

GENERAL TERMS AND CONDITIONS FOR SALE OF GOODS

These General Terms and Conditions shall apply to all Quotations, Purchase Orders and Contracts entered into by the Company and the Buyer.

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

‘Buyer’ means any person, firm, company, partnership, competent authority or other business entity who agrees to purchase Goods from the Company under the Contract.

‘Company’ means any entity of the Novomet Group.

‘Contract’ means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Terms and Conditions.

‘Goods’ mean any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

‘Purchase Order’ means a written confirmation of purchase of Goods under the Terms and Conditions of respective Quotation issued by the Company.

‘Price’ means the charge made by the Company for the provision of sale of the Goods as further defined in the Contract.

‘Quotation’ means the Company’s Quotation for the provision of sale of the Goods, incorporating these Terms and Conditions.

‘Terms and Conditions’ means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause 2.3.

‘Writing’ means any form of written communication including transmission by facsimile and electronic mail (the “Email”).

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 All business conducted by the Company with the Buyer, including any Contracts, Quotations or pre-contractual negotiations, shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions unless otherwise agreed in Writing.

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer’s Purchase Order, confirmation of Purchase Order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 No variation or addition to these Terms and Conditions shall be binding unless agreed in Writing by the Company. Any and all statements, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless incorporated into the Contract in Writing signed by the Company.

2.4 Each Purchase Order or acceptance of a Quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these Terms and Conditions.

2.5 No Purchase Order placed by the Buyer shall be deemed to be accepted by the Company until acknowledgement of Purchase Order is issued by the Company in Writing or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its Purchase Order and any applicable specification to it are complete and accurate.

2.7 Any Quotation is given on the basis that no Contract shall come into existence until the Company confirms Purchase Order in Writing to the Buyer.

2.8 The Company shall sell Goods and the Buyer shall pay the specified Price only in accordance with the Company's confirmation as stated in clause 2.7 above.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's Quotation or acknowledgement of Purchase Order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed in Writing by the Company, deliveries shall be made either:

(i) At the time specified on the Purchase Order, unless the Company specifies a different time,

(ii) During the Company's customary working hours, or

(iii) At such time as may be requested by the Buyer and agreed to in Writing by the Company; provided, however, that the Buyer has provided the Company with reasonable advance notice of the day and time on which such delivery is requested, together with all necessary information.

The Buyer shall be responsible for delivering to the Company all necessary shipping instructions, and until such instructions are received, the Company shall retain the Goods in storage.

4.2 The Buyer shall accept the Goods within 10 days of the Company giving it notice that the Goods are ready for delivery.

4.3 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 shall be within a reasonable time.

4.4 The Company shall not be liable for any direct, indirect or consequential loss (all three of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5 If for any reason the Buyer fails to accept delivery of any of the 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, licenses or authorizations:

a) Risk in the Goods shall pass to the Buyer (including the risk for the loss or damage caused by the Company's negligence);

b) The Goods shall be deemed to have been delivered; and

c) The Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer shall provide at the point of delivery and at its expense adequate and appropriate equipment and manual labour for loading or unloading the Goods.

4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.9 The Company, upon the Buyer's request and with the Company's written agreement, shall arrange for export shipment of the Goods on behalf of the Buyer. The Buyer shall pay the Company for all fees and expenses including, but not limited to, those covering preparation of consular documents, freight storage and shipping insurance coverage (including war risk). If required, the Company shall also apply for an export license. Without prejudice to any other condition or term of the Contract, the Company shall have no liability to the Buyer whatsoever in the event of late delivery or damage to the Goods during shipment.

4.10. Unless otherwise is stated in Purchase Order, within 20 (twenty) calendar days from the moment of Goods delivery to the Buyer, the latter shall return to the Company the following documents by express mail:

-Copy of waybill (bill of lading) with a Buyer's or Consignee's record of Goods receipt;

-Original of bill of quantities signed by the Buyer;

-Original of act of Goods acceptance signed by the Buyer.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods, as recorded by the Company upon dispatch from the Company's place of business, shall be conclusive evidence of the quantity received by the Buyer on delivery, unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence), unless the Buyer gives notice in Writing to the Company of the non-delivery 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 OF LOSS AND TITLE

6.1 Terms of delivery of Goods under Incoterms 2010 shall be specified by the Company and the Buyer in Writing in each case individually. Risk for loss or damage of Goods shall pass to the Buyer pursuant to the applicable terms of delivery under Incoterms 2010.

6.2. The title to Goods shall pass to the Buyer upon receipt of payment in cleared funds by the Company of amounts due in respect of the Contract.

