

**NTR LIMITED  
STANDARD TERMS AND CONDITIONS  
OF SUPPLY**

**1. INTERPRETATION**

1.1 In these Conditions the following words have the following meanings:

**the Buyer:** the person(s), firm or company whose written order for the Goods or Services is accepted by the Company;

**the Company:** NTR Limited registered number (01433038) whose registered office is at Unit 372A Thorp Arch Estate Wetherby West Yorkshire LS23 7BJ;

**Contract:** any contract between the Company and the Buyer for the supply and/or refurbishment of Goods, and/or any other services supplied by the Company, incorporating these Conditions;

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4;

**Goods:** any goods which the Company is to sell or supply to the Buyer (whether or not the same are owned by the Buyer and including any part or parts of them).

**Services:** any work carried out on the Goods which the Company is to supply to the Buyer (including to any part or parts of them).

1.2 In these Conditions references to any statute or statutory provision shall unless the context requires otherwise include a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

**2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company's contracts and any variation to these Conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.4 Each order from the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase Goods or Services subject to these Conditions, and no order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or Services to the Buyer. Acceptance of delivery of

the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.

- 2.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6 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 the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any person which results from the Company's use of the Buyer's specification.
- 2.7 The Company reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory or EU requirements which do not materially affect their quality or performance.
- 2.8 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.9 No order which has been accepted by the Company may be cancelled by the Buyer except with the written consent of the Company and on terms that the Buyer will indemnify the Company in full against all losses (including loss of profit) costs (including the costs of all labour and material used), damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

### 3. **DESCRIPTION**

- 3.1 The description of the Goods or Services shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of this Contract.

### 4. **DELIVERY**

- 4.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business, and all sales are ex-works Wetherby, United Kingdom (Incoterms 2000).
- 4.2 If carriage is required by the Buyer, the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case.
- 4.3 The carrier shall be deemed to be the Buyer's agent for the purposes of the Sale and Supply of Goods Act 1994, and delivery of the Goods must be accepted by the Buyer at any time of day.

- 4.4 Any dates specified by the Company 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 will be within a reasonable time.
- 4.5 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 If for any reason the Buyer does not accept delivery of any Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.6.1 risk in the Goods will pass to the Buyer (including risk of loss or damage caused by the Company's negligence)
  - 4.6.2 the Goods will be deemed to have been delivered; and
  - 4.6.3 the Company may store the Goods until delivery and the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 4.7 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
- 4.8 The Buyer will indemnify the Company against any liability and expense (whether arising under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading (whether or not the off-loading is supervised by or on behalf of the Buyer) for;
- 4.8.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and
  - 4.8.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.
- 4.9 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the whole contract as repudiated.
- 5. NON-DELIVERY**
- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch 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.
- 5.2 The Company shall not be liable for any non-delivery of Goods unless written notice is given to any carrier and to the Company within 15 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company 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.

**6. RISK, TITLE AND LIEN**

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

6.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that they are ready for collection; or

6.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or if earlier the time specified in condition 4.6.

6.2 [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:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

6.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.6 The Buyer's right to possession of the Goods shall terminate immediately if:

6.6.1 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a 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 reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer, or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

6.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

6.6.3 the Buyer encumbers or in any way charges any of the Goods.

If the Buyer carries on business outside the United Kingdom these provisions shall be taken as referring to equivalent provisions of the Buyer's local laws.

6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.8 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.]

6.9 The Company shall have a first and paramount general lien over the Goods whilst they are in the Company's possession for all sums due (including any interest and costs) at any time from the Buyer and shall be entitled to sell or dispose of the Goods as agent for, and at the expense of the Buyer and apply the proceeds in or towards payment of any such sums plus interest and costs on 7 days notice in writing to the Buyer.

6.10 Following sale or disposal of the Goods pursuant to condition 6.9, the Company shall apply the proceeds firstly in the payment of the sums including interest and costs (which without limitation shall include the costs of sale or disposal) due to the Company and secondly it shall account to the Customer for the excess or charge the Customer any shortfall.

