

## INDIGO (NI) LIMITED'S SPECIFIC TERMS OF TRADE; & THE LOYALTY SCHEME.

### 1 NEW CUSTOMERS

- 1.1 If a customer wishes to open an account, a member of the Indigo sales team will despatch the *application form* and *completion notes* to the prospective customer. Initial orders will be received on a strictly *pro-forma* basis; & payable in advance in accordance with Indigo (NI) Limited's ('Indigo's') accepted payment methods.
- 1.2 Please note that any supply of Indigo's products is entirely in the discretion of Indigo. Indigo therefore reserves the right to refuse to accept an order and/or to supply any product in accordance with such order, at any time and entirely at Indigo's instance without advancing any reason for so doing.

### 2 ACCOUNT APPLICATION

- 2.1 Once Indigo receives a copy of the customer's fully completed *application form* (signed by an appropriate signatory and in acceptance of Indigo's terms & conditions) Indigo's accounts department will begin the assessment process. An account application can take up to several weeks, but Indigo endeavours to process it as soon as possible.
- 2.2 Once the assessment process has been completed the customer will receive a copy of Indigo's terms of account along with a copy of Indigo's terms and conditions. The acceptance letter included should be signed and returned for Indigo records.
- 2.3 If Indigo *cannot properly or adequately assess* the prospective customer's financial status the account will be dealt with on a strictly *pro forma* basis until further notice.

### 3 CREDIT LIMIT

- 3.1 The credit limit set by Indigo for each account is based on data from credit-referencing sources & from financial details supplied by the customer and any other relevant sources.
- 3.2 After a 3-month continuous trading period the customer may request a *credit review*. This will be undertaken by the MD of Indigo.
- 3.3 A *credit review form* may be downloaded from Indigo's website or requested from Indigo's head-office. On completion of the form it should be signed and returned – whether by electronic means or in hard-copy.
- 3.4 Please note, however, **if poor performance has been noted on a customer's account, this**

**may adversely affect the outcome of the credit review.**

- 3.5 All account changes, if agreed between Indigo and a customer, will be confirmed; and

despatched to the customer's accounts department.

### 4 DISCRETIONARY CREDIT LIMITS

Credit limits noted and applied by Indigo are entirely in Indigo's discretion. These are based on several factors (or a combination thereof) including (but not limited to) the customer's: business history, account handling, good payment records, & good channels of communication.

### 5 PAYMENT TERMS

For customers with accounts at Indigo, their credit terms will be strictly as follows: **30 days from date of invoice** (i.e. in respect of an invoice raised on 18<sup>th</sup> May in a particular calendar year, payment should be received by Indigo no later than 1 calendar month thereafter – i.e. on 18<sup>th</sup> June of that year). For customers who have not been granted credit facilities, please see the *Pro-forma* Accounts section – *section 6* below.

### 6 PRO-FORMA ACCOUNTS

On receipt of all new orders, Indigo will raise a *pro-forma 'Receipt of Order' form* and despatch it to the customer – whether by electronic means or by hard-copy. Once Indigo receives confirmation of payment the goods comprised in the order will be invoiced and despatched to the customer.

### 7 ACCEPTED PAYMENT METHODS

Indigo accepts the following methods of payment: banker's draft (whether in denominations of Euro or Sterling); bank transfer (in this respect please seek the requisite details from Indigo's accounts' department); credit card (in this respect no charge to be effected, but the applicable form must be completed & returned to Indigo on request.)

### 8 ORDER PROCESSING

- 8.1 On placing new orders all customers are to ensure that an *order number* (or a person-reference) is supplied.
- 8.2 Once an order is raised on the Indigo system an *order acknowledgement* will be despatched whether by electronic means or in hard-copy. This document must be checked for price and quantity; and then signed and despatched to Indigo's sales department. Thereafter, subject to availability, the stock will be allocated to the customer order, and despatched in accordance with agreed terms.
- 8.3 In respect of any order, and in the event that Indigo receives a *credit hold warning* alert the customer's accounts department will be notified. No order may be processed for delivery or despatched until credit control in Indigo has satisfactorily approved it.
- 8.4 Indigo aims to fulfil all orders on an 'ASAP basis.' However, some products may require *forecasting*. Furthermore, manufacturers' stock-taking may result in delayed order fulfilment. In the event, Indigo seeks cooperation on a customer's part (and, in select cases, its indulgence) as it endeavours to fulfil all orders as expeditiously as possible. In cases of delay, accordingly, Indigo undertakes to timeously inform the customer & to supply all available information concerning the order & any delay in fulfilment.

