

**TERMS OF SALE  
NOVIA CORPORATION**

**1. DEFINITIONS**

In these Standard Terms of Sale (“**Terms**”) the following words shall have the following meanings (unless the context otherwise requires): “**Company**” means Novia Corporation, a Delaware corporation; “**Contract**” means any purchase order, Sales agreement, or other agreement for the sale of Goods between the Company and the Customer to which these Terms apply; “**Customer**” means the person, firm or company who has placed an order for Goods from the Company; “**Delivery Point**” means the Company’s address or such other address as the Company may specify to the Customer; and “**Goods**” means all material goods; and “**Services**” means intangible products to be supplied under the Contract to the Customer by the Company.

**2. GENERAL**

2.1 Any quotation is not an offer to sell Goods. All orders by the Customer for the Goods (“**Orders**”), if accepted by Company in its sole discretion, will be accepted subject only to these Terms. DIFFERENT OR ADDITIONAL TERMS PROPOSED BY CUSTOMER ON OR IN CONNECTION WITH CUSTOMER’S PURCHASE ORDER FORMS OR OTHER DOCUMENTATION, SHALL NOT APPLY TO THE PURCHASE OF GOODS HEREUNDER AND ARE HEREBY EXPRESSLY REJECTED AND SHALL NOT BECOME PART OF THE TRANSACTION. COMPANY’S AGREEMENT TO SELL GOODS TO THE CUSTOMER IS EXPRESSLY LIMITED TO THESE TERMS AND, IF APPLICABLE, A WRITTEN AND SIGNED SUPPLY AGREEMENT BETWEEN THE CUSTOMER AND COMPANY TO WHICH THESE TERMS ARE ATTACHED.

2.2 If, subsequent to this Contract, any sale is concluded with the same Customer by fax, telegram, electronically or orally, or by any combination of these, without express reference to these Terms, these Terms shall apply unless expressly modified in writing, and signed by both the Company and Customer.

2.3 Any statement or representation by the Company or its employees or agents upon which the Customer proposes to change, must be set out in writing and signed by both parties. Any statement or representation which is not so confirmed in writing is followed or acted upon entirely at the Customer’s own risk. For the avoidance of doubt, illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

2.4 Quotations shall be available for acceptance by the Customer for a maximum of sixty (60) days from the date of issue by the Company and may be withdrawn by the Company by written or oral notice to the Customer at any time prior to acceptance of the Order by the Company. Supply or delivery dates quoted may be affected by delays in placing an Order.

2.5 Verbal, telephone, fax, or email Orders will be executed at the Customer’s sole risk and Company will make every effort to confirm in writing receipt by the Company within 72 hours. No order for Goods shall be deemed to have been accepted by Company unless written acknowledgement of acceptance is received by the Customer from the Company or the Order is processed by the Company.

2.6 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

2.7 The Company may cancel an Order at any time by serving notice in writing on the Customer if it does not receive, on request, satisfactory (in the Company’s sole opinion) credit references in relation to the Customer. If the Company cancels an Order pursuant to this Section it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Customer as a result of or in connection with such cancellation.

2.8 Seller cannot accept any return of goods unless its written permission has been first obtained. Credit will be allowed on the basis of the price charged for the goods less a 20% restocking charge and less any freight charges allowed or paid by Seller. Goods not in first class saleable condition are subject to refusal or higher restocking charges, at the option of Seller. Special Order, non-standard or fabricated goods are not subject to cancellation or return except as specifically specified in writing at time of order.

**3. PRICES**

3.1 In the supply of Goods, prices do not include the price of delivery or of any import or customs duties or any other applicable taxes or governmental impositions unless otherwise stated in writing by the Company, which taxes, impositions and duties shall be the sole responsibility of the Customer. All prices are subject to the addition of any applicable sales tax.

3.2 The Company reserves the right at any time prior to delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or any other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

**4. PAYMENT**

4.1 Subject to Section 4.2 below, payment of the price for the Goods is due in U.S. Dollars in cash or ACH funds no later than thirty (30) days following shipment of the Goods, unless otherwise agreed in writing.

4.2 If the Customer wrongfully fails to take delivery of the Goods, the Company shall be entitled to invoice for payment by the Customer for the contract price.

4.3 No payment shall be deemed to have been received until the Company has received cleared funds.

4.4 In the event of default in payment by the Customer, the Company shall be entitled (without prejudice to any other right or remedy it may have under these Terms or otherwise) to charge interest on a daily basis (after as well as before judgment) on any amount outstanding at the rate of four percent (4%) above the prime rate published by JPMorgan Chase Bank from time to time.