6.11 If the Company accounts to the Buyer for any balance remaining after payment of any sums due to the Company, the Company shall be discharged of any liability whatsoever in respect of the Goods.

## 7. **PRICE**

7.1 Unless otherwise agreed by the Company in writing the price for the Goods or Services shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 Such price shall be exclusive of any value added tax or any other applicable tax or duty which the Buyer will pay in addition when it is due to pay for the Goods or Services.

7.3 Except as otherwise agreed in writing by the Company such price is given on an ex-works basis and where the Company agrees to deliver the Goods otherwise

than the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

- 7.4 The cost of items such as pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods or Services, but full credit will be given to the Buyer provided that they are returned undamaged to the Company before the due payment date.

## 8. **PAYMENT**

- 8.1 Unless otherwise agreed by the Company in writing, the Company may invoice the Buyer for the price of the Goods or Services on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 8.2 Payment of the price for the Goods or Services is due on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision to the contrary
- 8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% 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 judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 9. **QUALITY**

- 9.1 If the Company sells goods to the Buyer but is not itself the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods supplied will be of satisfactory quality within the meaning of the Sale and Supply of Goods Act 1994 and the Services supplied will be carried out with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982.
- 9.3 The Company shall not be liable for a breach of the warranty in condition 9.2 unless:
- 9.3.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of:

- 9.3.2 the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
  - 9.3.3 the date when the Buyer discovers or ought reasonably to have discovered the defect (where the defect would not be apparent to the Buyer upon reasonable inspection); and
  - 9.3.4 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranties in condition 9.2:
- 9.4.1 if the Buyer makes any further use of such Goods after giving notice; or
  - 9.4.2 if the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - 9.4.3 if the Buyer alters or repairs such Goods without the written consent of the Company; or
  - 9.4.4 if the defect in such Goods or Services arises from any design defect in any drawing design or specification supplied or approved by the Buyer.
- 9.5 Subject to conditions 9.3 and 9.4, if any of the Goods or Services do not conform with the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) [or refund the price at the pro rata Contract rate] provided that, if the Company so requests, the Buyer shall, (at the Company's expense), return to the Company the Goods or the part of such Goods which is defective.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranties in condition 9.2.
- 9.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for a further 12 month period.

## 10. **LIMITATION OF LIABILITY**

- 10.1 The following provisions and the provision of condition 9, set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions; and
  - 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by the above-mentioned acts of 1982 and 1994) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

***The Buyer's attention is in particular drawn to the provisions of condition 10.4***

- 10.4 Subject to conditions 10.2 and 10.3:
- 10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the aggregate contract price of the particular item or items of the Goods; and
  - 10.4.2 the Company shall not be liable to the Buyer for any loss of goodwill or reputation, loss of profit or loss of sales (whether direct or indirect) or any consequential or indirect loss, damage or expense whatsoever (howsoever caused) which arises out of or in connection with the Contract.
- 10.5 The Buyer shall indemnify the Company against all liability, actions proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Company by any third party except to the extent the Company is liable to the Buyer in accordance with these terms and conditions.
11. **FORCE MAJEURE**
- 11.1 The Company shall not be deemed to be breach of this Agreement or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.
  - 11.2 For the purpose of this condition 11 **Force Majeure** means, any cause preventing the Company from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Company including without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of the Company or any other party) act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of supplies or sub-contractors.
12. **GENERAL**
- 12.1 Time for performance of all obligations of the Buyer under the Contract is of the essence.
  - 12.2 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.
  - 12.3 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.
  - 12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

- 12.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 12.6 The parties to this Agreement 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.
- 12.7 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.

### 13. **COMMUNICATIONS**

- 13.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or airmail or sent by facsimile transmission:
- 13.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 13.1.2 (in case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 13.2 Communications shall be deemed to have been received:
- 13.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and Bank and public holidays) after posting (exclusive of the day of posting) and in the case of airmail, 7 days;
- 13.2.2 if delivered by hand, on the day of delivery;
- 14.2.3 if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.