

NEW BALANCE TERMS AND CONDITIONS OF SALE

1. INTRODUCTION

- 1.1 These terms and conditions (“**Conditions**”) set out the terms on which New Balance sells Goods.
- 1.2 The Customer should read these Conditions carefully before placing an Order. The Customer's attention is drawn in particular to the provisions of clauses 8, 9 and 11.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Conditions the following definitions apply:

“**Contract**” means the agreement between New Balance and the Customer for the sale and purchase of the Goods, and which incorporates these Conditions and the Order;

“**Customer**” means the person who purchases the Goods from New Balance and whose details are set out in the Order;

“**Defective Goods**” has the meaning given in clause 8.4;

“**Goods**” means the footwear, clothing, accessories and other goods which are made available for sale by New Balance from time to time, and which, in relation to the Order, are specified in the Order;

“**Location**” means the address for delivery of the Goods, as set out in the Order or otherwise agreed in writing between the parties;

“**New Balance**” means [New Balance Belgium](#), a company registered in [Belgium](#) under company number [0763.435.3321616165](#) and whose registered office is [Avenue Hermann Debroux 54, 1160 Auderghem, Belgium](#);

“**Order**” means an order for the Goods which is submitted to New Balance by the Customer in writing;

“**Specification**” means the specification of the Goods which are the subject of the Order and which is applicable at the time of the Customer placing the Order; and

“**VAS**” or “**Value Added Services**” means any ancillary services provided by New Balance in relation to the Order (for example, the application of barcodes or swing tickets or special packaging for any Goods), as specified in the Order or otherwise agreed in writing between the parties.

- 2.2 In these Conditions, unless the context requires otherwise:

- 2.2.1 a reference to a: party includes that party’s personal representatives, successors and permitted assigns; ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns; and ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;

- 2.2.2 any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and

- 2.2.3 a reference to legislation is to that legislation as amended, extended, re-enacted or consolidated from time to time, and includes all subordinate legislation made from time to time under that legislation.

3. ORDERS

- 3.1 New Balance may issue quotations to the Customer from time to time. Quotations are not an offer to supply any Goods and are incapable of being accepted by the Customer.
- 3.2 Each Order received by New Balance from the Customer shall be an offer to purchase the Goods subject to these Conditions.
- 3.3 New Balance may accept or reject an Order at its discretion.
- 3.4 If New Balance is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable. Rejection by New Balance of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.5 An Order shall not be accepted by New Balance, and no binding obligation or contract to supply any Goods shall arise, until the earlier of New Balance's written acceptance of the Order or New Balance dispatching the Goods or making the Goods available for collection.
- 3.6 These Conditions apply to and form part of the Contract between New Balance and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 3.7 Except where otherwise expressly agreed in writing and executed by a duly authorised signatory on behalf of New Balance, no terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, the Order, Order confirmation, specification or other document shall form part of the Contract, and no variation of these Conditions, the Order or the Contract shall be binding. Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 3.8 New Balance reserves the right to amend any accidental error or omission on quotations, an Order acknowledgment and/or invoices or with respect to the Specification by giving the Customer notice in writing. If, before the Goods are delivered or made available for collection, any such amendment results in a change which materially disadvantages the Customer (for example, a price increase of more than 10%), the Customer may cancel the Order by giving notice in writing to New Balance within ten days of receipt of New Balance's notice. If the Customer cancels the Order in accordance with this clause, New Balance shall issue a credit note to the Customer in respect of the invoice(s) for the Goods, and/or a refund in respect of any such invoice(s) which have already been paid by the Customer (as applicable). If any such amendment is notified or otherwise becomes apparent to the Customer after the Goods have been delivered or made available for collection, clause 8 may apply.
- 3.9 The Customer may request New Balance to provide VAS in relation to the Order. If New Balance agrees to provide any VAS in relation to the Order, the parties shall document the agreed price (if applicable) and description of the VAS in the Order or otherwise in writing. New Balance shall provide the VAS in accordance with the agreed description.

4. PRICE

- 4.1 The price for the Goods shall be as set out in New Balance's published price list for the then-current season, and the price of any VAS (if applicable) shall be as set out in writing by New Balance.
- 4.2 The prices are exclusive of VAT (or equivalent sales tax), which if applicable shall be applied based on the VAT rate in force on the invoice date. The Customer shall pay any applicable VAT to New Balance on receipt of a valid VAT invoice. For VAT purposes, the Customer acknowledges that all footwear sizes specified in New Balance's invoices are American sizes.
- 4.3 In addition, New Balance may charge the Customer for packaging, delivery and/or insurance costs, where specified in the Order or otherwise agreed in writing between the parties.

