

## GENERAL TERMS AND CONDITIONS OF NEDIS (UK) LIMITED Version March 2022

### Clause 1. General

1. The private limited liability company Nedis (UK) Limited is registered in England and Wales under company number 1066461 with its registered office at Prebend House, 72 London Road, Leicester, England, LE2 0QR (hereinafter "**Nedis**").

### Clause 2. Definitions

In these general terms and conditions ("**GTC**") the following expressions shall have the following meanings:

- I. **Commercial RMA**: has the meaning described in clause 11.1;
- II. **DAP**: means delivered at place in accordance with Incoterms 2020;
- III. **Delivery**: means the delivery of Products to Purchaser in accordance with clause 6;
- IV. **EU**: means the European Union (for the avoidance of doubt, excluding the United Kingdom);
- V. **FCA**: means free carrier in accordance with Incoterms 2020;
- VI. **IP**: means any intellectual and industrial property rights, such as patents, trade marks, service marks, trade names, trade mark registrations, designs, business names, copyrights, database rights, design rights, inventions, confidential information, knowhow and other intellectual property rights and interests relating to or embodied in the Products or any other materials provided by Seller;
- VII. **Invitation**: means any proposal by Seller to a (potential) Purchaser in whatsoever form and whether or not containing a price offer to sell Products to Purchaser, which proposal is without obligation and can be cancelled or withdrawn at all times by Seller until it is confirmed by Seller;
- VIII. **Products**: means products sold (or invited to be sold, as the case may be) under an agreement by Seller to Purchaser;
- IX. **Purchaser**: means any natural or legal person, entering into a purchase or other agreement with Seller and/or such person to whom Seller has made an Invitation pursuant to clause 4 of these GTC;
- X. **Purchase Order**: means the purchase order to be submitted by the Purchaser to the Seller pursuant to clause 4.2.
- XI. **Seller**: means Nedis, or a member of the Nedis group of companies;
- XII. **Technical RMA**: has the meaning described in clause 11.1;
- XIII. **Working Day**: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

### Clause 3. Applicability

1. These GTC shall apply to all (distribution) agreements, purchase orders, Invitations or other legal relationships in the broadest sense under which Seller sells or invites to sell Products to Purchaser. These GTC supersede and replace any prior agreement, understanding or arrangement between the parties, whether oral or in writing and whether generated by Nedis or the Purchaser.
2. Seller and Purchaser shall only deviate from these GTC if expressly and mutually agreed in writing with regard to a specific agreement, Invitation or other legal relationship, and then with reference to a specific clause of these GTC that is to be deviated from.
3. Such deviation does not create any deviation or other right with regard to any other agreements, Invitations or legal relationships.

4. Seller reserves the right to amend these GTC. Any such amendment of these GTC shall be binding on the Purchaser, but only after publication of the amendment on the website and in the webshop of Seller.

