



## NIKKEN KOSAKUSHO EUROPE LTD TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these standard terms and conditions, the following words and phrases shall have the following meanings:

“Affiliate” means any company controlling, controlled by or under common control with Nikken Kosakusho Europe Limited from time to time. Control of an entity means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity; of the Goods. Such services shall be subject to separately agreed terms and conditions;

“Specification Sheet” means a specification sheet in the form issued by the Company. Such forms are available on request;

“Trade Marks” means the trade marks (whether registered, applied for or unregistered) or other identifying marks applied to the Goods or their packaging prior to delivery to the Customer;

“Working Day” means any day from Monday to Friday (inclusive) which is not a bank or other public holiday in England.

1.2 In these Conditions (unless the context otherwise requires):

“Company” means Nikken Kosakusho Europe Limited trading as Nikken Euro-Centre, a company registered in England and Wales under number 02312143 whose registered office is at Precision House, Mangham Way, Barbot Hall Industrial Estate, Rotherham, S61 4RL;

“Conditions” means these terms and conditions of sale;

“Confidential Information” means all confidential information disclosed (whether in writing, orally or by any other means and whether directly or indirectly) by the Company to the Customer whether before or after the date of this Agreement including, but not limited to, information relating to the Goods, or any of the Company’s or its Affiliates’ operations, processes, plans or intentions, product information, know-how, registered or unregistered design rights, trade secrets, market opportunities, business affairs, and Intellectual Property Rights;

“Contract” means a contract for the sale of Goods made by or on behalf of the Company with a Customer;

“Customer” means a person to whom the Company supplies or is to supply Goods pursuant to a Contract;

“Documentation” means the operating manuals and instructions relating to the Goods which the Company shall provide to the Customer;

“Ex-Works” has the meaning designated to that INCOTERM from time to time by the International Chamber of Commerce;

“Export Contract” means an international supply contract as defined by Section 26 of the Unfair Contract Terms Act 1977;

“Goods” means any goods detailed on the Order (including any software embedded therein) which the Company supplies pursuant to a Contract;

“INCOTERM” has the meaning designated by the International Chamber of Commerce to such expression from time to time;

“Intellectual Property Rights” includes copyrights, design rights, registered and unregistered design rights, patents, utility models and prototypes, inventions, database rights, trade marks (including the Trade Marks) software designs, service marks and any other identifying marks or logos, know-how and other rights normally protected by confidentiality;

“Order” means an order for the Goods received by the Company from the Customer;

“Order Confirmation” has the meaning defined in condition 2.1(i);



“Second Hand Goods” means Goods which have been previously owned or used by a third party for a commercial industrial purpose;

“Services” means any services which the Company provides pursuant to a Contract for the sale of Goods excluding any services relating to the installation, maintenance or support of the Goods required after delivery.

1.3 headings (all of which are for reference only) will not affect the construction of these Conditions; and

1.4 references to a numbered condition are references to a condition of these Conditions so numbered; and

1.5 any reference to any legislation or legislative provision shall be construed as a reference to that legislation or legislative provisions as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

## 2. FUNDAMENTALS OF THE CONTRACT

These Conditions shall govern and be incorporated in each Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer, or implied by custom, practice, or course of dealing.

2.1 No Contract shall come into existence until the Order (however given) is accepted by the Company which occurs upon the earlier of:

- (i) a written confirmation (“Order Confirmation”) of the Order;
- (ii) an invoice being issued by the Company; or
- (iii) the Company delivering the Goods to the Customer.

Where an Order specifies Goods (and/or their component parts) that are not manufactured by the Company, it is a condition precedent of the Contract that the Company is able to readily source those Goods (and/or their component parts).

2.2 All Orders shall quote the product code designated by the Company for the Goods in question. Failure to quote the correct product code may result in incorrect Goods being supplied to the Customer or a delay in delivery for which the Company cannot accept any liability whatsoever.

2.3 The Customer’s acceptance of delivery of the Goods shall (without prejudice to condition 5 or any other manner in which acceptance of these Conditions may be evidenced) constitute unqualified acceptance of these Conditions.

2.4 No verbal representation or verbal statement by an employee, representative or agent of the Company shall form part of the Contract or constitute a representation on the part of the Company unless such representation or statement is confirmed in writing by the Company.

