

Our terms

1. These terms

- 1.1 What these terms cover.** These are the terms and conditions on which we supply products to you.
- 1.2 Why you should read them.** Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms or require any changes, please contact us to discuss.
- 1.3 Are you a business customer?** Our products are intended for professional and/or industrial use only and are not intended or suitably packaged for sale to or to be used by the general public or consumers. We only intend to supply businesses and do not supply consumers. If you are a consumer you must not purchase products from us. You are a consumer if you are an individual and you are buying products from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).
- 1.4 This is our entire agreement with you.** These terms constitute the entire agreement between us in relation to your purchase of products from us to the exclusion of any other terms or conditions including without limitation any terms or conditions which you may seek to apply under any purchase order, sales offer, order confirmation or similar document or in correspondence even if referred to in any contract between us for the products. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in our contract with you. Written or oral representations including those made over the telephone are not binding unless confirmed in writing by a director of ours. In particular but without limitation no agent, salesman or sales representative of ours shall have power to vary the terms of our contract with you unless such variation is confirmed in writing by a director of ours. Any variation to these terms must unambiguously and expressly be stated to vary the particular term. Despatch or delivery of any products to you shall be deemed to be conclusive evidence of your acceptance of these terms.
- 1.5** Our contract supersedes all previous agreements and understandings between us in relation to the subject matter of the contract.
- 1.6 Estimates and Quotations are not binding.** Estimates or quotations that we may issue are not binding on us. Unless previously withdrawn, an estimate or quotation is valid for 28 days from its issue or such longer period as we may agree in writing.
- 1.7 Changes to these terms.** We may make changes to our terms from time to time and any changes will apply to all orders placed after the date of the change. You should periodically check our terms for these changes.

2. Information about us and how to contact us

- 2.1 Who we are.** We are W.P. Notcutt Limited, a company registered in England and Wales. Our company registration number is 00143865 and our registered office is at Homewood Farm, Newark Lane, Ripley, Surrey, GU23 6DJ. Our registered VAT number is GB 222 3028 18.
- 2.2 How to contact us.** You can contact us by telephoning us on 01483 223311 by writing to us at sales@notcutt.co.uk or by writing to us at Homewood Farm, Newark Lane, Ripley, Surrey, GU23 6DJ.
- 2.3 How we may contact you.** If we must contact you, we may do so by telephone or by writing to you at the email address or postal address, you have provided to us. In the case of written notice or instruction sent to you by post, it shall be deemed to be received 48 hours after posting. Additional methods of communicating with you including email are set out in clause 15.8.
- 2.4 "Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.

3. Our contract with you

- 3.1 How we will accept your order.** Our acceptance of your order will take place when we accept your order by phone or when we write or email you to accept it, at which point a contract will come into existence between you and us. We are entitled to accept or refuse any order.
- 3.2 If we do not accept your order.** If we do not accept your order, we will inform you of this (which may or may not be in writing) and will not charge you for the product. This might be because the product is out of stock, because of unexpected limits on our resources, because we have identified an error in the price or description of the product, because we are unable to meet a delivery deadline you have requested or for some other reason at our entire discretion.

4. Our products

- 4.1 Products may vary from their pictures.** The images of the products on our website or in our brochures or documents are for illustrative purposes only. We cannot guarantee that a device's display of the colours or a picture in any document accurately reflects the colour of the products. Your product may vary from those images.

