

CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 In these Conditions:

"Company" means Nippon Gohsei UK Limited;

"Contract" means the contract between the Company and the Customer for the supply of Products and/or Services into which these Conditions are incorporated;

"Customer" means the person, firm or company with whom the Contract is made;

"Products" means any products samples or other goods supplied to the Customer by the Company;

"Services" means services of any description supplied to the Customer by the Company whether with or without Products;

"writing" and "written" shall include facsimile transmission and e-mail.

2. FORMATION OF CONTRACT

2.1 The Company shall supply the Products and Services in accordance with any quotation of the Company which is accepted by the Customer or any order of the Customer which is accepted by the Company subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is placed or purported to be placed by the Customer.

2.2 Unless previously withdrawn any quotation of the Company is open for acceptance within 28 days or such other period as may be specified in the quotation and after that period of time the Company reserves the right to reject the order.

2.3 Any terms or conditions contained in the Customer's documentation which are inconsistent with these Conditions shall not form part of the Contract unless accepted by the Company in writing.

2.4 No variation to these Conditions shall be effective unless made in writing and signed by an authorised officer or employee of the Company. At the request of

the Customer the Company will verify in writing whether any named individual has the requisite authority.

- 2.5 All specifications, descriptions and illustrations contained in the Company's catalogues, brochures, leaflets or other advertising, publicity or information materials are intended to give a general indication of the Products and Services concerned and none of them shall form part of or be incorporated into the Contract.
- 2.6 If Products are sold to the Customer in accordance with specifications or other technical data supplied or approved by the Customer, the Customer shall be solely responsible for ensuring that the Products are fit for their purpose and the Customer shall indemnify the Company against any claim made against the Company to the extent that the claim arises as a result of or otherwise in connection with the inadequacy of such specifications or other data.
- 2.7 All specifications and other technical data and descriptions provided by the Company in connection with the Products will have been provided by the Company's suppliers to the Company and not necessarily independently tested or otherwise verified by the Company. If the Customer specifically requests in writing such testing or verification by the Company the Company will provide a quotation for the cost of carrying out this Service. If no such request is made it will be the Customer's responsibility to carry out such testing and verification before using or reselling the Products.
- 2.8 The Customer will not without the prior written consent of the Company:
- 2.8.1 give away, loan, exhibit or sell any specifications, technical descriptions, drawings, documents or other information or extracts therefrom or copies thereof supplied by the Company; or
- 2.8.2 use such specifications, technical descriptions, drawings, documents or other information other than in connection with the use or sale of the Products by the Customer.
- 2.9 The Company reserves the right to correct any clerical or typographical errors or omissions to its quotations, acknowledgements of order or other documents at any time.

3. PRICES AND PAYMENT

- 3.1 All prices quoted are exclusive of VAT, and the Company reserves the right to make additional charges to cover the cost of packaging, insurance, carriage and other incidental expenses.
- 3.2 The Company shall be entitled to increase the Contract price in the event of any changes in the cost of materials since the date of the quotation or acknowledgement of order.
- 3.3 Unless otherwise stated in the quotation or acknowledgement of order the price for each delivery of Products or the provision of Services shall be paid in full by the Customer within 20 days of the end of the month during which the Company's invoice is dated. Invoices will generally be dispatched immediately upon the Services having been provided or upon the Products being ready for dispatch or collection. In the event of the Products being delivered by instalments a separate invoice in respect of each instalment will generally be dispatched immediately upon the relevant instalment of the Products being ready for dispatch or collection.
- 3.4 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
- 3.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 3.6 The Company shall be entitled to charge interest (compounded with monthly rests) at the rate of four per cent above Barclays Bank PLC Base Lending Rate for the time being in force on any sums which remain unpaid after the same shall become due. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4. CANCELLATION AND SUSPENSION OF THE CONTRACT

- 4.1 This Condition applies if:

- 4.1.1 the Customer is in breach of any of its obligations under the Contract or any other contract between the Customer and the Company; or
 - 4.1.2 unforeseen events occur which materially affect the commercial effect of the Contract; or
 - 4.1.3 the Customer becomes bankrupt, goes into liquidation, has a receiver, administrative receiver or administrator appointed over any of its property or assets or is otherwise insolvent; or
 - 4.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 4.1.5 the Company reasonably apprehends that any of the events mentioned in paragraphs 4.1.3 or 4.1.4 is about to occur in relation to the Customer and notifies the Customer accordingly.
- 4.2 If this Condition applies 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 under the Contract without any liability to the Company and if Products have been delivered to the Customer but not paid for or any Services have been carried out, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

5. TITLE

- 5.1 (a) Notwithstanding delivery and the passing of risk in the Products or any other provision of these Conditions:
 - 5.1.1 the property in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Products;
 - 5.1.2 further to sub-paragraph 5.1.1 the property in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of all sums due to the Company on any account of the Customer.
- 5.2 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Company's fiduciary agent and bailee

and shall keep the Products separate from those of the Customer and third parties and properly stored protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to use or sell the Products in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Products whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored protected insured and identified as the Company's property.