2.5 A Contract may only be cancelled or amended by the Customer with the Company’s prior written consent and upon cancellation or amendment the Company shall be entitled to invoice the Customer for all work carried out to date by the Company under or pursuant to the Contract including any costs and expenses incidental to that work.

2.6 The Customer shall pay any and all expenses, costs and charges incurred by it in the performance of its obligations under this Agreement unless the Company has expressly agreed beforehand in writing to pay such expenses, costs and charges.

## 3. ESTIMATES, QUOTATIONS AND ORDERS

3.1 Unless otherwise expressly stated in writing by the Company, a quotation or estimate given by the Company shall be an invitation to treat and shall not constitute an offer and the Company reserves the right to withdraw or revise any such estimate or quotation at any time before the Company issues the Order Confirmation. The Order shall constitute an offer to purchase the Goods from the Company.

3.2 Without prejudice to the provisions of condition 3.1, any estimate or quotation shall automatically expire 180 days after it is given.

3.3 Specifications, illustrations, descriptions and diagrams of goods in the Company’s catalogues, trade literature or other



published matter (separately or together "Publications") are approximate only. Such specifications, illustrations, descriptions and diagrams of goods in such Publications are not to be relied upon as a basis for a sale by description and if the Customer requires Goods to comply with any particular or exact description, specification, diagram or illustration it shall inform the Company of such requirements by completing a Specification Sheet and submitting the same with the Customer's Order, whereon the Company shall be free to agree or decline to meet such requirements. The Company shall be under no liability for inaccuracies in the Publications and shall be free to change or alter any goods detailed therein from time to time.

3.4 If, before delivery, the Goods the subject of the Order are destroyed or damaged due to a Force Majeure event and cannot be replaced, the Company may cancel the Contract without any liability to the Customer.

#### 4. DELIVERY

4.1 Any dates and times given or agreed by the Company for delivery of the Goods are approximate only and such dates and times shall not be of the essence and shall not be made of the essence by the service of any notice. The Company accepts no liability for any direct or indirect loss, damage or expense (including loss of profits and liability to third parties) suffered or incurred by the Customer as a consequence of any delay in delivery. The Company may make delivery in advance of the delivery date upon giving reasonable notice to the Customer.

4.2 The Customer shall be entitled to terminate or rescind the Contract in writing by email to a valid company email address or by special delivery if the Company shall, due to no fault of the Customer, not deliver the Goods in question within 180 days of the delivery date originally given or agreed by the Company, but shall have no further or additional claim or remedy against the Company in relation to any delay in delivery.

4.3 Delivery dates and times are based on a number of assumptions (which, if invalid and causing delay, the Company cannot be held liable), including but not limited to the following:

4.3.1 any items to be supplied by the Customer for inclusion in the Goods will be made available to the Company by the time requested by the Company;

4.3.2 any Goods which the Company requires to be source from a third party (including an Affiliate), shall be supplied to the Company by the delivery date indicated by such third party; and

4.3.3 where the price for the Goods is payable by the Customer to the Company in instalments, each instalment is paid by its due date.

4.4 The Company shall inform the Customer if it cannot deliver the Goods on any estimated delivery date previously given or agreed and shall notify the Customer by any means of a revised delivery date. Any revised delivery dates given or agreed by the Company are approximate only and the provisions of condition 4.1 shall apply thereto, mutatis mutandis, in all respects.

4.5 Delivery of Goods shall be made on an Ex-Works basis unless otherwise agreed in writing by the Company. Delivery of the Goods on Ex-Works terms shall be made by the Company making the same available for collection at the Company's premises in the UK on the date that the Company shall notify the Customer the same will be made available for collection.

4.6 Where the Company agrees to deliver Goods which are not the subject of an Export Contract to an address other than the Company's premises, delivery shall be made by the Company delivering the Goods to that address. The Customer shall give the Company accurate instructions for the delivery of the Goods. Without prejudice to the generality of the foregoing, the Customer will provide, without causing material delay to the Company or its agent, safe and proper means of access to and egress from such place of delivery and suitable facilities for the unloading of the Goods.

