

## **GENERAL CONDITIONS OF SALE**

### 1. DEFINITIONS

- 1.1. "Newclay" means Newclay Products Limited (registered in England under number 00919472) whose registered office is at Quay House, Quay Road, Newton Abbot, Devon, TQ12 2BU
- 1.2. "Buyer" means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods.
- 1.3. "Contract" means the particular individual contract for the supply of the Goods by Newclay to the Buyer.
- 1.4. "Collection Note" means the document entitled collection note generated by Newclay and sent with the carrier or by post, fax or e-mail by Newclay to the Buyer.
- 1.5. "Delivery Note" means the document entitled delivery note generated by Newclay and sent with the carrier or by post, fax or e-mail by Newclay to the Buyer.
- 1.6. "Despatch Note" means the document entitled despatch note generated by Newclay and sent with the carrier or by post, fax or e-mail by Newclay to the Buyer.
- 1.7. "Goods" means the goods or materials supplied or sold by Newclay to the Buyer as specified in the Sales Order Confirmation, Delivery Note, Collection Note or equivalent document.
- 1.8. "Incoterms" means Incoterms 2000 as published by the International Chamber of Commerce in 1999 or such other edition in force at the date when the Contract is made.
- 1.9. "Intellectual Property" means patents, registered and unregistered trademarks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up, know how, domain names, inventions, service marks, and database rights and like rights wherever situated in the world.
- 1.10. "Order" means an order placed for the Goods.
- 1.11. "Sales Order Confirmation" means the document entitled sales order confirmation generated by Newclay and sent by post, fax or e-mail by Newclay to the Buyer. If a Sales Order Confirmation is not generated by Newclay any Sales Invoice or Receipt generated by Newclay take the meaning of "Sales Order Confirmation" for the purposes of these Conditions.
- 1.12. "Safety Legislation" means the Health and Safety at Work etc. Act 1974, the Consumer Protection Act 1987 and all regulations thereunder, the General Product Safety Regulations 1994 and all other legislation from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in Member States) imposing legal requirements with respect to the safety of goods the handling transportation storage or disposal of goods or goods incorporating the Goods and the health and safety of the users of the Goods.
- 1.13. "Special Conditions" means such additional terms agreed from time to time in writing between Newclay to the Buyer.
- 1.14. "Time of Delivery" and "Time of Despatch" have the meanings given in Clause 7.
- 1.15. "Date of Collection" has the meanings given in Clause 8.
- 1.16. "Time of Collection" has the meanings given in Clause 8.
- 1.17. Reference to any statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

- 1.18. To the extent of any conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail.
- 1.19. Reference to any Clause is to a clause of these Conditions.
- 1.20. In this document and in any Special Conditions:
  - 1.20.1. the headings are for convenience only and shall not affect the interpretation of this document or those Special Conditions;
  - 1.20.2. the use of the plural shall include the singular and the use of the singular shall include the plural;
  - 1.20.3. references to the masculine, feminine or neuter genders shall include each and every gender.

## 2. APPLICABILITY OF TERMS

- 2.1. Unless otherwise expressly agreed in writing by Newclay every Contract shall be governed in all respects by these Conditions and any Special Conditions. These Conditions shall apply in respect of any containers or pallets (whether or not belonging to Newclay) which are used in connection with the delivery of the Goods. These Conditions shall apply to any services that Newclay supplies which are ancillary to the supply of the Goods to the maximum extent feasible.
- 2.2. Newclay's quotation is not to be taken as an offer and no Contract shall take effect unless and until a Sales Order Confirmation has been despatched by Newclay to the Buyer.
- 2.3. Newclay is prepared to receive the Buyer's Order by telephone, by fax or by e-mail but will accept no responsibility whatsoever for any error or omission in the transmission of the Buyer's Order.
- 2.4. Newclay shall be entitled to rely in all respects and in all circumstances on the contents of the Sales Order Confirmation as stating the quantity and grade of the Goods that are to be supplied. Accordingly, it shall be the Buyer's sole responsibility to check Sales Order Confirmation and to notify Newclay forthwith after the receipt of the same where the Goods are not properly stated in the Sales Order Confirmation.
- 2.5. Where there is a conflict between the Sales Order Confirmation and any quotation or estimate that Newclay may have given, the Sales Order Confirmation shall always prevail.
- 2.6. The Buyer acknowledges that these Conditions shall prevail over any qualification or condition purported to be imposed by the Buyer and any previous course of dealing between the Buyer and Newclay.
- 2.7. The Contract shall be based solely on these Conditions and any Special Conditions.
- 2.8. The Buyer expressly agrees that these Conditions and any Special Conditions shall take precedence over any contractual provisions proffered by the Buyer. Newclay shall not be bound by and does not agree to any contractual provisions proffered by the Buyer save to the extent, if any, that Newclay expressly agrees to the same in writing. The Buyer agrees that no actions taken by Newclay shall be interpreted as Newclay accepting any contractual provisions proffered by the Buyer.

