

Nimans Terms & Conditions

Your attention is particularly drawn to the exclusions and limitations of liability at Condition 8.

1. These Conditions

(1) In these terms and conditions except where the context requires otherwise, capitalised phrases and expressions shall have the following meanings:

'Contract' means any contract between Nimans and the Customer for the sale and purchase of Goods incorporating these Conditions;

'Delivery Point' means the place where delivery is to take place under condition 3;

'Goods' means all equipment, spare parts, other goods, repairs or services to be provided to the Customer by Nimans;

'Helpdesk' means the helpdesk in respect of which incidents related to the Goods or other telephone system products supplied by Nimans may be reported by the Customer;

'Insolvency Event' has the meaning given in condition 4(3)(a);

'Nimans' means Nimans Limited (company number 1876587);

'The Customer' means the person, firm or company purchasing or agreeing to purchase goods or services from Nimans;

'These Conditions' means the terms and conditions set out herein; and

'Technical Support Services' means the technical support services set out in condition 6(1).

(1) All Contracts shall be subject only to these Conditions notwithstanding any variation or attempted variation of these Conditions made by the Customer in its order form or otherwise and save as provided by condition 1 (3) of these Conditions the making of an order by the Customer for the Goods shall for all purposes be deemed to be acceptance by the Customer of these Conditions to the exclusion of any other terms and conditions (including but not limited to any terms and conditions the Customer purports to apply under any purchase order, specification or other document or which may otherwise be implied by trade or a course of dealing).

(2) No terms and conditions endorsed or delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Nimans.

(3) Any brochure in which these Conditions are incorporated shall constitute an invitation to treat by Nimans and any order placed by the Customer shall constitute an order for Goods incorporating these Conditions made by the Customer which Nimans in its discretion accepts in writing, or by email, or by telephone or by fax. No cancellation of any order by the Customer shall be valid unless made in writing and accepted in writing by Nimans.

(4) Each Contract contains all the terms agreed by the Customer and Nimans in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Nimans which is not set out in the Contract. Nothing in this condition shall exclude or limit Nimans' liability for fraudulent misrepresentation.

(5) Each order or acceptance of a quotation for Goods by the Customer from Nimans shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions. A Contract will be formed when Nimans accepts the order.

(6) No order placed by the Customer shall be deemed to be accepted by Nimans until Nimans has confirmed the order in writing, or by e-mail, or by telephone or by fax (if earlier) Nimans delivers the Goods to the Customer. For the avoidance of doubt, Nimans is under no obligation to accept any order.

(7) Any quotation is valid for a period of 30 days only from its date, provided that Nimans has not previously withdrawn it and will constitute an invitation to treat and not an offer.

2. The Goods

(1) Subject to the warranty contained in condition 7(1), all descriptions, drawings and particulars relating to the Goods in any catalogues, leaflets, brochures or other documents are for illustrative purposes only and do not form part of the Contract.

(2) All representations as to the performance of the Goods are based on information supplied by the manufacturer of the Goods and relate to their performance in normal conditions and when used correctly.

(3) The Contract is not a sale by sample.

3. Delivery and Risk

(1) The Goods shall be delivered to the location specified by the Customer in the Customer's order or in the event no location is specified by the Customer at Nimans' premises. Delivery of an order shall be completed when Nimans places the Goods ordered at the Customer's disposal at the Delivery Point. On delivery of the Goods the Customer shall arrange for the Goods to be signed for.

(2) Unless otherwise expressly agreed, the price shown in the current price list of Nimans is exclusive of Value Added Tax and except where otherwise specified by Nimans the cost of packing and carriage shall be charged to the Customer at Nimans' rates from time to time in effect.

(3) Any dates specified by Nimans for delivery of the Goods are intended to be an estimate. If no dates are so specified, delivery shall be within a reasonable time. The time for delivery is not of the essence.

(4) The Goods shall be at the Customer's risk from the time of delivery by Nimans.

(5) If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Nimans is unable to deliver the Goods on the estimated date because the Customer has not provided appropriate instructions, documents, licences or authorisations: (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by Nimans' negligence); (b) the Goods shall be deemed to have been delivered; and (c) Nimans may store the Goods until delivery and the Customer shall be liable to pay all related costs and expenses (including, but not limited to, costs relating to redelivery, storage and insurance of the Goods) reasonably incurred by Nimans in doing so until such time as the Goods are delivered.

(6) The Customer shall provide at the Delivery Point (at its own expense) adequate and

appropriate equipment and manual labour for unloading the Goods.

(7) If Nimans delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered by the Customer, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

(8) Nimans may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

(9) Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

(10) Where the Goods are delivered to the Customer's premises or a third party specified by the Customer, it is the Customer's responsibility to obtain licences, permits, wayleaves, easements, as are necessary for the delivery of the Goods and otherwise to provide all the necessary access information to enable delivery.

