

NIKE CONSULTANTS LIMITED CONDITIONS OF SALE

1. DEFINITIONS

In these conditions the following words shall have unless the context requires otherwise the meanings set out opposite them.

- 1.1 "the Company" shall mean Nike Consultants Limited;
- 1.2 "the Customer" shall mean any person firm or company or organisation to whom the Company agrees to sell "the Goods";
- 1.3 "the Goods" shall mean the goods (and any parts thereof) the subject matter of the contract as described in these conditions and (if appropriate) on the face of the Company's acknowledgement of order form.
- 1.4 "the Manufacturer" shall mean the manufacturer of the Goods.
- 1.5 "the Buyer" shall mean the person, firm or company ordering or buying goods and/or services from the Company.

2. GENERAL

- 2.1 All contracts for the sale of the Goods by the Company are made subject to these conditions of sale which supersede any earlier sets of conditions issued by the Company. Any stipulations or conditions in the Customer's order form or other document delivered by the Customer which would if applicable conflict with these conditions or in any way qualify or negate the same shall be deemed to be inapplicable to the Company unless the same shall have been expressly agreed to in writing in a document signed by a director of the Company. No other servant or agent of the Company has any authority to alter or qualify these conditions in any way.
- 2.2 The Company reserves the right by notice in writing to the Customer signed by a director of the Company to add to amend or vary these conditions at any time before acceptance of delivery of or payment for the Goods whichever is earlier.
- 2.3 Acceptance of delivery of the Goods or payment for the Goods by the Customer to the Company shall of itself constitute an acceptance of these conditions where acceptance has not previously been communicated to the Company.
- 2.4 Quotations shall be available for acceptance (unless expressly stated otherwise) for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.
- 2.5 If any statement or representation has been made to the Customer by the Company its servants or agents upon which the Customer wishes to rely other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm reject or clarify the point and submit a new quotation.

3. DELIVERY

- 3.1 Time for delivery is given as accurately as possible but is not guaranteed.
- 3.2 In the event that the Goods are not delivered on the date stipulated then the Customer shall accept delivery of the Goods within such further period which is reasonable in all circumstances provided that if the Customer is of the reasonable opinion that such reasonable period has expired he shall give written notice to that effect to the Company stating his reasons for such opinion whereupon such reasonable period shall be deemed to expire 15 days after the service of such notice. The Customer shall have no right to claim damages or cancel the order for any delay in delivery not exceeding 15 days beyond such reasonable period.
- 3.3 The Company shall not be required to fulfil orders in the sequence in which they are placed.
- 3.4 Failure by the Customer to take delivery of or to make payment in respect of the Goods or any one or more instalments of the Goods shall entitle the Company to treat the whole of the contract as repudiated by the Customer.
- 3.5 Without prejudice to condition 3.4 the Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery of the Goods but shall be under no obligation to do so and where delivery is postponed by agreement otherwise than due to default by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and payment for the Goods shall be made on the date payment would have been due had delivery not been postponed.
- 3.6 Should expedited delivery be agreed an extra charge shall be payable by the Buyer to cover any overtime or any other additional costs involved.

4. PASSING OF PROPERTY AND RISK

- 4.1 Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the Goods: -
 - 4.1.1 If the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods at the time when the Goods arrive at the place of delivery;
 - 4.1.2 In all other circumstances at the time when the Goods leave the Company's premises.
- 4.2 Title to the Goods or any part thereof shall not pass to the Customer until: -
 - 4.2.1 The Customer has paid to the Company all sums due and payable by it to the Company under this contract and all other prior contracts between the Company and the Customer; or
 - 4.2.2 The Company serves notice in writing on the Customer specifying that the title in the Goods or any specified part thereof has passed to the Customer and until title to the Goods has passed to the Customer the Customer shall possess the Goods or any part thereof as a bailee of the Company and shall store the Goods or any part thereof separately from other goods as so to ensure that they are clearly identifiable as the property of the Company.
- 4.3 The Company shall be entitled to recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licences the Company its officers employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition 4.2 is being complied with by the Customer or recovering any Goods in respect of which title has not passed to the Customer.
- 4.4 The Customer shall only be at liberty to sell the Goods hereunder prior to the passing of title to the Customer on the understanding that the portion of the proceeds of sale of the Goods which represents the sums due to the Company hereunder belong to the Company and are held by the Customer on trust for the Company and are paid into a separate bank account designated as a trust account for the Company.

5. PRICE

All prices are unless otherwise stated quoted net ex works exclusive of VAT or other tax or duty relating to the sale or delivery of the Goods chargeable to the Customer and the cost of carriage and packaging if required by the Company shall be charged extra.

6. TERMS OF PAYMENT

- 6.1 Unless otherwise agreed by the Company in writing payment for the Goods shall be paid in full and received by the Company within seven days from the date of delivery.
- 6.2 Where the goods are delivered by instalments the Company may invoice each instalment separately and Customer shall pay such invoices in accordance with these conditions.
- 6.3 In the event of default of payment by the Customer the Company shall be entitled without prejudice to any other right or remedy the Company has under these conditions and without prior notice to suspend all further deliveries on any contract or contracts between the Company and the Customer and to charge interest on the amount outstanding at the rate 4% above the base rate of National Westminster Bank Plc or the rate of interest specified in the regulations made under Section 6 of the Late Payment of Commercial Debts (interest) Act 1998 whichever is the greater, from time to time in force throughout the period the amount is outstanding. A cheque tendered by the Customer in payment shall not be treated as payment until the same has been cleared.

