

NORBAIN SD LIMITED (“the Company”)

TERMS AND CONDITIONS OF QUOTATION AND SALE

1. **INTERPRETATION**
- 1.1 In these Terms (“Terms”):
 - “AO” means the acknowledgement of order form (if any) issued by the Company to the Purchaser;
 - “Applicable Guarantee Period” means in relation to any Goods the guarantee period applicable to those Goods subject to clauses 7.3 and 7.4 as notified in the relevant quotation issued by the Company and confirmed in any AO but if not so notified shall be 12 months from delivery;
 - “Contract” means the agreement between the Purchaser and the Company for the supply of the Goods;
 - “Goods” means the goods and/or services (as appropriate) listed in the AO or which the Company otherwise agrees to supply to the Purchaser (including any instalments or parts of the goods);
 - “liability in relation to” means “liabilities, losses, damages, costs (including without limitation legal costs on a full indemnity basis and value added tax and other applicable taxation), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with”;
 - “Purchaser” means the purchaser of the Goods as stated in any applicable AO;
 - “Price”, subject to these Terms, means the price for the Goods as quoted and confirmed in any AO.
- 1.2 Any Contract provision invalid or unenforceable for any purpose shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the Contract.
- 1.3 A payment shall be deemed made when credited to the payee’s bank account and is cleared funds.
- 1.4 Save as otherwise agreed in writing by the Company the Contract shall comprise solely these Terms, any AO and any relevant quotation issued by the Company to the Purchaser. Variations of the Contract shall be effective only if agreed in writing and will then prevail over these Terms.
- 1.5 English is the authentic text of the Contract and all notices or other communications under or relating to it shall be in writing in English. Any translation will be for guidance only.
2. **QUOTATIONS, SPECIFICATION, VARIATION AND CANCELLATION**
- 2.1 A quotation is not an offer and may be withdrawn or modified: save as otherwise agreed in writing by the Company no contract or commitment shall exist until the Company sends its AO to the Purchaser or until the Company commences work on or appropriates Goods to the Contract. Unless otherwise stated therein a quotation will lapse 30 days after its date of issue.
- 2.2 Orders are accepted subject to the credit status of the Purchaser being satisfactory to the Company which may cancel the Contract at any time if the Purchaser’s credit references are not satisfactory to the Company.
- 2.3 The Company may alter the specification of any Goods if this does not materially affect their performance or utility.
- 2.4 If any variation in the Goods or the Contract is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Purchaser shall pay such additional amount as is fair and reasonable and the Company shall have reasonable additional time to perform the Contract.
- 2.5 The Purchaser may only vary or cancel the Contract with the Company’s written consent and upon such terms as the Company may specify.
3. **PRICES AND PAYMENT**
- 3.1 Subject to any AO, the Price shall exclude value added tax and any other applicable taxes and duties, packaging, carriage, insurance, documentation and pre billed charges. Unless costed for in any AO, the Company may make reasonable additional charges for complying with any special requirements of the Purchaser and may increase the Price at any time before delivery to reflect any increase in the cost of the Goods to the Company which is due to any factor outside its control, including without limitation foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in labour, material or costs of supply. Payment, subject to any AO, shall be made at the Company’s office in England, clear of any banking transaction charges and without deduction, set off or counterclaim. Payment shall be made in accordance with the payment terms and in the currency stated in any AO, or if none are stated, within thirty days following the end of the month in which delivery of the Goods is made or the Services provided.
- 3.2 Time of payment is of the essence of every Contract. Without limiting the Company’s remedies if payment is overdue, the Purchaser shall indemnify the Company against any legal fees and other costs of collection and (as well after as before judgment and as an independent obligation) shall pay to it a sum equal to 5% above the base rate from time to time of Midland Bank PLC calculated from the date payment fell due until the date of actual payment (or such lesser amount as is the maximum rate permissible by law) and the Company may cancel the Contract and any other contracts and suspend deliveries to the Purchaser.
- 3.3 Any payment which, by reason of delay caused by the Purchaser, would have fallen due earlier than it falls due under these Conditions, shall be deemed to fall due when, but for the Purchaser’s delay, it might reasonably be expected to have fallen due.
- 3.4 The Purchaser shall indemnify the Company against any liability in relation to any breach by the Purchaser of its obligations under the Contract.