#### **Clause 4. Agreement**

1. All proposals made by Seller to sell Products to Purchaser shall be Invitations.
2. An agreement shall exist from the moment Purchaser accepts these GTC and after acceptance in writing by Seller of a Purchase Order. A Purchase Order shall be deemed to be an offer by Purchaser (whether or not such Purchase Order was based on an Invitation).
3. All Purchase Orders should be made electronically using the Nedis EDI, the Seller's webshop, csv files or such other method notified by the Seller. In case of ordering methods requiring manual handling by the Seller, Seller shall be entitled to charge handling costs to the Purchaser. For the purposes of submitting Purchase Orders, Purchaser will be given a unique client number and login code. These login details may not be transferred to any party or individual outside the organisation of Purchaser.
4. Seller will make Product information available on its website. Such Product information is for information only and the Seller accepts no responsibility for any errors or omissions.
5. Seller reserves the right to refuse Purchase Orders at his own discretion, or to charge an extra fee, the acceptance of which shall be subject to Purchaser's approval. Acceptance of Purchase Orders may be subject to conditions imposed by the Seller, such as, but not limited to, advance payment of the entire price or part of the price.
6. If for any reason it is impossible to accept any Purchase Order for a specific Product, Seller will where reasonably possible consult with Purchaser in order to supply an alternative Product. Seller and Purchaser shall agree the alternative Purchase Order as per the procedure in these GTC.
7. A Purchaser's Purchase Order shall be binding for Purchaser regardless of how it was placed with Seller. Seller shall use reasonable efforts to confirm within two (2) Working Days whether or not Seller can accept the Purchase Order.
8. Any changes in and/or (partial) cancellation of a purchase order by Purchaser shall only take place at Seller's discretion, to be given in writing and on the condition that any changes to the performed activities by Seller will be paid for, in full, by Purchaser; In such case, Seller is always entitled to pass on any (extra) costs to Purchaser and to re-determine the Delivery time.
9. Purchaser shall immediately provide Seller with any information Seller deems reasonably necessary or any information that can be reasonably understood as necessary for the supply by the Purchaser of the agreed Product or Products within such reasonable timeframe as is communicated by the Seller (or if not such timeframe is communicated prior to the date for Delivery of the Products). If the information required for such performance is not supplied in time to Seller, Seller has the right to postpone its performance and/or to charge Purchaser with the extra costs Seller has incurred because of the delay, at Seller's usual rates.
10. Any additional commitments and/or arrangements made by Seller, or made on behalf of Seller by other persons acting as a representative of the Seller, are only binding to Seller if these commitments and/or arrangements have been confirmed in writing to Purchaser by Seller's authorised staff.

#### **Clause 5. Prices**

1. All prices communicated by Seller whether in an Invitation or by any other means shall be in £ (GBP), unless otherwise agreed in writing.

2. The purchase price payable by Purchaser to Seller will be exclusive of any value added taxes (VAT), other transaction based taxes or customs duties and exclusive of all other costs, e.g. those mentioned in clause 6.3 below, unless otherwise agreed in writing. Where applicable, VAT, other transaction based taxes or customs duties will be paid in addition to the purchase price by Purchaser.

3. In the event that any tax or customs authorities of appropriate jurisdiction, for whatsoever reason, should conclude:

(1) that Seller is to act as the importer and/or should have acted as the importer in the past under these GTC instead of as purchaser; or

(2) that the Seller should have treated a transaction or transactions with the Purchaser pursuant to these GTC as subject to VAT,

and, as a consequence, (retroactively) applies VAT (incl. import VAT), other transaction based taxes or customs duties, including late interest and penalties, against the Seller, Purchaser shall indemnify Seller for, and hold it harmless against, any and all such additional costs or damages arising.

4. Prices quoted by Seller are only deemed confirmed upon acceptance of a Purchase Order by Seller pursuant to clause 4.2.
5. Seller shall be entitled to adjust the applicable prices to the Purchaser in case of unforeseen circumstances outside Seller's control, including but not limited to devaluation of the Euro, increase of raw material prices and increase in transportation costs.
6. Notwithstanding the circumstances described in clause 5.5 above, Seller shall at all times be entitled to adjust the applicable prices in case Purchaser makes multiple purchases under a continuing agreement (*duurovereenkomst*) by informing Purchaser of the prices applicable to new purchases or orders as from that moment. In the event of an adjustment on the grounds of this clause 5.6, Purchaser shall be entitled to terminate the continuing agreement between the parties if there is an increase of more than 5% compared to the last applicable prices and the increase is not the result of unforeseen circumstances as referred to in clause 5.5.

## **Clause 6. Delivery**

1. The dates of Delivery indicated by Seller can never be considered as binding deadlines. Any deviation from these dates by Seller does not give Purchaser any entitlement to claim damages, to cancel or to terminate the agreement, unless expressly agreed otherwise by the Seller. The time for delivery is not of the essence.
2. Indicated Delivery dates shall always be conditional on timely receipt of any authorisation permits or licences, documentation to be provided by Purchaser and upon timely fulfilment of payment or any other obligations by Purchaser. In the event that these conditions are not met, the involved dates may be adjusted accordingly by Seller.
3. Unless the contrary appears from the Purchase Order confirmation, all additional costs borne by the Seller, including but not limited to Delivery, insurance, administration and transport costs, shall be charged separately in addition to the agreed price of the Products by Seller to Purchaser. In the event that any additional service is required and is taken care of by Seller without any price having been explicitly agreed upon, Seller shall be entitled, at its discretion, to bill Purchaser for the costs actually incurred, including a reasonable profit margin, and/or to charge the rates normally used by Seller.
4. In the event that the Products are delivered on deposit pallets, the deposit incurred by the Seller will be charged to the Purchaser.
5. Unless otherwise agreed by the Seller, all Products will be delivered DDP within the EU and within UK, and FCA outside of the EU and UK, in each case to the location agreed by the Seller in the relevant purchase order.