4.5 In the event of any dispute, the Customer shall not be entitled to withhold payment of the price of the Goods or any payments or to any right of set-off, deduction, counterclaim, reduction or otherwise against any payment due to the Company under any other agreement for the sale of Goods.

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- 4.6 In respect of Goods sold for export, unless otherwise agreed in writing, payment should be made by irrevocable letter of credit confirmed with a clearing bank approved by the Company, or payment prior to fabrication or shipment.
- 4.7 Time for payment shall be of the essence of the Contract.
- 4.8 All payments payable to the Company under the Contract shall become due immediately on its termination.
- 5. DELIVERY**
- 5.1 Unless otherwise agreed in writing by the Company, delivery shall be deemed to take place when the Goods are made available by the Company at the Delivery Point, for collection by the Customer or its carrier at the Company's premises ("Delivery").
- 5.2 Any and all dates and periods specified by the Company for Delivery are estimates only and do not constitute fixed times for delivery. Delivery shall not be of the essence of the Contract and shall not be made of the essence by notice. The Company shall have no liability for any damages, losses, costs or expenses whatsoever or in connection with the failure by the Company to meet any delivery times specified in the Order. The Customer shall have no right to cancel an order for a failure of the Company to meet any delivery times.
- 5.3 The Company will endeavor to comply with any reasonable request by the Customer for postponement of Delivery but shall be under no obligation to do so and the Customer is obliged to take Delivery at such date and time as specified by the Company. Where postponement is agreed by the Company in writing the Customer shall, if required, pay all costs and expenses including a reasonable charge for storage occasioned thereby and any costs incurred by the Company in relation to any insurance payments reasonably made by it. The Company reserves the right to deliver the Goods to the Customer in partial shipments. Where the Goods are delivered in partial shipments, each Delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the partial shipments in accordance with these Terms or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.4 The date for Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer.
- 5.5 If the Customer is ordering Goods for Delivery outside of the country of manufacture by the Company, such Goods may be subject to import duties and taxes which are levied when the Goods reach the specified destination. The Customer will be responsible for payment of such import duties and taxes. The Customer will comply with all laws and regulations of the country for which the Goods are destined and the Company will not be liable for any breach of those laws.
- 5.6 The Customer shall (and shall procure that its sub-contractors and agents shall):
- (a) Strictly follow all instructions and installation materials related to the Goods and not make any alteration, modification or addition to the Goods or packaging (and any alteration of the Goods, or use of non-approved parts, products or packaging with the Goods, shall be a material breach of these Terms and voids any warranties made by the Company for the Goods).
- 6. RISK AND TITLE**
- 6.1 Title to the Goods will pass to Customer upon Customer's receipt of monies for the Goods.
- 6.2 Unless otherwise agreed between the Company and the Customer in writing, risk of damage to or loss of the Goods shall pass to the Customer upon Shipment. When Goods are transported by the Company's own vehicles, Delivery shall be deemed to take place at the moment the Goods are lifted from the Company's vehicle.
- 6.3 No claim for Goods damaged in transit will be considered by the Company unless the Company used its own transport for Delivery and/or unless:
- (a) An appropriately qualified signature, e.g. "Goods received damaged, (signed)" is clearly made by the Customer on the delivery note; at time of Delivery.
- (b) The Company is advised in writing per motor carrier rules; unless modified by contract.
- (c) The Company is advised in writing within three days of receipt of Goods for ocean carriers.
- 6.4 No allowance for claims for short deliveries will be made unless the Company is given an opportunity for verifying same within one (1) week of receipt.
- 6.5 For the avoidance of doubt, where the Customer collects the Goods from the Shipment Point or where a third party delivers the Goods, the Company shall have no liability to the Customer for any Goods damaged in transit.
- 7. WARRANTY AND LIABILITY**
- 7.1 Company has provided its Goods under normal conditions; however, Company does not represent or warrant that the results of those conditions would necessarily avoid injury to persons or property. Company expressly disclaims any warranty or liability for claims arising by reasons of death or personal injury or damage to property resulting from any impact, collision or contact with the Goods or nearby hazards or objects by any vehicle, equipment, object or person, misuse for which it was not intended, or failure of the Customer to strictly comply with Section 5.6.
- 7.2 Company warrants only that the Goods and any component part manufactured by Company will be free from defects in material or workmanship during the Warranty Period (as defined below).
- 7.3 THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 7.4 For defects reported during the Warranty Period, Company will, at Company's election, refund, repair or replace free of charge the Goods or component part manufactured by Company that contains such a defect. Company's liability is expressly limited to replacement free of charge (in the form and under the terms originally shipped), or to repair or to manufacture/remanufacture by Company, the Goods or parts not complying with Company specifications, or, at Company's election, to the repayment of an amount equal to the purchase price of the Goods or parts, whether such claims are for breach of warranty or negligence. COMPANY SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES, DAMAGES OR EXPENSES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY SUCH LOSSES, DAMAGES OR EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING OR USE OF THE GOODS FROM ANY OTHER CAUSE RELATING THERETO, OR FROM PERSONAL INJURY OR LOSS OF PROFIT.

