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## General Conditions

General conditions for Newko Canada., hereinafter called the "SUPPLIER", a limited liability company.

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### Article 1. Applicability

- 1.1 These conditions are applicable to all offers, quotations, agreements and confirmed orders.
- 1.2 In these conditions the term "CLIENT" means any person who wishes to enter into an agreement with the SUPPLIER including their representative(s), store assistants, authorized person(s) or assigned person(s).
- 1.3 In these conditions the term "CONSUMER" means any person not acting on behalf of a company, or a buyer who acts as a consumer and has entered into an agreement with the SUPPLIER. All conditions contained herein shall also apply to the CONSUMER unless explicitly agreed to otherwise.
- 1.4 Supplemental details or deviations of these conditions are valid only if agreed to in writing by the SUPPLIER to the CLIENT.
- 1.5 If the SUPPLIER agrees to a deviation to these conditions with a CLIENT in an agreement, then the CLIENT shall not refer to deviation in subsequent agreements. Deviations to these conditions should be agreed upon explicitly.
- 1.6 A reference by the CLIENT to its own general conditions will be emphatically rejected by the SUPPLIER.

### Article 2. Offers and Agreements

- 2.1 All offers by the SUPPLIER, either in the form of price lists or otherwise, including verbal offers and other statements of representatives and/or employees of SUPPLIER, are not binding and are made subject to confirmation in accordance with the next sub-clause.
- 2.2 An agreement is brought about only when confirmed in writing within 8 days after ordering or if the execution of the order has already commenced within 8 days.
- 2.3 If the delivery consists of several parts then the agreement as a whole shall be effective from whenever the first part delivery takes place.

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2.4 Subsequent agreements, promises and/or alterations to the agreement made by and/or on behalf of the SUPPLIER's employees to the CLIENT are only binding if confirmed in writing by the SUPPLIER within 8 days, or when the SUPPLIER completely or partially carries the order in to effect within 8 days.

2.5 Every agreement is concluded subject to the condition that, in the exclusive opinion of the SUPPLIER, the CLIENT's creditworthiness is satisfactory for the monetary fulfilment of the agreement.

2.6 The SUPPLIER is authorized at or after conclusion of the agreement, but before further deliveries is made, to ask the CLIENT to provide a guarantee that all payments and other obligations will be met.

2.7 The SUPPLIER is authorized, whenever it considers it desirable or necessary for the proper execution of an order, to acquire the assistance of others, the costs of which will be passed on in accordance with the relevant quotation(s). If possible and/or necessary the SUPPLIER will consult the CLIENT in this regard. If the CLIENT is the CONSUMER then the costs will be stated beforehand.

2.8 The SUPPLIER is authorized to demand cash on delivery or any other form of payment.

2.9 Offers are subject to misprints.

### 3. Prices/Selling Prices

3.1 All prices are FCA (warehouse) specific location, Incoterms 2020, exclusive of GST or any other applicable taxes. Prices are excluding any, transportation costs taxes and any other cost associated with the order. These will be added to the order, unless otherwise agreed explicitly in writing. All is unless otherwise agreed in writing.

3.2 Exclusions are:

- special import duties and or other taxes;
- special packaging material and/or packing;
- Costs for loading and unloading, transport and insurance.

3.3 Prices are based on costs prevailing at the time of offer/quotation. If these costs rise after the offer/quotation date as a result of, for example, increases in the prices of raw materials, accessory materials, parts, transport costs, wages, insurance premiums, fiscal loads, import duties, rates of exchange, then the SUPPLIER is authorized to pass on these increases to CLIENT.

3.4 The terms of the former sub-clause are also valid, if these cost rising factors were foreseeable at the time the agreement was concluded.

3.5 Where a price rise is more than 15% above the price agreed, the CLIENT has the right to summarily terminate the agreement without judicial intervention by means of a registered letter, in which case he will be obliged to compensate the SUPPLIER for that part of the order which has already been met, and for which these conditions shall remain in force.

3.6 If the CLIENT is a CONSUMER then he is authorized to cancel an order if a price rise occurs in accordance with sub-clause 3.3, unless the price rise occurs only after 3 months after the conclusion of the agreement, then sub-clause 3.5 is correspondingly applicable.

