

DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY
NMO
(A PART OF THE OFFICE FOR PRODUCT SAFETY AND STANDARDS)
STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

1. BASIS OF SALE

1.1 The Secretary of State for the Department for Business, Energy and Industrial Strategy shall sell and the Customer (person, company or organisation) shall purchase the Goods and/or Services in accordance with any written estimate or quotation of NMO or any contract signed between the two parties or any written order of the Customer which is accepted by NMO on and subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such estimate or quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2. ORDERS AND SPECIFICATIONS

2.1 No order submitted by the Customer shall be deemed to be accepted by NMO unless and until confirmed in writing by NMO's authorised representative.

2.2 The Customer shall be responsible to NMO for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving NMO any necessary information relating to the Goods and/or the Services within a sufficient time to enable NMO to perform the Contract in accordance with its terms.

2.3 The quantity, quality and description of and specification for the Goods and description of and any specification for the Services shall be those set out in NMO's estimate or quotation (if accepted by the Customer) or the Customer's order (if accepted by NMO).

2.4 No order which has been accepted by NMO may be cancelled by the Customer except with the agreement in writing of NMO and on terms that the Customer shall indemnify NMO 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 NMO as a result of cancellation.

3. ESTIMATES & QUOTATIONS

3.1. All estimates and quotations are valid for 30 days only or until earlier acceptance by the Customer.

3.2 NMO shall agree with the Customer an estimate of expected fees or quotation prior to the commencement of any work. The supply of a Purchase Order by the Customer to the value of the estimate of expected fees or quotation shall be considered an agreement of expected fees or quotation.

3.3 NMO reserves the right, by giving notice to the Customer at any time before delivery, to increase any estimate to reflect any increase in the cost to NMO which is due to any factor beyond the control of NMO (such as, without limitation, any 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, description of or specifications for the Goods and/or the Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give NMO adequate information or instructions.

3.4 Except as otherwise stated under the terms of any estimate or quotation and unless otherwise agreed in Writing between the Customer and NMO, all estimates and quotations given by NMO are for delivery at NMO's premises, and where NMO agrees to deliver the Goods otherwise than at NMO's premises, the Customer shall be liable to pay NMO's charges for transport, special packaging and insurance. For estimates and quotations relating to audit activities involving work carried out at the Customers' location, all travel and subsistence costs shall be borne by the Customer.

3.5 The estimate or quotation is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to NMO.

4. PAYMENT

4.1 NMO shall be entitled in its sole discretion to require payment by the customer:

- in advance of delivery of the Goods and/or supply of the Services, of fees estimated or quoted by NMO to be payable in respect of such delivery or supply;
- at any point during delivery of the Goods and/or supply of the Services, of the fees accrued up to that point with the balance invoiced on completion; or
- on completion of the delivery of the Goods and/or supply of the Services.

4.2 Accrued fees at any point during delivery of the Goods and/or supply of the Services shall be calculated from the amount of work carried out to that point as recorded by NMO on its systems.

4.3 For Customers who have made payment in advance,

- should the supply of Goods and/or Services be cancelled, either by NMO or the Customer, NMO will provide a full refund or pro rata as appropriate within 30 days of cancellation. Where the supply of Goods and/or Services has not commenced a full refund will be appropriate. Where the supply of Goods and/or Services has been part completed, NMO will deduct fees accrued from the advance and refund the balance in accordance with Clause 4.2.
- should there be an overestimate of fees, NMO will refund the amount of the overestimate within 30 days of the delivery of the Goods and/or supply of the Services.

4.4 If any payment to be made by the Customer to NMO is overdue, interest will be chargeable thereon as well after as before judgement on a day to day basis at an annual rate of 4% above the National Westminster Bank Limited Base Rate from time to time applicable, until the sum due is paid.

4.5 Where any sum owed by the Customer to NMO under this or any other contract is overdue or if at any time the credit standing of the Customer has in the opinion of NMO been impaired for any other reason NMO may withhold any deliveries of Goods due to be made and/or refuse to continue work under this Contract until arrangements as to payment or credit have been established which are satisfactory to NMO.

4.6 Where any sum owed by the Customer to NMO under this or any other contract is overdue NMO shall be entitled to cease work upon this Contract until such sum (together with such interest as may be due thereon) is paid and in the event that such default continues for longer than 30 days NMO shall be entitled but not bound (without prejudice to any other rights that he may have in respect thereof) to terminate this Contract forthwith and to dispose of any Goods that have been appropriated by NMO to this Contract.

5. DELIVERY

5.1 Delivery of each consignment of the Goods shall be made at NMO's premises unless otherwise agreed in writing provided that NMO shall be entitled to withhold delivery of the Goods until the Customer has paid all sums due to NMO hereunder.

5.2 At the Customer's written request and expense, NMO will arrange for transport of the Goods to the Customer's premises and arrange insurance of the Goods whilst in transit. All charges for transport, special packaging and for insurance of the Goods in transit are payable by the Customer in addition to the estimated or quoted price.