- 4.2 Product packaging may vary.** The packaging of the product may vary from that shown in images on our website or in any documentation.
- 4.3 Minor changes to quantities.** You will not be entitled to reject the products if we deliver up to and including 1% more or less than the quantity of products ordered and there will be no price adjustment in these circumstances.
- 4.4 Making sure your order is accurate.** It is your responsibility to make sure that your order is accurate. If we are making or supplying any product to specifications, you have given us you are responsible for ensuring that these specifications are correct.
- 4.5 Description of products.** You acknowledge and agree that any description which is given or applied to the products is given solely for purposes of reference and is not the basis for any express or implied undertaking that the products correspond with or conform to such description, shall not make the contract a sale by description and is not and has not been relied on by you when entering into any contract with us.
- 4.6 Samples.** Any samples, drawings, descriptive matter or advertising issued by us and any descriptions or specifications of the products are issued or published for the sole purpose of giving an approximate idea of the products. They shall not form part of the contract between us or have any contractual force. No contract with us shall be deemed to constitute a sale by sample.
- 4.7 No advice.** It is your sole responsibility to ensure that the products are satisfactory for your purposes. Any information provided by us as to suitability and application of the products is given for information purposes only and you must not rely on it nor substitute that for making your own evaluation, tests and investigations which you must do so as to determine the suitability of the product for your purposes. We will not be liable for any advice or recommendations given by us, our employees or agents in relation to the products which has not been confirmed in writing by a director of ours.
- 5. Your rights to make changes**
- 5.1** You are not entitled to cancel or change any order once a contract comes into force. If you wish to make a change to the product you have ordered, please contact us. We will let you know if the change is possible which is at our sole discretion.
- If we agree to any change, we will let you know about any changes to the price of the product, the timing of supply and anything else which we decide may be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.
- 6. Our rights to make changes**
- 6.1 Minor changes to the products.** We may change a product to reflect changes in relevant laws and regulatory requirements, for example, if the legislation requires us to make changes or to implement minor technical adjustments and improvements.
- 6.2 More significant changes to the products and these terms.** In addition, we may make more significant changes to the product. If we do so, we will notify you and you may then contact us to end the contract before the changes take effect and receive a refund for any products paid for but not received.
- 7. Delivery and ownership**
- 7.1 Delivery costs.** The costs of delivery will be as we have informed you or as displayed on our website. You must pay us all costs or charges for packaging, loading, unloading, carriage and insurance unless we have agreed in writing that this is included in the price. We will deliver the products to the address agreed with you. If your delivery address is outside of the United Kingdom, you must pay for all applicable taxes, duties, import levies, export levies tariffs and charges in addition to any other amounts that you agree to pay us. If we incur any of these costs, we will be entitled to recharge them to you.
- 7.2 Instalments.** We may deliver products by instalments, which shall be invoiced and paid for separately. Each delivery shall operate as a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment or contract. However, if you do not accept delivery and/or pay for any instalment, we will be entitled to terminate our contract with you and/or cancel any other instalment or instalments.
- 7.3 When we will provide the products.** Any delivery dates are estimates only and are not an essential term of the contract between us. If you have not received deliveries within five days of our invoice date or in the case of exports within three days of the anticipated delivery date, you must tell us in writing immediately. If you do not comply with this, it may result in any claim being refused by the carriers and you will be responsible for your entire loss.
- 7.4 Your obligation on delivery.** It is your responsibility to provide at your own cost suitable equipment and manpower for unloading the products when we deliver them to you.
- 7.5 We are not responsible for delays outside our control.** If our supply of the products is delayed by an event outside our control, we will contact you to let you know and we will take reasonable steps to minimise the effect of the delay. We will not be liable for delays caused by the event, but if there is a risk of substantial delay, you may contact us to end the contract and receive a refund for any products you have paid for but not received. We shall not be liable for any delay in delivery of the products if that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the delivery of the products.

- 7.6 Collection by you.** If you have asked to collect the products from our premises, you can collect them from us at a mutually agreed time and date or such other date as we may specify if we do not agree a date with you.
- 7.7 If you are not available to receive the products when delivered or we are unable to deliver the products when ready because you have not provided delivery instructions.** If no one is available at your address to take delivery or you fail to accept delivery, or if you fail to provide us with sufficient instructions to enable us to deliver the products to you, then we will contact you to rearrange delivery. However, until we can deliver the products to you, we may charge you for storage, insurance, delivery costs and any other expenses we incur.
- 7.8 If you do not re-arrange delivery.** If you do not collect the products from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery, we will contact you for further instructions and may charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection within 14 days, we may end the contract and clause 9.4 will apply. You will still have to pay us for the products.
- 7.9 When you become responsible for the products.** A product will be your responsibility from the time we deliver the product to the address you gave us or you or a carrier organised by you to collect it from us. However, if you do not accept delivery or do not collect any products when agreed or specified by us, we cease to be responsible for the products from the date and time that delivery or collection should have taken place.
- 7.10 When you own the product.** You only own a product once we have received payment in full in cleared funds for all products you have ordered from us. You must still pay us even if ownership of the products has not transferred to you.
- 7.11 What will happen if you do not give required information to us.** We may need certain information from you so that we can supply the products to you, for example, delivery information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and clause 9.4 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the products late or not supplying any part of them if this is caused by you not giving us the information, we need within a reasonable time of us asking for it.
- 7.12 Acceptance of products.** You must inspect the products on their delivery or collection and must tell us in writing (and if appropriate the courier) of any visible defect, damage or shortfall within 48 hours following delivery or collection. In the case of breakage, you must retain the damaged products and packaging material for inspection. We won't be liable for any visible defect, damage or shortfall that is not notified to us within that timescale and the products shall be deemed to have been accepted. Your sole remedy if there is any such damage and/or shortfall will be at our discretion to either repair or replace the defective product or refund a proportion of the price relating to the defective products. If you use any products after delivery, you shall be deemed to have accepted such products as being in all respects in accordance with the contract between us.

