

# CONDITIONS OF SALE AND TRADING

1. **INTERPRETATION**  
1.1 In these Conditions:  
'BUYER' means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.  
'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.  
'COMPANY' means nmc (uk) ltd and its subsidiaries.  
'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Company.  
'CONTRACT' means the contract for the purchase and sale of the Goods.  
'WRITING' includes telex, cable, facsimile transmissions and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.  
1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
2. **BASIS OF THE SALE**  
2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer 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 such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.  
2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.  
2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claims for breach of any such representations which are not so confirmed.  
2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.  
2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
3. **ORDERS AND SPECIFICATIONS**  
3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.  
3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within sufficient time to enable the Company to perform the Contract in accordance with its terms.  
3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Buyer).  
3.4 If the goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or in connection with 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 Buyer's specification.  
3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or EC requirements or where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.  
3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.  
3.7 All stated dimensions and weights relating to the Goods are approximate only.
4. **HEALTH & SAFETY**  
The Buyer agrees as follows:-  
4.1 to pay due regard to all information supplied by the Company relating to the use of the Goods and/or concerning conditions necessary to ensure the Goods will be safe and without risk to health at all times when they are being used or maintained by any person at work;  
4.2 to comply with the General Products Safety Regulations 1994 if and to the extent that they are applicable to the Goods;  
4.3 to indemnify the Company in respect of any and all claims arising from the Goods being unsafe as a result of the Buyer's activities;  
4.4 to monitor the safety of the Goods, to pass on to the Company any information as to the risks of the Goods and to co-operate in any action the Company decides to take to avoid those risks, and  
4.5 to keep records of the customers to whom the Goods are sold and to provide the Company with copies of them as and when requested.
5. **PRICE OF THE GOODS**  
5.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.  
5.2 The Company reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any of foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.  
5.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods to the Buyers premises or such other address as the Buyer may direct, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.  
5.4 The price of the Goods is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.  
5.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.  
5.6 For any order for delivery to one place at one time where the net order value is less than £150.00 a charge of £250.00 will be added to cover carriage and administrative charges.
6. **TERMS OF PAYMENT**  
6.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Buyer shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods. In which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.  
6.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Company's invoice or within such other period as the Company shall agree in Writing and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.  
6.3 If the Buyer fails to make any payment before or on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:  
6.3.1 cancel the contract or suspend any further deliveries to the Buyer;  
6.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and  
6.3.3 charge the Buyer interest (both before and after judgment) on the amount unpaid at the rate of five per cent per annum above National Westminster Bank Plc base rate from time to time from the date 30 days after the date of the relevant invoice until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
7. **DELIVERY**  
7.1 Delivery of the Goods shall be made by the Company delivering the Goods to the Buyer's premises or some other place for delivery as notified in Writing by the Buyer to the Company or by the Buyer collecting the Goods at the Company's premises.  
7.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.  
7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.  
7.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.  
7.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:  
7.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or  
7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.  
7.6 The Buyer may only return the Goods or any part thereof at the discretion of the Company and upon the prior authority in Writing being given by a duly authorised employee of the Company being of no less than senior managerial status. In any event, only Goods in perfect condition packed in full cartons may be returned. All Goods returned will be at the Buyer's risk and expense and in addition the Buyer shall pay a charge of 15% of the net invoice value of the Goods despatched under the relevant order to reimburse the Company for any costs and expenses incurred.  
7.7 Notwithstanding any authority to return the Goods given pursuant to clause 6.6, following receipt of returned Goods pursuant to clause 6.6, the Company shall within 10 working days notify the Buyer in Writing of any of the Goods it deems unsaleable and shall thereafter return such Goods to the Buyer at the Buyer's sole expense.
8. **RISK AND PROPERTY**  
8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:  
8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or  
8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.  
8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.  
8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to re-use or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.  
8.5 If the Goods are incorporated into other products the property in those other products is upon such incorporation ipso facto transferred to the Company and the Buyer as bailee of them for the Company will store the same for the Company in a proper manner without charge to the Company.  