4. **RISK AND PROPERTY**
- 4.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the earlier of the time when the Company notifies the Purchaser that the Goods are available for collection or upon the Company first tendering the Goods for delivery at the Purchaser’s address stated in the AO
- 4.2 All other material or goods or provided by or on behalf of the Purchaser in the possession of the Company or otherwise shall be held, worked on and carried at the Purchaser’s risk in every respect. The Purchaser shall insure accordingly
- 4.3 Notwithstanding delivery and the passing of risk in the Goods and any other provision of the Contract, title to and ownership of the Goods shall not pass to the Purchaser until the Company has received the price in full in cash or cleared funds
- 4.4 If at the date that payment in full for the Goods is made any other monies then due for payment by the Purchaser to the Company on any account have not been paid, title to the Goods shall not in any event pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the monies overdue
- 4.5 Until such time as property in the Goods passes to the Purchaser, the Purchaser shall:
 - (a) hold the Goods as the Company’s fiduciary agent and bailee;
 - (b) keep the Goods separate from those belonging to the Purchaser and third parties and properly stored, insured and identified as the Company’s property; and
 - (c) the Company shall have a lien over any of the Purchaser’s assets in its possession or control.
5. **DELIVERY**
- 5.1 Save as otherwise agreed in writing by the Company delivery shall be made by the Company making the goods available for collection from its premises and so informing the Purchaser or, if some other place for delivery is stated in any AO, by the Company or its nominated carrier tendering the Goods for delivery to the stated place. If the Purchaser fails to take delivery or to give adequate delivery instructions, the Company may (without prejudice to its other rights) store or dispose of the Goods, in which case the Purchaser shall pay to the Company upon request the amount of any reasonable storage or disposal charges. If the Purchaser does not take delivery or give adequate delivery instructions within 14 days of the Company’s notification that the Goods are ready for despatch the Company may without prejudice to any other rights terminate the Contract in accordance with clause 10. Whilst the Company will seek to meet the stated delivery time, it is approximate and the Company shall not incur liability in relation to late delivery. If no time for delivery is agreed the Purchaser shall accept the Goods when ready for delivery.
- 5.2 The Company may deliver in instalments constituting separate contracts and delay in delivery of any instalment will not entitle the Purchaser to terminate the Contract, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery. Where Goods are delivered by instalments the Company may issue separate invoices.
- 5.3 The Purchaser shall clear the Goods for export from the UK and import into the country of delivery unless any AO states otherwise.
6. **INSPECTION AND ACCEPTANCE**
- Unless the Company will or has issued an acceptance certificate the Purchaser shall inspect and test the Goods and within 7 days of their delivery (and in respect of services, within 7 days of the Company tendering their completion) shall give written notice to the Company of any damage or claim. In the absence of such notice, the Goods shall be deemed to comply with the Contract and the Purchaser shall accept them. The Goods are sold as a batch and without prejudice to the Purchaser’s right to reject all the Goods the Purchaser may not reject some only of the Goods.
7. **GUARANTEE**
- 7.1 If within the Applicable Guarantee Period any Goods prove defective by reason of faulty design, workmanship, materials or non-conformity with their specification the Company will adjust, repair or replace them as it sees fit free of charge provided that:
 - (a) the Purchaser gives written notice of the defect (with reasonable relevant information) to the Company as soon as reasonably practicable and within the Applicable Guarantee Period;
 - (b) the Goods have been used solely for their proper purpose and in accordance with the operating instructions;
 - (c) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by the Purchaser or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair wear and tear;
 - (d) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Purchaser;
 - (e) no part of the Goods have been replaced with a part not supplied or approved by the Company;
 - (f) payment in full of all sums due in respect of the Goods has been made in accordance with clause 3.1;
 - (g) the Purchaser shall be liable for any costs incurred by the Company in responding to claims caused by operator error or incorrect application or other default of the Purchaser or other third party;
 - (h) the Purchaser shall accord the Company sufficient access to the Goods to enable its staff to inspect and adjust, repair, remove or replace the Goods;
 - (i) the costs of all consumables shall be paid by the Purchaser;
 - (j) the obligations of the Company are enforceable only by the Purchaser and shall not be assigned to or enforceable by any other person.
- 7.2 The Company may repair the Goods in situ or have them returned to its premises or to the original manufacturer: the risk in the Goods shall at all times remain the Purchaser’s and they shall be packaged as the Company instructs and despatched at the Purchaser’s expense and in accordance with the Company’s returns authorisation procedure from time to time notified to the Purchaser. Costs of carriage on the Goods’ return to the Purchaser shall be borne by the Company where the defect is covered by this guarantee.
