

# NOVARA TRADING AG

## TERMS AND CONDITIONS OF SALE

### 1.1 Definitions

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 14.3.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** all intellectual property rights of any description, whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Specification:** any specification for the Goods that is agreed in writing by the Customer and the Supplier.

**Supplier:** Novara Trading Ag, registered in Switzerland with company number ch-02.04.034.187-6.

### 1.2 Interpretation

(a) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(b) a reference to **writing** or **written** includes faxes and emails.

## 2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures or on its website (**Promotional Materials**) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. Unless otherwise agreed in writing by the Supplier, a quotation shall only be valid for a period of 28 days from its date of issue.

## 3. Goods

3.1 The Goods are described in the Supplier's documentation as modified by any applicable Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

## 4. Design of Goods

4.1 The Supplier and the Customer agree that all current and future Intellectual Property Rights in respect of the Goods vest and shall remain vested exclusively in the Supplier and accordingly the Customer is not allowed to reproduce or have reproduced the Goods or parts thereof, including but not limited to: software (including source code), drawings, printing plates, matrices and tools), in modified form or otherwise.

4.2 Without prejudice to the provisions of clause 4.1, where the Goods (or any part or parts of them) have been designed by the Supplier at the request of the Customer:

- (a) the Supplier shall retain ownership of all Intellectual Property Rights in the Goods and in the Supplier's designs for them ( and each and every part of them);
- (b) nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights in the Goods or the Supplier's designs for them and in particular the Customer shall have no right to use and/or reproduce the Supplier's designs or to allow or authorise any other person to do so;
- (c) the Customer warrants that Goods manufactured by the Supplier in accordance with the Customer's specifications do not infringe the Intellectual Property Rights or other rights of third parties; and,
- (d) if any claim (whether actual or threatened) is made against the Supplier that the manufacture or sale of Goods manufactured by the Supplier in accordance with the Customer's specifications infringes the Intellectual Property Rights or other rights of any third party, the Customer shall indemnify the Supplier against all damages or other compensation awarded against the Supplier in connection with the claim or paid or agreed to be paid by the Supplier in settlement of the claim and all legal or

other expenses incurred by the Supplier in or about the defence or settlement of the claim. The Supplier shall notify the

Customer forthwith after becoming aware of the claim, and take all action reasonably requested by the Customer to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Supplier being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in so doing.

4.3 Without prejudice to the Supplier's right to claim on any other basis, or to take advantage of any other remedies available to it, if the Customer breaches the provisions of clause 4.1 or the Supplier's Intellectual Property Rights in the Goods or in the Supplier's designs for them, the Customer shall pay to the Supplier on demand all costs and expenses incurred by the Supplier in or in relation to the design of the Goods concerned on a time and materials basis (including a reasonable amount in respect of management time).

## 5. Delivery

5.1 Where the Supplier agrees in writing to deliver the Goods:

- (a) the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier informs the Customer that the Goods are ready;
- (b) delivery is completed on the arrival of the Goods at the Delivery Location.
- (c) the Customer shall be responsible, at its own cost and risk, for unloading the Goods from the vehicle on which they are delivered to the Delivery Location by the Seller; and,
- (d) the Supplier will repair or replace, free of charge, Goods damaged in transit or shortages in delivery provided that:
  - (i) where there are visible signs of damage to or shortage in the Goods on delivery the Customer notifies the Supplier (and wherever applicable any carrier) of any such damage or shortage forthwith on delivery;
  - (ii) in any other case the Customer notifies the Supplier and any such carrier of any such damage to or shortage in the Goods as soon as possible and in any event within 3 days of delivery; and,
  - (iii) in each case the Customer gives to the Supplier and its carrier, servants and insurers all reasonable facilities for inspecting the Goods and making such enquiries as may be reasonable in the circumstances.

5.2 Unless the Supplier agrees in writing to deliver the Goods:

- (a) the Customer shall collect the Goods from the Supplier's premises as detailed in the Supplier's quotation or such other location as may be advised by the Supplier prior to delivery (**Ex Works Delivery Location**) within:
  - (i) 7 days of the Supplier informing the Customer that the Goods are ready; or,
  - (ii) 2 days of the date, after the Supplier has informed the Customer that the Goods are ready for collection, on which the Customer agreed to collect the Goods.whichever is the earlier; and,
- (b) delivery is completed on the completion of loading of the Goods at the Ex Works Delivery Location.

5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

5.4 Reasonable surcharges may be added to the Price in the event of unavoidable events outside the control of the Seller including acts of God, war, terrorism, fire, natural disasters, civil commotion, governmental actions, labour disputes, fuel or utilities, customs duties taxes and expenses.

5.5 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If the Supplier fails to deliver the Goods, it shall have no liability for any losses, consequential loss, damages or costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality.

5.7 If the Customer fails to take or accept delivery of the Goods, as the case may be, in accordance with clause 6.1 or 6.2, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the seventh day after the day on which the Supplier tendered delivery of the Goods at the Delivery Location or notified the Customer that the Goods were ready for delivery at the Ex Works Delivery Location, as the case may be; and
- (b) the Supplier shall be entitled (but not obliged) to store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance and the Supplier's own storage charge).

5.8 If 14 days after the day on which the Supplier tendered delivery of the Goods at the Delivery Location or notified the Customer that the Goods were ready for delivery at the Ex Works Delivery Location, as the case may be, the Customer has not taken or accepted delivery of them the Supplier may resell or otherwise dispose of part or all of the Goods.

5.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 6. Quality

6.1 The Supplier warrants that on delivery the Goods shall:

- (a) subject to clause 7.2, conform in all material respects with their description and any applicable Specification; and
- (b) be free from material defects in material and workmanship.

6.2 The images of the Goods in the Supplier's Promotional Materials are for illustrative purposes only and the Supplier cannot guarantee that they accurately reflect the colour of the Goods which may vary slightly from those images.

6.3 Subject to clause 7.4, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery (not exceeding 7 days) and in any event within 90 days of the date of delivery that some or all of the Goods do not comply with the warranty set out in clause 7.1; the Supplier is given a reasonable opportunity of examining such Goods; and
- (b) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost (which will be reimbursed by the Supplier if it is liable for the Goods' failure to comply with the warranty set out in clause 7.1),
- the Supplier shall, at its sole option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 7.3;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.5 Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 6.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7. Title and Risk**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and,
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property.
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
- (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8. Price and Payment**
- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 7 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases

in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.

8.4 The Supplier may invoice the Customer for the Goods on or at any time:

(a) Before or after the delivery of the Goods; or,

(b) deemed delivery of the Goods pursuant to clause 6.6.

8.5 The Customer shall pay the invoice in full without deduction and in cleared funds according to the terms of payment agreed and if not specified within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

8.6 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier:

(a) the Supplier shall be entitled to charge the Customer interest (both before and after any judgment) on the amount unpaid pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (**the Act**), at the rate of 8 per cent per annum above Bank of England base rate from time to time, until payment in full is made; and

(b) the Customer shall pay to the Supplier compensation for late payment pursuant to section 5A of the Act as amended by the Late Payment of Commercial Debts Regulations 2002.

8.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 9. Credit Accounts

9.1 This clause applies if the Supplier has agreed in writing to allow the Customer a credit facility and is expressly subject to the following conditions of this clause 10.

9.2 The Customer will only be allowed a credit facility if the accounts and other financial information and bank and trade references supplied by the Customer are wholly satisfactory to the Supplier. Such references will be taken up as quickly as possible.

9.3 The Supplier will notify the Customer in writing when the Customer's account with the Supplier has been opened and of the credit limit imposed on the account. The Customer will only be allowed a credit facility when its account has been opened and then only to the credit limit imposed on the account.

9.4 The Supplier reserves the right to vary the terms upon which it allows the Customer a credit facility, or to withdraw a credit facility at any time and for any reason. Any variation in such terms or withdrawal of a credit facility will be notified to the Customer in writing and will take immediate effect.

9.5 Where any valid warranty claim is made in respect of Goods supplied on credit if the Supplier decides to refund to the Customer the price of the Goods (or a proportionate part of the price) pursuant to clause 7.3 such refund will be made by credit to the Customer's account.

9.6 Notwithstanding any warranty claim made by the Customer, the Customer must nevertheless pay the price of the Goods which are the subject of the claim in accordance with clause 9 above pending the determination of the validity of such claim. In default the Supplier shall be entitled to withdraw the Customer's credit facility.

9.7 If the Customer breaches any of these Conditions (including, but without limitation, this clause 10) or if the Supplier withdraws the Customer's credit facility then without prejudice to any other right or remedy available to the Supplier the full price of all Goods supplied but not yet paid for shall become immediately due and payable notwithstanding any previous agreements or arrangements to the contrary.

## 10. Termination

10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices

and interest.

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 11. Limitation of Liability

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

11.2 Subject to clause 12:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

## 12. Force Majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 28 days written notice to the affected party.

## 13. General

### 13.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### 13.2 Entire Agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### 13.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract 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 or other next working day delivery service, commercial courier, or fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business 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 fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 13.7 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.