4.7 Delivery of Goods the subject of an Export Contract shall take place in accordance with the INCOTERM agreed for such Contract. Where no INCOTERM is expressly agreed the Goods shall be delivered in accordance with condition 4.5. Where appropriate, the Customer shall give the Company accurate instructions for the delivery of the Goods. Without prejudice to the generality of the foregoing, the Customer will provide, without causing material delay to the Company or its agent, safe and proper means of access to and egress from such place of delivery and suitable facilities for the unloading of the Goods.

4.8 If at the Customer's request, or through its failing to give full forwarding or delivery instructions, the Goods are not dispatched from the Company's premises within fourteen days of the Company's notification that the Goods are ready for



despatch, then the Company will be entitled to invoice the Customer for the Goods (where it has not already done so) as though the Customer had taken delivery of them and risk of loss or damage to such Goods shall pass to the Customer on the date of such invoice. The provisions of this condition shall apply notwithstanding the meaning of any INCOTERM.

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 these instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat all the Contracts as repudiated.

4.10 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions in good time for the delivery of the Goods, then without prejudice to any other right and/or remedy available to the Company, the Company may:

4.10.1 terminate the Contract pursuant to condition 14 below, and in particular condition 14.2.1; or

4.10.2 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) for storage; or

4.10.3 sell the Goods at a price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.

4.11 Where delivery is made at the Company's premises, the Company shall be responsible for loading the Goods.

4.12 Where the Company shall deliver the Goods to an address other than the Company's premises, the Customer shall be solely responsible for unloading the Goods at the point of delivery. The Customer shall indemnify the Company against any loss, liability and cost suffered or incurred by the Company and arising as a result of the Company or its sub-contractor or agent assisting the Customer in the unloading, or other removal of the Goods from the delivery vehicle.

4.13 If the Customer shall not comply with conditions 4.6 or 4.7 or refuses or fails to take delivery of the Goods or fails to take any action reasonably necessary on its part for delivery or carriage of the Goods, the Company may retain the Goods and, without prejudice to any other right or remedy available under these Conditions, charge the Customer a void delivery charge equal to the costs incurred by the Company in endeavouring to deliver the Goods (including demurrage charges) and the Customer agrees to pay the same. Such sum shall be recoverable by the Company from the Customer as a debt.

4.14 Section 32(2) of the Sale of Goods Act 1979 does not apply and the Company is not required to give the Customer the notice specified in section 32(3) of that Act.

## 5. ACCEPTANCE OF GOODS AND RETURNS

5.1 The Customer shall inspect the packaging of the Goods upon delivery. If any of the packaging appears damaged or the Goods are delivered the wrong way up (where the packaging indicates that they should be kept a particular way up), or if the incorrect quantity of items are delivered or appear otherwise not in accordance with the Contract, the Customer must within 3 Working Days of delivery notify the Company by e-mail and attach to such e-mail digital photographs of the damaged packaging or other discrepancy (as the case may be). The Company shall be released from any liability in respect of any such discrepancy if the Customer fails to so notify the Company in accordance with this condition 5.1.

5.2 Any claim made by the Customer in respect of the Goods will, if and to the extent accepted by the Company, be settled by the issue to the Customer of a credit note.

## 6. EXPORT SALES AND INCOTERMS

6.1 In the event of a conflict between these Conditions and the meaning of any INCOTERM included in the Contract, the meaning of the INCOTERM shall prevail, save where these Conditions expressly state that a provision in these Conditions shall apply notwithstanding the meaning of any INCOTERM.

6.2 Notwithstanding the meaning of any INCOTERM, the Customer shall be responsible for the collection, remittance and payment of any and all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase and importation of the Goods.



6.3 Notwithstanding the meaning of any INCOTERM, if a licence or consent of any government or other authority is required for the supply to, or carriage or use of the Goods, the Customer will obtain such licence or consent at its own expense and produce evidence of it to the Company on request.

## 7. RISK

7.1 In respect of any Contract other than an Export Contract, the risk of damage to or loss of the Goods shall pass to the Customer upon delivery, or if the Customer wrongfully fails to take delivery, the time when the Company tenders delivery of the Goods. Delivery shall be taken as occurring:

7.1.1 where the Goods are delivered other than on an Ex-Works basis, when the Goods are made available to the Customer for offloading from the Company's or its agent's vehicle;

7.1.2 where the Goods are collected by the Customer on an Ex-Works basis, immediately after the Goods are loaded onto the vehicle used by the Customer or its agent.