4.4 New Balance may from time to time agree discount(s) with the Customer. Conditions may apply to a discount, as notified by New Balance to the Customer from time to time.

5. CREDIT LIMIT AND PAYMENT

5.1 New Balance may set, withdraw and vary the Customer's credit limit from time to time and withhold all further supplies if the Customer exceeds its credit limit.

5.2 New Balance shall invoice the Customer for the price of the Goods and (if applicable) any VAS when or at any time after:

5.2.1 the Goods are dispatched for delivery to the Customer, or made available for collection by the Customer, where such price, plus the price for all other Orders placed by the Customer but which have not yet been paid, is equal to or lower than the Customer's credit limit. Where the Goods are dispatched or made available for collection on separate dates, New Balance may (but is not obliged to) raise separate invoices for each consignment; or

5.2.2 the Order is accepted by New Balance, where:

(a) such price, plus the price for all other Orders placed by the Customer but which have not yet been paid, is greater than the Customer's credit limit; or

(b) the Customer does not have a credit limit.

5.3 Where part of the amount to be invoiced to the Customer falls within the Customer's credit limit, New Balance may, at its discretion, invoice such part in accordance with clause 5.2.1, and the remaining amount in accordance with clause 5.2.2.

5.4 Invoices may be sent by post or by email. New Balance may send separate invoices for the price of the Goods and the price of any VAS.

5.5 The Customer shall pay all invoices in full, without deduction or set-off, and in cleared funds within thirty days of the date of each invoice, unless otherwise indicated on the invoice or specified by New Balance in writing; in the currency specified on each invoice; and to the bank account nominated by New Balance.

5.6 New Balance shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which New Balance has with the Customer.

5.7 Time of payment is of the essence. Where sums due from the Customer are not paid in full by the due date, New Balance may, without limiting its other rights, charge interest on such sums at an equivalent to the interest rate set by the law of 2 August 2002 combating late payments in commercial transactions . Such interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment. New Balance may also suspend processing other Orders placed by the Customer until payment of the sums due, together with accrued interest, is received in full.

5.8 In addition, where any sums are not paid in full by the due date and such sums fell within the Customer's credit limit when the Order was accepted by New Balance, New Balance may withdraw the Customer's credit limit until the sums, together with accrued interest, are paid in full. If the sums are not paid within ninety days following the due date, New Balance may pass the recovery of such sums to a third party debt collection agent, in which case additional fees, payable directly to the debt collection agent, will apply.

6. DELIVERY AND COLLECTION

- 6.1 Except where clause 6.2 applies, New Balance (or a carrier appointed by New Balance) shall deliver the Goods to the Location once the Goods are available for dispatch and in accordance with DAP (Incoterms Rules 2010) (or such other Incoterms rule which the parties have agreed in writing as being applicable).
- 6.2 Where agreed in writing by New Balance, the Customer may collect the Goods from New Balance's warehouse, in which case New Balance shall notify the Customer when the Goods are available for collection. The Customer shall collect the Goods at its cost and within five days of New Balance's notice, unless otherwise agreed by New Balance in writing.
- 6.3 If the Customer has any special delivery or collection requirements, the Customer shall notify New Balance in advance. New Balance shall comply with such requirements only where agreed in writing and in advance.
- 6.4 The Goods may be delivered or made available for collection by instalments. Any delay in delivery or availability for collection or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.5 Time of delivery or making the Goods available for collection is not of the essence. New Balance shall use its reasonable endeavours to meet any agreed delivery or collection dates but such dates are approximate only. Where New Balance invoices in accordance with clause 5.2.2, New Balance shall not dispatch the Goods or make the Goods available for collection until payment has been received in accordance with clause 5.5.
- 6.6 New Balance shall not be liable for any delay in or failure of delivery caused by the Customer's failure to make the Location available, prepare the Location for delivery, or provide New Balance with adequate instructions for delivery.
- 6.7 If the Customer fails to collect or accept delivery of the Goods, New Balance shall store and insure the Goods pending collection or delivery, and the Customer shall pay all costs and expenses incurred by New Balance in doing so.
- 6.8 If ten days following the due date for collection or delivery of the Goods, the Customer has not collected or taken delivery of the Goods, New Balance may resell or otherwise dispose of the Goods. No refund or credit note will be due to the Customer if New Balance is unable to resell the Goods. Where New Balance resells the Goods, New Balance shall issue a credit note to the Customer in respect of the invoice(s) for the Goods, and/or a refund in respect of any such invoice(s) which have already been paid by the Customer (as applicable), minus:
- 6.8.1 a re-stocking charge which shall be calculated as 10% of the total amount invoiced to the Customer for the Goods;
 - 6.8.2 where the resale price for the Goods is less than the price invoiced to the Customer for the Goods, the difference between such prices; and
 - 6.8.3 any costs incurred by New Balance in connection with: attempting to make delivery to the Customer (including any delivery charges invoiced to the Customer); storing and insuring the Goods pending delivery or collection; reselling the Goods; and any VAS provided by New Balance in respect of the Goods.