5.3 Unless otherwise expressly agreed in writing with the Customer any delivery times specified by NMO in its estimate or quotation or otherwise are business estimates only and NMO will not be liable to the Customer for any loss or damage sustained by the Customer as a result of NMO's failure to comply with such delivery times.

6. STORAGE

6.1 NMO shall be entitled to store the Goods (or any of them) at their own premises or elsewhere at the Customer's expense if:

6.1.1 where the Customer has elected to collect the Goods from NMO 's premises, the Customer fails to take delivery at the time specified therefore.

6.1.2 where the Customer has elected to have the Goods delivered by NMO either NMO is unable to dispatch the Goods by reason of any act or omission on the part of the Customer or NMO has dispatched the Goods but the Customer fails to take delivery thereof.

6.1.3 NMO is withholding delivery of the Goods pursuant to the proviso to Condition 5.1.

6.2 The expenses that NMO may reclaim from the Customer include all reasonable costs incurred by NMO (whether by way of storage, insurance or otherwise) in respect of the Goods and it is expressly declared that it shall be reasonable for NMO to effect insurance in respect of the Goods notwithstanding that the risk therein has passed to the Customer.

7. UNCOLLECTED EQUIPMENT

7.1 If any equipment belonging to the Customer and submitted to NMO under this contract is not collected by the Customer, or his agents, within 30 days of delivery of the Goods/Services pursuant to this contract, NMO reserves the right to dispose of said equipment in any manner it sees fit and may reclaim from the Customer any reasonable costs incurred in disposal.

8. FORCE MAJEURE

8.1 Neither party shall be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond its control including but not limited to an act of God, war, civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident.

STANDARD TERMS AND CONDITIONS SPECIFIC TO NMO CERTIFICATION BODY (INCLUDING NOTIFIED BODY 0126) (PRODUCT CERTIFICATION AND MANAGEMENT SYSTEM CERTIFICATION)

9. CERTIFICATION REQUIREMENTS

9.1 The Customer shall always fulfil the certification requirements, including the implementation of appropriate changes when they are communicated by the Certification Body. The Customer shall inform the Certification Body, without delay, of changes that may affect its ability to conform with the certification requirements. The Customer shall comply with any requirements that may be prescribed by the Certification Body relating to the use of marks of conformity, and on information related to the product and / or management system.

10. ARRANGEMENTS FOR EVALUATION

10.1 The Customer shall make all necessary arrangements for:

- a) the Certification Body to conduct the assessment and surveillance, if required, including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and the Customer's subcontractors;
- b) investigation of complaints;
- c) the participation of observers, if applicable.

11. PUBLICITY AND USE OF CERTIFICATION BY CUSTOMER

11.1 The Customer shall ensure that any claims regarding product and / or management system certification are consistent with the scope of certification. The Customer shall ensure that in its publications, advertising material and other publically presented information, no confusion arises between NMO certified and non-certified products. The Customer shall not make any claim that could mislead third parties to believe that certain products have been certified when, in fact, they have not. The Customer shall ensure that in its publications, advertising material and other publically presented information, no confusion

arises regarding the scope and boundaries of the NMO certified management system(s). In making reference to its product and or management system certification in communication media such as documents, brochures or advertising, the Customer shall comply with the requirements of the Certification Body (available on request).

11.2 The Customer shall not use its product and / or management system certification in such a manner as to bring the Certification Body into disrepute and does not make any statement regarding its product and / or management system certification that the Certification Body may consider misleading or unauthorised. For example; the Customer will not make reference to an ISO 9001 management system certification in such a way to suggest that a product is certified. The Certification Body shall take suitable action, at the expense of the Customer, to deal with incorrect or misleading references to certification.

11.3 Upon suspension, withdrawal or termination of certification, the Customer shall discontinue its use of all advertising matter that contains any reference thereto and takes action as required by the Certification Body (e.g. the return of certification documents) and takes any other required measure.

11.4 If the Customer provides copies of the certification documents to others, the documents shall be reproduced in their entirety or as specified by the Certification Body.

11.5 The Customer must amend their advertising and other publicity materials to ensure it is reflective of the scope of certification, if their scope of certification reduces.

12. MODIFICATION OF CERTIFICATION

12.1 The Customer shall inform the Certification Body, in writing, of any intended modification to the product or the manufacturing process which may affect the conformity of the product with the product and / or management system certification. The Certification Body will determine whether the announced changes require further investigations and modification of the product and / or management system certification. If such is the case, the Customer shall not release certified products resulting from such changes until notified accordingly by the Certification Body. Failure to notify the Certification Body of any intended modification may result in suspension of the certificate.

13. SUSPENSION OF CERTIFICATION

13.1 A certificate may be suspended by the Certification Body for a limited period in cases such as the following:

- a) If the Customer has not notified the Certification Body of any intended modification to the product or manufacturing process; or
- b) If a case of misleading reference to product and or management system certification, as described in Clause 10, is not corrected by suitable restrictions or other appropriate remedial actions by the Customer; or
- c) Where any fees payable by the Customer to the Certification Body remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, the Certification Body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate will be suspended until payment of the sum owed has been received.