7.2 In respect of any Export Contract, the risk of damage to or loss of the Goods shall pass to the Customer in accordance with the INCOTERM agreed between the parties.

## 8. TITLE

8.1 Notwithstanding that the risk in the Goods shall pass to the Customer in accordance with condition 7, title to the Goods (whether separate and identifiable or incorporated in other goods) shall remain with the Company, as legal and beneficial owner, until the Company has received in cash or cleared funds payment in full of all sums then due:

8.1.1 for those Goods;

8.1.2 for any other goods and services supplied by the Company to the Customer; and

8.1.3 for any other monies due from the Customer to the Company on any account.

8.2 Until such time as title to the Goods passes to the Customer under condition 8.1, the Customer shall:

8.2.1 hold the Goods as the Company's fiduciary agent and bailee;

8.2.2 keep the Goods separate from all other goods in its possession and readily identifiable as the property of the Company;

8.2.3 store the Goods in an appropriate and secure environment;

8.2.4 not annex the Goods to land or a building or other fixture without the Company's prior written consent; and

8.2.5 insure the Goods and keep them insured for the full replacement price to the reasonable satisfaction of the Company and, as and when requested by the Company, produce any insurance policy relating thereto for the Company's inspection; and hold any proceeds received pursuant to said insurance policy(ies) for any Goods the subject of this condition 8.2.4 on trust for the Company.

8.3 At any time before title to the Goods passes to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company), the Company may (without prejudice to any other of its rights):

8.3.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises;

8.3.2 separate and remove the Goods where the Goods have been annexed to any land or building or fixed or attached to or incorporated into other goods but are detachable without causing damage in order to recover possession of them;

8.3.3 require delivery up to it of all or any part of the Goods;



8.3.4 enter any premises of the Customer or any third party where the Goods are stored for the purpose of checking the Customer's compliance with Condition 8.2 above.

8.4 Without prejudice to the Company's other remedies under this Agreement, where the Customer breaches any of the provisions of Conditions 8.2 or 8.3 above, all sums whatever which the Customer owes to the Company shall immediately become due and payable.

8.5 The Customer may resell the Goods before title has passed to it in the ordinary course of its business.

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

8.7 The Company may at any time appropriate sums received from the Customer as it thinks fit, notwithstanding any purported appropriation by the Customer.

8.8 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Customer purports to do so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due for payment.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Company has no actual knowledge of any infringement of any Intellectual Property Rights which will result from the sale or use of the Goods in accordance with these Conditions or the use of any publication of any information or technical data relating thereto and issued by the Company or with the Company's approval. The Company gives no warranty that such sale, possession, or use or the use of any publication of any information or technical data relating to the Goods will not give rise to any infringement of this nature and shall have no liability to the Customer in respect of any such infringement or alleged infringement.

9.2 The Customer shall notify the Company immediately of any claim made or action brought against the Customer for the infringement of any Intellectual Property Right. If the Company shall so request, the Company shall have sole conduct of the litigation and all settlement negotiations which may arise therefrom. The Customer shall give the Company its reasonable assistance in relation to any such claim.

9.3 The Customer shall ensure that any Trade Marks or any other words or marks affixed to or used in relation to the Goods are not altered, obliterated, obscured, defaced or removed. The Customer shall not add to, affix or use any additional words or marks to or in relation to the Goods.

9.4 The Customer shall indemnify and hold harmless the Company from and against all loss, liability and costs (including legal costs and expenses) suffered or incurred by the Company as a direct result of a claim by a third party that the Goods or Services infringe such third party's Intellectual Property Rights and such infringement or alleged infringement shall relate to or arise as a consequence of the Company complying with instructions given by the Customer which relate to the design, manufacture, composition, appearance or specification of the Goods.

9.5 If the Company or its employees or agents design the Goods pursuant to a commission from the Customer, any Intellectual Property Rights created in relation to the design of such Goods shall vest in the Company and the Customer shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this condition 9.5.

9.6 The Customer shall not do anything to diminish the rights to or interest in any Intellectual Property Rights of the Company or its licensor which apply or relate to the Goods or their manufacture.

