

NEWPORT INDUSTRIES LIMITED

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words shall mean:

“Customer” - The person, the firm or company whose order for the Goods is accepted by Newport;

“Carrier” - Any person, firm or company or any employees, servants or agents thereof who has/have entered into a contract with the Customer to arrange the carriage of the Goods by road, rail, sea and/or air;

“Goods” - The goods which Newport is to supply to the Customer pursuant to these terms and conditions;

“Newport” - Newport Industries Limited the registered office of which is at [c/o Haslers. Old Station Road, Loughton, Essex. IG10 4PL]

“Parties” - Newport and the Customer

“Purgistics” – Purgistics Ltd the registered office of which is at [c/o Haslers. Old Station Road, Loughton, Essex. IG10 4PL]

1.2 These terms and conditions shall apply to all sales of Goods by Newport to the Customer. No variation or amendment to these terms and conditions shall be valid unless agreed in writing by a director of Newport

1.3 If any of these terms and conditions are inconsistent with any legislation, then the legislation shall prevail and the other terms and conditions, if any, shall remain in full force and effect

THE SALE

- 2.1 Newport shall sell and the Customer shall purchase the Goods in accordance with these terms and conditions
- 2.2 Each order for Goods by the Customer to Newport shall be deemed to be an offer by the Customer to purchase the Goods subject to these terms and conditions
- 2.3 Any quotation is given on the basis that there shall be no obligation on the part of Newport and no Contract shall come into force until Newport accepts the customer's order in accordance with Clause 3.1. Any quotation is valid for a period of 3 days only from the date of the quotation unless otherwise stated, provided that Newport has not previously amended or withdrawn the quotation
- 2.4 Newport's marketing documentation, website, manuals, specifications, quotations and price lists ("Newport's Documentation") do not constitute an offer(s) and Newport reserves the right to withdraw the same at any time prior to acceptance of the Customer's order
- 2.5 Newport's employees, servants or agents are not authorised to make any representations in respect of the Goods unless confirmed in writing by a director of Newport. On placing an order the Customer acknowledges and agrees that it has not and does not rely on any such representations and shall waive any claim for breach in this respect whatsoever provided always that this Clause does not seek to exclude liability for fraudulent misrepresentation by Newport or its employees, servants or agents
- 2.7 Save where otherwise agreed in writing between the parties, all descriptions, recommendations and suggestions relating to the handling, storage and use of the Goods made by Newport or in reply to a specific request or otherwise is given in good faith but it shall be the sole responsibility of the Customer to satisfy itself as to the suitability of the Goods for its own particular purposes. Newport's Documentation does not form part of these terms and conditions

ORDERS AND THE GOODS

- 3.1 No order submitted by the Customer shall be deemed to be accepted by Newport until the earlier of a written acknowledgement of the order being sent to the Customer, or Newport's confirmation that the Goods are ready for collection or delivery (whichever is

applicable)

- 3.2 The Customer shall be solely responsible to Newport for the completeness and accuracy of any order (to include any specification) and for providing Newport with all required information relating to the Goods within a reasonable period of time to enable Newport to perform its obligations pursuant to these terms and conditions
- 3.3 The written specification (if any), quantity and quality descriptions for the Goods shall be those set out in Newport's quotation which shall form part of these terms and conditions or the Customer's order (if accepted by Newport pursuant to these terms and conditions)
- 3.4 Pursuant to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (as amended) (the "Act"), Newport hereby gives notice to the Customer that Newport has available product information and documentation, (to include safety data sheets) to include the conditions necessary to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly handled, transported, stored and used by the Customer's employees, servants or agents at work. If the Customer is not already in possession of such product information and documentation in relation to the safe handling, transportation, storage and use of the Goods at work the Customer should immediately contact Newport
- 3.6 The Customer hereby undertakes pursuant to section 6(8) of the Act to take such measures as are communicated to it pursuant to these terms and conditions or otherwise and take such other steps as are reasonably necessary to ensure, so far as is practicable, that the Goods will be safe and without risk to health at all times when handled, transported, stored and used by the Customer, its employees, servants and agents
- 3.7 The Customer shall indemnify and keep indemnified Newport against all claims, losses, damage, work and expenses to include all fines and penalties in relation to the Goods incurred directly or indirectly by Newport under the Act or any regulation order or direction made thereunder or any other instrument relating to health and safety
- 3.8 All sampling of the Goods by the Customer, the making and testing of samples and interpretation of results must be carried out in accordance with ISO testing methods only

COLLECTION AND DELIVERY

4.1 The parties shall agree the location for collection of the Goods. Failing agreement collection of the Goods shall be at a location nominated by Newport