- 7.3 If the Goods incorporate goods or services provided by a third party, the obligations of the Company in respect of such goods or services shall not exceed the warranty obligations of such third party to the Company nor exceed any time limit upon those obligations.
- 7.4 The Applicable Guarantee Period for any Goods repaired or replaced or any corrective services pursuant to the initial guarantee shall be the remaining period, if any, of such initial guarantee period.
8. **EXCLUSION OF LIABILITY**
- 8.1 In an effort to keep the contract price as low as possible and as the Purchaser is better able than the Company to quantify loss which it may suffer from a breach of contract and to insure accordingly, the Purchaser agrees to the Company limiting its liability and therefore agrees that save as expressly agreed in writing or as mandatorily implied by law:
 - (a) the Company shall have no obligation in respect of the Goods except for its undertaking in clause 7 above (“the Guarantee”) and as expressly stated in the Contract;
 - (b) the Guarantee is the only guarantee, warranty or undertaking (express or implied) upon which the Goods are sold or licensed by the Company and all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law;
 - (c) the Company shall not be liable to the Purchaser for any loss, injury or damage of any nature (whether direct, indirect, incidental, consequential or otherwise) arising out of or relating to the supply, manufacture, packing, delivery, storage, use or resale of the Goods or any default in respect of the foregoing, whether such loss results from negligence, breach of contract, warranty or statutory duty or otherwise and in particular but without limitation the Company shall not be liable for any loss which represents loss of profit, revenue, benefit, anticipated savings or goodwill, loss of use of any asset, loss of data, business interruption, management costs or third party liability.
- 8.2 In any event the Company’s liability shall be limited to refunding any monies paid in respect of such Goods.
- 8.3 The Purchaser shall not rely upon any representation concerning the Goods unless made by the Company in writing in the Contract save that nothing in the Contract shall exclude liability for fraudulent misrepresentation.
- 8.4 Save to the extent of any warranty stated or expressly confirmed in the AO (and so far as permitted by law), the Company shall have no liability in respect of any failure by the Goods to recognise date changes or otherwise be millennium compliant in any respect and the Purchaser shall satisfy itself in all such respects. Any liability of the Company under any warranty, indemnity or other obligation stated or confirmed in the AO is subject to all exclusions and limitations in these Conditions save this clause 8.3.
9. **REGULATORY COMPLIANCE, LICENCES AND PRE-DELIVERY TESTS**
- 9.1 The Goods will comply with mandatory United Kingdom (“UK”) regulations applicable to the manufacture and non-consumer sale of the Goods at the date of delivery but no other warranty or undertaking as to regulatory compliance in the UK or elsewhere is given or to be implied unless specifically given in writing signed by a director of the Company or stated in any AO. The Purchaser shall comply with applicable laws relating to the Goods, their use and disposal.
- 9.2 The Purchaser shall obtain in good time any applicable licences, permits and approvals relating to import and export and to the installation and/or operation of the Goods and will indemnify the Company against all liability in relation to Goods supplied without them. The Company shall not be responsible for any liability in relation to delay in obtaining or failure to obtain such licences, permits or approvals.
10. **TERMINATION OF CONTRACT**
- 10.1 The Company may terminate separately all or any of the Contract and every other contract with the Purchaser if:
 - (a) the Purchaser fails to make payments to the Company under any contract as they fall due or the Purchaser otherwise breaches any such contract and the breach or non-payment is not remedied within seven days of notice from the Company; or
 - (b) the Purchaser is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or the Company has reasonable grounds for believing it will fail to discharge its obligations under any contract or steps are taken to propose any composition, scheme or arrangement involving the Purchaser and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, the Purchaser or any of its property or enforce any security over the Purchaser’s property, or repossess any goods in its possession or wind up or dissolve the Purchaser, or sequestrate its estate or dissolve it or file a petition in bankruptcy or other relief from creditors; or
 - (c) control of the Purchaser passes from the present shareholders, owners or controllers to other persons whom the Company in its absolute discretion regards as prejudicial to its reasonable interests; or
 - (d) in the reasonable opinion of the Company the Purchaser has ceased or threatened to cease to trade or its financial condition has materially deteriorated since the date of the Contract and the Company considers due performance by the Purchaser of its obligations is in jeopardy; or
 - (e) where the Purchaser is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or
 - (f) anything corresponding to any of the above occurs outside England and Wales.