6. If Purchaser wants the Products to be delivered in a manner which is different to the usual manner in which they are to be Delivered pursuant to clause 6.5, the Seller shall be entitled to charge Purchaser all extra costs incurred for such Delivery in addition to all regular costs.
7. Other than in the exercise of its rights under clause 9.2, Purchaser is at any time obliged to accept Delivery of the Products. In the event of failure to accept Delivery, Purchaser shall be liable for all reasonable damages and/or costs incurred by Seller, without prejudice to such other rights as the Seller may have in accordance with applicable law.

### **Clause 7. Transfer of risk**

In accordance with clause 6.5, all risks in connection to the Products, shall be transferred to Purchaser at the moment that Products are delivered to Purchaser if delivered within the EU or those people appointed by Purchaser if delivered outside of the EU.

### **Clause 8. Intellectual and industrial property rights**

1. The Customer acknowledges, understands and agrees all IP in or arising out of or in connection with the Products offered by Seller are the exclusively property of the Seller or its group companies. Purchaser shall not claim any such rights in or out of court, nor shall these rights at any time be passed on to Purchaser. Seller makes no representation or warranty as to the validity or enforceability of the IP, now as to whether it infringes any intellectual property rights of any third parties.
2. Should any third party make a claim with regard to a possible violation of any IP that relates to Seller, Seller is exclusively entitled to defend itself against it or to take legal action against any such third party, or to reach a private arrangement with such third party. Purchaser shall fully cooperate with Seller in such procedures.
3. Purchaser shall not be permitted to make any kind of changes, alterations to or remove anything from the packaging, brands, trade names or other distinguishing features attached to or put on the Products or packaging delivered by Seller or other members of its group, other than as expressly necessary for sales purposes.
4. Seller shall not be liable for defects or damages/losses arising from inaccuracies or imperfections in specifications, designs, drawings, models, descriptions, images, and other IP related to the Products (together 'the corporate materials'). It shall be the responsibility of the Purchaser to notify the Seller of any changes to the corporate materials which may be needed in order to comply with all applicable laws and to do so immediately upon becoming aware of the same.
5. Purchaser may receive images, audio, text and videographs (jointly referred to as marketing features) of Seller's Products and (registered) trademarks (logos) in the name of Seller and/or its associated companies. Seller grants the Purchaser a royalty-free, non-exclusive, non-transferable or assignable licence to use the marketing features solely in relation to the promotion, marketing and sale of the Products. The Purchaser shall ensure that the marketing features are not transmitted to any person or entity outside of the Purchaser's organisation.
6. If the Purchaser on-sells any products received from the Seller online through third party marketplace platforms (including, without limitation, Amazon) it shall include the marketing features of the Seller in the descriptions of the products and shall ensure professional and complete information about the specifications of the Products in its advertisements. Furthermore, the purchaser shall only sell the Products online if it meets the following service requirements which are necessary for the effective sale of those Products: (i) delivery within maximum 72 hours and (ii) availability of a service desk during office hours with a response time of maximum 24 hours.