3.7 The CLIENT is obliged to abide by the minimum selling prices established by the SUPPLIER unless specifically agreed in writing by the SUPPLIER to the CLIENT.

3.8 If the CLIENT contravenes the conditions of the previous sub-clause, the SUPPLIER is authorized to cancel all outstanding delivery agreements without judicial intervention and to consider the agreement cancelled in accordance with sub-clause 7.1.b, notwithstanding the conditions of clause 7.

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3.9 All accounts of either SUPPLIER or CLIENT are also immediately claimable.

#### **4. Delivery/Delivery Time**

4.1 All delivery dates are given in good faith and are not legally binding. Where a delivery is not made in accordance with the dates so given in good faith, the SUPPLIER shall be granted an extension of time for delivery.

4.2 The CLIENT is obliged to examine all consignments for possible packing shortages immediately upon delivery or to exercise this control when the SUPPLIER advises the CLIENT that the goods are at the CLIENT's disposal.

4.3 The CLIENT must note all such packing shortages on the delivery note, invoice and/or transport documentation at the time of delivery. Failure to do so will invalidate any such claims which will not be dealt with. The administration of the SUPPLIER shall be binding in these cases.

4.4 Small deviations in quality, quantity, colors, finish, size and weight which are considered by the SUPPLIER to be technically unavoidable or desirable do not give the CLIENT the right to refuse any delivery.

4.5 The SUPPLIER is authorized to deliver in parts (partial deliveries), which can be invoiced separately by the SUPPLIER. The CLIENT is then obliged to pay for these deliveries in accordance with the conditions as stated in clause 12.

4.6 The obligations of the SUPPLIER shall be fulfilled when the SUPPLIER has presented the goods to the CLIENT once. The receipt signed by the CLIENT or its representative, shall be regarded as full proof of delivery.

4.7 Where the goods are not accepted, transport costs and all associated cost increases will be for the account of the CLIENT. After a period of four weeks the SUPPLIER is authorized to sell these goods (by private contact). The possible decreased revenue and associated costs will be for the account of the CLIENT. The right of the SUPPLIER to also make a claim in accordance with the conditions of sub-clause 7.3 shall be undiminished.

4.8 If the SUPPLIER is unable to deliver the goods ordered in one delivery. The SUPPLIER may deliver in several deliveries without cancellation of the order by the CLIENT.

#### **5. Force Majeure**

5.1 In the case of major force, which shall include: strike, fire, water damage, government rules, delay during shipping or transport, export prohibits, war, mobilization, import and export hindrances and all other situations which may hinder meeting the agreement temporarily or not, the SUPPLIER will be authorized, at its sole discretion, either to extend the delivery time for the duration of this hindrance, or to cancel the sale, as far as this is affected by the hindrance. The CLIENT is authorized to ask the SUPPLIER to declare a preference in writing and SUPPLIER should respond to this within 8 days.

5.2 If the hindrances last no longer than one month, then the SUPPLIER is not authorized to cancel. If the hindrances last longer than one month, then the CLIENT has the right to cancel the agreement, provided always that such cancellation is sent by registered letter and is received by the SUPPLIER before the order is delivered.

5.3 SUPPLIER is authorized to claim payment for the performance of any of its obligations that were made in relation to the execution of the relevant agreements, before a major force became evident.

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## 6. Transfer of Property

6.1 The delivered goods shall remain the property of the SUPPLIER until such time as the CLIENT has fulfilled all payment obligations.

6.2 The CLIENT is not authorized to transfer the delivered goods to a third party in pledge or property, or to hand over the goods for use by a third party (unless in accordance with its business duties).

6.3 In the case of resale by the CLIENT of not (yet) or partly paid for goods, the CLIENT shall transfer the right to receive payment from its customer to SUPPLIER. Every transfer will be considered as a (partial) payment.

6.4 The CLIENT is obliged immediately upon request to provide information concerning the third party buyer, making it possible for SUPPLIER to claim the debt directly from the aforesaid third party buyer. The amount paid by the third party buyer to the SUPPLIER will be deducted from the total debt due from the CLIENT to the SUPPLIER.

6.5 The CLIENT is obliged to impose the same property rights as contained in this clause on to its buyer.

6.6 If the CLIENT fails to fulfill any of its obligations to the SUPPLIER in the event of any circumstance referred to in sub-clause 7.1 of these conditions, the SUPPLIER is authorized to recover the delivered goods without notice, default or judicial intervention.

