

# NATURAL BY CHOICE LIMITED - TERMS AND CONDITIONS OF SALE

## 1 Definitions

- 1.1 "We" and "Us" : means the seller of the Goods named overleaf  
1.2 "Goods" : means the articles (and any instalment or part of such articles) which you agree to buy from us  
1.3 "You" : means the person who agrees to buy Goods from us  
1.4 "Writing" : includes cable, facsimile, transmission, email and all similar means of communication

## 2 Background

- 2.1 These conditions apply to all contracts for the sale of Goods by us to you to the exclusion of all others which you may purport to apply under any purchase order confirmation of order or the like.  
2.2 Any order for Goods or the acceptance of our quotation will be deemed to be your offer to buy the Goods and will not result in a binding contract until we accept it in writing.  
2.3 These conditions may only be varied in writing. You may not rely on any recommendation or advice concerning the Goods or their use unless we make such representation in writing in our brochure description/specification.

## 3 Orders and Specification

- 3.1 You are responsible for ensuring the accuracy of the terms of any order and for giving us any necessary information within a sufficient time.  
3.2 The quantity, quality and description of and any specification for the Goods are those set out in your order (if we accept it) subject to clause 7 below  
3.3 We may at any time change the specification of the Goods so as to comply with any relevant safety, statutory or EU requirements or which does not materially affect the quality or fitness for purpose of the Goods.  
3.4 Once accepted, an order may not be cancelled without our agreement in writing and on terms that you indemnify us in full against all loss (including loss of profits) costs (including costs of labour and materials used) damages, charges and expenses we incur in relation to the order and its cancellation

## 4 Payment

- 4.1 The price for the Goods is that quoted in the acknowledgement of order and includes the cost of delivery to the location specified in that acknowledgement. All prices quoted are valid for 30 days only or if sooner, accepted by you  
4.2 We may increase the price of the Goods by giving you notice at any time before delivery to reflect any increase in cost which is due to factors occurring after acceptance of the order which are beyond our reasonable control  
4.3 The price is exclusive of any applicable VAT which will be due at the rate ruling on the invoice date.  
4.4 We may invoice you for the price of Goods once we have despatched them or if you are to collect them once we have notified you that the Goods are ready for collection  
4.5 The price for the Goods is due without deduction or set off, before the last day of the month following the invoice and we shall be entitled to recover the price even if the Goods have not been delivered or if they still belong to us. Time for payment is of the essence  
4.6 If you fail to make any payment on the due date then without prejudice to our other rights or remedies we may  
4.6.1 cancel the contract or suspend any further deliveries of Goods  
4.6.2 appropriate any payment you make to such of the Goods under this or any other contract as we may think fit irrespective of your purported appropriation and  
4.6.3 charge you interest (both before and after judgment) from day to day on the amount unpaid at the rate of 4% per annum above the basic rate of Barclays Bank plc from time to time from the due date until payment in full is made

## 5 Delivery

- 5.1 Delivery of the Goods occurs when we deliver the Goods to the agreed location or if you have agreed to collect them when we notify you that they are ready for collection  
5.2 When we deliver the Goods to you, you are responsible for making all arrangements necessary including adequate labour and facilities for the prompt and safe unloading of the Goods. Failure to do so shall be deemed to be your failure to take delivery  
5.3 If you fail to take delivery of the Goods or fail to give us adequate delivery instructions in sufficient time, then without prejudice to our other rights or remedies we may  
5.3.1 store the Goods until actual delivery and charge you for the reasonable costs incurred and/or  
5.3.2 resell the Goods at the best price readily obtainable and charge you for any shortfall below the price you agreed together with the costs of such resale and any delivery  
5.4 All dates or periods quoted for delivery of the Goods are approximate only and we shall not be liable for any delay for whatever cause. We may deliver the Goods in advance of the quoted delivery date upon giving you reasonable notice. Time for delivery is not of the essence  
5.5 If Goods are to be delivered by instalments each delivery shall be deemed to be a separate contract and failure to deliver any instalment and/or any claim in respect of any instalment shall not affect the contract as to the delivery of any other instalment  
5.6 Our liability for failure to deliver the Goods in accordance with these conditions shall be limited to the excess (if any) of your cost (in the cheapest market available) of similar Goods to replace those not delivered over the price of the Goods