## 3. PUBLICATIONS AND REPRESENTATIONS

- 3.1. All descriptions, illustrations and information contained in (i) Newclay's catalogues, brochures, web site, price lists, advertising matter and other publications and (ii) labels attached or affixed to Newclay's containers and packaging or any other collateral item relating to the Goods shall be regarded as approximate only and are to present merely a general idea of the goods described in them and shall not form part of the Contract or be deemed to import any warranty regarding the Goods unless and to the extent that the contrary is expressly agreed in writing by Newclay.
- 3.2. Where there is a conflict between the Sales Order Confirmation and any quotation or estimate that Newclay may have given, the Sales Order Confirmation shall always prevail.
- 3.3. The Buyer acknowledges that in entering into the Contract, it has not relied upon any oral or written representations undertakings or warranties made by or on behalf of Newclay save to the extent that any such representation is set forth in writing and expressly included in the Contract.
- 3.4. Nothing in this Contract shall be taken to exclude Newclay's responsibility in the case of a fraudulent misrepresentation made by Newclay or for which Newclay is liable.

#### 4. PRICES

- 4.1. Save as otherwise agreed in writing by Newclay or as indicated in the Sales Order Confirmation or any Special Conditions, the price of the Goods will be that prevailing at the Time of Delivery. Save to the extent that the contrary may be stated in the Sales Order Confirmation, the price of the Goods is stated as a price per sales unit, as appropriate. Save to the extent that the contrary may be stated in the Sales Order Confirmation, the price of the Goods shall exclude transportation, insurance, delivery and unloading.
- 4.2. Save as expressly stated otherwise by Newclay in writing, prices are quoted by Newclay exclusive of VAT, which Newclay shall add at the appropriate prevailing rate.
- 4.3. Newclay shall be entitled to charge the Buyer interest on any sums paid late under a Contract from the due date until the date of payment. Such interest shall be calculated on a daily basis at the rate of 1.5% per month (compound).
- 4.4. Where the price of an element of power, fuel, raw material or transport used or contracted for by Newclay to manufacture the Goods increases above the price payable as at the date of this contract then Newclay may increase the price payable by the Buyer by a commensurate amount calculated by Newclay acting reasonably and taking into account that increase and the proportionate amount of that element within the total manufacturing cost of the Goods. Newclay shall notify or e-mail the Buyer of the said increase in the price of the Goods. The Buyer may terminate this Contract by giving notice to Newclay promptly after receipt of any such notice or e-mail. Where the Buyer does not terminate this Contract promptly after receipt of any such notice or e-mail and in any event twenty four (24) hours before the time that the Goods are scheduled to leave Newclay's premises, the Buyer shall be bound to accept the delivery of the Goods at the new price.

#### 5. RESERVATION OF TITLE - RISK AND PROPERTY

- 5.1. Risk of damage to or loss of the Goods shall pass to the Buyer at the Time of Delivery.
- 5.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until Newclay has received in cash or cleared funds payment in full of the price of the Goods.
- 5.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Newclay's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 5.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in separate identifiable existence and have not been resold) Newclay shall be entitled at any time to require the Buyer to deliver up the Goods to Newclay at the Buyers' expense and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 5.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Newclay, but if the Buyer does so all monies owing by the Buyer to Newclay shall (without prejudice to any other right or remedy of Newclay) forthwith become due and payable.