7. RISK AND TITLE

- 7.1 Where the Goods are to be delivered to the Customer, risk in the Goods shall pass to the Customer in accordance with DAP (Incoterms Rules 2010) (or such other Incoterms rule which the parties have agreed

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in writing as being applicable). Where the Goods are to be collected by the Customer, risk in the Goods shall pass to the Customer on collection.

- 7.2 If, following receipt of the Goods, it appears that any of the Goods have been lost or damaged prior to delivery or collection, the Customer shall notify New Balance within seven days of delivery or collection.
- 7.3 Title to the Goods shall pass to the Customer once New Balance has received payment in full and cleared funds for those Goods; any other goods that New Balance has supplied to the Customer; and any other monies due to New Balance from the Customer.
- 7.4 Until title to the Goods has passed to the Customer, the Customer shall hold the Goods as bailee for New Balance; store the Goods separately from all other material in the Customer's possession; take all reasonable care of the Goods and keep them in the condition in which they were delivered or collected; insure the Goods from the date of delivery or collection with a reputable insurer, against all risks, for an amount at least equal to their price, and noting New Balance's interest on the policy; ensure that the Goods are clearly identifiable as belonging to New Balance; not remove or alter any mark on or packaging of the Goods; inform New Balance immediately if the Customer becomes subject to any event or circumstance specified in clause 14.1; and on reasonable notice permit New Balance to inspect the Goods during the Customer's normal business hours and provide New Balance with such information concerning the Goods as New Balance may request from time to time.
- 7.5 Notwithstanding clause 7.4, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that any event or circumstance specified in clause 14.1 has occurred or is likely to occur. If the Customer resells the Goods, it does so as principal and not as New Balance's agent, and title to the Goods shall pass to the Customer immediately prior to the resale.
- 7.6 If, at any time before title to the Goods has passed to the Customer (such Goods being the "**Unpaid Goods**"), the Customer informs New Balance, or New Balance reasonably believes, that the Customer has or is likely to become subject to any of the events or circumstances specified in clause 14.1, Customer shall return to, or make the Unpaid Goods available for collection by, New Balance. If the Customer fails to do so promptly, New Balance may enter any premises where the Unpaid Goods are stored and repossess the Unpaid Goods and/or any other goods supplied by New Balance, up to the total price of the Unpaid Goods.

8. WARRANTY

- 8.1 New Balance warrants that the Goods shall, on delivery or collection, conform in all material respects to the description of the Goods as stated in the Order and their Specification(s), and be free from material defects in design, material and workmanship.
- 8.2 New Balance shall not be liable for any failure of the Goods to comply with clause 8.1 where:
- 8.2.1 such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - 8.2.2 the Customer sells or uses any of the Goods after notifying New Balance that they do not comply with clause 8.1;
 - 8.2.3 the Goods differ from their Specification(s) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - 8.2.4 New Balance has notified the Customer of a Specification difference before delivery or collection in accordance with clause 3.8, and such difference does not materially disadvantage the Customer or the Customer has not cancelled the Order in accordance with clause 3.8.

8.3 Except as set out in this clause 8, New Balance gives no warranties and makes no representations in relation to the Goods, and all warranties and conditions, whether express or implied by statute, or otherwise, are excluded to the extent permitted by law.

8.4 Except as provided in clause 9, New Balance shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1 (such Goods being "**Defective Goods**").

9. RETURNS

9.1 New Balance accepts returns of the Goods only in accordance with this clause 9.

9.2 If the Customer wishes to return any Defective Goods, the Customer must contact New Balance's Customer Services Department in Warrington within seven days of the delivery or collection date.

9.3 New Balance only accepts returns of non-Defective Goods at New Balance's sole discretion and in exceptional circumstances (for example, where New Balance is able to resell the relevant Goods). If the Customer wishes to return any non-Defective Goods, the Customer must contact New Balance within ninety days of the delivery or collection date.