- 10.2 If the Contract is terminated, the Company (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:
 - (a) declare immediately payable (and so interest-bearing under clause 3.2) any sums owed by the Purchaser, proceed against the Purchaser for the same and/or damages, and appropriate any payment by the Purchaser as the Company thinks fit (notwithstanding any purported appropriation by the Purchaser);
 - (b) suspend further performance of any Contract and/or any credit granted to the Purchaser on any account (and the time for delivery by the Company shall be extended by the period of such suspension);
 - (c) take possession of and deal with (including the sale of) any materials and other assets of the Purchaser held by or on behalf of the Company and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon.
- 10.3 Where Goods are described as “specials” in the quotation or AO a cancellation fee of 100% of the Price shall apply at any time.
11. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
- 11.1 The Purchaser shall acquire no intellectual property rights in the Goods but if the AO so requires the Company shall grant or procure the grant of a licence to use relevant software with the Goods to or at the direction of the Purchaser in accordance with the AO.
- 11.2 The Purchaser acknowledges that all specifications, designs, programs or other material including know-how, plans, drawings and price lists issued by or on behalf of the Company are confidential and agrees not to use them or any other confidential information of the Company for any purpose (other than the purpose for which the information was disclosed) nor reproduce it in any form nor disclose it to third parties. The Purchaser shall not seek to abstract from the Goods any confidential information regarding their design, construction or otherwise (and without limiting the foregoing shall not decompile any software comprised in the Goods) and all rights subsisting in such material are reserved.
- 11.3 The Purchaser shall obtain similar undertakings as those set out in sub-clause 12.1 from its customers and indemnify the Company against any liability in relation to any failure to do so. The Purchaser shall upon request sign and/or require its customers to sign the Company’s form of non-exclusive licence to use programs necessary to operate the Goods; all obligations of the Company under any contract are conditional upon execution of such agreement and compliance with its terms.
12. **FORCE MAJEURE**
- The Company shall not be liable for any failure to perform its obligations hereunder by reason of any cause whatsoever beyond its control (including without limitation trade dispute; fire, flood or act of god; armed conflict; equipment or supply difficulties; any rule or action of any public authority; transportation delays; refusal or delay in granting any necessary licence or permit; or any repudiatory event by the Purchaser). In such circumstances it may terminate the Contract whereupon the Purchaser shall pay a sum equal to the costs to the Company of performing the Contract and the Company’s liability shall be limited to repayment of any sums paid in respect of undelivered Goods (or unperformed services) less such costs.
13. **USE OF GOODS AND SAFETY**
- 13.1 The Purchaser shall:
 - (a) procure that the Goods (including any goods the subject of services) are used only for the purposes and in the manner for which they were designed and supplied; that all persons likely to use or come into contact with the Goods receive appropriate training and copies of applicable literature supplied by the Company; that all third parties who use or may be affected by or rely upon the Goods are given full and clear warning of any hazards (both patent and latent) associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with. Any warning notices displayed on the Goods must not be removed or obscured; the Purchaser shall procure that any third party to whom the Goods are supplied agrees not to remove or obscure such warning notices and shall take such steps as are reasonable to enforce such agreement;
 - (b) promptly comply with any safety recommendation made to it in respect of the Goods (including recall of them) and shall procure compliance by all relevant persons and shall pay the Company’s reasonable charges for additional or replacement parts (including installation costs) supplied by the Company for this purpose;
 - (c) maintain and make available to the Company all records necessary to enable Goods to be traced to their ultimate buyer or user;
 - (d) indemnify the Company against any liability in relation to any breach of the Purchaser’s obligations under this clause 14.1.
14. **GENERAL**
- 14.1 The Purchaser shall indemnify the Company against all liability in relation to any specification, design, information or component which the Purchaser has supplied or arranged for the supply to the Company and warrants that the use of such specifications, designs, information or components will not infringe the rights of any third party.
- 14.2 No indulgence, forbearance, partial exercise of any right or remedy or previous waiver shall prejudice any rights or remedies. Remedies shall be cumulative and no choice of remedy shall preclude any other remedy.
- 14.3 The Purchaser shall not assign, mortgage, charge, sub-let or otherwise dispose of the Contract or any rights thereunder in whole or in part.
- 14.4 After termination (howsoever caused) or cancellation, clauses 3.2, 4, 8, 12, 14 and 15.1 shall continue in full effect.
- 14.5 All Contracts shall be governed and construed in accordance with English law and the Purchaser irrevocably submits to exclusive jurisdiction of the Courts of England without prejudice to which the Company may apply for any provisional or conservatory measures or interim relief in any court having jurisdiction in the Purchaser’s country or the country where the Goods are then located.