9.7 The Customer recognises the Company's and its licensor's right and title in and to the Intellectual Property Rights which apply or relate to the Goods and will not obtain any rights to or interest in such Intellectual Property Rights and such rights and interest shall remain vested in the Company and/or its licensor.

9.8 This condition 9 shall survive any termination or expiry of any Contract.



## 10. PRICE

10.1 Subject to the provisions of condition 10.3, the price payable for the Goods shall be as stated in the Company's price list issued to the Customer at the date of the Order and shall be payable in the currency invoiced. Such price shall be for supply on an Ex-Works basis and shall therefore be exclusive of any storage, carriage, customs duties and all other taxes, duties and expenses in respect of the Goods, all of which shall be charged to the Customer in addition to the price for the Goods supplied or to be supplied and the Customer shall pay the same to the Company in addition to the Ex-Works price. This condition shall apply notwithstanding the meaning of any INCOTERM unless specifically agreed otherwise in writing by the Company.

10.2 The Company reserves the right to issue revised price lists without notice.

10.3 The Company may at any time prior to acceptance of an Order revise its prices to take account of increases in costs including, without limitation, the cost of any goods, raw materials, transport (including freight charges), labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.

10.4 The Company shall (if applicable) charge and the Customer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Goods.

## 11. PAYMENT

11.1 The price payable for Goods (other than for Goods which are the subject of an Export Contract in respect of which condition 11.2 will apply) together with any sums to be charged in addition to the price pursuant to condition 10 shall be paid on delivery of the Goods in question unless the Company agrees to allow the Customer a period of credit, in which case that period of credit will apply.

11.2 The price payable for Goods the subject of an Export Contract together with any sums to be charged in addition to the price pursuant to condition 10 shall be paid in advance of delivery of the Goods and on receipt of a pro-forma invoice therefor, unless otherwise agreed in writing.

11.3 Notwithstanding the provisions of conditions 11.1 and 11.2, if the Company shall so request at any time (including any time before the Company shall deliver the Goods to the Customer):

11.3.1 the Customer shall secure all payments (or such of them as the Company shall specify) payable to the Company for or relating to such Goods by establishing an irrevocable letter of credit in favour of and in a form acceptable to the Company which, if required by the Company, shall be confirmed by a bank acceptable to the Company; or

11.3.2 the Customer shall secure all payments (or such of them as the Company shall specify) payable to the Company from time to time during a period specified by the Company, for or relating to all Goods delivered or to be delivered to it from the Company, by establishing an irrevocable standby letter of credit for such period in favour of and for an amount and in a form acceptable to the Company which, if required by the Company, shall be confirmed by a bank acceptable to the Company; in either case, as the Company shall specify; and

11.3.3 the Customer shall bear the cost of establishing such letter of credit or standby letter of credit (as the case may be) and the administration costs associated with it, so that, subject to the Company submitting the documents required for payment correctly, the Company shall receive the payments due in full without deduction.

11.4 Unless otherwise expressly agreed, the Customer shall make all payments due to the Company under any Contract in the currency invoiced.

11.5 Where a dispute arises in respect of part only of an invoice, the part(s) of such invoice which shall not be in dispute shall be paid by the Customer to the Company in accordance with this condition 11.

11.6 Time of payment of any invoice is of the essence and the Company reserves the right to suspend the supply of Goods to the Customer where any amounts are overdue under any Contract until all such amounts have been paid.

11.7 Notwithstanding the meaning of any INCOTERM, the Customer shall be responsible for the collection, remittance and payment of any and all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other



authority in respect of the purchase or importation of the Goods unless specifically agreed otherwise by the Company in writing.

11.8 The Customer is not entitled to withhold payment of any amount due to the Company by way of any set-off or counterclaim.

11.9 If the Customer fails to pay any amount due to the Company under any Contract on the due date, interest shall be added to such amount at the rate of 1.5% per month over the Bank of England Base Rate current at the date that the overdue payment falls due from the due date for payment up to and including the date of receipt of payment in full (whether before or after judgment).

11.9.1 If, in the Company's view, the Customer's credit-worthiness deteriorates before delivery of the Goods or a Customer defaults on any payment, the Company may require payment in full or in part of the price prior to delivery, and/or the provision of security for payment by the Customer in such form as is acceptable to the Company.