### **Clause 9. Conformity**

1. The Purchaser shall visually inspect each Delivery of Product promptly on receipt and inform the Seller within ten (10) Working Days following Delivery of any issues regarding the Product delivered. Such issues must be set out in writing, with a clear and detailed description of the relevant issue. If Seller has delivered the wrong Products, or has delivered more Products than ordered, Purchaser shall either return these Products to Seller, or contact Seller in order to have Seller generate an extra order for the correct quantity of Products.
2. If the packaging is visibly damaged at the moment of Delivery, and/or the packaging has already been opened, Purchaser may choose to refuse or to accept the Delivery by signing the receipt and adding "subject to verification". Purchaser shall promptly confirm this to Seller in writing.
3. Defects that were not visible at the time of Delivery, and could not have become known after a careful and timely check as at Delivery, must be reported to Seller by the Purchaser as a Technical RMA following the procedure described in clause 11 within 5 Working Days.
4. Any entitlement to claim that Purchaser may have against Seller regarding defects in Products delivered by Seller will be void if:
  - a. Seller has not been informed in the time frame and/or in the relevant manner specified above;
  - b. Purchaser does not cooperate (sufficiently) with Seller to investigate the soundness of the complaint;
  - c. Purchaser has not properly mounted, treated, used, stored or maintained the Products, or has used or treated the Products under circumstances or for purposes other than provided for by Seller; and/or
  - d. Purchaser has continued to use the concerned Product.

#### **Clause 10. Guarantee and Recall**

1. Except as expressly provided in these GTC and to the fullest extent permitted by law, Seller makes no representations or warranties of any kind with respect to any Product, express or implied, written or oral, including any implied warranty of merchantability, suitability or fitness for a particular purpose.
2. Seller guarantees that Products sold under Seller's own brand names shall be free from material defects in design, material and workmanship for a period of twenty four (24) months. The 24 month period shall start on the day Purchaser sells the Product to any third party customer, or if later, three (3) months after Purchaser has purchased the Product from Seller. In case of professional or equivalent use by Purchaser or the Purchaser's customer, the respective period for such Products shall be reduced to twelve (12) months. The Seller's guarantee shall lapse in any case twenty seven (27) months after the Product is sold by Seller to Purchaser, or fifteen (15) months in case of professional use. The type of use (professional or equivalent, or non-professional) by the Purchaser or Purchaser's customer shall, if disputed by Seller, be required to be proven by Purchaser. Purchaser shall in all cases provide (copy of) the original invoice/agreement. Seller shall have no obligations whatsoever to the Purchaser regarding the concerned Products following the periods stipulated in this clause 10.2.
3. The warranty period for consumables, being products subject to wear and tear and with an expected life span of no more than 6 months, including but not limited to batteries, cable ties, clamps and scented pearls for hoovers, as well as other products with a purchase price not exceeding £30.00, the latter being deemed to be consumables, shall be limited to six (6) months, commencing on the day after delivery.
4. For third party Products which are non Nedis brands, the warranty periods of the manufacturer of the respective Product will be applicable to the extent Seller is able to pass

them on, as stated in the Seller's webshop and/or upon Purchaser's request. Alternatively, such Products will be subject to the same warranty periods as Nedis branded Products pursuant to clause 10.2. The provisions contained in clauses 10.2 and this clause 10.4 are without prejudice to any rights that Purchasers may have against the manufacturers of such Products.

5. Warranty claims must be sent in writing to Seller within thirty (30) days after the defect/ flaw has been detected or should reasonably have been discovered by the Purchaser. Such notification must take place through the RMA procedure described in clause 11.
6. If Seller finds that a warranty claim is sound and covered by a warranty, Seller will, at Seller's sole discretion:
  - a. repair the defective Product;
  - b. supply replacement Product or parts; or
  - c. refund the purchase price to Purchaser,

following which the Seller shall have no further liability to Purchaser for the Product covered by a warranty. Seller and Purchaser may also agree that the relevant Product will be replaced by an equivalent Product.

Any delivery of a new Product by the Seller pursuant to this clause 10.6 will not affect the guarantee period which shall remain to be determined according to clause 10.2.