8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.  
8.7 The title in the goods shall pass to the Buyer only when payment in full has been received by the Seller for all goods whatsoever supplied (and all services rendered) at any time by the Seller to the Buyer. The Buyer shall permit the servants or agents of the Seller to enter on to the Buyer's premises and repossess the goods at any time prior thereto. As long as payment has not been effected the Buyer cannot sell, pledge or offer goods as guarantee or collateral security. Should the goods (or any of them) be converted into a new product, whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been effected on behalf of the Seller and the Seller shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted goods in relation to any third party, and the Buyer hereby indemnifies the Seller in relation thereto. In the case of non-payment by the Buyer on the due date and upon demand the Seller will return forthwith to the Seller all merchandise unpaid for.
9. **WARRANTIES AND LIABILITY**  
9.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery.  
9.2 The above warranty is given by the Company subject to the following conditions:  
9.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;  
9.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;  
9.2.3 The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.  
9.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.  
9.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.  
9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.  
9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery of the Buyer) be notified to the Company in Writing as follows:  
9.5.1 in respect of damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company) within 5 working days of receipt of the Goods or (in the event of total loss of the Goods) receipt of the relevant invoice or delivery note;  
9.5.2 in respect of any defects in the Goods at the time of delivery (not being defects caused by any act, neglect or default of the Buyer or of any third party) within 5 working days of receipt of the Goods;  
9.5.3 in respect of other defects in the Goods which were not apparent on reasonable inspection, within a reasonable time after delivery of the Goods.  
If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.  
9.6 Where any valid claim in respect of any of the Goods, which is based on any defect in the quality or condition of the Goods or their failure to meet specification, is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Buyer shall have no further liability to the Buyer.  
9.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage whether for loss of profit or otherwise, costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.  
9.8 The Company shall not be liable to the Buyer 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 Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:  
9.8.1 Act of God, explosion, flood, tempest, fire or accident;  
9.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;  
9.8.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;  
9.8.4 import or export regulations or embargoes;  
9.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);  
9.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;  
9.8.7 power failure or breakdown in machinery.
10. **INDEMNITY**  
10.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:  
10.1.1 the Company is given full control of any proceedings or negotiations in connection with any such claim;  
10.1.2 the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;  
10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);  
10.1.4 the Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);  
10.1.5 the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and  
10.1.6 without prejudice to any duty of the Buyer at common law, the Company shall be entitled to require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.
11. **INSOLVENCY OF BUYER**  
11.1 This clause applies if:  
11.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
11.1.2 an enforcement officer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or  
11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or  
11.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.  
11.2 If this clause 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 Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
12. **EXPORT TERMS**  
12.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.  
12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in Writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.  
12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on thereon.  
12.4 The Buyer shall be responsible for ensuring that the Goods comply with any legislative or other regulatory or safety requirements, relating to the sale by the Buyer or any third party or any use of the Goods in the country of destination.  
12.5 Unless otherwise agreed in Writing between the Buyer and the Company, the Goods shall be delivered FOB the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.  
12.6 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.  
12.7 Payment of all amounts due to the Company for the Goods, shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a bank acceptable to the Company or, if the Buyer so requires, by the Company in Writing or, or before acceptance of the Buyer's order to waive this requirement by acceptance by the Buyer and delivery to the Company of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such branch of National Westminster Bank Plc in England as may be specified in the bill of exchange or on such other terms as may be agreed in Writing between the parties.  
12.8 The Buyer undertakes not to offer the Goods for resale in any other country outside the European Union notified by the Company to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
13. **GENERAL**  
13.1 The Company is a member of the group of companies whose holding company is NMC SA, registered in Belgium, and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.  
13.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed received, in the case of the first class prepaid letter post three days after posting and, in the case of any other means of communication, immediately on transmission by the sender to the recipient.  
13.3 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.  
13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.  
13.5 The Contract shall be governed and interpreted by English law and any dispute arising under or in connection with these Conditions or the sale of the Goods shall be dealt with under the jurisdiction of the English Courts.