11.10 The Company reserves the right to alter or withdraw at any time any credit allowed to the Customer.

11.11 The Company may offset any amount owing to it from the Customer against any amount owed to the Customer by the Company.

11.12 The Company has a general lien on all the Customer's property in the Company's possession from time to time (although the Customer may have paid for it in full) in satisfaction of any amount owed by the Customer to the Company under any Contract, and may deal with it as it sees fit.

11.13 The Customer shall reimburse the Company for any costs incurred by the Company in dealing in or holding the Company's property pursuant to condition 11.12, and the Company shall be entitled to recover the same from the Customer as a debt.

11.14 If the Company has to seek to recover an outstanding debt, the Customer shall be liable to the Company for all costs, including but not limited to, interest, solicitors fees, agent fees and court fees which are incurred by the Company in recovering the outstanding debt.

## 12. WARRANTIES

12.1 Subject to the provisions of condition 12.3 the Company warrants to the Customer that the Goods (other than Second Hand Goods) will:

12.1.1 at the time of delivery correspond with the specification detailed on a Specification Sheet submitted by the Customer with its Order provided that the Company shall not have declined to supply the Goods to such Specification Sheet; and

12.1.2 be free from defects in materials and workmanship used or employed in their manufacture or construction for a period of 1 year from the date of delivery, subject to the Goods being in use for not more than 40 hours per week during such warranty period, PROVIDED THAT the provisions of condition 12.4 shall apply.

12.2 The Company warrants to the Customer that the Second Hand Goods will:

12.2.1 at the time of delivery correspond with the specification detailed on a Specification Sheet submitted by the Customer with its Order provided that the Company shall not have declined to supply the Second Hand Goods to such Specification Sheet; and

12.2.2 at the time of delivery be in working order, PROVIDED THAT the provisions of condition 12.4 shall apply.

12.3 The warranties in condition 12.1 are given on the following conditions:

12.3.1 the Company shall not be liable for any defect in the Goods caused by any of the following:

12.3.1.1 abuse, accident, neglect, vandalism, wilful damage or mis-use of the Goods;





12.3.1.2 toxic, explosive, corrosive or other hazardous materials or substances applied to the Goods;

12.3.1.3 repairs negligently carried out by a third party;

12.3.1.4 failure to adhere to the maintenance procedures recommended in the Documentation;

12.3.1.5 incorrect or negligent installation or commissioning of the Goods or failure to adhere to the installation and commissioning instructions set out in the Documentation;

12.3.1.6 failure to follow the Company's instructions as to the operation of the Goods;

12.3.1.7 collision, impact, or accident after risk of loss of or damage to the Goods has passed to the Customer;

12.3.1.8 fair wear and tear;

12.3.1.9 inappropriate conditions of storage or use.

12.3.2 the Company shall not be liable for any defect in the Goods arising from any drawing, design, manufacturing process, specification or any other information supplied to the Company by the Customer;

12.3.3 the Company shall not be liable under condition 12.1 or 12.2 if the Customer has not paid for the Goods in full by the due date for payment therefor;

12.3.4 the Company shall not be liable under condition 12.1.2 if, after delivery of the Goods;

12.3.4.1 any part or parts of the Goods shall be removed from the Goods or replaced with parts which did not form part of the Goods originally supplied, unless and to the extent that the Company shall specifically agree otherwise in writing, or to the extent that the Company shall provide the Distributor with replacement parts specifically for the Goods in question; or

12.3.4.2 any alteration or modification is made to the Goods without the Company's prior written approval or in accordance with the terms of such approval;

12.3.4.3 the warranties detailed at condition 12.1 do not extend to parts, materials or equipment which form part of the Goods but which are not manufactured by the Company or an Affiliate of the Company, and the Customer shall be entitled only to the benefit of any warranty or guarantee given by the manufacturer thereof to the Company or to the Customer.