## 9 LOYALTY SCHEME

- 9.1 Indigo operates a customer loyalty scheme. (*the Loyalty Scheme; the Scheme*). The terms of the *Loyalty Scheme* are set out below, in this *section 9*. However, Indigo specifically reserves the right to amend or alter its terms; or, without notice and entirely in its discretion, to retract and dis-apply the *Loyalty Scheme*, whether in part or in its entirety.
- 9.2 In the event, only those customers who have satisfied the terms of *the Scheme* and duly and properly qualified for a discount up to and prior to cessation of *the Scheme*, will be dealt with in fulfilment of its terms.
- 9.3 *The Scheme* entails an offer by Indigo of a quarterly monetary rebate on the value of specific purchases – over a quarter period. A customer who buys product listed in *the Scheme* will receive a loyalty discount percentage, variable from product to product but also in terms of quantity purchased and applicable discount percentage.
- 9.4 The current portfolio of Indigo brands (*the Product Brands*) to which *the Scheme* applies are the following: (1) *Elan*; (2) *Niles*; (3) *Xantech*; (4) *Furman*; & (5) *Sunfire*. There are, however, within these *Product Brands* selected but limited exclusions. Furthermore, Indigo reserves the right without notice to eliminate and remove from the above list a specific brand or product from its *Loyalty Scheme*. Indigo may also add to the *Loyalty Scheme* list.
- 9.5 *The Scheme* applies (*per section 9.4* above) to the monetary value of identified product purchased by a customer in a particular quarter period. The relevant periods are the usual calendar quarters commencing respectively on 01/01; 01/04; 01/07; & 01/10. At the end of the quarter following the purchase order *the Scheme* will operate a cash-back rebate to a qualifying customer; or aggregate a designated credit on that customer's account with Indigo.
- 9.6 The applicable discount percentage bands (4X) applying to *the Scheme* are as follows:
  - (a) On purchases of £3k and above: 2.5% of purchase order value.
  - (b) On purchases of £10k and above: 5% of purchase order value.
  - (c) On purchases of £15k and above: 7.5% of purchase order value, free shipping included.
  - (d) On purchases of £25k and above: 10% of purchase order value, free shipping included.
- 9.7 *The Scheme* commences on 01 January 2018 and will be based on the aggregate value of customer purchases of *Product Brands* during a quarter period. If earned, a rebate will be paid to the customer at the end of the quarter following that in which the rebate was earned.
- 9.8 For purposes of facilitating the operation of *the Scheme* customers should complete the requisite direct debit facility form and return to Indigo's accounts department.

## GENERAL TERMS & CONDITIONS OF TRADE – INDIGO (NI) LIMITED

### DEFINITIONS

1 In these conditions the following terms shall have the following meanings.

'Indigo' means Indigo NI Ltd.

'Customer' means the customer of Indigo.

'Contract' means any contract for the sale of Goods by Indigo to the Customer.

'Goods' means any goods forming the subject of this contract including parts and components of or materials incorporated in them or as detailed in the Invoice overleaf.

'Price' means the price as detailed on the Invoice.

### QUOTATION

2 Quotations by Indigo unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation.

### EXISTENCE OF CONTRACT

3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:

- Indigo's written acceptance;
- Delivery of the goods, the subject of the Order; and
- Indigo's invoice

An order form has been completed and signed on behalf of the Customer and the order acknowledgment has been signed on behalf of Indigo.

3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.

3.3 Except as expressly provided for in this Invoice no variation or amendment of this Invoice or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

### PRICES

4.1 The Price for the goods described is in accordance with the current price list compiled by Indigo at the date of order and excludes any special requirements of the Customer overnight, service charges and any Third Party delivery addresses, VAT and other taxes or duties. The Price invoiced is calculated in respect of the quantity of goods actually delivered irrespective of the quantity in respect of which any quotation was issued.

4.2 Indigo shall have the right in respect of any uncompleted portion of the Contract to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.