4.2 Where collection of the Goods is to take place at a location nominated by Newport:

4.2.1 the Goods shall be collected and loaded onto the Customer's vehicle by the Customer, its employees, servants or agents at a suitable collection point at the location nominated by Newport as directed by Newport's duly authorised representative;

4.2.2 whilst at the location nominated by Newport the Customer, its employees, servants and agents must obey the site rules and the instructions of Newport's duly authorised representative; and

4.2.3 the Customer shall be responsible for the loading of the Goods and condition of the vehicle onto which it, its employees, servants or agents collect the Goods (whether owned or hired) and Newport shall not be liable in any way (including, without limitation, for negligence) for loss or contamination of the Goods resulting from the loading of the Goods and/or condition of such vehicle. The Customer shall indemnify Newport for any loss, damage or injury to Newport, its employees, servants or agents, its plant and equipment (whether owned or hired) caused by the Customer, its employees, servants or agents, the Customer's vehicle, or that of its employees, servants or agents or the condition thereof

4.3 It is agreed and acknowledged by the Customer that where the Goods are to be delivered to the Customer's premises or another location nominated by the Customer, Newport shall instruct Purgistics for and on behalf of the Customer (if requested to do so by the Customer prior to Newport's acceptance of the Customer's order) to arrange the carriage of the Goods by road, rail, sea and/or air, subject to Purgistics' standard Terms and Conditions of Business which the Customer is deemed to have knowledge of and accept by placing an order with Newport pursuant to these terms and conditions. Alternatively, the Customer shall instruct its own Carrier

4.4 Any time, period or date for collection agreed to in accordance with the Customer's order or contained in Newport's acknowledgment of

the order is an estimate only and Newport shall not be liable for any damages or losses (including as a result of negligence) arising out of failure to meet such time, period or date

4.5 Where the Goods are to be delivered in instalments a failure by Newport to deliver any one or more (but not all) of the instalments pursuant to these terms and conditions or any claim by the Customer in respect of any one or more (but not all) instalments shall not entitle the Customer to treat the Customer's order as a whole as repudiated

4.6 The Customer must satisfy itself as to the condition of the Goods at the time of delivery and the Goods must be inspected and accepted in writing by the Customer or Customer's representative at the time of collection or delivery (whichever is applicable)

4.7 Newport shall have no liability whatsoever for shortweight of measures of Goods supplied of 10% or less than that which was ordered by the Customer. In circumstances of shortweight of measures of Goods supplied of greater than 10% than that which was ordered by the Customer, Newport's liability shall be limited at Newport's sole discretion to an additional supply of the Goods pursuant to these terms and conditions to make up the short weight of measure, or refund all or part (as appropriate) of the price of the relevant Goods. Newport shall have no liability in respect of the short weight or measure if notification is given later than 24 hours after collection or delivery of the Goods (whichever is applicable)

4.8 The Customer shall reimburse Newport all costs and expenses incurred by Newport as a result of any delay in the collection of the Goods resulting from the acts or omissions of the Customer or any of its employees, servants or agents

4.9 Without prejudice to any other rights or remedies available to Newport additional charges may be made if:

4.9.1 the Customer requires collection or delivery of the Goods (whichever is applicable) in quantities less than minimum loads, such minimum loads may be notified to the Customer by Newport from time to time; or

4.9.2 the Customer requires to collect the Goods outside Newport's normal working hours; or

4.9.3 the Customer fails to collect or take delivery of the Goods or

4.9.4 the Customer requests that collection or delivery to be deferred.

4.10 If the Customer cancels or postpones its order, (which can only take place by prior written notice from the Customer to Newport) Newport shall be entitled to recover all costs incurred up to the date upon which Newport receives notice of such cancellation

PRICE

5.1 The price of the Goods shall be the price quoted by Newport. Where no price has been quoted by Newport, Goods shall be supplied at Newport's prices in force at the date of collection or delivery (whichever is applicable)

5.2 Newport reserves the right to increase the price of the Goods by prior written notice to the Customer following acceptance of the Customer's order until 7 days prior to collection or delivery (whichever is applicable) if in Newport's sole opinion the price originally quoted is no longer commercially reasonable, in which case the Customer may cancel the order by prior written notice to Newport and shall be entitled to a full refund

5.3 The price of the Goods shall be subject to VAT and any other government duty, tax or levy applicable

PAYMENT

6.1 Payment shall be due before collection or delivery (whichever is applicable) if required by Newport at the time the Customer's order is accepted. In all other cases, payment shall be made within 30 days from the date of the invoice, but if default is made in the payment of any one invoice, these credit terms shall cease to apply and the Customer shall become immediately liable to pay all sums outstanding

6.2 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to Newport, Newport shall be entitled to:

6.2.1 cancel the Customer's order

6.2.2 charge the Customer interest (both before and after any Court Judgment) on the amount unpaid at the rate of 5% per annum above Barclays Bank PLC's base rate from time to time until payment in full is made