Retention of Title

- 7.13** Until we have received payment in cleared funds for the products and any other amounts that you owe to us (referred to below as "**Amounts Owed**"):
- (a) you must hold the products as bailee on our behalf and you acknowledge that there shall exist a fiduciary relationship in respect of the products between you, and us;
 - (b) you must wherever practicable store the products on your premises separately from your own goods or those of any other person in such a way that they can be readily identified as our products;
 - (c) you must maintain the products in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery and provide evidence of such insurance on request;
 - (d) you must give us such information relating to the products as we may require from time to time;
 - (e) we may at any time if payment is overdue in whole or in part without prejudice to any other right of ours enter upon any premises where the products are stored or where they are reasonably thought to be stored and may repossess them. All costs and expenses reasonably incurred by us in connection with such recovery shall be paid by you;
 - (f) you may process, incorporate, admix or mix the products with property not belonging to us ("**Mixed Products**"). Mixed Products shall become and/or shall be deemed to be our sole and exclusive property. However, if Mixed Products have been created with goods that are not owned by you, that Mixed Product shall become or shall be deemed to be owned by us in common with that other person. The provisions of clause 7.14 shall apply with necessary changes to the proceeds of sale of any product referred to in that sub-clause. The value of the proportion of the commercial value of those Mixed Products owned by us shall not be less than the price charged by us for the products delivered to you and used in the making of the Mixed Product.

7.14 You are authorised by us to sell on the products in your ordinary course of business (but not otherwise) at a price which shall be no less than the purchase price of the products from us subject to the express condition that the entire proceeds are held in trust for us and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as our money. If you resell the products as permitted by this clause:

- (a) you do so as principal and not as our agent;
- (b) title to the products shall pass from us to you immediately before the time at which resale by you occurs;
- (c) if before title to the products passes to you, you become subject to any of the events listed in clause 9.1(e) or (f), then, without limiting any other right or remedy we may have, your right to resell the products or use them in the ordinary course of your business ceases immediately; and
- (d) you must notify us immediately if you become subject to any of the events listed in clause 9.1(e) or (f);

7.15 Each of the provisions of clause 7.13 shall be construed and shall take effect separately and in the event of one or more such provisions being held ineffective this shall not affect the validity of the remaining provisions.

7.16 **We may suspend supply of the products if you do not pay.** If you do not pay us for the products or any other amounts that you owe us when you are supposed to (see clause 7) we may in addition to our other rights suspend supply of the products until you have paid us the outstanding amounts. We can also charge you interest on your overdue payments (see clause 12.6).

8. Ending the contract/cancellation

8.1 **Your rights if our contract ends.** Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing and when you decide to end the contract.

- (a) *If what you have bought is faulty* you may have a legal right to end the contract (or to get the product repaired or replaced or to get some or all your money back);
- (b) *In all other cases,* you will need our written agreement to end the contract and even if we agree, we may charge you cancellation charges and/or restocking charges.

8.2 **Returns.** Returns of products will not be credited unless our prior agreement has been obtained. A credit will be based on the invoiced prices. You will be responsible for the costs of any returns unless these terms say that we will pay those costs in a particular situation. We may charge a restocking fee. Any costs, losses or expenses that we incur as a result of your use or handling of the returned products shall be deducted from the credit that we give you.