- 5.3 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold in the manner provided by paragraph 5.2) the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 5.4 Where the Company is unable to determine whether any Products are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 5.5 On cancellation of the Contract, howsoever caused, the Company's (but not the Customer's) right contained in this Condition 5 shall remain in effect.

6. DELIVERY

- 6.1 Delivery of the Products shall be made by the Customer collecting the Products from the Company's premises on the agreed collection date once the Company has notified the Customer that the Products or Goods are ready for collection or if some other place for delivery is agreed by the Company, by the Company delivering the Products to that place.
- 6.2 Any dates quoted for delivery of the Products or completion of the Services are approximate and are given for information only and shall under no circumstances be essential terms. A delay in delivery of the Products or completion of the Services including dates later than the date or dates provided in the Contract

shall not constitute a breach of contract and shall not entitle the Customer to avoid the Contract or to any other remedy unless the Company has guaranteed the date in a written warranty which expressly modifies the provisions of this Condition.

- 6.3 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Products or the Services if the delay or failure was due to any cause beyond the Company's reasonable control.
- 6.4 If the Customer fails to take delivery of the Products or fails to give the Company adequate instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance but without imposing any obligation on the Company to insure) of storage.
- 6.5 The weight or quantity of the Products printed upon the Company's advice/despatch note shall be final unless the Customer shall have given written notice of any discrepancy in weight or quantity within seven days after receipt of the Products and has thereafter given the Company a reasonable opportunity of witnessing a verification of the weight or quantity of the Products before they have been used processed or sold. The Customer acknowledges and agrees that it will accept a margin of three percent under such weight or quantity and shall pay for the same without there being an adjustment to price.
- 6.6 The Company may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 6.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

7. RISK

- 7.1 Risk of damage to or loss of the Products shall pass from the Company to the Customer at whichever of the following times is relevant:

- 7.1.1 if the Customer or a third party on behalf of the Customer collects the Products from the Company's premises on the agreed collection date at the time of completion of the loading of the Products onto the vehicle collecting them;
 - 7.1.2 if the Customer or a third party on behalf of the Customer fails to collect the Products from the Company's premises on the agreed collection date at the close of business on such date;
 - 7.1.3 if the Company or a third party on behalf of the Company transports the Products to the Customer's premises or to any other agreed location at the time of completion of unloading of the Products at such premises or location or if the Customer, its agents or representatives wrongfully fail to take delivery of the Products at the time when the Company or third party has tendered delivery of them;
 - 7.1.4 in any other case at the time of completion of the loading of the Products at the Company's premises.
- 7.2 Where the Contract provides for delivery of the Products by the Company or a third party on behalf of the Company the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer:
- 7.2.1 gives written notice to the Company within seven days after the date of the Company's advice note or other notification of the dispatch of the Products in the case of non-delivery or within three working days of the date of delivery of the Goods or Products in any other case, the delivery document should also be endorsed with details of any damage or deficiency at the time of receipt; and
 - 7.2.2 where the Products are transported by a third party complies in all respects with the third party's conditions of carriage for notifying claims for loss or damage in transit.

8. ASSIGNMENT

- 8.1 The rights and obligations of the Customer under the Contract are personal to the Customer and may not be assigned or transferred or held on trust for a third party by the Customer in whole or in part without the prior written consent of the

Company.

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

9. LIABILITY

- 9.1 The Customer expressly holds itself out as making the Contract in the course of a business.

- 9.2 Except as expressly provided in these Conditions all warranties statements terms and conditions or undertakings which may be implied by statute common law custom of the trade or otherwise are hereby excluded to the fullest extent permitted by law.

