of re-fitting either the defective goods once repaired or their replacement, nor of re-doing any work (including but not limited to painting) which was done to the defective goods by any other party subsequent to the supply of the goods by the supplier, nor of making good in the area where the goods were fitted, nor for any other costs.
- 12.3 Save as is expressly provided in Condition 12.2 hereof and save where and to the extent that a prohibition against exclusion or restriction of obligations or liability applies, the Supplier, its servants and agents shall be under no liability whatsoever to the Buyer, whether in contract, tort or otherwise howsoever (including any liability for consequential injury loss or damage of any nature whatsoever with the exception of liability for death or personal injury resulting from negligence) for or arising out of any defect, failure or unsuitability for any purpose, failure to conform with description or sample of the Goods or any part thereof whether the same be due to any negligent act or omission on the part of the Supplier, its servants or agents or any other cause whatsoever, and all conditions, warranties or other terms whether express or implied, statutory or otherwise inconsistent with the provisions of this Condition are hereby excluded.
- 12.4 In cases where the Supplier exercises its option to rectify or replace the Goods, the Goods shall be rectified or the replacement Goods shall be supplied subject to these Conditions of Sale.
13. The Supplier reserves the right to perform the Contract by a sub-contractor or sub-contractors. The Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefit thereof.
14. The Buyer undertakes that the Goods will be installed, used, kept, stored, maintained and serviced in strict compliance with any relevant instructions of the Supplier and that the Buyer will notify any subsequent purchasers of such instructions. Instructions are available from the Supplier on request.
15. Without prejudice to any other rights of the Supplier, however arising, and save where and to the extent prohibited by law, the Buyer agrees to indemnify the Supplier and to keep the Supplier at all times fully indemnified from and against all liabilities, actions, proceedings, judgments, awards, and damages whatsoever and howsoever arising and the costs thereof (including, without prejudice to the generality hereof, the legal costs of the Supplier on an indemnity basis in connection with any of the foregoing) arising directly or indirectly:
  - (i) as a result of or in connection with any breach or non-performance of any of the Buyer's obligations or warranties under or in relation to the Contract;
  - (ii) as a result of or in connection with any conduct of the Buyer, its servants or agents, in connection with the Contract;
  - (iii) in respect of any actual or alleged infringement of patent, registered design, trade mark, design right, copyright or other right in property as a result of any Goods supplied or worked on complying with the particular design or specification of the Buyer or as a result of any act of the Buyer in relation to any Goods supplied or worked on.
16. Save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies, the Supplier, its servants and agents shall be under no liability whatsoever to the Buyer, whether in contract, tort or otherwise howsoever, and whether or not resulting from any negligence of the Supplier, its servants or agents (including any liability for consequential injury, loss or damage of any nature whatsoever with the exception of liability for death or personal injury resulting from negligence) for or arising out of any advice, information, opinion, or statement given or made by the Supplier, its servants or agents, and whether the same be oral or in writing and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with this Condition are hereby excluded. In particular and without prejudice to the generality of the foregoing:
  - (i) it is the responsibility of the Buyer to determine whether the Goods ordered are fit for any purpose for which they may be required, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this Condition are hereby excluded;
  - (ii) it is the responsibility of the Buyer to ensure that any use to which the Goods are put, and any location in which the Goods are put or used, complies with all relevant legislation and codes of practice.
  - (iii) any statement by the Supplier as to possible performance of the Goods is only an estimated guide and shall not be a contract term;save where and to the extent that such exclusion is prevented by law.
- 17.1 The Buyer shall not at any time use or permit use of the Goods or any part thereof supplied by the Supplier, as a basis or starting point, or in any other way, for making any tool, mould, pattern or moulding, without the express permission in writing of a director of the Supplier. Any tool, pattern, mould or moulding manufactured at any time in contravention of terms 17.3 and/or 17.4 herein, shall immediately become the Supplier's property, and the Supplier is hereby entitled to manufacture or derive tools, patterns, moulds and mouldings therefrom. The provisions of this term 17.3 are additional to any other rights and remedies of the Supplier.
- 17.2 The Buyer shall not at any time nor in any form copy or imitate, nor directly or indirectly cause, permit or assist to be copied or imitated Goods sold or offered for sale under the names nojerm, Nojerm, CleanScreen, ClearScreen, Pure Privacy or other forms of such names, or any other Goods actually supplied or generally offered for sale by the Supplier. The Buyer shall not trade in copies or imitations of such Goods, and if he has already copied or imitated such Goods, he will now forever cease to manufacture such copies or imitations.
- 17.3 Paragraphs 17.1, 17.2, 17.3 and 17.4 are terms fundamental to the Contract.
18. The Buyer undertakes to ensure that the installation and use of the Goods will be in compliance with all applicable requirements of statute, statutory rule or order, regulation or other instrument having force of law, relevant standard or Code of Practice.
19. If, notwithstanding the other provisions hereof, the Supplier shall be held to be under any liability to the Buyer (whether in a contract, tort or otherwise howsoever and whether or not resulting from any negligence on the part of the Supplier, its servants or agents, with the exception of liability for death or personal injury resulting from negligence), without prejudice to the other provisions hereof such liability shall not exceed the sum of £10,000 in respect of any incident giving rise to any claim which the Supplier's insurers do not meet, save where and to the extent that a prohibition against exclusion or limitation of obligations or liability applies.
20. The Buyer shall not disclose to any third party save for the purpose of performing the Contract or any other contract between the Supplier and the Buyer, or pursuant to legal obligation, details of this or any other contract between the Supplier and the Buyer.
21. No time given or concession made on the part of the Supplier shall be construed as a waiver of any of its rights or remedies.
22. In the event of the invalidity of any of these Conditions or any paragraph subparagraph or part thereof the same shall be severed and shall not affect the validity or enforceability of the remaining provisions.
- 23.1 The Contract shall be deemed to have been made in England and shall be governed by English law.
- 23.2 Any claim or dispute arising in any way out of or in connection with the Contract or the supply of the Goods shall be subject to the exclusive jurisdiction of the English Courts