

# TERMS AND CONDITIONS OF SALE

## CUBIS INDUSTRIES

### THE CONTRACT

- 1.1 In these Conditions: "Goods" shall mean the goods, products or materials supplied by the Company to the Buyer.  
"Company" shall mean Cubis Industries trading as a division of Northstone (NI) Limited and any of its affiliated businesses or companies.  
"Buyer" shall mean the person or firm who purchases the Goods from the Company.  
"Contract" shall mean the contract between the Company and Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.2 **These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any terms and conditions sought to be incorporated by the Buyer shall be of no effect unless and to the extent they are expressly agreed to in writing by the Company.**

### ORDERS AND SPECIFICATIONS

- 2.1 An order, request or acceptance of quotation from the Buyer in respect of the Goods shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions ("**Offer**"). No Offer shall be accepted or deemed to be accepted by the Company until the Company either delivers the Goods to the Buyer in accordance with the Offer or the Company confirms in writing to the Buyer in accordance with these conditions that the Offer has been accepted. By making an Offer, the Buyer shall be deemed to confirm that the terms of its Offer, and any specifications or requirements specified in the Offer in relation to the Goods, are complete and accurate and that they are suitable for the intended purpose for which the Buyer intends to use the Goods.
- 2.2 Unless otherwise agreed, any quotation is valid for a period of thirty (30) days only from its date, provided that the Company has not previously withdrawn it.
- 2.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify and hold harmless the Company, its directors, officers, employees, shareholders, successors and assigns against all loss, damages, costs and expenses incurred in connection with any claim which results from the Company's use of the Buyer's specification, including but not limited to any actual or alleged infringement of a third party's intellectual property. For the avoidance of doubt this clause shall survive termination of the Contract.
- 2.4 The Company reserves the right to make any changes in the specification of the Goods which are amended to conform with any applicable laws, rules or regulations, or, where the Goods are to be supplied to the Company's specification, which do not materially affect its quality or performance.
- 2.5 Any loss incurred by the Company as a result of the cancellation of an order after the Goods have been out into production will be reimbursed by the Buyer.
- 2.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

### DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Company's quotation. Any typographical, clerical or other error or omission on any document issued by the Company shall be subject to correction by the Company, without incurring any liability.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.3 Any advice or recommendation given by, or statement or representation made by the Company or its employees or agents to the Buyer or its employees or agents, relating to the Goods, which is not confirmed in writing in this Contract, is followed or acted upon entirely at the Buyer's own risk, and the Company shall not be liable for any such advice or recommendation.

### DELIVERY

- 4.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises or, if some other place for delivery is agreed by the Company in writing, by the Company delivering the Goods to that place.
- 4.2 The Buyer shall provide suitable roadways and entrances to the delivery site. If, in the Company's opinion, suitable roadways or approaches are not available, the Company vehicles shall return to the Company's premises and the Buyer agrees to collect the Goods within three (3) business days from the date on which the Company notifies the Buyer of the attempted delivery. The Buyer shall be responsible for all transport costs, shipping charges and other associated costs incurred by the Company in delivering or attempting to deliver the Goods. For sites beyond the curb line, the Company assumes no liability for damage to footpaths, driveways, roadways or other property and the Buyer agrees to indemnify and hold harmless the Company, its directors, officers, employees, shareholders, successors and assigns against all claims, liability, loss or expense including legal fees and expenses incurred as a result of any damage.
- 4.3 Any times specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery is not of the essence.
- 4.4 The Company's liability for failure to deliver the Goods shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods not delivered. For the avoidance of doubt, the Company shall not be liable in the event that the failure to deliver the Goods is as a result of events beyond the reasonable control of the Company, or as a result of the actions or omissions of the Buyer.
- 4.5 The Buyer shall at its cost and expense provide at the delivery site adequate and appropriate equipment and manual labour for loading and unloading the Goods.
- 4.6 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.7 Where the Buyer specifies particular requirements relating to the delivery and unloading of the Goods, any costs and expenses associated with such delivery and unloading requirements shall be payable by the Buyer including any cancellation costs associated with such special requirements.

### RISK/TITLE

- 5.1 Risk in the Goods shall pass to the Buyer at the time of delivery and, if the Buyer fails to accept delivery of the Goods when delivered by the Company, delivery shall be deemed to have occurred at the time and date at which the Company attempted to deliver the Goods.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Goods, and (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall: (a) keep the Goods insured on the Company's behalf for its full price against all risks to the reasonable satisfaction of the Company; (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (d) notify the Company immediately if it becomes subject to any of the events listed in clause 5.4; and (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 5.4 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer goes into liquidation or a receiver, administrator, or similar officer is appointed over all or substantially all of the assets of the Buyer, or anything analogous to any of the above under the laws of any applicable jurisdiction occurs in relation to the Buyer. The Buyer grants the Company, 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 Buyer's right to possession has terminated, to recover them.