6.7 If the SUPPLIER recovers the delivered goods then the agreement is dissolved in accordance with sub-clause 7.1 of these conditions.

6.8 The CLIENT is obliged to inform the SUPPLIER directly if the goods delivered by the SUPPLIER become subject to an administration order, in as much that the aforesaid goods are not (yet) the property of the CLIENT, and also when any circumstance referred to in sub-clause 7.1 of these conditions arises.

## 7. Cancellation/Termination of an Agreement

7.1 The SUPPLIER reserves the exclusive right to cancel the agreement immediately without judicial intervention if the CLIENT:

- a) is adjudged to be bankrupt, requests a delay of payment, or is put into receivership, or in protection or goes into liquidation;
- b) Does not pay invoices (on time), or otherwise does not, not properly or not on time meet any obligation from the agreement.

7.2 On termination, all claims on the CLIENT are immediately payable and the SUPPLIER is also authorized to claim compensation for total damages, lost profit and/or lost interest.

7.3 "Lost profits" will amount, except for counter-proof by the SUPPLIER, to at least 25% of the agreed price, and "lost interest" will be up to the prevailing judicial interest rate.

## 8. Transport-risk/Risk-transition

8.1 All risk of transport of goods to be delivered or goods delivered rests with the CLIENT from the moment the goods leave the warehouse of the SUPPLIER. Such risk concerning direct or indirect damage also rests with the CLIENT regardless of any claim by the CLIENT of the existence of any clause on any consignment note or other such documents that all transport damages are for the account of the sender.

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8.2 If no other instructions are given by the CLIENT, the mode of transport, dispatch, packing for example will be determined by the SUPPLIER. Specific instructions by the CLIENT in relation to transport/dispatch will be executed only if the CLIENT agrees to bear the total costs.

8.3 SUPPLIER and CLIENT/CONSUMER agree that shipping with an outside temperature of minus 20 degrees Celsius or below will not take place. Shipment will wait until the outside temperature will rise to above minus 20 degrees Celsius. When a situation like this occurs, SUPPLIER will make the final decision to ship or not. If however the CLIENT/CONSUMER insists on the product, transportation with temperature of minus 20 degrees Celsius or lower will be at CLIENT/CONSUMER own risk.

## 9. Claims

9.1 Claims/complaints about the delivered goods should be made to the SUPPLIER within 8 days of receipt of goods by the CLIENT.

9.2 Claims about invoices must be received by the SUPPLIER within 5 days of the despatch date.

9.3 After this time has expired, the CLIENT will be regarded as having approved the delivered goods and the invoice, and claims will not then be dealt with by SUPPLIER.

9.4 No claim will ever release the CLIENT from its payment obligations and the full terms as set out in clause 12 of these conditions will remain in force.

9.5 Under the terms of these conditions every partial delivery shall be considered to be a separate delivery.

9.6 The CLIENT is not authorized to return any goods which are subject to a claim without the written permission of the SUPPLIER.

## 10. Responsibility and Guarantee

10.1 The guarantee on the delivered goods is completely conformable and restricted to the guarantee provided by the manufacturer of the relevant goods.

10.2 Guarantee does not apply to damage caused by bursts.

10.3 If the damage is caused to persons or other matter by goods as a result of a perceived design, material or production fault for which the SUPPLIER is responsible, this responsibility shall be restricted to the invoice value. This restriction shall not apply if the damage is due to intent or obvious guilt of the SUPPLIER or one or more of the SUPPLIER's subordinates.

10.4 The SUPPLIER shall not be responsible for damage to delivered goods if it appears that the CLIENT or user/consumer:

- did not adhere to the directions for use
- adds other products to the product which negates the desired action of SUPPLIER's product
- is allergic to SUPPLIER's product, or shows an allergic reaction
- did not store the product as instructed, or used the product for purposes other than those for which it was intended
- swallowed a non-consumable product.

10.5 Except for the terms of clause 1 of these conditions, the SUPPLIER shall not be responsible for the choice of product ordered by and delivered to the CLIENT unless the CLIENT made its intentions clear to the SUPPLIER in advance and where the SUPPLIER consequently provided all necessary information and did not make any subsequent alterations.