#### 6. PAYMENT

- 6.1. Newclay shall be entitled to submit an invoice to the Buyer at any time on or after the Time of Despatch or the Time of Delivery, whichever is earlier.
- 6.2. The Buyer shall pay Newclay's invoice in full by the 30th day following the date the invoice is issued by Newclay. Newclay reserves the right (in Newclay's absolute discretion) to charge interest on overdue payments at the rate of 1.5% per month or part month.
- 6.3. Notwithstanding the provisions of Clauses 6.1 and 6.2 Newclay reserves the right (in Newclay's absolute discretion) to require payment in full for the Goods on or before the Time of Despatch or the Time of Delivery or otherwise to change any credit facility from time to time given by Newclay to the Buyer.
- 6.4. The Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by Newclay in writing.

## 7. DELIVERY

- 7.1. Where Newclay agrees or states a specified delivery date, Newclay shall use reasonable endeavours to deliver on or before the relevant date, but Newclay shall be under no obligation to do so.
- 7.2. Newclay shall not be obliged to make delivery at any specified time. The Buyer shall be obliged to accept any delivery during the hours of 8:30 a.m. and 4:30 p.m. on a day on which the banks are open for a full range of transactions in the territory in which the Buyer is situated (the "Normal Delivery Hours"). If the Buyer requests that delivery take place at a specified time or outside the Normal Delivery Hours and the same is recorded in the Sales Order Confirmation, Newclay will use its reasonable endeavours to deliver at the specified time. Newclay may charge an additional amount, at Newclay's absolute discretion, for such delivery or for second or subsequent attempts to deliver where deliveries have been refused or could not be made for any other reason.
- 7.3. Time shall not be of the essence with respect to any of Newclay's obligations arising under the Contract.
- 7.4. Newclay shall not be liable in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or performance of any service.
- 7.5. Where the Goods are delivered by arrangement of Newclay, the Time of Delivery shall be when the carrier arrives at the Buyer's premises (see Clause 8).
- 7.6. Where the Goods are delivered in some manner other than as specified in Clauses 7.5 or 7.6, the Time of Delivery shall be when the Goods leave Newclay's premises.
- 7.7. The provisions of Clause 7 are subject to any contrary provision of the Sales Order Confirmation which may specify a different Time of Delivery. Without limitation, the Sales Order Confirmation may specify that an Incoterm applies in which event the Time of Delivery shall be when delivery is effected as stated in that Incoterm (and if none is stated, then in accordance with the provisions of Clause 7.)

## 8. CUSTOMER ARRANGED COLLECTION

- 8.1. Newclay, at its sole discretion, reserves the right to refuse to allow collections arranged by the Buyer.
- 8.2. Where the Goods are collected from Newclay by arrangement of the Buyer, by whatever means, the Time of Delivery shall be the Time of Collection, defined as the time when the Goods are lifted over the side of the transporting vehicle.
- 8.3. Newclay accepts no responsibility for loss or damage to the Goods from the Time of Delivery.
- 8.4. The Date of Collection will be specified by Newclay to the Buyer at least five working days in advance. Newclay shall not be obliged to agree a Date of Collection specified by the Buyer.
- 8.5. The Time of Collection shall be between 08.30am and 3.00pm (2.00pm on Fridays, or as otherwise specified by Newclay). Collections outside these times may be subject to labour or other charges to cover additional costs.
- 8.6. The Buyer shall ensure that the vehicle arranged by them to make the collection complies with all legislative requirements and that it can be loaded safely by one person, either operating a forklift truck or manually where the Goods are not on a pallet. Collections not conforming to these requirements may be subject to labour or other charges to cover additional costs.
- 8.7. Newclay, at its sole discretion, reserves the right to refuse to load a vehicle arranged by the Buyer if, in its opinion, the vehicle is considered to be unsafe or unsuitable for any reason.
- 8.8. Where the Date of Collection is not achieved by the Buyer, the Buyer accepts that Newclay will levy a warehousing fee of £10 (plus VAT where applicable) per pallet per day or part day. Additionally, the Buyer accepts that Newclay, at its sole discretion, may arrange delivery of the Goods at the Buyer's expense at any time after three working days has elapsed from the Date of Collection as stated to the Buyer by Newclay.
- 8.9. Where Newclay agrees or states a specified Date of Collection, Newclay shall use reasonable endeavours to make the Goods available on the Date of Collection and/or give the Buyer as much notice as possible of any change to the Date of Collection, but Newclay shall be under no obligation to do so.
- 8.10. Newclay shall not be liable in respect of any loss incurred by the Buyer arising from any delay in making the Goods available for collection or in performance of any service.

