

## **TERMS & CONDITIONS**

Please read the following General Terms and Conditions of Sale of MBN USA, Inc (Nahmias) carefully. Our Contract is comprised of the Order and these General Terms and Conditions of Sale. By placing an Order, you accept our Contract on behalf of the buyer indicated in the Order as a legally binding contract with Nahmias.

### **1. Basis of the provision of the goods**

1.1 Nahmias shall supply goods to the buyer as set out in the Order subject to these General Terms and Conditions of Sale ('General Terms', and the Order and the General Terms together shall be the 'Contract').

1.2 The Contract shall apply to the exclusion of any other terms and conditions the subject of any such order made or purported to be made, by the buyer.

### **2. Order**

2.1 The buyer may place orders for goods (each an 'Order') during a Nahmias sales period.

2.2 Nahmias may accept or decline Orders at its absolute discretion. Acceptance of an Order shall occur when it is expressly confirmed by Nahmias.

2.3 The buyer is responsible for ensuring that Orders are complete and accurate.

2.4 Nahmias may, at its absolute discretion, accept an amendment to an Order by the buyer up to 7 days after confirmation, provided that the applicable Nahmias sales period has not ended.

2.5 In the event that the Buyer cancels any Order 8 days or more after confirmation the buyer shall pay Nahmias a cancellation fee equal to 30% of the total value of the cancelled Order.

### **3. Financial terms and conditions**

3.1 Prices: The prices set out in the Order are in USD. The prices exclude all costs related to transport, shipping and insurance of the goods and all taxes, import duties, costs associated with specific export/import documents which shall be borne by the buyer.

3.2 Price changes. Nahmias reserves the right to increase the prices at any time by giving the Customer not less than 10 days' notice in the event of an event causing an increase in costs due to exchange rate changes or to duties or taxes to which Nahmias is subject.

3.3 Invoicing. Nahmias shall invoice the buyer for the Goods, in accordance with the invoicing schedule set out in the Order.

3.4 Standard payment term. The buyer shall pay all invoices on the account of Nahmias upon receipt of each invoice unless another payment period has been explicitly specified on the Order confirmation.

3.5 Late payment. If the buyer fails to make payment in accordance with the terms of the contract, Nahmias may, without limiting its other rights, charge interest on the outstanding amount at an annual rate of 4% or the maximum rate permitted by law, whichever is lower. Interest will accrue daily, starting from the due date until full payment is received, whether before or after judgment.

3.6 Credit limits. Nahmias may set and vary credit limits from time to time and withhold all further supplies if the buyer exceeds such credit limit.

### **4. Delivery**

4.1 Unless otherwise agreed in the Order, Nahmias shall deliver the goods to the buyer Ex Works (Incoterms) for collection from the Nahmias warehouse specified in the Order (or such location agreed in writing by the parties) (the 'Delivery Location'). The goods will be considered delivered from the moment the goods are handed over to the buyer or its nominated carrier.

4.2 Nahmias shall endeavor to have the goods ready for collection at the Delivery Location on the delivery date stated on the Order Confirmation (the 'Delivery Date') however Delivery Dates are approximate only, and time of delivery is not of the essence. If Nahmias delivers the goods at any time after the Delivery Date Nahmias shall have no liability in respect of such late delivery.

4.3 If Nahmias determines that the goods cannot be delivered on the Delivery Date, it will notify the buyer and inform it of the new delivery time. If the buyer fails to respond in writing, it will be taken that it has agreed to the new delivery time. If the buyer does not agree with this new delivery time, it will notify Nahmias in writing within 7 working days of receiving the notification, and Nahmias shall use reasonable endeavors to provide an alternative time.

4.4 The buyer will collect the goods no later than 14 days after notice from Nahmias and/ or the warehouse. Nahmias will be entitled to charge a surcharge for each week that the goods remain in the warehouse after the buyer is notified, they are ready for collection of up to 5% on the remaining owed balance to cover all additional warehouse and related costs per week.

4.5 The goods may be delivered by installments. Any delay in delivery or defect in an installment shall not entitle the buyer to cancel any other installment.

4.6 The buyer shall not be entitled to reject a delivery of the goods on the basis that an incorrect volume of the goods (or incorrect volumes of any size or color of goods outside the tolerances set out in the Order) has been supplied, provided that the buyer shall be invoiced in accordance with the volume delivered.