4.3 Price changes shall take effect on the date of service on the customer of notice of the change.

### PAYMENT

5.1 All invoices are payable (subject to *Clause 5.3* below) without discount of any kind within 30 days of the date of Indigo's Invoice at premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

5.2 Without prejudice to any other rights of Indigo and to accord with the *Late Payment of Commercial Debts (Interest) Act 1998*, and the *Late Payment of Commercial Debts Regulations 2013* (or any amendments thereto or replacements thereof), if the Customer fails to pay the invoice price by the due date the Customer shall not be

allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgment).

5.3 Credit facilities shall only be provided to Customers after completion and return of an application form, which shall be provided by Indigo to the Customer upon request. Prior to the granting of any credit facilities trade references shall be required and the within terms and conditions shall be deemed to have been accepted upon completion of the Application Form. Indigo reserves the right to refuse credit at any time and to withdraw credit facilities without notice.

5.4 Customers without credit facilities must send payment for goods ordered with Order Form if payment is made by cheque the goods shall only be processed on clearance of cheque received.

### TITLE

6.1 For the purpose of *section 12* of the *Sale of Goods Act 1979* Indigo shall transfer only such title or rights in respect of the goods as Indigo has and if the goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to Indigo.

6.2 Notwithstanding the earlier passing of risk, title in the goods shall remain with Indigo and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.

6.3 Until title passes the Customer shall hold the goods as Bailee for Indigo and shall store or mark them so that they can at all times be identified as the property of Indigo.

6.4 Indigo may at any time before title passes and without any liability to the Customer:

- repossess and dismantle and use or sell all or any of the goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and
- for that purpose (or determining what if any goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

6.5 Until title passes the entire proceeds of sale of the goods shall be held in trust for Indigo and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as Indigo's money.

6.6 Indigo may maintain an action for the price of any of the goods notwithstanding that title in them has not passed to the Customer.

### RISK, DELIVERY AND PERFORMANCE

7.1 The goods are delivered to the Customer when Indigo makes them available to the Customer or any agent of the Customer (or any person or body corporate to whom the customer requests Indigo to deliver the goods) or any carrier (who shall be the Customer's agent whoever pays its charges) at Indigo's premises or other delivery point agreed by Indigo.

7.2 Risk in the goods passes when they are delivered in accordance with *clause 7.1*.

7.3 Goods are supplied by ex-stock, but Indigo may at its discretion deliver the goods by instalments in any sequence. Where an out of stock situation arises, delivery times advised in this situation will be estimated only. Indigo shall not be liable for failure to dispatch within the time granted. Special Delivery requirements will be charged in addition to any applicable handling and carriage charge.

**7.4** Where the goods are delivered by instalments, no default or failure by Indigo in respect of any one or more instalments shall vitiate the Contract in respect of the goods previously delivered or undelivered.

**7.5** Indigo may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of goods ordered.

**7.6** Any dates quoted by Indigo for the delivery of the goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected by Indigo no regard has been paid to any quoted delivery dates.

**7.7** If the Customer fails:

- to take delivery of the goods or any part of them on the due date; and
- to provide any instructions or documents required to enable the goods to be delivered on the due date,

Indigo may on giving written notice to the Customer store or arrange for the storage of the goods, and on the service of the notice:

- risk in the goods shall pass to the Customer;
- delivery of the goods shall be deemed to have taken place; and
- the Customer shall pay to Indigo all costs and expenses including storage, any redelivery and insurance charges arising from its failure.

**7.8** Indigo shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

#### **CLAIMS NOTIFICATION**

**8.1** Any claim that any goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to Indigo within two days of their delivery.

**8.2** Any alleged defect shall be notified by the Customer to Indigo within ten days of the delivery of the goods or in the case of any defect, which is not reasonably apparent on inspection within two days of the defect coming to the Customer's attention.

**8.3** Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective goods.

**8.4** Indigo shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall, if so requested in writing by Indigo, promptly return any goods the subject of any claim and any packing materials securely packed and carriage paid to Indigo for examination.

**8.5** Indigo shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

**8.6** Goods returned for repair are entirely at the Customer's risk and should be notified to Indigo in advance. Indigo will issue a returns note number at this time. Indigo will not accept any returns unless returns note number is clearly written on the exterior of the carton. This should be referred to in all correspondence relating to the repair. Repairs outside the warranty will only be undertaken upon written acceptance of our quotation. Indigo does not accept responsibility for carriage costs in the case of repairs.