12.4 The warranties (or any of them) detailed in conditions 12.1 or 12.2 are limited to the repair or replacement (at the Company's option) of any parts causing the Goods or Second Hand Goods (as the case may be) to fail to comply with such warranties relating thereto, and are subject to the Company confirming that any warranty claim is covered by the warranties given pursuant to conditions 12.1 or 12.2 (as the case may be). Any repair or replacement of parts by the Company pursuant to the said warranties shall be carried out:

12.4.1 in respect of Goods or Second Hand Goods situated in the United Kingdom free of any labour charge;

12.4.2 in respect of Goods or Second Hand Goods situated other than in the United Kingdom, on condition that the Company shall have no obligation or liability to supply or pay for the labour required in respect of the same. (Where the Customer is an end user, in most circumstances the distributor who supplied the Goods to the Customer is likely be willing to provide/arrange the labour, for which a charge will be made to the Customer by the supplier of that labour). The Company shall have no further liability to the Customer in respect of a warranty claim, save as expressly provided in this condition 12.4.

12.5 The Customer shall or shall procure that the Company is given access to the Goods the subject of a warranty claim for the purpose of inspection, and, if the Company shall so request, return the defective Goods to the Company carriage paid.

12.6 This condition 12 shall survive any termination or expiry of any Contract.

## 13. LIABILITY



13.1 Except as expressly set out in condition 12, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, use of or failure to supply the Goods, or the performance or non-performance of the Services are excluded to the fullest extent permitted by law.

13.2 Subject to the provisions in condition 13.4 below, the Company is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or the Company was advised of the possibility of them in advance:

13.2.1 loss or damage to intangible property including software;

13.2.2 loss or damage incurred by the Customer as a result of third party claims;

13.2.3 loss of actual or anticipated profits;

13.2.4 loss of business opportunity;

13.2.5 loss of anticipated savings;

13.2.6 loss of goodwill; or

13.2.7 any indirect, special or consequential loss or damage howsoever caused.

13.3 Without prejudice to the provisions of conditions 13.2 or 13.3, the entire liability of the Company under or in connection with the use of, supply of or failure to supply the Goods, or the performance or non-performance of the Services, whether in contract, tort (including negligence, or breach of statutory duty) misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the net amount paid or payable by the Customer for the Goods the subject of a claim.

13.4 Nothing in these Conditions shall operate to exclude or restrict the Company's liability for:

13.4.1 death or personal injury resulting from negligence;

13.4.2 fraud or deceit.

13.5 This condition 13 shall survive any termination or expiry of any Contract.

## 14. TERMINATION

14.1 On or at any time after the occurrence of any of the events in condition 14.2, the Company may:

14.1.1 suspend further deliveries to the Customer;

14.1.2 exercise its rights under condition 8.3;

14.1.3 terminate, without liability to pay compensation, any Contract forthwith by giving notice to that effect to the Customer.

14.2 The events are:

14.2.1 the Customer being in material or persistent breach of any obligation under a Contract or these Conditions and, where capable of remedy fails to remedy such breach within 30 days of receiving a notice specifying such breach and requiring its remedy;

14.2.2 a meeting being convened, a petition being presented, an order being made, an effective resolution being passed, or notice being given for the Customer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction);

14.2.3 an application being made, or resolved to be made by any meeting of the Customer's directors or members, for an



administration order in relation to it or any person gives or files notice of intention to appoint an administrator of it, or an administrator being appointed;

14.2.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Customer's assets;

14.2.5 the Customer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

14.2.6 a proposal being made for a composition in satisfaction of the Customer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986; or

14.2.7 anything analogous to the aforementioned events mentioned in this condition 14.2.

14.3 If the Customer shall suffer any of those events listed in conditions 14.2.2 to 14.2.7 inclusive and, at that time or during the continuance thereof it shall hold any stocks of goods supplied by the Company, the Customer shall promptly notify the Company and without delay of (a) the event suffered by it; and (b) the location of such goods and the quantities thereof. The Customer shall allow the Company to collect and repossess such goods in respect of which title has not passed to the Company.

14.4 On termination of a Contract pursuant to condition 14.1.3, any indebtedness of the Customer to the Company shall become immediately due and payable and the Company is relieved of any further obligation to supply Goods or perform Services to the Customer pursuant to that Contract.

## 15. LICENCES AND CONSENTS

15.1 Notwithstanding the meaning of any INCOTERM, if a licence or consent of any government or other authority is required for the supply to, or carriage or use of the Goods, the Customer will obtain such licence or consent at its own expense and produce evidence of it to the Company on demand.