## **5. Risk and title**

5.1 Risk in the goods shall pass to the buyer on delivery.

5.2 Until title to the goods has passed to the buyer, the buyer shall: (a) hold the goods as bailee for Nahmias; (b) store the goods separately from all other material in the buyer's possession; (c) take all reasonable care of the goods and keep them in the condition in which they were delivered; (d) insure the goods from the date of delivery; (e) ensure that the goods are clearly identifiable as belonging to Nahmias; (f) not remove or alter any mark on or packaging of the goods; (g) inform Nahmias immediately if it becomes subject to any of the events or circumstances set out in clauses 6.1(a) and 6.1(b) on reasonable notice permit Nahmias to inspect the goods during the buyer's normal business hours and provide Nahmias with such information concerning the goods as Nahmias may request from time to time.

5.3 If, at any time before title to the goods has passed to the buyer, the buyer informs Nahmias, or Nahmias reasonably believes, that the buyer has or is likely to become subject to any of the events specified in clauses 6.1(a) and 6.1(b) Nahmias may: (a) require the buyer at the buyer's expense to re-deliver the goods to

Nahmias; and (b) if the buyer fails to do so promptly, enter any premises where the goods are stored and repossess them.

## **6. Termination**

6.1 Without prejudice to any other right or remedy it might have, Nahmias may terminate this Contract at any time by notice in writing to the buyer, such notice to take effect as specified in the notice: (a) if the buyer is in breach of this Contract and, in the case of a breach capable of remedy within 10 days, the breach is not remedied within 10 days of the buyer receiving notice specifying the breach and requiring it to be remedied; or (b) if the buyer takes any step or action in connection with its entering administration, or if an order is made or a resolution is passed for the winding up of the buyer, or if an administrator or administrative receiver is appointed in respect of the whole or any part of the buyer's assets or business, or if the buyer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or (c) the buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.

6.2 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

## **7. Warranties and liability**

7.1 Subject to the conditions set out below, Nahmias warrants that the goods will correspond with their specification at the time of delivery and will be of merchantable quality.

7.2 The buyer shall be responsible for arranging for inspection of the goods at Nahmias's premises before shipment. Nahmias 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.

7.3 Nahmias shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal conditions, failure to follow Nahmias's instructions (whether oral or in writing), misuse or alteration of the goods without Nahmias's approval, or any other act or omission on the part of the buyer, its employees or agents or any third party.

7.4 Subject as expressly provided in this Contract, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.5 Any goods returned which Nahmias is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection may be replaced free of charge or, at the Nahmias's sole discretion, Nahmias may refund or credit to the buyer the price of the defective goods, but Nahmias shall have not further liability to the buyer.

7.6 Except as expressly provided in this Contract and subject to clause 7.7, Nahmias 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 statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the buyer (including, without limitation, loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Nahmias, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by Nahmias.

7.7 Nothing in this Contract shall limit or exclude Nahmias's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; (d) any matter in respect of which it would be unlawful for Nahmias to exclude or restrict liability.

7.8 Subject to clause 7.7, Nahmias's total liability to the buyer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the total sums paid by the Customer for Goods under the Contract.

## **8. Miscellaneous**

8.1 Reporting. Any shortages, discrepancies or failure of delivery of in relation to an Order must be reported to Nahmias in writing within 7 working days of the buyer becoming aware of it.

8.2 Goods: Any samples or advertising produced by the buyer and any descriptions or illustrations contained in the buyer's catalogs or online materials are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force.

8.3 No reselling. Only the buyer has the right to sell the goods. The goods may only be sold at the points of sale agreed in the Order. If the buyer wishes to sell the goods at a different point of sale, it must request prior written permission from Nahmias.

8.4 Online sales. The buyer may only sell Nahmias goods online if the online addresses are specifically agreed and approved in writing with Nahmias in advance. If approved, this means that Nahmias goods are strictly to be sold via the buyer's direct e-commerce website and not to be sold through any other 3rd party platforms, under different store names, affiliated businesses or brands.

8.5 Nahmias trademark. The goods are delivered with Nahmias trademark(s) sewn or otherwise applied to the goods. The buyer must not remove such trademark(s) under any circumstances. The buyer has no rights whatsoever to use Nahmias's trademark(s) other than as set out in these Terms.

8.6 Marketing. All marketing, publicity and lending of goods to the press and media must be approved by Nahmias.

## **9. General**

9.1 Nahmias shall not be liable for any delay in, or failure of delivery caused by the buyer's failure to collect the goods or by force majeure (as described at clause 9.2).

9.2 Neither party shall have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Contract by written notice to the other party.

9.3 This Contract may only be amended in writing and signed by duly authorized representatives of the parties.

9.4 This Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations, or understandings between them relating to such subject matter. The parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this Contract excludes liability for fraud.

9.5 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.6 Any notice required or permitted to be given by either party to the other under the Contract 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 pursuant to this provision to the party giving the notice.

9.7 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

9.8 This contract shall be governed by the laws of the United States of America, without regard to its conflict of laws principles. The buyer agrees to submit to the exclusive jurisdiction of the courts of the United States of America.