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7.5 This Warranty is made to the direct Customer from the Company and does not extend to any other person or entity and is not assignable, except that this warranty will transfer to a commercial buyer, buying directly from a Customer who is an authorized distributor of the Company and party to a distributor or Sales agreement with Company.

7.6 Any claim with respect to the Goods and any component parts manufactured by the Company and sold hereunder shall be deemed waived by the Customer unless Company is notified in writing, in the case of defects apparent on visual inspection, within sixty (60) days from the delivery date, or, in the case of defects not apparent on visual inspection, within twelve (12) months from the said delivery date (such 60 days or 12 months, as applicable, the “**Warranty Period**”). The Goods claimed to be defective may be returned prepaid to Company’s plant for inspection in accordance with return shipping instructions that Company shall furnish to the Customer forthwith upon receipt of the Customer’s notice of claim. If the claim is established, Company will reimburse the Customer for all shipping costs incurred in connection with such return.

7.7 The foregoing warranty shall not apply (a) if the Goods have been subject to improper storage, accident, misuse or unauthorized modifications or alterations, or have not been installed, operated, and maintained in accordance with procedures approved by the Company, or (b) to any components manufactured by the Customer or a third party not approved by the Company.

7.8 The Customer shall indemnify and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with any breach of the Contract by the Customer and death or personal injury to the Company’s employees or agents while such employees or agents are on any premises of the Customer in connection with the Contract. Without limiting the foregoing, the Customer shall indemnify the Company against all claims by any third parties for any claims, loss, damage or expense resulting from the breach by the Customer of any of its obligations under these Terms, including without limitation, any modification, misuse, or unapproved alteration of, or use of non-approved components with, the Goods.

**8. TERMINATION**

8.1 The Company shall be entitled, without prejudice to the Company’s other rights and remedies, either to terminate wholly or in part any or every Contract between the Company and the Customer and/or to suspend any further deliveries of Goods in any of the following circumstances:

- (a) Non-compliance by the Customer with the Company’s terms of payment; or
- (b) If the Customer has failed to provide a letter of credit or guarantee, or any other security required by the Contract reasonably requested by Company; or
- (c) upon the Customer’s dissolution, insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for the Customer’s business, or an assignment for the benefit of creditors, of the Customer;

(d) the Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;

(e) the Customer or any connected person commits any breach of this or any other Contract whenever made between the Customer and the Company; or

(f) there has been, or the Company suspects that there has been, a breach or there has been a breach of any of the provisions of Section 13 below.

**9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

9.1 All intellectual property, including without limitation, all drawings, installation instructions, documents, confidential records, computer software and other information supplied by the Company or otherwise obtained by the Customer, whether produced by itself or a third party, are supplied on the express understanding that all intellectual property rights are reserved to the Company (or the third party) and that the Customer will not, without the written consent of the Company, give away, loan, exhibit or sell any such intellectual property or other information or extracts from them, or copies of them, or use them in any way except in connection with the Goods in respect of which they are issued.

9.2 All claims for alleged infringement of patents, trademarks, registered designs, design rights or copyright received by the Customer relating to the Goods must be notified immediately to the Company. If requested by the Company, the Company shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the Company thinks fit and the Customer will provide the Company such reasonable assistance as the Company may request. The cost of any such proceedings will be borne by the Company.

9.3 If any allegations shall be made against the Customer to the effect that the supply of the Goods infringes the intellectual property rights of any third party or the Company has reason to believe that such allegation is likely to be made, the Company may at its option and expense modify or replace the Goods so as to avoid the infringement (but without adversely affecting the overall performance of the Goods), or obtain for the benefit of the Customer the right to continue to use the Goods, or repurchase the Goods at the Contract Price as reduced by a reasonable provision for depreciation. If the Company pursues any of such options, the Customer will have no rights or remedies against the Company arising directly or indirectly out of the alleged infringement.