- 8.11. Time shall not be of the essence with respect to any of Newclay's obligations arising under the Contract.
- 8.12. The provisions of Clause 8 are subject to any contrary provision of the Sales Order Confirmation which may specify a different Time of Collection. Without limitation, the Sales Order Confirmation may specify that an Incoterm applies in which event the Time of Delivery shall be when delivery is effected as stated in that Incoterm (and if none is stated, then in accordance with the provisions of Clause 8.)

## 9. DELIVERY BY INSTALMENTS

- 9.1. Newclay shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between Newclay and the Buyer.
- 9.2. Any failure, suspension or delay by Newclay in respect of any part-delivery of the goods or the discovery of any defect in any of the Goods so delivered shall not entitle the Buyer to cancel the remainder of the Contract and shall not affect the obligations of the Buyer in respect of the remainder of the Goods or the remainder of the Contract.

## 10. SUITABILITY OF STORAGE AND OFFLOADING FACILITIES

The Buyer shall at all times be solely responsible and liable to ensure that the Buyer's storage and offloading facilities are adequate and suitable.

## 11. FAILURE TO ACCEPT DELIVERY WHEN TENDERED

- 11.1. Where any delay in delivery of the Goods is caused by the Buyer, Newclay shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the cost of returning the Goods to Newclay's premises, of storing the Goods and of re-delivering the Goods.
- 11.2. Where any delay in delivery of any services is caused by the Buyer, Newclay shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the wasted cost of having labour and materials ready to deliver the service.
- 11.3. Notwithstanding Clauses 11.1 and 11.2 above, and subject to any contrary provision that Newclay may agree to in writing, the Buyer shall be entitled to re-schedule on not more than one occasion delivery of the Goods by giving Newclay reasonable notice so to do.

## 12. FORCE MAJEURE AND HARDSHIP

- 12.1. In this Clause 12, "Force Majeure Event" means an event wholly beyond the reasonable control of the party claiming the benefit of the Clause (including its sub-contractors) including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure by any statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage or significant price increase of power, fuel, raw material or transport, and any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the Clause relies thereon.
- 12.2. Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract. The party seeking to take advantage of this Clause 12 shall:
- 12.2.1. give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and
- 12.2.2. use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the said failure or delay.

### 13. TERMINATION

- 13.1. If:
- 13.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or has an administrator or administrative receiver appointed over the whole or any part of its assets; or
  - 13.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 13.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
  - 13.1.4. Newclay reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
  - 13.1.5. any event takes place in any jurisdiction other than England which is analogous to any of the above under this Clause 13.1; or
  - 13.1.6. the Buyer is in breach of any material provision of this Contract and fails to remedy such breach within thirty (30) days of a notice from Newclay indicating the breach and requiring the Buyer to remedy the same.
- 13.2. Where Clause 13.1 applies then, without prejudice to any other right or remedy available to Newclay, Newclay shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer.
- 13.3. Where Clause 13.1 applies 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.
- 13.4. The Buyer may terminate this contract at any time not less than seventy-two (72) hours before the time that the Goods are scheduled to leave Newclay's premises provided always that where the Buyer exercises this right, the Buyer shall be liable to compensate Newclay for costs incurred prior to receipt by Newclay of notice of such termination and for the full value of any products made specifically for the Buyer. Newclay may issue an invoice for such costs at any time after such notice of termination has been received.

### 14. VARIATION IN SPECIFICATION

- 14.1. Newclay's only responsibility shall be to deliver Goods in accordance with any formal written specification referred to in the relevant Sales Order Confirmation. If the Buyer wishes an alternative specification the Buyer must raise that issue prior to the Contract being entered into.
- 14.2. Newclay shall be responsible for ensuring that the Goods when supplied are in accordance with the specification. Newclay shall not be obliged to undertake any tests not relating to the specification. Without limitation, Newclay shall not be under any obligation to test for any contaminant not envisaged by the specification. The Buyer shall in accordance with good manufacturing principles also check that the Goods meet the specification prior to using the Goods or supplying the Goods to a third party.
- 14.3. Where the Goods are pre-packaged goods that are sold on by Newclay in the same packaging as they are bought by Newclay, then in place of Clauses 14.1 and 14.2 above, Newclay's only obligation shall be to use its reasonable endeavours to pass on to the Buyer the warranties given to Newclay by the seller of the Goods to Newclay.
- 14.4. Newclay may by giving written notice or e-mail to the Buyer vary the specification of the Goods at any time. The Buyer may terminate this Contract by giving notice promptly after receipt of any such notice or e-mail.