7. If Purchaser or any third party (have) made repairs and/or changes to the Product, without Seller's express prior authorisation in writing, Seller shall have no warranty obligation whatsoever to the Purchaser.
8. If the Product does not show any defects after comprehensive testing and inspection by Seller, Seller shall charge Purchaser a minimum of £ 20, in research costs. The Product will thereafter be returned and any shipment costs borne by the Seller will be charged to the Purchaser.
9. If any defect is the result of improper or wrongful usage, or not following the instructions for use of the Product, the guarantee provided under clause 10.2 shall not apply.
10. Sample Products provided by the Seller for development or testing purposes, prototypes and pre-Production versions of Products are excluded from the guarantees described in this Clause 10.
11. In the event that a Product is subject to a recall, being a recall by Seller of one or more specific products according to the procedure applicable within seller's organisation, Seller shall provide purchaser with detailed instructions and purchaser shall be obliged to comply with these instructions. All actions and associated costs incurred by Purchaser in carrying out the Seller's instructions shall require Seller's prior written consent, which shall not be withheld on unreasonable grounds.

## **Clause 11. Conditions for returning Products**

1. Otherwise than under clause 9.1, the return of delivered products by the Purchaser will only be possible in relation to any technical defect (a "**Technical RMA**") and provided the following process is followed. Delivered products cannot be returned if the purchaser has not ordered the correct products or quantities (a "**Commercial RMA**").
2. In the event of a Technical RMA, purchaser must create an RMA number via the webshop by issuing a request ("**RMA request**").
3. Upon receipt of the RMA request, Seller shall assess this request and inform Purchaser of the follow-up process. If the RMA request is approved, Purchaser will receive an RMA number from the Seller, including instructions on how to proceed with the RMA request.

4. The RMA number is valid for thirty (30) days from the date of issue by seller. If Purchaser has been instructed to return the products to Seller's warehouse at 's-Hertogenbosch (the Netherlands), and the products are not returned within this thirty (30) day period, the RMA number shall expire and Purchaser must apply for a new RMA number, to which application the process described in this article shall apply.
5. The Seller will only accept returns of products that have a valid RMA number. The RMA number must be clearly visible on the outside of the packaging. Damage caused during transport due to incorrect packaging may be a valid reason for the Seller to refuse the return shipment.
6. In connection with a Technical RMA, the Seller will check within 10 Working Days of receipt of the Product at Seller's warehouse at 's-Hertogenbosch (the Netherlands) whether the Product is defective, as indicated by Purchaser in the RMA request, and whether it is covered by any guarantee pursuant to clause 10.2.
7. Seller shall not accept returns of Products other in connection with a Technical RMA as described in this clause unless otherwise agreed in writing between the parties.

## **Clause 12. Liability**

1. Nothing in this Agreement limits or excludes the Seller's liability for death or personal injury caused by its negligence or for any damage or liability incurred by the Purchaser as a result of fraud or fraudulent misrepresentation by the Seller or to the extent that the liability may not be excluded or limited by any applicable law.
2. Subject to clause 12.1, Seller shall not have any liability to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of business, goodwill or reputation or for any other loss or damage that is an indirect or consequence of any act or omission of the Seller, regardless of the cause thereof and regardless whether it has been caused by an unlawful act (including negligence), breach or otherwise.
3. Subject to clauses 12.1 and 12.2, Seller's maximum total liability to Purchaser under or in connection with these GTC or the Products howsoever arising shall in any case not exceed the amount paid by Purchaser to Seller for the Product(s) giving rise to the claim.
4. Purchaser shall indemnify Seller from and against all damage (including third party claims) and/or costs of whatever nature, caused directly or indirectly by or with regard to incorrect information/representation, wrongful acts and or mistakes of Purchaser.
5. If Seller provides Purchaser with advice or assistance concerning any Products, the furnishing of such advice or assistance shall not subject Seller to any liability and Purchaser shall indemnify Seller in this regard.
6. Seller is not liable for any damage as a result of any purchase orders which are misunderstood, deformed, delayed or which do not come across properly as a result of the use of the internet or any other means of communication between Purchaser and Seller, or between Seller and third parties.
7. In the event of any conflict, this clause 12 shall take precedence over any other clause in these GTC.

## **Clause 13. Reservation of ownership and security**

1. The Products delivered by Seller remain the property of Seller until Purchaser has paid all amounts due to Seller for the Products Delivered. If Seller deems necessary to do so, it is entitled to require from Purchaser to provide security for its obligations under this clause 13.1.
2. Notwithstanding the provisions in clause 13.1, Purchaser will be allowed to sell the Products to third parties, but only in the normal course of business.