#### **CANCELLATION**

**9.** Orders for goods which have to be obtained or made especially for the Customer will be charged in full unless written notice of cancellation is received no more than 2 weeks from date of order confirmation and manufacture of them or any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the goods are allocated to the Contract but if a cancellation notice is received after the goods have been allocated to the Contract then a packing and handling charge will be payable by the Customer.

#### **SCOPE OF CONTRACT**

**10.0** Under no circumstances shall Indigo have any liability of whatever kind for:

**10.1** any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of Indigo or the manufacturer of any goods or neglect or from any instructions or materials provided by the Customer;

**10.2** any goods which have been adjusted, modified or repaired except by Indigo;

**10.3** the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to Indigo;

**10.4** any substitution by Indigo of any materials or components not forming part of any specification of the goods agreed in writing by Indigo;

**10.5** any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by Indigo contained in Indigo's catalogues, price lists, manufacturers documentation or elsewhere since they are merely intended to represent a general idea of the goods and not to form part of the Contract or be treated as representations;

**10.6** any technical information, recommendations, statements or advice furnished by Indigo, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or

**10.7** any variations in the quantities or dimensions of any goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the goods, and the substituted materials or components are of a quality equal or superior to those originally specified.

#### **EXTENT OF LIABILITY**

**11.1** Indigo shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of Indigo or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:

- for death or personal injury resulting from Indigo's negligence; and
- as expressly stated in these conditions.

**11.2** If subject to the terms of *Clause 8.6* the Customer establishes that any goods have not been delivered, have been delivered damaged, or are not of the correct quantity or do not comply with their description Indigo shall, at its option, replace with similar goods any goods which are missing, lost or damaged or do not comply with

their description, or allow the Customer credit for their invoice value or repair any damaged goods.

**11.3** If the Customer establishes that any goods are defective Indigo shall, as its option, replace with similar goods or repair any defective goods, allow the Customer credit for their invoice value or assign to the Customer (so far as Indigo is able to do so) any warranties given by the manufacturer of the goods to Indigo.

**11.4** The delivery of any repaired or replacement goods shall be at Indigo's premises or other delivery point specified for the original goods.

**11.5** Where Indigo is liable in accordance with this condition in respect of only some or part of the goods the Contract shall remain in full force and effect in respect of the other or other parts of the goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the goods.

**11.6** No claim against Indigo shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the goods by any person except Indigo.

**11.7** Indigo shall not be liable where any goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged goods will, if available, be supplied by Indigo at the prices ruling at the date of despatch.

**11.8** In no circumstances shall the liability of Indigo to the Customer under this condition exceed the invoice value of the goods.

#### **GENERAL**

**12.1** Indigo may sub-contract the performance of this contract in whole or in part.

**12.2** Indigo may at its discretion suspend or terminate the supply of any goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with Indigo or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or Indigo bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

**12.3** If the goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall compensate Indigo in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.

**12.4** Except for any which is expressly agreed to be included in the goods all tools, patterns, materials, drawings, specifications and other data provided by Indigo shall remain its property and all technical information, patentable or un-patentable, copyright and registered designs arising from the execution of any orders shall become the property of Indigo.

**12.5** The *Contracts (Rights of Third Parties) Act 1999* shall not apply to this Contract.

#### **CONFIDENTIALITY**

**13** The Customer shall not at any time whether before or after the termination of this document divulge or use any unpublished technical information deriving from Indigo or any other confidential information in relation to Indigo's affairs or business or method of carrying on business.

#### **FORCE MAJEURE**

**14** Indigo shall not be liable for any failure in the performance of any of its obligations under this document caused by factors outside its control.

#### **LAW AND JURISDICTION**

**15** This document shall be governed by Northern Irish Law and the Customer consents to the exclusive jurisdiction of the Supreme Court of Judicature of Northern Ireland in all matters regarding it except to the extent that Indigo invokes the jurisdiction of the courts of any other country.

#### **NOTICES**

**16.1** Any notice given under this deed shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail;
- by telex or facsimile transmission (the latter confirmed by telex or post); or
- by any other means which any party specifies by notice to the others.

**16.2** Each party's address for the service of notice shall be its above-mentioned address or such other address as it specifies by notice to the others.

**16.3** A notice shall be deemed to have been served:

- if it was served in person, at the time of service;
- if it was served by post, 48 hours after it was posted; and
- if it was served by email (or facsimile), at the time of despatch.