### 15. LIABILITY

- 15.1. Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgment and not Newclay's in determining such suitability. Newclay warrants that the Goods will comply with the specification previously supplied to the Buyer, as further provided for in Clause 14 above. If no specification has previously been supplied to the Buyer, a specification will be supplied to the Buyer on request and Newclay warrants that the Goods will comply with that specification.

- 15.2. Newclay's charges to the Buyer are determined on the basis of the exclusions from and limitations of liability contained in this Contract. The Buyer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Buyer for a breach by Newclay of this Agreement may be disproportionately greater than the price of the Goods.
- 15.3. The following provisions in this Clause 15 set out Newclay's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Buyer in respect of:
- 15.3.1. a breach of Newclay's contractual obligations;
  - 15.3.2. a tortious act or omission for which Newclay is liable;
  - 15.3.3. an action arising out of a misrepresentation made by or on behalf of Newclay; arising in connection with the performance or contemplated performance of this Contract or out of an act done or omission made as a consequence of the entry into by Newclay of this Contract.
- 15.4. The total liability which Newclay shall owe to the Buyer and in respect of all claims shall not exceed the price of the Goods.
- 15.5. Newclay shall in no circumstances be liable to the Buyer for any pure economic loss, loss of profit, loss of business and like loss. Newclay shall in no circumstances be liable to the Buyer for any indirect loss.
- 15.6. The Buyer shall only be entitled to bring a claim against Newclay where the Buyer issues legal proceedings against Newclay within the period that is the lesser of (i) the shelf life of the Goods and (ii) the period of twelve (12) months commencing on the date upon which the Buyer ought reasonably to have known of its entitlement to bring such a claim.
- 15.7. The exclusion of liability referred to in this Clause 15 does not apply so as to exclude or limit Newclay's liability for:
- 15.7.1. death or personal injury resulting from the negligence of Newclay, its servants or agents; or
  - 15.7.2. damage for which Newclay is liable to the Buyer under Part I of the Consumer Protection Act 1987 and where the Buyer acts as a consumer pursuant to that Act;
  - 15.7.3. breach of Newclay's implied undertaking as to title to the Goods contained in Section 12 of the Sale Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 save that nothing in this Clause 15 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
- 15.8. The exclusions from and limitations of liability set out in this Clause 15 shall be considered severably. The validity or unenforceability of any one paragraph or sub-paragraph of this Clause 15 shall not affect the validity or enforceability of any other part of this Clause 15.
- 15.9. The provisions of this Clause 15 shall survive the termination of the whole or a Part of this Contract.

## 16. SAMPLES

Except where the Goods are specifically ordered in writing against samples supplied by Newclay and the Sales Order Confirmation expressly refers to those samples, any and all samples supplied by Newclay are supplied for information only. Where the Buyer requires an additional warranty that the Goods comply with such a sample, the Buyer must communicate the same to Newclay prior to the issue of a Sales Order Confirmation. The Sales Order Confirmation shall refer to any additional warranty (in the form of an additional specification) to which Newclay may agree. Newclay does not give any further warranty about compliance of the Goods with any sample other than in respect of the specification contained in the Sales Order Confirmation.

## 17. CONTAINERS AND PALLETS

- 17.1. This Clause 17 shall only apply where containers or pallets belonging to Newclay are used in connection with the delivery of the Goods.
- 17.2. The value of all chargeable containers or pallets used in connection with the delivery of the Goods will be shown as a separate item on Newclay's sales invoice for the Goods and shall be paid for in full by the Buyer when payment for the Goods is due.
- 17.3. All such empty containers or pallets returned, at the Buyer's expense, to Newclay in good and complete condition within three months of receipt by the Buyer may be repurchased at Newclay's discretion at such rate as may be determined by Newclay from time to time.