8.3 **You must pay the costs of return.** In all circumstances you must pay the costs of returning products to us and you remain responsible for them until we accept their return at our premises.

8.4 **What we charge for collection.** If we agree to collect the product from you, we will charge you the cost of collection.

9. Our rights to end the contract

9.1 **When we may end our contract with you.** We may end our contract with you at any time by notifying you in writing if:

- (a) you do not make any payment to us when it is due;
- (b) you do not, within a reasonable time, allow us to deliver the products to you or collect them from us;
- (c) there is a delay or failure from our suppliers to deliver the products to us or if the price charged to us for the products materially increases after we have accepted your order and you do not agree to pay us a higher price to reflect this;
- (d) you commit a breach of any of these terms;
- (e) any insolvency process is levied upon any of your assets;
- (f) you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation whether voluntary or compulsory except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed over all or any of your undertaking, or a resolution is passed or a petition presented to any court for your winding up or for the granting of any administration order in or any proceedings are commenced relating to your insolvency or possible insolvency or you suffer any similar or analogous action in any jurisdiction.
- (g) your financial position deteriorates to such an extent that in our opinion your ability to adequately to fulfil your obligations under the contract has been placed in jeopardy;
- (h) any other agreement or contract between us and you terminate or is broken by you;

- (i) you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business.
- 9.2 The termination of any or all contracts between us will not affect any rights or liabilities of either party accrued prior to the termination.
- 9.3 If we terminate any or all contracts between us, we shall be entitled to raise invoices for all amounts due from you and you shall pay them immediately including for all products previously supplied together with all costs as have been incurred by us in connection with the termination.
- 9.4 **You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 9.1 we may deduct or charge you compensation as a result of you breaking the contract.
- 9.5 Any provision of the contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 10. **If there is a problem with the product**
- 10.1 **How to tell us about problems.** If you have any questions or complaints about the product, you must contact us using the details in clause 2.2 above.
- 11. **Your rights in respect of defective products**
- 11.1 We warrant that on delivery, and for a period of 3 months from the date of delivery ("**warranty period**"), any products shall:
 - (a) conform in all material respects with their description and any relevant specification (subject always to the appropriate national or international commercial tolerances applicable to those products);
 - (b) be free from material defects in design, material and workmanship;
- 11.2 Subject to clause 11.3, if:
 - (a) you give us notice in writing during the warranty period within 7 days of discovery or within 7 days of when you ought to have discovered that a product does not comply with the warranty set out in clause 11.1;
 - (b) we are given a reasonable opportunity of examining such product; and
 - (c) you return such product to us at your cost,and we agree that the product is defective, we shall, at our option, repair or replace the defective product, or refund the price of the defective product.
- 11.3 We will not be liable for a product's failure to comply with the warranty in clause 11.1 if:
 - (a) you make any further use of such product after giving a notice in accordance with clause 11.2(a);
 - (b) the defect arises because you failed to follow our oral or written instructions whether from us or any manufacturer as to the storage, installation, commissioning, use or maintenance of the product or (if there are none) good trade practice;
 - (c) the defect arises as a result of us following any drawing, design or specification supplied by you;
 - (d) you alter or repair the product without our written consent; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 11.4 **Mixing/Blending.** We will not be liable for the products after they are incorporated, mixed or blended with any other goods unless you are able to prove to our satisfaction that our products were faulty or defective before that mixing. We recommend that you test our products before mixing them and retain evidence of those tests and the results together with samples of the products.
- 11.5 Except as provided in this clause 11, we shall have no liability to you in respect of a product's failure to comply with the warranty set out in clause 11.1.
- 11.6 These terms shall apply to any repaired or replacement products supplied by us under clause 11.2.
- 11.7 Subject to clause 13.1, all warranties, conditions and other terms implied by statute or law are, to the fullest extent permitted by law, excluded from the contract between us.
- 12. **Price and payment**