3. If Purchaser does not comply with such obligations to Seller, or if a reasonable fear exists that Purchaser will fail to comply, Seller is entitled to remove the delivered Products which it owns, from Purchaser or a third party that holds the Products on behalf of Purchaser, or to have these Products removed. If the Purchaser fails to comply promptly with the Seller's requirements in this regard, the Seller shall be entitled to obtain a legal injunction to recover the Products. After the Products have been taken back by the Seller, Purchaser shall be credited for the market value, which under no circumstances will exceed the original purchase price, less the costs for taking back the Products and the damage sustained by Seller as a consequence of taking back the Products (including, for the avoidance of misunderstanding, any profits foregone). The above does not harm any of Seller's rights afforded by law.
4. Until ownership has passed to the Purchaser, Purchaser is not entitled to vest a non-possessory pledge or any other real or personal right in the Products for the benefit of a third party.
5. Purchaser shall identify the Products delivered to them by Seller as being Seller's property until the property has been transferred to Purchaser in accordance with this clause 13, including by storing them separately from any other products in the Purchaser's possession. Pursuant to clause 13.1 Purchaser shall insure against the risk of fire, explosion and water damage and theft with regard to such Products and provide evidence of such insurance to Seller at Seller's request. All of Purchaser's claims against the insurers of the Products under said insurance will be pledged by Purchaser to Seller if Seller so desires, as an additional security to Seller's claims against Purchaser, notwithstanding Purchaser's obligation to pay for the Products.

#### **Clause 14. Payment**

1. Purchaser shall pay for Products in in £ (GBP), unless otherwise agreed in writing, without any deduction or discount by bank transfer to a bank account provided by Seller. Payment of the purchase price is to be made within the period agreed upon in the Purchase Order, or in case no specific period has been agreed the default will be prepayment prior to Delivery.
2. In case a payment term has been agreed, Seller shall at all times be entitled to request payment in advance, either in full or in part, and/or obtain security for the payment.
3. If payment is made by bank transfer, the day on which the amount is received in the Seller's bank account will be considered the day of payment.
4. If Purchaser fails to pay on time the (full) amount due, it will be deemed to be in breach without further notice. In such circumstances, Seller has the right to suspend compliance with all obligations ensuing from the agreements with Purchaser, without prejudice to all rights ensuing under general law.
5. If Purchaser fails to meet its payment obligations, Seller shall be entitled immediately and without any written notice being required, to charge an interest at a rate of 8% above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.
6. Any complaint or other notification of any defect or fault issued by the Purchaser shall not suspend Purchaser's obligation to pay the Seller. Purchaser shall not be entitled by reason of any set-off, counter-claim, abatement or similar deduction withhold any payment due to Seller without Seller's express written authorisation.
7. All costs related to the collection of invoiced amounts (including extra-judicial and judicial collection costs) are for the account of Purchaser. Any judicial costs are expressly not limited to the court fees, but will include Seller's legal fees and will be fully for the account of Purchaser, if Purchaser is (for the greater part) the losing party.



8. If the financial situation of Purchaser after the entering into the agreement, but prior to the Delivery of the Products, sustains a considerable setback, Seller is entitled to refrain entirely or in part from further performance of its obligations under these GTC, or to demand a change of the payment conditions previously settled with the Purchaser.
9. Seller is entitled to transfer its claims under all transactions with Purchaser to a credit insurer or factoring company, at the choice of Seller.
10. Any objections to an invoice must be made prior to the payment date of the invoice, after which payment date such invoice shall be deemed to correct and definitive.

#### **Clause 15 Confidentiality**

1. Both Seller and the Purchaser undertake that they shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2 and 15.3.
2. Each party may disclose the other party's confidential information:
  - a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these GTCs, provided always that such persons comply with this clause 15; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these GTCs.