## 18. INTELLECTUAL PROPERTY

The supply of any of the Goods by Newclay shall not give the Buyer any rights whatsoever in respect of any Intellectual Property owned, used or enjoyed by Newclay in connection with the Goods.

## 19. CLAIMS

- 19.1. The buyer shall inspect the Goods as soon as is practicable after the Time of Delivery and shall give to Newclay and the carrier in writing before the end of the next working day after the Time of Delivery notice of any claim for any defect, shortage, damage or loss to the Goods whilst in transit. If the Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by the buyer without any claim for any defect, shortage, damage or loss.
- 19.2. The provisions of this Clause 19 shall only apply where any claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.
- 19.3. The provisions of this Clause 19 shall not apply to Goods collected by arrangement of the Buyer.

## 20. HEALTH AND SAFETY AT WORK

- 20.1. Newclay undertakes to comply with health and safety legislation. Where required by such legislation, Newclay will make available on its website and supply on request safety data sheets and other information regarding the health and safety attributes of the Goods.
- 20.2. The Buyer will comply with health and safety legislation. In particular but without limitation, the Buyer shall fully and effectually indemnify Newclay against any claims or proceedings resulting from any injury, loss or damage caused by:
  - 20.2.1. an Unexpected Defect in the Goods
  - 20.2.2. a failure to use the Goods in accordance with their intended purpose, health and safety legislation or with the information regarding the health and safety attributes of the Goods supplied by or on behalf of Newclay (whether such failure is on the part of the Buyer's employees, contractors or agents, or a third party to whom the Buyer has supplied the Goods).
  - 20.2.3. In this Clause 20.2, an "Unexpected Defect" means a defect in the Goods other than a failure by the Goods to meet the specification indicated in the Sales Order Confirmation.
- 20.3. The Buyer undertakes to ensure that all information provided or made available by Newclay to the Buyer concerning the use, handling, processing, storage or transportation of the Goods (hereinafter the "Use of the Goods"), including without limitation all information concerning any risks to health or safety to which the Use of the Goods may give rise and any conditions necessary to ensure that the Use of the Goods will be without risks to health, shall be brought to the attention of all employees of the Buyer and others involved in the Use of the Goods. The Buyer undertakes further to impose a similar requirement upon any third party to whom the Goods are sold or supplied.
- 20.4. The Buyer shall promptly inform Newclay of any incident of which the Buyer becomes aware in which the Use of the Goods has or may have given rise to risks to the health or safety of any person.

## 21. EXPORT SALES

- 21.1. The provisions of this Clause 21 shall apply only where the Sales Order Confirmation indicates that an Incoterm applies to the Contract.
- 21.2. The sale of the Goods is subject to the Incoterm (if any) stated in the Sales Order Confirmation. In the event of any conflict between the provisions of Incoterms and these Conditions, then (subject only to the provisions of Clause 7.7) these Conditions shall prevail.
- 21.3. It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to any Contract pursuant to these Conditions.
- 21.4. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.
- 21.5. Unless otherwise agreed in writing, Newclay shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

## 22. ASSIGNABILITY

The Buyer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of Newclay. Newclay may sub-contract the performance of its obligations as it sees fit, provided always that Newclay shall remain responsible for the acts and omissions of its subcontractors.

## 23. WAIVER

Save in respect of a waiver granted in writing, the failure of Newclay at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of Newclay's right thereafter to enforce that or any other provision of this Contract.

## 24. SEVERABILITY

If a provision in this Contract is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:

24.1. such unenforceability shall not affect the rest of this Contract; and

24.2. the parties shall in good faith amend and if necessary novate this Contract to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

## 25. STATUS

Nothing in these Conditions shall create any joint venture, agency or partnership between Newclay and the Buyer.

## 26. VARIATIONS

All variations to any Contract or to these Conditions must be made in writing and be signed by both parties.

## 27. THIRD PARTY RIGHTS

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract and this Contract shall not confer any right on a Third Party under that Act or otherwise.

## 28. PROPER LAW

Every Contract to which these Conditions apply shall be construed and take effect in accordance with the laws of England and the parties hereby accept the exclusive jurisdiction of the English Courts.