7. PRICE

7.1 Unless otherwise agreed by the Company in Writing, the Price for the Goods shall be the Price set out in the Quotation or Appendix to the Contract agreed by the parties in Writing. Any Quotation is valid for period of 30 days only from its date, provided that the Company has not previously withdrawn it. The Company has the right to change Price in the case of change in prices for components by third parties.

7.2 The Price for the Goods shall be exclusive any travel, accommodation, subsistence or other out-of-pocket expenses of the Company's employees, servants or agents (which, where applicable, the Buyer shall pay to the Company at cost) and shall exclude of all costs or/and charges in relation to packaging, loading, unloading, carriage and insurance or forwarding fees, taxes, or duties of any kind or other similar charges applicable to the Goods (including the costs referred to in clause 4.9), all of which the Buyer shall pay in addition when it is due to pay for the Goods.

7.3 The Company reserves the right to amend any typographical, clerical or other error or omission on any documentation containing pricing information issued by or on behalf of the Company and the Company shall have no liability to the Buyer for any such errors or omissions.

8. INVOICING AND PAYMENT

8.1 Unless otherwise expressly stated in Purchase Order acknowledged by the Company in Writing the Price shall be paid by the Buyer in the following order:

- 75 % (seventy five percent) of the Price shall be paid by the Buyer in advance (hereinafter referred to as “**Advance**”) within 15 (fifteen) calendar days from the acknowledgement of Purchase Order by the Company.

- The residual payment of 25 % (twenty five percent) of the Price shall be carried out by the Buyer within 30 (thirty) calendar days from the moment of issuance of invoice for the delivered or deemed to be delivered Goods.

8.2 Time of payment shall be of the essence.

8.3 If the Buyer cancels the Purchase Order within 30 (thirty) days from the Purchase Order date, the Buyer shall pay the Company liquidated damages in the amount of 30 % (thirty percent) of the Purchase Order Price.

8.4 If the Buyer cancels the Purchase Order starting from the 31st day from the Purchase Order date and on, the Buyer shall pay the Company liquidated damages in the amount of 80 % (eighty percent) of the Purchase Order Price.

8.5. The above liquidated damages represent the true value of the Company losses and shall not be disputed by the Buyer. The Company may withhold these liquidated damages from any Advances or other sums paid by the Buyer. All bank charges and expenses shall be borne by the Buyer.

8.6 All payments payable to the Company under the Purchase Order shall become due immediately on its termination despite any other provision.

8.7 The Buyer shall make all payments due under the Purchase Order in full without any deduction: whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Buyer has a valid court Purchase Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.8 If the Buyer fails to pay the Company any sum due pursuant to the Purchase Order, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% (five percent) accruing on a daily basis until payment is made, whether before or after any judgment.

9. QUALITY AND WARRANTY

9.1 The Company warrants that (subject to the other provisions of these Terms and Conditions) upon delivery, the Goods shall be free from defects in material or workmanship. The Company’s obligation under this warranty shall be limited to replacing or repairing the parts or, at the Company’s option, the Goods which prove defective in material or workmanship within twelve (12) months from the date of first installation or eighteen (18) months from the date of shipment from the Company, whichever date occurs first, provided that the Buyer gives the Company prompt notice in Writing of any defect or failure and satisfactory proof thereof.

9.2 The Company shall not be liable for a breach of the warranty as per clause 9.1 unless the Company is given a reasonable opportunity after receiving the Written notice of examining such defective Goods and the Buyer (if asked to do so by the Company) returns such defective Goods to the Company’s place of business (at the Buyers cost) for the examination to take place there. Examining of Goods and allocation of fault shall be done in accordance with the Guarantee Failure Matrix and Dismantle, inspection and failure analysis (DIFA) under the Company’ regulation in force on the date of the failure, available at the Company’s website.

9.3 The Company also shall not be liable for a breach of the warranty as per clause 9.1 if:

- a) The Buyer makes any further use of such Goods after giving such notice; or
- b) The defect arises because the Buyer failed to follow the Company’s verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- c) The Buyer alters or repairs such Goods without the written consent of the Company, or

d) in other cases, as stated in the Guarantee Failure Matrix, DIFA, available at the Company's website.

9.4 Subject to the provisions of this clause 9, within its warranty obligations the Company shall deliver the replaced or repaired Goods or part of such Goods at the Company's expense, to the delivery point provided for in the original Purchase Order and shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods. Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the twelve (12) or eighteen (18) month period referred to in condition 9.1.

9.5 The warranty period shall not be extended for repaired or replaced parts or products or re-performed services. Such parts or products or services shall remain under warranty only for the unexpired portion of the warranty period. Company's sole liability shall be at its option to repair or replace parts or products or re-perform services under this condition. Company may in its sole discretion credit Buyer's account for a portion of such parts or products and/or services determined by the Company to be defective.