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10.6 If the CLIENT is a CONSUMER then the responsibility for the goods shall be determined in accordance with judicial rules.

## 11. Returns

11.1 Due to the nature of our business and the importance of bio security returns are not permitted unless with the prior written agreement of the SUPPLIER. If goods are returned without such agreement, then all costs of such returns shall be for the account of the CLIENT. In this latter case, the SUPPLIER shall be free to store the goods on the account of and at the risk of the CLIENT (by a third party) or even to do with such returns as the SUPPLIER, at its sole discretion, deems appropriate. For all returns, a restocking fee of minimum 25% of the value of the product is in effect.

11.2 Returns, which are not accepted do not relieve the CLIENT in any way from its payment obligations.

11.3 An itemized statement by the SUPPLIER in regard to the real cost of or in connection to such returns and to measures taken pursuant thereto shall be binding on the CLIENT barring counter-proof.

11.4 The transport costs of such returns shall be for the account of CLIENT except where they are as a result of a fault by the SUPPLIER.

11.5 Returns shall always travel at the risk of the CLIENT.

## 12. Payment

12.1 Payment shall be net, cash on delivery or by means of deposit, cheque or remittance to the bank account assigned by the SUPPLIER within 8 working days after delivery or invoice date. The currency date as mentioned on the copy of the bank account of SUPPLIER is valid as the payment date.

12.2 If the invoice amount has not been received from the CLIENT within 8 working days, then the interest on this amount is due to SUPPLIER in accordance with the judicial interest rate at a minimum of 2% per month (26.82% per annum) valid for the whole period during which such payment is overdue whereby such time is calculated in complete months from the date on which the payment was due from the CLIENT.

12.3 If payment of an invoice is not received within 8 working days after the invoice date and when judicial measures have then been taken against CLIENT leading to the recovery of the debt, then the CLIENT is required to pay the judicial collection charges incurred by the SUPPLIER, which are to be determined at a minimum of 25% of the invoice amount to be paid or part thereof, such with a minimum of CAD 300.00, notwithstanding possible process costs that may be claimable by the CLIENT by virtue of a judicial verdict.

12.4 Payments made by or on behalf of the CLIENT will firstly offset settlement costs and interest, and will only then offset the oldest unpaid accounts, regardless of whether the CLIENT indicates that the payment is applicable for a more recent invoice.

12.5 If the CLIENT fails to pay for a partial delivery, the SUPPLIER may, at its sole discretion, either postpone delivery of all outstanding orders for the period during which the CLIENT leaves a claimable (partial) invoice unpaid or, at notice of default, permanently cancel all outstanding orders and demand immediate payment for all goods delivered and claimable up to that time, notwithstanding the SUPPLIER's right to indemnification in accordance with the terms of sub-clause 7.3 of these conditions which shall remain undiminished at all times.

## 13. Assignments

13.1 The CLIENT is not allowed to assign any rights and/or obligations arising from the agreement as concluded with the SUPPLIER.

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13.2 Assignment of rights and/or obligations is only possible if the CLIENT has informed the SUPPLIER of its intention to do so and has received explicit written permission from the SUPPLIER

#### **14. Applicable law and Disputes**

14.1 Canadian law is applicable to agreements concluded with the SUPPLIER.

14.2 The latest version of the "Incoterms" as composed by the International Chamber of Commerce in Paris (I.C.C.) applies.

14.3 All disputes between the SUPPLIER and the CLIENT which result from agreements will be judged by exception by the authorized judge in Calgary, AB unless the Justice of the Peace is authorized to adjudicate over such disputes.

#### **15. Advertisements**

15.1 The SUPPLIER is not responsible for any misprints in published advertisements and/or articles. The supplier holds the right to adjust the price accordingly without notification to the CLIENT. The CLIENT cannot claim any right from the prices or discount in the advertisements and/or articles.

15.2 Offers, published by the SUPPLIER cannot be combined with any other offers published by the supplier.

15.3 Special advertisement for tradeshow, will only apply for Clients in the province where the tradeshow will be held. Clients in other provinces will not be able to take part for this offer unless the SUPPLIER gives them the same promotional offer as stated in the advertisement in the way of a written confirmation.

15.4 Offers and discounts are based upon the standard pricelist of the SUPPLIER. If a CLIENT receives a special price, the CLIENT will have to pay whatever will give him the most rebates.