(11) The quantity of any consignment of Goods as recorded by Nimans on despatch from Nimans' place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

(12) Nimans shall have no liability for any delay in delivering an order or non-delivery of Goods:

(a) to the extent caused by the Customer's failure to comply with its obligations under these Conditions; or

(b) (even if caused by Nimans' negligence) unless the Customer gives written notice to Nimans of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

(13) Nimans' liability for, and the Customer's sole remedy in respect of, non-delivery of the Goods shall be limited to, at Nimans' option, arranging delivery of the missing Goods within a reasonable time or the issue of a credit note at the pro rata Contract rate against any invoice raised for such Goods save that where delivery is delayed for a period exceeding 60 days the Customer shall be entitled to terminate or rescind the Contract in which case Nimans shall issue a credit note at the pro rata Contract rate against any invoice raised for such non-delivered Goods.

4. Property in the Goods

(1) Notwithstanding risk in the Goods passing to the Customer in accordance with condition 3(4) of these Conditions the Goods shall remain the sole and absolute property of Nimans and title to and legal and equitable ownership of the Goods shall not pass to the Customer until payment is received by Nimans (in cash or cleared funds) of all monies due from the Customer to Nimans in respect of the Goods in question and all other sums which are or which become due to us from you on any account whatsoever.

(2) Until ownership in the Goods has passed to the Customer it shall:

(a) hold the Goods on a fiduciary basis for Nimans;

(b) store the Goods (at no cost to Nimans) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Nimans' property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on Nimans' behalf for their full price against all risks to the reasonable satisfaction of Nimans. On request the Customer shall produce the policy of insurance to Nimans.

(3) The Customer may use or re-sell the Goods in the ordinary course of its business prior to the passing of title (and if it does so, legal and beneficial ownership of the Goods will pass to the Customer immediately prior to it entering into a binding contract for the sale of those Goods), but the Customer's right to do so shall terminate immediately if:

(a) the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade, 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 notified to the Customer in advance, 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer ('**Insolvency Event**'); or

(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Nimans and the Customer; or

(c) the Customer encumbers or in any way charges any of the Goods.

(3) Nimans shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Nimans.

(4) The Customer grants Nimans, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are stored or where they are reasonably thought to be stored in order to inspect them, or, where the Customer's right to possession has terminated, to repossess them.

(5) Where Nimans is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Nimans to the Customer in the order in which they were invoiced to the Customer.

(6) On termination of the Contract, howsoever caused, Nimans' (but not the Customer's) rights contained in this condition 4 shall remain in effect.

5. Price & Payment

(1) The price of the Goods shall be the price quoted by Nimans to the Customer on receipt of an order from the Customer or shall be the price specified in the Customer's order which is accepted by Nimans

(2) Nimans shall be entitled to deliver an invoice in respect of the price of the Goods at any time on or after delivery of the Goods to the Customer.

(3) All invoices in respect of the Goods shall be paid by the Customer on or by 30 days of their date. No payment shall be deemed to have been received until Nimans has received cleared funds. Payments by credit card are subject to a 2.5% surcharge.

(4) Time for payment is of the essence.

(5) If the Customer fails to pay Nimans any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Nimans on such sum from the due date for payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, whether before or after any judgment.

(6) If payment should not be made in accordance with this condition 5, Nimans will be entitled to charge to the Customer (in addition to interest and or any legal costs ordered by a Court and without prejudice to any other rights or remedies available to Nimans) all related costs and expenses (including, but not limited to, administrative costs) incurred by Nimans in taking steps to secure payment.

(7) Unless otherwise stated, all payments are to be made in sterling to Nimans' address as stated on the invoice.

(8) The price may be increased by Nimans at its discretion to take account of fluctuations in exchange rates or increases in the cost of the Goods or taxes or otherwise.

(9) The price of the Goods shall be payable by the Customer in full and without any set-off, counterclaim, discount, abatement or otherwise.

6. Technical Support Services

(1) Nimans may, in its discretion, deliver advice in relation to problems in respect of the Goods or other telephone system products supplied by Nimans which are reported to the Helpdesk by employees or staff of the Customer ('Customer Staff'). In respect of such incidents the Helpdesk shall provide advice to Customer Staff but not to customers of the Customer or end users of the Goods. The Customer agrees and acknowledges that the Helpdesk shall have no responsibility to resolve the said incidents and accordingly the Customer agrees that the Helpdesk shall deliver advice to Customer Staff to assist the said Customer Staff in resolving incidents. The Customer further agrees and acknowledges that the Helpdesk may determine that it is not able to provide advice in respect of the incidents reported.

(2) All calls to the Helpdesk shall receive a response within a reasonable period of time during Nimans' working hours.

(3) Nimans shall deliver the Technical Support Services with reasonable skill and care.