6.3 The Customer shall not be entitled to make any deduction from, set-off, or retention of, the amounts due pursuant to the terms and conditions unless the Customer has a valid Court Order requiring an amount equal to such deduction, set-off or retention to be paid by Newport to the Customer

RISK AND TITLE

7.1 Title in the Goods shall not pass to the Customer until the price of the Goods and every other sum due from the Customer to Newport (whether pursuant to these terms and conditions or otherwise) has been paid in full and until such payment, Newport shall be entitled to enter the Customer's premises to recover the Goods

7.2 Until title in the Goods has passed to the Customer as provided in Clause 7.1, the Customer shall keep the Goods separate from all other of its goods, materials and products at the Customer's premises and separately labelled identifying Newport as the owner

7.3 Risk of damage to or loss of the Goods shall pass to the Customer:

7.2.1 on collection and loading of the Goods onto the Customer's or Customer's Carrier's vehicle at the agreed location for collection or failing which nominated by Newport pursuant to these terms and conditions; or

7.2.2 on delivery to the Customer's premises; (whichever is applicable)

GUARANTEE

8.1 If the Customer can establish to the reasonable satisfaction of Newport that:

8.1.1 the Goods are not in accordance with the written specification (if any) or quality pursuant to these terms and conditions; or

8.1.2 there is some other failure by Newport as to the Goods' compliance with these terms and conditions then, subject to the remaining provisions of Clauses 8 and 9, Newport shall at its sole discretion supply to the Customer additional Goods in the same quantity as the defective or non-compliant Goods and which in all respects are in accordance with these terms and conditions or refund all or part (as appropriate) of the price of the relevant Goods (the "Guarantee")

8.2 The Guarantee is subject to the following limitations:

8.2.1 the Guarantee shall not apply unless the Customer notifies Newport in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within 10 working days of the date of collection or delivery (whichever is applicable) of the Goods;

8.2.2 Newport will accept no responsibility for the quality or specification of its Goods if the Customer shall have added anything whatsoever to them (other than as directed by Newport);

8.2.3 Newport will accept no responsibility for the consequences where the Customer has supplied inadequate or incorrect information, specification or other data with the Customer's order or otherwise;

8.2.4 Where the Customer took and tested samples of the Goods in accordance with Clause 3.8, Newport will accept no responsibility for the quality or specification of the Goods if the faults in or failure of the Goods complained of were reasonably discoverable at the time the samples were originally taken and tested by the Customer

8.2.5 Newport will accept no responsibility for faults in or failure of the Goods due to the handling, transportation and storage methods adopted by the Customer;

8.3 The Customer shall provide to Newport, its employees servants and agents (together with such vehicles, plant and equipment as Newport shall deem necessary) safe and unrestricted access together with such other facilities and information as Newport may reasonably require to enable it to ascertain or verify the nature and cause of the alleged defect or failure by ISO testing methods only and to carry out its obligations under the Guarantee. PROVIDED ALWAYS THAT Newport shall be under no obligation

whatsoever to refund the price of, or supply additional Goods in respect of, any Goods which are removed by the Customer without Newport's prior written consent or where Newport has not been given proper opportunity to ascertain or verify the nature and cause of the alleged defect in accordance with this Clause

8.4 Newport shall be entitled to require the Customer by notice in writing to cease forthwith the use of any of the Goods in respect of which any alleged defect or failure has been notified to Newport and if the Customer fails to comply with such requirement Newport shall be under no liability to the Customer either under this clause or otherwise in relation to such Goods. Notwithstanding this, Newport shall not be liable for any damages or losses whatsoever suffered by the Customer to the extent that they are caused by the continued use of the Goods after a defect or failure became apparent, or ought reasonably to have become apparent, to the Customer, its employees, servants or agents

8.5 Newport shall be under no obligation whatsoever to refund the price of the Goods or supply any additional Goods to the Customer pursuant to the Guarantee where the alleged defect or failure results from incorrect handling, accident, failure to observe the sampling or testing procedures referred to in Clause 3.8, abnormal or improper conditions of transportation, storage or use or any act, neglect or default (including negligence) of the Customer or any third party

8.6 Subject to Clauses 8.1 to 8.5, additional Goods supplied pursuant to the Guarantee shall be delivered to the Customer at the address at which the defective Goods were located

NEWPORT'S LIABILITY

9.1 Subject to Clause 9.2:

9.1.1 the liability accepted by Newport under the Guarantee shall be in substitution of any other legal remedy of the Customer in respect of any alleged defect in relation to the Goods or failure of the Goods to comply with the quality or specification pursuant to these terms and conditions and any other condition, warranty, representation or undertaking on the part of Newport as to the quality of the goods or their fitness or suitability for any purpose howsoever and whenever expressed which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of sections 13 to