15.2 The Customer is not entitled to withhold or delay payment of the price if it fails to obtain any licence or consent, and will pay any additional costs or expenses incurred by the Company as a result of such failure.

## 16. FORCE MAJEURE

16.1 In this condition 16, "Force Majeure Event" means any circumstances beyond the reasonable control of the parties including, but not limited to acts of God, fire explosion adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by Company's or material shortages but, for the avoidance of doubt, nothing shall excuse the Customer from any payment obligations under these Conditions.

16.2 If the Company is prevented, hindered or delayed from or in supplying the Goods under these Conditions by a Force Majeure Event then delivery dates and other working deadlines will be reasonably extended.

16.3 Neither party shall be liable to the other if they are prevented from performing the Contract (in whole or in part) as a result of a Force Majeure Event.

## 17. CONFIDENTIALITY

17.1 The Customer shall not during the term of any Contract or thereafter:

17.1.1 use Confidential Information for a purpose other than as is necessary in connection with the use of the Goods; disclose Confidential Information to any person except with the prior written consent of the Company or in accordance with condition 17.2; and shall make every effort to prevent the use or disclosure of Confidential Information to third parties.

17.2 The Customer may disclose Confidential Information to any of its directors, other officers, employees, sub-contractors and customers (a "Recipient") to the extent that disclosure is reasonably necessary for the purpose of reselling or using the Goods



and on condition that, before disclosure of Confidential Information to a Recipient pursuant to this condition, the Customer shall ensure that such Recipient is bound by obligations of confidentiality which are no less stringent than those which apply to the Customer under these Conditions.

17.3 Conditions 17.1 to 17.2 do not apply to Confidential Information which:

17.3.1 is or becomes publicly known, other than by the Customer's or Recipient's breach of these Conditions/obligations of confidentiality;

17.3.2 can be shown by the Customer to the Company's reasonable satisfaction to have been known by the Customer before disclosure by the Company to the Customer;

17.3.3 is or becomes available to the Customer free of any restrictions as to its use or disclosure; or

17.3.4 is required to be disclosed by law.

17.4 Confidential Information shall not be deemed to be within the exceptions set out in condition 17.3 merely because it is contained in more general information which is in the public domain or is learned by the Customer or is in the Customer's prior possession and the combination of two or more portions of the information shall not be deemed to be within the exceptions set out in condition 17.3 merely because each separate portion is within the said exception.

17.5 This condition 17 shall survive any termination or expiry of any Contract.

## **18. ASSIGNMENT**

18.1 The Customer may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, a Contract without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed).

18.2 The Company is entitled at any time to assign or deal with the benefit of any Contract, or sub-contract any work relating to any Contract.

## **19. SEVERANCE**

19.1 If any of the conditions herein are found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other conditions which shall remain in full force and effect.

19.2 If any of these conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

## **20. DISPUTE RESOLUTION PROCEDURE**

20.1 If any dispute arises between the parties under or in connection with any Contract and it cannot be resolved by good faith negotiations between the parties, it shall be escalated to senior management level within 5 Working Days of a written request from either of the parties.

20.2 If the dispute is not resolved within 5 Working Days from the date of escalation to senior management level, then the matter may be referred to court proceedings by either party.

20.3 This condition 20 shall survive any termination or expiry of any Contract.

## **21. THIRD PARTIES**

A person who is not a party to a Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.



## 22. WAIVER

The rights and remedies provided by any Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Company shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of such Contract.

## 23. VARIATION

No variation or alteration of any of the provisions of a Contract shall be effective unless it is in writing and signed by or on behalf of each party.

## 24. GOVERNING LAW AND JURISDICTION

This Contract and all matters arising out of or in connection with it or its subject-matter or formation (whether or not themselves of a contractual nature) shall be governed by English law and you consent to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that WTL invokes the jurisdiction of the courts of any other country. Nothing in this Agreement shall prevent the Company from commencing proceedings in any jurisdiction. .

I am an authorised signatory of (Company name):

On behalf of the above named company I accept Nikken Kosakusho Europe Limited standard terms and conditions of sale.

Signed:

Name (in capitals):

Position:

Date: