

Newbuild Solutions Limited Terms and Conditions relating to the Sale of Nudura Products and Ancillary Hire.

1. Definitions

1.1 The definitions and rules of interpretation set out below apply in these conditions.

Buyer: the person firm or company who purchases the Goods from the Company.

Company: Newbuild Solutions Ltd.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Contract Price: The sum of the cost of Goods, any taxation payable thereon and any delivery or administrative costs payable to the Company by the Buyer.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Damage Deposit: The sum of 30% of the Hire Price payable by the Buyer to the Company to be held in respect of any damage to goods Hired to the Buyer by the Company.

The Equipment: Any Machines, tools or equipment hired by the Buyer from the Company.

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

The Hire Price: The sum payable to the Company by the Buyer for the hiring of any goods or materials.

2. Application of Terms and Formation of Contract

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other documents).

2.2 These conditions apply to all the Company's sales and any variations to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of an estimation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company via e-mail or fax. Such acknowledgement shall include the Contract Price. The contract shall be formed when the Company dispatches a written acknowledgement to the Buyer by post, DX, fax or email.

2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate and acknowledges that it shall not change the delivery point.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgment of order to the Buyer.

3. Prices and Payment

3.1 The Contract Price shall be set out in the Company's estimate which is given in accordance with Clause 3.6 above.

3.2 Upon confirmation of the order by the Company the Buyer shall pay 50% of the Contract Price. The remaining 50% shall be paid in cleared funds upon the arrival of the goods at the UK port or for materials from stock no later than 12 noon on the working day prior to delivery to the delivery point specified in the order.

3.3 The Contract Price is due in pounds Sterling and, unless otherwise expressly agreed by the Company, shall be made by means of BACs Transfer that has cleared prior to the due date.

3.4 Time for payment shall be of the essence.

3.5 No payment shall be deemed to have been received until the Company has received cleared funds.

3.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

3.7 The Buyer 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 Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

3.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract, 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 4% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim reasonable debt recovery costs as set out in the Late Payment of Commercial Debts (Interest) Act 1998

3.9 The Company will not arrange for delivery of the Goods to the Buyer until the Company has received the payment set out in clause 3.2 above unless expressly agreed otherwise agreed in writing by the Company.

3.10 In the event that the Buyer wishes the delivery point to be changed the Company in its absolute discretion may raise an additional charge for the costs arising from this change. The company is under no obligation to deliver to a location other than the delivery point specified in the order.

3.11 In addition to the Contract Price the Company may raise additional invoices in respect of the cost of Hire of any other goods in accordance with clause.

3.12 Failure to make payment for goods waiting for despatch from a UK port will, at the discretion of the company, result in either additional port storage charges at the rate they set, or payment for diversion of goods to an alternative location. This includes all additional charges for haulage, unloading, storage, reloading and re delivery of the goods.

4. Delivery

4.1 Delivery will only be arranged to destinations within mainland UK. There may be occasions when circumstances outside the company's control will result in the delivery date having to be changed.

4.2 Delivery will occur when the Goods are ready for unloading at the place specified in the Contract or as subsequently agreed in writing by the Company.

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. Delivery times stated are for guidance only, and may be subject to international delays associated with international maritime shipment of goods.

4.4 Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms 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).

4.5 The Company shall arrange for delivery to site on the understanding that there is a suitable road to the point where delivery is requested. If no such road exists delivery will be made to the nearest point to which, in the opinion of the driver, the vehicle may safely proceed and unload. Except for the use of a vehicle mounted crane, the Buyer will provide all necessary labour and equipment required to unload the Goods promptly and will indemnify the Company against any cost claim or damage arising from unloading.

4.6 A signature on the delivery note constitutes that all materials have been received in good order. It is the responsibility of the buyer to ensure that all goods have been checked and any damages noted to the company within 24 hours.

4.7 The Buyer shall at its sole expense provide sufficient, access to and from the Site, unloading space, materials, facilities and access to employees and contractors to enable the Company to carry out the Services, including delivery of the Goods and the Equipment to the Site, in a safe manner. The Buyer shall ensure that the delivery point is cleared and prepared before delivery. It is the Buyer's responsibility to ensure that the Company has sufficient access to be able to deliver the Goods and the Equipment and the Company shall not be in breach of the Agreement and/or any Contract if it is unable to deliver the Equipment to the delivery point in a safe manner. Additional charges shall apply for any redelivery or attempted redelivery in such circumstances.

4.8 Delivery shall include the off loading of Goods and, or Equipment from the Company or its carrier's delivery vehicle at the delivery point. The Buyer shall procure that a duly authorised representative of the Buyer shall be present at the delivery point. Acceptance of delivery of the Equipment by such representative shall constitute conclusive evidence that the Buyer has accepted such delivery.

5. Hire

5.1 The Company will use reasonable endeavours to ensure that all Equipment complies in all material respects with the Buyer's requirements before delivering it to the Buyer.

5.2 The Equipment shall be of satisfactory quality and in proper working order in accordance with industry standards and shall not exceed the reasonable operating life of such Equipment for the duration of the Hire Period.

5.3 The Buyer shall immediately notify the Company of any loss, accident, damage or defect in the Equipment.

5.4 The Buyer shall during the period of Each Hire:

5.4.1 keep the Equipment in good repair and condition, (fair wear and tear only excepted) save that the Buyer shall not repair or allow any third party to repair the Equipment;

5.4.2 not make any alteration to the Equipment and shall not remove any existing components from the Equipment without the prior written consent of the Company;

5.4.3 where the Equipment requires fuel, oil and/or electricity, ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person;

5.4.4 only use the Equipment for its proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to the Buyer by the Company;

5.4.5 ensure that the Equipment is kept and operated in a suitable environment;

5.4.6 keep the Equipment in the Buyer's possession and control during the operating hours on any Business Day and take reasonable measures to protect the Equipment from theft, damage and/or other risks, including if Equipment is on the Buyer's premises on a day other than a Business Day;

5.4.7 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment or invalidate any insurance;

5.4.8 not allow the Equipment to be used dangerously or unlawfully;

5.4.9 comply with all laws, statutory requirements and applicable regulations in using the Equipment including under the Health & Safety at Work Act 1974 and all other health and safety legislation which relates to the use of the Equipment;

5.4.10 ensure that the Equipment is used by such employees that are reasonably qualified or skilled in the use of such Equipment;

5.4.11 not, without the prior written consent of the Company, part with control of or in any way acquire or dispose of or otherwise assign or transfer any of the Equipment or any interest in any of the Equipment, including for the avoidance of doubt, re-hire or onward hire; and

5.4.12 not without the prior written consent in any way create or permit the creation of any encumbrance (including any charge or lien) security interest or type of preferential arrangement on or over the Equipment.

5.5 The Buyer shall grant or shall procure the grant for the Company or its authorised representatives to access the Site at all such reasonable times on the Company giving the Buyer reasonable notice to inspect the Equipment and ensure the Buyer's compliance with its obligations under the Agreement and/or any Contract;

5.6 Where the Equipment is supplied with fuel the Buyer shall be responsible for returning the Equipment with the same or greater amount of fuel and the Company may charge the Buyer for any refuelling costs if the Buyer fails to comply with this clause, at such rates as may be notified to the Buyer from time to time, even if this is after the submission of the final invoice.

5.7 The Buyer shall be liable to the Company for:

5.7.1 all costs and expenses in respect of rectifying any damage to the Equipment (fair wear and tear excepted) which occurred during the period between delivery by the Company and return to the Company by the Buyer.

5.7.2 lost or stolen Equipment and/or Equipment which is beyond economical repair in accordance with clause

5.8 Time of delivery of the Equipment and/or performance of the Services will not be of the essence. If, despite the Company's reasonable endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of the Agreement or any Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery and/or performance except as set out in this clause. Any delay in delivery of the Equipment and/or performance of the Services will not entitle the Buyer to cancel

5.8 The company may, prior to the hire of the Equipment, require the Buyer to pay such Deposit as is considered appropriate by the Company as notified to the Buyer at the time the Equipment is ordered. Such Deposit shall be a deposit against default by the Buyer of payment of any Charges or any loss of or damage caused to the Equipment. If the Buyer fails without due cause to make any payment of the Charges or causes any loss or damage to the Equipment (in whole or in part), then (subject to the Damage Waiver in respect of damage to the Equipment or Damage Waiver Plus in respect of loss or damage to the Equipment in accordance with Clause 12). The Company shall be entitled to apply the Deposit against such default, loss or damage either by deduction from the Deposit sum or deduction of such sums from the credit or debit card (as applicable). Any Deposit sum (or balance thereof) shall be refundable at the end of the Hire Period. The Deposit shall not act as a limitation of the Buyer's liability to the Company to pay damages for any damage or loss to the Equipment.

6. Cancellation of Orders

6.1 The Company may at its discretion accept or reject the cancellation of any order after it has been accepted. If the Company decides to accept the cancellation of an order the acceptance shall be on such terms as the Company may specify.

6.2 The Company may at its discretion accept or reject the return of any Goods which have been incorrectly ordered or the Cancellation of an order prior to delivery. If the Company decides to accept the return of such Goods the Company shall retain the sum paid by the Buyer in accordance with Clause 3.2 above as recompense for the costs incurred.

7. Risk and Title to Goods

7.1 The Goods are at the risk of the Buyer from the time of delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1the Goods; and

7.2.2all other sums which are or which become due to the Company from the Buyer on any account.

7.2.3 Until the property in the Goods passes to the buyer, the company shall be entitled at any time to require the Customer to deliver up the Goods to us, and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.3 The Buyer may not resell the Goods before ownership has passed to it.

7.4 The Buyer's right to possession of the Goods or Equipment shall terminate immediately if:

7.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

7.4.2the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

7.4.3the Buyer encumbers or in any way charges any of the Goods.

7.5 Unless otherwise agreed by the parties in writing, risk in the Equipment shall pass to the Buyer on delivery. Risk in the Equipment will return to the Company on the date of collection of the Equipment agreed between Company and the Buyer (provided that the Company is able to collect the Equipment on that date) or the date the Equipment is returned to the Company.

During the period when the Equipment is at the Buyer's risk the Buyer shall insure each item of Equipment to a value of no less than its full replacement value against any loss, damage, fire or theft of the Equipment and shall maintain appropriate public liability insurance. The insurance cover will be maintained with a reputable insurer. The Buyer shall, on request, provide confirmation that the relevant insurance policies are in place.

8. Quality

8.1 The Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company by the manufacturer of the Goods but does not warrant that the Goods have any such warranty or guarantee and in the event that they do that such warranty or guarantee is transferable.

9 Limitation of Liability

9.1 Subject to condition 8.4, 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 sub-contractors) to the Buyer in respect of:

9.1.1 any breach of these conditions 9.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract

9.3 Nothing in these conditions excludes or limits the liability of the Company:

9.3.1 for death or injury caused by the Company's negligence; or

9.3.2 under section 2(3), Consumer Protection Act 1987; or

9.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

9.3.4 for fraud or fraudulent misrepresentation.

9.4 Subject to condition 9.2 and condition 9.3:

9.4.1 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 Contract Price; and

9.4.2 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.

10. Assignment

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

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

11. Force Majeure

11.1 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 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, provided that, if the event in question continues for a continuous period in excess of 45 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

12. General

12.1 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.

12.2 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 shall continue in full force and effect.

12.3 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.

12.4 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.

12.5 No one other than a party to an agreement reached per these conditions, shall have any right to enforce any of its terms.