15 inclusive of the Sale of Goods Act 1979 (as amended) shall not apply to the contract;

9.1.2 the liability of Newport whether in contract or in tort arising out of or in connection with any act, omission, neglect or default of Newport, its employees, servants or agents in respect of these terms and conditions (including, without limiting the generality of the foregoing for negligence, breach of any condition or warranty whether express or implied by statute, common law or otherwise) shall be limited to the refund of the price of the Goods or the supply of additional Goods pursuant to the Guarantee;

9.1.3 Newport shall not be liable to the Customer in contract or tort (including negligence) or for breach of statutory duty for any loss of profit, loss of income, loss of revenue, loss of goodwill, loss of anticipated savings, loss of opportunity or losses calculated by reference to profits, income, business, revenue, goodwill, anticipated savings, or opportunity (in all cases whether direct or indirect) or any indirect, consequential or economic loss of any kind whatsoever which the Customer may suffer or incur by reason of any act, omission, neglect or default (including negligence) in respect of these terms and conditions by Newport, its employees servants or agents.

9.2 nothing in these conditions shall:

9.2.1 limit or exclude the liability of Newport for death or personal injury resulting from the negligence of Newport, its employees, servants or agents;

9.2.2 limit or exclude the liability of Newport for fraudulent misrepresentation; or

9.2.3 exclude the conditions and warranties implied by section 12 of the Sale of Goods Act 1979 (as amended).

9.3 Newport shall not be liable to the Customer in any manner or be deemed to be in breach of these terms and conditions (subject to Condition 9.2) because of any delay in performing or any failure to perform any of Newport's obligations under these terms and conditions if the delay or failure was due to any cause beyond Newport's reasonable control ("Force Majeure").

9.4 Without prejudice to the generality of Condition 9.3 Force Majeure shall include: governmental actions, war or threat of war, national

emergency, riot, civil disturbance, sabotage, insurrection or requisition; act of God, fire, explosion, flood, tempest, epidemic or accident; import or export regulations or embargoes or compliance with any governmental, parliamentary or local authority order, rule, regulation, direction or bye-law; strikes, lock outs or other industrial actions or trade or labour disputes; inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or power failure or breakdown in machinery, including vehicles

9.5 Newport undertakes to make every reasonable endeavour to overcome difficulties arising from a Force Majeure events provided always that Newport shall not be obliged to purchase the Goods from third parties

9.6 Notwithstanding the provisions of Clause 9.1, it is acknowledged and accepted by the Customer that Newport's liability under these terms and conditions shall cease 9 months following the date of collection or delivery (whichever is applicable) of the Goods or the date that the cause of action against Newport first arose, whichever is the later

INSOLVENCY AND BREACH BY THE CUSTOMER

10.1 This clause applies if the Customer commits any breach of these terms and conditions or of any other contract between the Customer and Newport or between the Customer and any company within the same group of companies of which Newport is a member(including, without limitation, Purgistics) ; or the Customer has a bankruptcy order made against him or makes any voluntary arrangement or composition with his creditors or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors (or being a company or body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of a reconstruction or amalgamation, or a resolution is passed or a petition presented to any Court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or an encumbrancer takes possession or a manager, administrator, receiver or administrative receiver is appointed over any of the property, undertaking or assets of the Customer (or part thereof); or the Customer ceases or threatens to cease to carry on business; or if any distraint, lien, execution (whether legal or equitable) or other process is levied or enforced on any property of the Customer and is not paid out, withdrawn or discharged within 21 days; or the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or Newport reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this Clause applies then without prejudice to any other right or remedy available to Newport shall be entitled to cancel the Contract without any liability to the Customer and if the Goods have been collected or delivered (whichever is applicable) but not paid for the price shall become immediately due and payable despite any previous agreement or arrangement to the contrary

GENERAL

11.1 All notices between the parties in respect of these terms and conditions must be in writing and delivered by hand, sent by first class pre-paid post, sent by facsimile transmission or sent by e-mail (in the case of notices to Newport) to Newport's address, facsimile number or e-mail address shown overleaf or as notified in writing by Newport from time to time or (in the case of notices to the Customer) to its registered office (if it is a company) or (in any other case) to the last known address of the Customer or such address, facsimile number or e-mail address as shall be notified in writing to Newport by the Customer for this purpose.

11.2 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery, if delivered by hand; or at the time of transmission, if sent by facsimile or by e-mail

11.3 No waiver by Newport of any breach of any provision of these terms and conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these terms and conditions and the remainder of such provision shall not be affected

11.5 The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute which arises in connection with these terms and conditions

11.6 The Customer shall not assign, sub-contract or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of Newport. Any or all of Newport's rights or obligations under the Contract may be assigned or

sub-contracted by Newport

11.7 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

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