10. LIMITATION OF LIABILITY

10.1 Subject to clauses 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

- a) any breach of the Contract;
- b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- c) 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 general law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Terms and Conditions excludes or limits the liability of the Company for:

- a) death or personal injury caused by the Company's negligence/willful misconduct; or
- b) any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- c) fraud or fraudulent misrepresentation.

10.4 Subject to clauses 10.2 and 10.3:

- a) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
- b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior consent in Writing of the Company.

12. CHANGE OF DESIGN

The Company expressly reserves the right to change or modify the design and construction of any of its Goods without obligation to furnish or install such changes or modifications on Goods previously or subsequently sold.

13. PATENTS

13.1. The Company warrants that the use or sale of the Goods hereunder will not infringe patents of others by reason of the use or sale of such Goods per se, and hereby agrees to hold the Buyer harmless against judgment for damages for infringement of any such patent, provided that the Buyer shall promptly notify the Company in Writing upon receipt of any claim for infringement, or upon the filing of any such suit for infringement, whichever first occurs, and shall afford the Company full opportunity, at the Company's option and expense, to answer such claim or threat of suit, assume the control of the defence of such suit, and settle or compromise same in any way the Company sees fit. The Company does not warrant that such Goods:

(a) will not infringe any such patent when not of the Company's manufacture, or specially made, in whole or in part, to the Buyer's design specifications; or

(b) if used or sold in combination with other materials or apparatus or used in the practice of processes, will not, as a result of such combination or use, infringe any such patent, and the Company shall not be liable and does not indemnify Buyer for damages or losses of any nature whatsoever resulting from actual or alleged patent infringement arising pursuant to (a) and (b) above.

This clause states the entire responsibility of the Company concerning patent infringement.

13.2. Except as specifically stated in the Purchase Order, nothing herein shall be construed as granting to the Buyer any rights under any patents, trademarks, copyrights, trade secret or other intellectual property (the "Intellectual Property") and to the Confidential Information disclosed by the Company.

13.4. This Clause 13 shall survive termination or expiration of the Contract, however arising.

14. FORCE MAJEURE

14.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company (hereinafter the "Force Majeure Event") including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14.2 If the Force Majeure Event continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give a Written notice to the Company to terminate the Contract.

15. CONFIDENTIAL INFORMATION

15.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives, prices which have been disclosed to the Buyer by the Company, its employees, agents or subcontractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.

15.2 The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors who need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

15.3 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Buyer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorization.

15.4 This Clause 15 shall survive termination or expiration of the Contract, however arising.

16. TERMINATION

16.1 The Company shall be entitled to terminate the Contract forthwith by notice in Writing to the Buyer if:

- (a) the Buyer commits an irremediable breach of the Contract, persistently repeats a remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
- (b) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than for the purposes of solvent amalgamation or restructuring); or
- (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (d) the Buyer ceases or threatens to cease to carry on business; or
- (e) any applicable UN sanctions are imposed on the country where the Goods are to be supplied or have been supplied.

16.2 In the event of termination by the Company pursuant to clause 16.1 above then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries due under it without any liability to the Buyer and, if the Goods are delivered but not paid for, the Price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest at the per annum rate of 5% from the time of such cancellation or suspension until the Company receives payment.

16.3 The Buyer shall be entitled to terminate the Contract for convenience by giving a notice in Writing of termination to the Company. In the event of termination by the Buyer pursuant to this clause, the Company shall invoice the Buyer and the Buyer shall immediately pay to the Company the liquidated damages stated in the clause 8 together with any additional costs and/or charges payable by the Buyer.

17. GOVERNING LAW AND JURISDICTION

17.1 If the Dispute is not resolved amicably by negotiation within thirty (30) days after a party hereto has made a written request then, the settlement of the Dispute, shall be subject to the exclusive jurisdiction of the court of Dubai International Arbitration Centre (“DIAC”) under the DIAC Arbitration Rules (“the Rules”), by one arbitrator appointed in compliance with the Rules, with seat of proceedings and award – Dubai, with language of proceedings and award - English.

17.4 The Contract shall be governed by and construed in accordance with the material laws of England and Wales.

18. GENERAL

18.1 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.

18.2 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.

18.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19. COMMUNICATIONS

19.1 Any notice required to be given by either party under the Contract must be in Writing, signed by the authorized representative of a party, and delivered or sent by courier, or pre-paid first class recorded delivery letter or facsimile or by electronic mail, to the official address of the receiving party.

19.2 Such notices shall be deemed to have been served in the case of a notice delivered by hand - when delivered, in the case of a letter - forty-eight (48) hours after the time of posting, in the case of facsimile when dispatched, in the case of e-mail - on the next day after being sent.