**10. FORCE MAJEURE**

In the event of the performance of any obligation by the Company being prevented, delayed or in any way interfered with by war, riot, civil unrest, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its reasonable control (including the delay or failure to supply of any suppliers of the Company) the Company may suspend or treat as impossible the performance of any obligation to the Customer without liability for any loss.

**11. HEALTH AND SAFETY**

The Customer agrees to pay due regard to any information supplied by the Company relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person and the Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as

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far as is reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

**12. TESTING AND INSPECTION**

12.1 Testing and inspection if specified by the Customer or his agent shall be at the Company's desired location (at the Customer's expense) and such testing and inspection shall be final and conclusive as to the results thereof.

12.2 The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested by the Customer and accepted by the Company in writing.

12.3 In addition to any costs incurred by the Company in testing the Goods the Customer shall pay for all test pieces which comply with specification.

**13. COMPLIANCE**

13.1 The Customer shall comply with all relevant laws, including any applicable anti-corruption laws in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such laws.

13.2 The Customer acknowledges that the Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct ("**HS Code of Conduct**"). The HS Code of Conduct together with the Company's Anti-Bribery and Corruption Policy ("**HS ABC Policy**") are available at [www.hsholdings.co.uk](http://www.hsholdings.co.uk) and the Customer shall, at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy, as each may be updated from time to time. This clause shall apply whether or not the Customer is acting pursuant to the Contract or its relationship with the Company.

13.3 The Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 13 at the request of and to the satisfaction of the Company. If the Customer fails to comply with this Section 13, the Company shall be entitled, in its sole discretion, to terminate the Contract and any other agreements between the Customer and the Company without penalty to the Company, but with obligations for the Customer to remedy any damages suffered by the Company as a result of such termination or as a result of the breach of contract.

**14. MISCELLANEOUS**

14.1 In the case of any Order for the export of Goods, the Schedule to the Uniform Law on International Sales Act 1967 shall not in any circumstances apply to the Contract and neither shall the limits imposed by the Unfair Contract Terms Act 1977 on the extent to which liability can be excluded or limited. The United Nations Convention on Contracts for the International Sale of Goods shall have no application to the purchase of Goods, these Terms or actions hereunder or contemplated hereby.

14.2 Any failure to exercise or any delay by the Company in exercising a right or remedy provided by this Contract or at law or in equity will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under these Terms will not constitute a waiver of any other breach or default and will not affect the other terms of the Contract.

14.3 The Customer shall not, without the written consent of the Company, assign (including by operation of law), transfer, mortgage, or grant a lien on any of its rights under any Contract or purport to do the same.

14.4 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any Contract and shall for the avoidance of doubt be entitled to assign any interest or rights that it has in relation to any Contract.

14.5 If any provision of these Terms shall be held invalid or unenforceable in whole or in part then the unaffected provisions shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these Terms.

14.6 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed and interpreted exclusively according to the laws of the State of Massachusetts. The parties hereby agree to submit to the exclusive jurisdiction of the courts in Massachusetts provided that the Company may at its option file suit in the state in which the Customer is organized or located, including action to obtain any remedy (including injunctive relief).

14.7 There are no third party beneficiaries to these Terms.

**15. COMPANY LIMITATION OF LIABILITY**

Notwithstanding any other provisions of these Terms, Company shall not be liable for incidental, indirect, special or consequential damages of any kind whatsoever including but not limited to, damages for loss of use, inconvenience or loss of time, or loss of revenue. Only to the extent that a claim meeting these limitations is insured through any collectable insurance available to Company, said claim shall be limited to the total collectable insurance available to Company for that claim. Under no circumstances shall a claim, limited as set out above, exceed that total amount of collectable insurance available to Company for the claim. However, to the extent any claim(s) are not covered by any insurance of any type, nature or variety available to Company, then said claim(s) shall be limited to the total amount of the purchase order value for the item(s) involved.

**16. SERVICES WARRANTY AND LIABILITY**

Provided that the Company has been notified, within a reasonable time, not to exceed sixty (60) days, from completion of the contracted Service to the customer, of any verified errors or deficiencies in the Service; the Company will proceed to correct the error(s) or deficiency (ies) for the Customer at no cost. This rework will constitute the Company's sole liability for errors, deficiencies, defects or other non-conformance. However, no other direct or indirect expenses, material costs to the customer, as a result of any and all corrections made, will be accepted by the Company.

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