7. CANCELLATION

Cancellation of this contract will only be agreed to by the Company on the condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

8. INSTALLATION/WARRANTY

- 8.1 The Customer undertakes and warrants to the Company that the Goods will be installed by the Manufacturer or an engineer authorised by the Manufacturer to carry out such installation and that upon completion of the installation the Manufacturer and/or the authorised engineer shall run a full diagnostic check on the system into which the Goods have been installed. The Customer shall notify the Company immediately in the event of the diagnostic check not proving satisfactory. In the event that the Customer installs the Goods in any other manner or takes delivery of the Goods into its own stock then it does so at its own risk.
- 8.2 The Company shall not be liable for: -
 - 8.2.1 Any defect in the quality or state of the Goods unless such defect arises and the Customer gives notice in writing to the Company of this defect within seven days of completion of the Manufacturer's diagnostic check in accordance with clause 8.1 hereof.
 - 8.2.2 Any loss or damage suffered by reason of use of the Goods after the Customer becomes aware of defect or after the Customer becomes aware of circumstances which should reasonably have indicated the existence of a defect.

9. SOFTWARE

- 9.1 In the event any of the Goods supplied are software then the following provisions shall apply in addition to the provisions of these Conditions
 - 9.1.1 The Buyer shall comply with all the licensing terms and requirements of the licensor;
 - 9.1.2 The Buyer shall satisfy itself that any software licensed is used in accordance with its licensing terms and on hardware that is compatible with the software;
 - 9.1.3 The Buyer shall not do or omit to do anything that would put it in breach of the terms of the license and it shall enter such license and enter into such agreements as the Company and/or licensor may require.

10. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights including without limitation copyright, design rights, designs, patent or trade marks whether registered or unregistered in relation to Goods or Services will remain the property of the Company and/or the relevant licensor as the case may be.

11. HEADINGS

- 11.1 The headings are intended for reference only and shall not affect the construction of these Conditions.
- 11.2 The invalidity in whole or in part of any clause in these Conditions shall not affect the validity of the remainder of such clause or these Conditions.

12. GUARANTEE

- 12.1 In the event that the Goods or any part thereof are defective in quality or state or otherwise not in accordance with the contract then the Customer shall require (in lieu of any legal remedy which may otherwise have been due to the Customer) the Company to repair or supply satisfactory substitute Goods and the Company provided the Customer has complied with the requirements as to notice contained in these conditions shall be obliged at its option to repair of take back the defective Goods and supply satisfactory substitute Goods to the Customer free of charge and within a reasonable time. Upon the Company repairing the defective Goods or supplying satisfactory substitute Goods then the Customer shall be bound to accept such repaired or substitute Goods and the Company shall be under no liability to the Customer in respect of any loss or damage whatsoever arising from the initial delivery of defective Goods or from the delay before the defective Goods are repaired or the substitute goods are delivered.
- 12.2 In the event that the Goods are not manufactured by the Company then: -
 - 12.2.1 The Company will use its reasonable endeavours to assign to the Customer the benefit of any warranty or guarantee given by the Manufacturer.
 - 12.2.2 Any recommendation by the Company of such Goods shall not in any way make the Company liable in respect of such Goods.
 - 12.2.3 The Company gives no assurance warranty or guarantee whatsoever that the sale or use of the Goods will not infringe patent, copyright, registered design, design copyright or other intellectual property rights of any other person firm or company.
- 12.3 Insofar as the Goods comprise second user items the Company warrants that the Goods are eligible for cover under the standard maintenance contract provided by the Manufacturer.

13. LIABILITY

Save where the Company can be shown to have failed to exercise reasonable care in the supply of the Goods and such failure results in death or personal injury the Company shall not without prejudice to condition 10 be liable to the Customer for loss, injury or damage of any kind whatsoever consequential or otherwise (including without limitation removal or rectification work required in connection with the installation of repaired or substitute Goods) which results directly or indirectly from the Company's supply or failure to supply Goods to the Customer.

14. CONFIDENTIAL INFORMATION

The Customer shall treat as confidential all information supplied by the Company under this Agreement which is designated as confidential by the Company or which is by its nature clearly confidential.

15. INSOLVENCY

If the customer shall become bankrupt or unable to pay its debts as prescribed by Section 123 Insolvency Act 1986 or compound with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver, Manager, Administrator or Administrative Receiver is appointed of all or any part of its assets or undertaking the Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

16. FORCE MAJEURE

In the event that the manufacture or delivery of any of the Goods is prevented or hindered directly or indirectly by fire, the elements, war, international act of terrorism, civil commotion, strikes or lock-outs, industrial dispute, shortage of raw materials or fuel notwithstanding that the Company has taken all reasonable steps to procure the same, shortage of labour, break down or partial failure of plant and machinery, late receipt of Customer's specifications or other necessary information, acts orders or regulations of Government, delay on the part of any independent sub-contractor or supplier, or any other cause whatsoever beyond the reasonable control of the Company then the time for delivery of the Goods shall be extended for a reasonable period having regard to the effect of the delaying cause on the manufacture or delivery.

17. RIGHTS OF THIRD PARTIES

Both customer and company acknowledge that it is not their intention that any third party shall be entitled to enforce any term of this agreement which may confer a benefit on that 3rd party, whether any such entitlement would, but for this provision, arise under the Contract (Rights of Third Parties) Act 1999 or otherwise.

18. NOTICES

Any notice required to be given by either the Company or the Customer to the other shall be deemed to be properly served if sent by prepaid registered letter posted to its registered office or such address as may from time to time be notified to the other for this purpose and any notice served shall be deemed to have been served 24 hours after the time of posting and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted.

19. ENGLISH LAW

The contract made hereunder shall be governed and interpreted according to English Law and the Company and the Customer hereby submit themselves to the jurisdiction of the English Courts.