- 9.3 The Company does not exclude liability for:

9.3.1 death or personal injury resulting from its negligence or that of its employees or for fraudulent misrepresentation;

9.3.2 direct physical damage to or physical loss of the property of the Customer (excluding for the avoidance of doubt the Products themselves) resulting from the Company's or its employees' negligent acts or omissions and which arise out of the performance of its obligations under the Contract if and to the extent that such damage or loss is covered by any policy of insurance taken out by the Company and operative at the time of the damage or loss up to a maximum sum of 80% of the Company's insurance cover as may be in place from time to time in respect of any event or series of events. The Company undertakes to maintain or procure the maintenance of an insurance policy or policies which provide cover against the Company's legal liability to third parties for direct physical damage to or physical loss of material property of third parties caused by products supplied in the course of the Company's business on and subject to such terms, conditions, exceptions and deductibles as the Company acting in good faith deems to be appropriate in the circumstances. If at the time any claim arises under the Company's insurance policy or policies the Customer is or would but for the existence of the Company's insurance policy or policies be entitled to an indemnity under any other policy or

policies neither the Company nor its insurers shall be liable except (and subject to the terms and conditions of the policy or policies) in respect of any excess beyond the amount which would have been payable under such other policy or policies had the Company's insurance policy or policies not been effected;

9.3.3 under section 2(3) Consumer Protection Act 1997; or

9.3.4 for fraud or fraudulent misrepresentation.

9.4 Subject to paragraph 9.3 the Company will not be liable to the Customer:

9.4.1 for any direct loss damage or injury; and/or

9.4.2 for any indirect consequential or special loss damage or injury (including but without limitation financial loss of profits loss of business or contracts loss of operating time or loss of use) whether foreseeable or not to the Customer or to the Customer's property howsoever whensoever or wheresoever arising whether by reason of any representation (other than fraudulent) or any implied warranty condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the Company its employees or otherwise) or otherwise in respect of or in connection with the supply of the Products and/or the Services or the use or resale of the Products and/or

9.4.3 without prejudice to the provisions of sub-paragraphs 9.4.1 and 9.4.2 for the costs of recalling the Products or any defective goods produced using the Products.

9.5 The Company is concerned to ensure that the price of providing the Products and Services remains competitive and taking into account:

9.5.1 the fact that the Customer is in a better position than the Company to know or ascertain the amount of any loss which will arise out of any defect in the Products or the Services;

9.5.2 the fact that the extent of the damage that might be caused or alleged to be caused to the Customer is disproportionate to the amount that

can reasonably be charged (and is charged) by the Company to the Customer;

9.5.3 the terms and conditions upon which the Company's own suppliers are prepared to supply goods and services to the Company;

this must necessarily involve the incorporation of the terms and conditions set out in this Condition 9.

10. PROPER LAW AND JURISDICTION

The Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England and shall be subject to the non-exclusive jurisdiction of the English Courts.

11. INDEMNITY AND TRADE MARKS

11.1 The Customer shall indemnify and keep the Company indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract tort or otherwise and including, but not limited to, liability arising from the negligence of the Company or from the negligence of any person for whom the Company is vicariously liable) in respect of or in connection with any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the supply of the Products and/or Services and/or the use or resale of the Products

except to the extent that the Company has expressly assumed liability under these Conditions for the loss, injury or damage concerned.

11.2 If the Products are to be supplied or any Services are to be carried out by the Company in accordance with a formula specification or data submitted by the Customer, the Customer shall indemnify the Company against all losses damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's formula specification or data.

11.3 The Customer shall not alter, remove, deface or tamper with any of the Company's registered or unregistered trademarks or trade names or use any of the Company's registered or unregistered trademarks or trade names other than on or in relation to the Products.

11.4 The Company shall retain all rights in its intellectual property and trade marks at all times. Any intellectual property generated as a result of these Conditions shall vest in the Company absolutely.

12. WAIVER

The rights of the Company or the Customer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

13. SEVERANCE

In the event of any of the words provisions terms and/or Conditions herein contained being unenforceable or void for any reason whatsoever each word provision term or Condition (including any paragraph or sub-paragraph herein contained) shall be deemed to be severable from the remaining words provisions terms or Conditions and such remaining words provisions terms or Conditions shall remain in full force and effect.

14. HEADINGS

The headings to these Conditions are for convenience only and shall not affect their construction.

15. THIRD PARTY RIGHTS

The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16. FORCE MAJEURE

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 including, without limitation, maintenance problems, 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.

17. COMMUNICATIONS

17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

17.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

17.1.2 (in the case of communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.

17.2 Communications shall be deemed to have been received:

17.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the date of posting); or

17.2.2 if delivered by hand, on the day of delivery; or

17.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

17.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.