#### **Clause 16. Force Majeure**

1. Seller shall not be held to perform any obligation to Purchaser if it is outside of Seller's control to do so as a result of circumstances that permanently or temporarily prevent such performance ("**Force Majeure**"). Seller shall not be liable for any damages or losses resulting from such Force Majeure. Force Majeure shall include at any rate, but not be limited to, pandemic, transport ban, import ban, circumstances that limit or prevent transportation, strike, lack of personnel or (spare) part, riot, civil disturbance, acts of war, fire and/or water damage, breakdown of machines, interruption of the power supply, faulty or incomplete compliance by third parties, government measures, including at any rate import and export restrictions, marketing ban and non-compliance of its vendors.
2. In the event that the Force Majeure persists for more than two months, each of the Seller and the Purchaser shall be entitled to adapt the performance of the agreement to the circumstances or to terminate the agreement in whole or in part, without judicial intervention, and without being held to any compensation of damage to the other.

#### **Clause 17. Suspension and Termination**

1. In addition to all powers afforded by law, Seller is entitled to suspend the compliance of its obligations if:
  - a. Purchaser does not comply with its (payment) obligations on time and completely;
  - b. Purchaser has been asked to provide security for the compliance of its obligations under the agreement and has failed to do so (sufficiently);
  - c. Purchaser has been declared bankrupt or filed for bankruptcy or for a court-supervised recovery procedure;
  - d. Seller has learned of any (other) circumstances which constitute reasonable grounds to fear that Purchaser will fail to comply with its obligations.

2. In addition to all powers afforded by law, if Purchaser does not comply with its obligations under these GTC, Seller shall be entitled to terminate the agreement immediately in whole or in part and with immediate effect, without having any obligation to pay any kind of compensation of damage or restitution, while Purchaser is obligated to pay compensation for damage for having committed non-performance.
3. Seller is entitled to terminate or amend the agreement if circumstances occur which are of such nature that compliance with the obligations under these GTC and/or the agreement to which they pertain has become impossible or if any other circumstances occur which are of such nature that it is not reasonable to expect from Seller to perform these GTC and/or the agreement to which they pertain on the originally agreed conditions.
4. Also in case of liquidation, a (request of) court-supervised business recovery or bankruptcy, attachment, if such attachment has not been lifted within three months, of Purchaser's assets, debt relief or any other circumstance preventing Purchaser to dispose freely over its assets, Seller is free to cancel the purchase order or contract or to terminate the agreement at once and with immediate effect, without being liable to payment of any compensation of damage.
5. Regardless whether the agreement was signed for a fixed or for a continuous term, Seller is always entitled to cancel such agreement, for whatever reason, with due observance of a reasonable notice period. Seller is never held to pay any kind of compensation for damage.

#### **Clause 18. Right to set-off**

1. The Seller shall be entitled to set-off any and all claim(s) made by the Purchaser against the Seller with claim(s) Seller and/or one of its affiliates has against Purchaser.
2. Purchaser shall not be allowed to set-off a claim of Seller against Purchaser with claims Purchaser has against Seller.

#### **Clause 19. Governing law and disputes**

1. These GTC and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales.
2. All disputes shall as much as possible be settled amicably in good faith between Purchaser and Seller. If an amicable settlement is not possible, the parties submit irrevocably to the courts of England, which shall have exclusive jurisdiction to hear all disputes arising in connection with it.

#### **Clause 20. Severability clause**

If any provision of these GTC is deemed to be invalid, the validity of any other part of these GTC will not be affected. In such a case, the parties shall negotiate in good faith to replace the invalid provision by a valid provision that is permitted by law and as much as possible, is in accordance with the purpose and intent of these GTC.

#### **Clause 21. Assignment and subcontracting**

Purchaser may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these GTC without the prior written consent of Supplier.

#### **Clause 22. Notices**

1. Any notice or other communication given to a party under or in connection with these GTC shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax.
2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 22.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax, one working day after transmission.
3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **Clause 23. Waiver**

Any forbearance, delay or indulgence by either of the parties in enforcing any of the terms and conditions of these GTC will not prejudice or restrict the rights and remedies of the other, nor will any waiver of any subsequent breach operate as a waiver of any subsequent breach and no right, power or remedy available to that party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy will be cumulative.

### **Clause 24. Third party rights**

Except as stated elsewhere in these GTC, no person who is not a party them will have any right to enforce it pursuant to the Contracts (Rights of Third Parties) Act 1999.