13.2 The Customer shall not identify the product and / or management system as certified when product and / or management system certification has been suspended.

13.3 The Certification Body will confirm in writing to the Customer the suspension of product and or management system certification. At the same time, the Certification Body shall indicate under what conditions the suspension will be removed. At the end of the suspension period, an investigation will be carried out to determine whether the indicated conditions have been fulfilled. On fulfilment of these conditions the suspension shall be lifted and the Customer notified of the reinstatement of the product and / or management system certification. If the conditions are not fulfilled the product and / or management system certification shall be withdrawn.

13.4 All costs incurred by the Certification Body in suspending and reinstating product and / or management system certification will be charged to the Customer.

14. WITHDRAWAL OF CERTIFICATION

14.1 Product and or management system certification may be withdrawn if:

- a) the Customer takes inadequate measures in case of suspension; or
- b) the requirements of the Regulations and/or standards governing use of the product and / or management system certification have not been satisfied.

14.2 In cases of withdrawal, no reimbursement of fees shall be given and withdrawal of product and / or management system certification shall be published by the Certification Body and where required by regulation, notified to the Secretary of State.

15. APPEALS

15.1 If, for any reason, notification is given which may result in an application for product and / or management system certification being rejected, product and / or management system certification not being granted, suspended or being withdrawn, the Customer has the right to appeal.

15.2 Notification of the intention to appeal must be made in writing and received by the Certification Body with seven days of receipt of notification of the non-acceptance of an application or the non-issue, suspension or withdrawal of product and / or management system certification.

15.3 The review will be carried out by the Lead Technical Manager (or Technical Manager not involved in the decision), Head of Technical Services and a Member of the NMO Certification Body Impartiality Committee. The Customer shall be informed of the membership of the review panel and may object to the membership. The Certification Body shall be required to submit evidence to support its decision to not accept an application or to withhold, suspend or withdraw product and / or management system certification.

15.4 The decision of the review panel shall be put in writing to the Customer with reasons for the decision reached. This decision shall be final and binding on both the Customer and the Product and / or management system certification service. Once the decision regarding an appeal has been made, no counter-claim by either party in dispute can be made to amend or change this decision.

15.5 In instances where the appeal has been successful and product and / or management system certification is granted or reinstated, no claim can be made against the Certification Body for reimbursement of costs or any other losses incurred as a result of the withholding, suspension or withdrawal notification.

16. COMPLAINTS

16.1 If a Customer has cause to complain regarding the conduct of employees of the Product and / or management system certification service, the complaint shall be made in writing, without delay, and addressed to the NMO Quality Manager. If the complaint is made against the Quality Manager, the letter of complaint shall be addressed to the Head of Technical Services.

17. CONFIDENTIALITY

17.1 For the purposes of this clause 18 "Confidential Information" means all non-public information obtained by the NMO Certification Body from the Customer and which is either designated in writing as confidential or which would be regarded as confidential by a reasonable business person.

17.2 Save as provided in clauses 18.3, 18.4, and 18.5 the NMO Certification Body agrees not to disclose any Confidential Information to any third party.

17.3 The NMO Certification Body may disclose Confidential Information without breaching these terms and conditions:

- a) with the prior written approval of the Customer;
- b) to such of its employees, agents, sub-contractors or professional advisers as need to know it for the purpose of discharging the NMO Certification Body's obligations to the Customer under the Contract provided that such employees, agents, sub-contractors or professional advisers are subject to obligations of confidentiality corresponding to those which bind the NMO Certification Body;
- c) if ordered to do so by a court or other regulatory authority.

17.4 The NMO Certification Body reserves the right to publish copies of all EU Type Examination, EU Unit Verification and EU Design Examination Certificates that it issues on its website or in other publications.

17.5 The NMO Certification Body may provide to market surveillance authorities, MID Module D, D1, E, E1, H, H1 (excluding design examination certificates) and NAWI Module D, D1 certificates. NMO will not publish these certificates (other than H1 design examination certificates) on its website or in other publications.

17.6 The NMO Certification Body will not publish on its website or by other means make publically available ISO 9001 certificates that it has granted.

17.7 Confidential information about a particular client or individual shall not be disclosed to a third party without the written consent of the client or individual concerned, other than is specified above and as required by the accreditation standards governing the certification. Where the certification body is required by law to release confidential information to a third party, the client or individual concerned shall, unless regulated by law, be notified in advance of the information provided.

17.8 Information about the client, gained from sources other than the client (e.g. complainant, regulators) shall be treated as confidential and handled in accordance with Civil Service policy.

18. COMPLAINTS TO CUSTOMER REGARDING CERTIFIED PRODUCTS AND MANAGEMENT SYSTEMS

18.1 In respect of certified products and management systems, the Customer is required to keep a record of all complaints made known to the Customer relating to certified product / management system compliance with the certification requirements and to make these records available to the Certification Body when requested, and

- a) take appropriate action with respect to such complaints and any deficiencies found in product / management system that affect compliance with the requirements for certification;
- b) document the actions taken.