- 12.1 Where to find the price for the product.** The price of the product will be the price as told to you over the telephone, told to you in the course of email exchanges or as we may have agreed depending on how we contract with you. We take all reasonable care to ensure that the price of the product advised to you is correct. However please see clause 12.3 for what happens if we discover an error in the price of the product you order. If the price given to you does not include VAT, you must also pay any VAT.
- 12.2 We will pass on changes in the rate of VAT.** If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.
- 12.3 What happens if we got the price wrong.** It is always possible that some of the products we sell may be incorrectly priced. We will normally check prices before accepting your order. If the product's correct price at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your order. If we accept and process your order where a pricing error, we may end the contract, refund to you any sums you have paid and require the return of any products provided to you.
- 12.4 When you must pay and how you must pay.** We accept payment by certain credit and debit cards. Unless we have agreed credit account facilities with you, you must pay for the products before we dispatch them. Where credit account facilities have been agreed with you, we will submit an invoice to you which shall be due and payable within 30 days of the date of invoice. If you don't pay us any amounts you owe us when due under this contract or any other contract with us, we may immediately end any credit account facilities we have agreed with you and you must immediately pay us any amounts which remain to be paid by you, even if not otherwise due. We may also end any credit account facilities we have agreed with you if we have any reason to doubt your solvency. If that happens, we are entitled to demand that you pay us for products before they are despatched to you, consider all amount that you owe to us, whenever due, as becoming due immediately or cancel any outstanding orders without liability to you.
- 12.5 When we can change the price.** We reserve the right to increase the price at any time prior to delivery to reflect any increases in the cost of supplying the products due to factors beyond our reasonable control (including without limitation changes in exchange rates, legislation, duties, tariffs such as but not limited to the consequences of the United Kingdom leaving the European Union). We will notify you of the price change and you will be entitled to cancel the contract if you do not wish to agree to this price change unless the products are already in transit.
- 12.6 Our right of set-off.** You must pay all amounts due to us under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12.7 We can charge interest if you pay late.** If you do not make any payment to us by the due date, we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us the interest together with any overdue amount on demand.
- 12.8 What to do if you think an invoice is wrong.** If you think an invoice is wrong, please contact us promptly to let us know. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.
- 13. Our responsibility for loss or damage suffered by you THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 13.1** Nothing in these terms shall limit or exclude our liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 13.2** Except to the extent expressly stated in clause 13.1, all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.
- 13.3** Subject to clause 13.1:
- (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements, loss of anticipated savings or contracts, loss of business opportunity, injury to reputation, third party losses, loss of use or corruption of software, data or information, loss of or damage to goodwill, or any indirect or consequential or special loss or damage arising under or in connection with any contract between us; and

(b) our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 100 per cent of the total sums paid by you for products under such contract.

14. How we may use your personal information.

14.1 We will only use your personal information as set out in our Privacy Policy. You can find our Privacy Policy on our website www.notcutt.co.uk.

15. Other important terms

15.1 General. Clause headings are included for convenience only and do not affect the meaning of these terms. Use of the singular includes the plural and vice versa. References to persons include all legal persons. References to any statute or statutory provision includes that provision as may be varied from time to time.

15.2 We may transfer our contract to someone else. We may transfer our rights and obligations under our contract with you to another person or organisation.

15.3 You need our consent to transfer your rights to someone else. This contract is between you and us. You may not transfer any of your rights or obligations to another person or organisation.

15.4 Nobody else has any rights under this contract. Subject to clause 15.1, this contract is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end the contract or make any changes to these terms.

15.5 If a court finds part of this contract is illegal, the rest will continue in force. Each of the clauses of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

15.6 Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of you breaking any contract with you, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you, but we continue to provide the products, we can still require you to make the payment at a later date.

15.7 Other rights. Our rights and remedies provided in this contract are in addition to any rights and remedies provided by law.

15.8 Notices: Any notice or other communication given to a party under or in connection with our contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the addressee's address stated above or sent by email to the party's email address used to communicate to you or us in connection with our contract. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the 48 hours after posting or at the time recorded by the delivery service or if sent by email at 9.00 am on the next day after transmission provided no undelivered message is issued and no out of office notice is issued in response to the transmission of the email. In addition, we can effectively give you notices in the manner set out in clause 2.3.

15.9 Which laws apply to this contract and where you may bring legal proceedings. Any dispute or claim arising out of or in connection with a contract between us or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.