## 6 Risk and Ownership

- 6.1 Risk of damage to or loss of the Goods shall pass when the Goods are available for delivery at our premises or where we have agreed to deliver the Goods, upon their delivery to the agreed location (but before they are unloaded)  
6.2 Notwithstanding delivery and passing of risk, the Goods remain our property until we have received, in cash or cleared funds, payment in full of the price for the Goods and of any other Goods we have sold or agreed to sell to you for which payment is then or may become due  
6.3 Until such time as property in the Goods passes to you, you hold the Goods as our fiduciary agent and bailee and will keep them separate from your other Goods or those of third parties and properly stored, protected, insured and identified as our property. You may resell or use the Goods in the ordinary course of your business but shall account to us for all proceeds of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from your other money or property and that of third parties and in the case of tangible proceeds, properly stored, protected and insured  
6.4 Until such time as property in the Goods passes to you (and provided the Goods are still in existence and have not been resold) we may at any time require you to deliver up the Goods to us and if you fail to do so immediately, enter upon your premises or those of any

third party where the Goods are stored and repossess the Goods. As soon as we make such a request your right to resell or use the Goods shall cease.

- 6.5 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property but if you do so, all monies you owe to us shall (without prejudice to our other rights or remedies) forthwith become due and payable

## 7 Warranties

- 7.1 The Goods correspond with BS680:part 2:1971 only if we have confirmed this to you in our quotation or our acceptance of your order. If we have agreed to the contract being a sale by sample the Goods will correspond with the sample in quality, we shall have no liability to you unless more than 5% of the Goods do not correspond either with the above British Standard or the sample (as the case may be)  
7.2 We will use all reasonable endeavours when selecting samples to provide a fair indication of the colour, texture and quality of the Goods, but due to the nature of the Goods some variation may occur  
7.3 You may not reject the Goods in the basis of any defect or failure to correspond with the specification or sample which is so slight in the context of the nature of the Goods and their intended use that it would be unreasonable for you to reject them. No defect in part of the Goods nor failure of part to correspond with sample shall entitle you to reject any other part of the Goods  
7.4 You shall inspect the Goods promptly on delivery. Claims based on any defect in the quality or condition of the Goods or their failure to correspond with sample shall (whether or not you refuse delivery) be notified to us within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure but prior to the fixing or installation of the Goods. If delivery is not refused and you do not notify us accordingly, you may not reject the Goods, we shall have no liability for such defect or failure and you shall be bound to pay the price as if the Goods had been duly delivered in accordance with the contract  
7.5 Where any claim relating to any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to correspond with sample is notified to us in accordance with these conditions, we may replace the Goods (or the parts in question) free of charge or at our sole discretion, refund to you the price of the Goods (or an appropriate part of the price) but we shall have no further liability to you  
7.6 Except in respect of death or personal injury caused by our negligence, our liability to you for any representation, contract term (express or implied) or any duty at common law for any consequential loss or damage whatsoever (and whether caused by our negligence or our employees or agents or otherwise) in connection with the supply of the Goods or their use or resale by you shall be limited to the price of the Goods (or an appropriate proportion of the price)  
7.7 Subject as expressly provided in these conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law  
7.8 Where the Goods are sold to you as a person dealing as a consumer  
7.8.1 the exclusion contained in clause 7.9 shall not apply and  
7.8.2 your statutory rights are not affected by these conditions  
7.9 We shall permit you to inspect and test the Goods at your own cost before delivery

## 8 Force Majeur

- 8.1 We shall not be liable to you nor be deemed to be in breach of these conditions by reason of any delay or any failure to perform any of our obligations in relation to the Goods if the delay or failure is due to any cause beyond our reasonable control which includes (without limitation) strikes, lockouts, or other industrial action, trade disputes or difficulties in obtaining raw materials, labour, fuel, parts or machinery

## 9 Insolvency

- 9.1 This clause applies if  
9.1.1 you make a voluntary agreement with your creditors, become subject to an administration order or become bankrupt or go into liquidation or  
9.1.2 any person takes possession or a receiver is appointed of any of your property or assets or  
9.1.3 you cease or threaten to cease to carry on business or  
9.1.4 we reasonably apprehend that any of the above events are about to occur in relation to you and notify you accordingly  
9.2 If this clause applies then without prejudice to any other right or remedy available to us, we may cancel the contract or suspend any further deliveries without any liability to you 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.

## 10 General

- 10.1 Any notice required or permitted to be given 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 at the relevant time have been notified for this purpose  
10.2 Our waiver of any breach of the contract by you shall not be considered as a waiver of any subsequent breach of the same or any other provision  
10.3 If any 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  
10.4 Any dispute arising under or in connection with these conditions or the sale of the Goods shall be referred to arbitration by single arbitrator appointed by agreement or in default nominated on the application of either party by the president for the time being of the Institute of Chartered Surveyors in accordance with the Arbitration Act 1996  
10.5 These conditions shall be governed by Scottish law and the parties submit to the exclusive jurisdiction of the Scottish courts, save that if you are domiciled in England (within the meaning of them Civil Jurisdiction and Judgments Act 1982) then the contract shall be construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.