7. Warranty

(1) Unless otherwise expressly agreed in writing, Nimans warrants that the Goods supplied shall at the date of delivery be in accordance with manufacturer's normal designs and specifications current at the date of manufacture or delivery provided always the supply by Nimans of goods differing from any contractual or pre-contractual specifications or descriptions shall not be a breach of the Contract insofar as the goods are of approximately equivalent performance to the goods referred to in such specifications or descriptions.

(2) Nimans shall not be liable for a breach of the warranty in condition 7(1) unless:

(a) the Customer gives written notice of the defect to Nimans, and, if the defect is as a result of damage in transit by the carrier on delivery as evidenced by damage to the packing of the Goods, and in any other circumstance within 5 days of the time when the Customer discovers or ought reasonably to have discovered the defect; and

(b) Nimans is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by Nimans) returns such Goods to Nimans' place of business for the examination to take place there.

(3) Nimans shall not be liable for a breach of the warranty in condition 7(1) if:

(a) the Customer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Customer failed to follow Nimans' or any manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Customer alters or repairs such Goods without the written consent of Nimans.

(4) Subject to condition 7(2) and 7(3) if any of the Goods do not conform with the warranty in condition 7(1) Nimans shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate by crediting the Customer's account provided that, if Nimans so requests, the Customer shall, at the Nimans' expense, return the Goods or the part of such Goods which are defective to Nimans.

(5) If Nimans complies with condition 7(4) it shall have no further liability for a breach of the warranty in condition 7(1) in respect of such Goods.

(6) Any Goods replaced shall belong to Nimans and any repaired or replacement Goods shall be warranted on the same terms as this condition 7.

(7) To be valid, any claim against Nimans whether in contract or in tort must be brought within 2 years of the date of invoice and any such claim shall be limited to an amount by way of liquidated damages equal to the invoice value of the goods in respect of which the claim is made.

(8) Notwithstanding condition 7(1) the Customer acknowledges that Nimans does not manufacture the Goods. As such Nimans is not able to give any warranty as to the ongoing performance of the Goods and the Customer shall only therefore be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Nimans and which Nimans hereby assigns to the Customer in so far as it is able.

8. Liability of Nimans

(1) Subject to condition 3(13) and condition 7(4), the following provisions set out the entire financial liability of Nimans (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of these Conditions;

(b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods;

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;

(d) any breach of statutory duty; and

(e) otherwise arising under the Contract and or these Conditions.

(2) The Customer agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into the Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).

(3) 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

(4) Nothing in these Conditions excludes or limits the liability of Nimans:

(a) for death or personal injury caused by Nimans' negligence; or

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

(c) for any matter which it would be illegal for Nimans to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

(5) Subject to condition 8(4):

(a) Nimans' 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

(b) Nimans shall not be liable to the Customer for: (i) loss of income; (ii) loss of profit; (iii) loss of revenue; (iv) loss of anticipated earnings; (v) loss of anticipated savings; (vi) loss of business; (vii) or loss of goodwill; (viii) loss of bargain; (ix) liability that you have to third parties; or (x) any indirect, consequential or special losses (whether of the type mentioned in conditions 8(5)(b)(i) to (ix) or otherwise).

9. Termination

Nimans may by notice in writing served on the Customer terminate any or all Contracts immediately:

(a) if any payment due to Nimans is overdue for payment by more than 5 days; or

(b) if the Customer is in material breach of any Contract and, where the breach is capable of remedy, the Customer fails to remedy such breach within 14 days of service of written notice from Nimans specifying the breach and requiring it to be remedied; or

(c) if the Customer suffers an Insolvency Event.

10. Force Majeure

Nimans shall not be liable to the Customer for any failure to perform its obligations due to any circumstances beyond its control (including, but not limited to, strikes, lock-outs, industrial disputes, failure or power supply delays, delays caused by manufacture of the goods, riots, civil disturbances, terrorism, war or war-like activity, embargoes, loss at sea, fire, explosion, flood, severe weather or other natural causes or other events beyond Nimans' reasonable control) and in such event Nimans may elect by written notice to cancel any Contract or elect that the time for performance shall be extended until such time as Nimans can reasonably effect performance.

11. Waiver

If the Customer shall be in breach of any of these Conditions then failure by Nimans to require the Customer to rectify the same shall not create any assumption that such a breach has been waived by Nimans. The rights and remedies provided by these Conditions may be waived only in writing in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to. The rights and remedies provided by these conditions are cumulative.

12. Notices

All demands, notices and other communications shall be in writing and addressed to Nimans at its registered office address and to the Customer at the address given by it for delivery of invoices and shall be deemed to be duly given or made by letter 48 hours after being posted by first class postage pre-paid or registered post or if delivered by hand at the time of delivery.

13. Assignment

Nimans may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign or otherwise transfer or purport to assign or transfer the Contract or any part of it without the prior written consent of Nimans.

14. Severance

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 and the remainder of such provision shall continue in full force and effect.

15. Third Party Rights

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

16. Law & Jurisdiction

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.