## **PRICE AND PAYMENT**

- 6.1 Unless otherwise agreed, the price for the Goods shall be the Company's relevant price as at the date of the Contract. The price for the Goods shall be exclusive of any value added tax.
- 6.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost of the Goods including any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification; any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions; or to correct any typographical, clerical or other error or omission in the quotation.
- 6.3 All returns of Goods are subject to a handling charge and carriage, if applicable.
- 6.4 The Company shall be entitled to invoice the Buyer for the price of the Goods after delivery of the Goods. Some accounts may be subject to a credit charge, which will be agreed in advance between the Company and the Buyer.
- 6.5 Payment of the price for the Goods shall be due in the currency in which they are invoiced and shall be paid in full and cleared funds within thirty (30) days of the date of the invoice issued by the Company in accordance with the instructions of the Company. Time for payment shall be of the essence. Errors in invoicing must be notified to the Company within seven (7) days of the date of invoice. No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. The Company is entitled to set off any amount due to the Buyer from the Company against any amount due to the Company from the Buyer under this Contract.
- 6.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Company shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer and charge interest from the due date for payment at the annual rate of 3% above the refinancing base rate from time to time of Danske Bank accruing on a daily basis until payment is made, whether before or after any judgment.

## **WARRANTIES**

- 7.1 Goods sold by the Company are warranted to be free from defects in materials or workmanship for a period of three (3) months from the date of delivery subject to the exclusions set out below.
- 7.2 The Company shall not be liable for:
  - (i) any defects in the quality or state of the Goods which would not be apparent on a reasonable examination of the Goods being otherwise not in accordance with the terms of the Contract unless the Buyer notifies the Company of the defect in writing within fourteen (14) days after receipt of the Goods;
  - (ii) any defects in the quality or state of the Goods which would not be apparent on a reasonable examination, unless the Buyer notifies the Company of the defect in writing within 3 (three) months of the Buyer's receipt of the Goods.
  - (iii) any written notice given pursuant to (i) and (ii) above shall specify the matters complained of. The Company shall have the right upon providing the Buyer 1 (one) business day's notice to inspect the Goods and the Buyer shall make all necessary arrangements to allow the inspection to take place at the time and date notified by the Company.
- 7.3 The Warranty given in clause 7.1 shall not apply to:
  - (i) any Goods which have been tampered with or stored in unsuitable conditions or for an excessive period or subjected to misuse negligence or accident after delivery or collection has taken place; or
  - (ii) any claim arising from unfitness of the goods for their purpose it being the sole responsibility of the Buyer to ensure that the goods ordered are fit for the purpose intended;
  - (iii) any claim arising from the installation of the Goods;
  - (iv) instances where the Buyer makes any further use of such Goods after giving notice in accordance with clause 7.2;
  - (v) instances where the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (vi) instances where the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
  - (vii) instances where the Buyer alters or repairs such Goods without the written consent of the Company;
  - (viii) instances where the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (ix) instances where the Goods differ from their description or any specification agreed as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 Without prejudice to Clause 7.1 and except where the Goods is sold to a person dealing as a consumer, all other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

## **LIMITATION OF LIABILITY**

- 8.1 The Buyer has been provided with copies of the Company's health and safety and Goods information guidelines, and acknowledges and agrees that it has read and understood all matters set out therein. The Company shall not be liable to the Buyer for any failure of the part of the Buyer to adhere to such guidelines, and the Buyer hereby agrees to indemnify and hold harmless the Company, its directors, officers, employees, shareholders, successors and assigns against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with a failure by the Buyer to adhere to such guidelines.
- 8.2 Nothing in these conditions excludes or limits the liability of the Company for any matter for which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 8.3 The Company's liability in respect of a failure of the Goods to comply with the specifications is limited to the cost of replacement of the Goods, which shall be in all circumstances limited to the cost of replacing the Goods as laid and shall exclude any additional costs arising from the Buyer having carried out any operation on or over the laid Goods. Because of such limitation where the Buyer is intending to carry out operations which would prevent the replacement of the defective Goods or add to the cost of doing so it is advised to check that the Goods meets the specifications before commencing such operations.
- 8.4 Subject to conditions 8.1, 8.2 and 8.3, and without prejudice to condition 4.4, the Company's total liability in contract, tort (including negligence or breach of statutory duty), or otherwise, arising in connection with the performance or contemplated performance of the Contract, or the use or resale of the Goods by the Buyer shall be limited to the Contract price. The Company shall not be liable to the Buyer for economic loss, loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract, or the use or resale of the Goods.

## **GENERAL**

- 9.1 The Company may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with its rights and obligations under the Contract or any part thereof. The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with its rights and obligations under the Contract or any part thereof without the prior written consent of the Company.
- 9.2 The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by circumstances beyond the reasonable control of the Company. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume

- of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company.
- 9.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 9.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 9.5 Failure or delay by the Company 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.
- 9.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Republic of Ireland and the Irish Courts..
- 9.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 9.8 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

#### **COMMUNICATIONS**

- 10.1 All communications between the parties about the Contract shall be in writing and sent by pre-paid post or by fax or email to the registered office of the recipient or other such address or email address as shall have been notified to one party by the other, and shall be deemed to have been received (i) if sent by pre-paid post, two working days after posting; or (ii) if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.