9.4 If New Balance approves a returns request pursuant to clause 9.2 or 9.3:

9.4.1 New Balance shall issue a returns authorisation number and returns authorisation documents to the Customer; and

9.4.2 the Customer shall then promptly return the Goods to the returns address specified by New Balance (and for the avoidance of doubt, not to any other address or via New Balance's agents or sales representatives), in their original packaging and with the returns authorisation documents affixed to, and the authorisation number clearly marked on, the outside of the package containing the Goods;

9.4.3 New Balance may reject Goods which:

- (a) are not returned in accordance with the requirements of this clause 9;
- (b) where clause 8.2 applies, in respect of Defective Goods; or
- (c) have been soiled, worn, or otherwise damaged following delivery or collection, or which have faded through display, unless the Customer can demonstrate (for example, via photographic evidence) that such defects were present when the Goods were delivered or collected;

9.4.4 if New Balance rejects any returned Goods, New Balance shall return the Goods to the Customer with a report showing the reason(s) for rejection;

9.4.5 New Balance shall reimburse the Customer for the reasonable courier costs incurred by Customer in returning Defective Goods to New Balance. The Customer shall pay for the cost of returning non-Defective Goods to New Balance;

9.4.6 following acceptance of the returned Goods:

- (a) in respect of Defective Goods only, New Balance will (at its option) provide the Customer with a repair, replacement or full credit note for the price of the Goods; or
- (b) in respect of any other Goods, New Balance will provide the Customer with a credit note for the price of the Goods, minus a re-stocking charge equal to 10% of such price.

9.5 These Conditions shall apply to any repaired or replacement Goods supplied by New Balance pursuant to this clause 9.

10. RESTRICTION ON ONWARD SALE

The Customer is authorised to re-sell the Goods within the European Union and United Kingdom only.

11. LIMITATION OF LIABILITY AND INDEMNITY

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

11.2 Subject to clause 11.3:

11.2.1 New Balance's total liability in respect of the Contract shall not exceed the total amount paid or payable by the Customer in respect of the Contract;

11.2.2 New Balance shall not be liable for consequential, indirect or special losses, or for any of the following (whether direct or indirect): loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill; and

11.2.3 New Balance shall not have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which are the result of any event or sequence of events which is beyond New Balance's reasonable control.

11.3 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of death or personal injury caused by negligence; fraud or fraudulent misrepresentation; or any other losses which cannot be excluded or limited by applicable law.

11.4 The Customer shall indemnify New Balance in full from and against any losses, damages, liability, costs (including legal fees) and expenses which New Balance may suffer or incur directly or indirectly arising from: any breach by the Customer of the Contract or any negligent, wrongful, fraudulent and/or dishonest act or omission by the Customer (or its agents, authorised or otherwise or employees or other personnel) and which results in a claim against New Balance by any third party, including any customer, agent or employee of the Customer; and/or any breach by the Customer of clause 16.5.

12. CONFIDENTIALITY AND ANNOUNCEMENTS

12.1 The Customer shall keep confidential all commercial, financial and technical information belonging to New Balance, including in relation to the Goods, the prices and New Balance's plans, distribution and sales channels, and shall only use such information as required to perform the Contract. This clause shall not apply to any information which was in the public domain at the date of the Contract, or which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement, or any disclosure required by law or a regulatory authority.

12.2 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

13. TERMINATION OF THE CONTRACT BY THE CUSTOMER

13.1 The Customer may terminate the Contract by giving New Balance notice in writing at least thirty days prior to the dispatch or collection date (as specified in the Order or otherwise notified to the Customer in writing by New Balance). If New Balance has already invoiced the Customer in respect of the Goods, New Balance shall issue the Customer with a full credit note in respect of such invoice(s) and/or a full refund in respect of any such invoice(s) which have already been paid by the Customer (as applicable).

- 13.2 The Customer may also terminate the Contract by giving New Balance less than thirty days' notice in writing prior to the dispatch or collection date (as specified in the Order or otherwise notified to the Customer in writing by New Balance). Where the Customer terminates the Contract in accordance with this clause 13.2:
- 13.2.1 New Balance shall invoice the Customer for the Goods, unless New Balance has already done so. If New Balance has already invoiced the Customer and New Balance succeeds in reselling the Goods, New Balance shall issue a credit note to the Customer in respect of the existing invoice(s) and/or a refund in respect of any such invoice(s) which have already been paid by the Customer (as applicable); and
- 13.2.2 if New Balance resells the Goods, the amounts on the invoice(s) issued, credited and/or refunded pursuant to clause 13.2.1 shall be reduced by the following amounts:
- (a) a re-stocking charge which shall be calculated as 10% of the total price of the Goods;
 - (b) where the resale price achieved for the Goods is less than the price invoiced or due to be invoiced to the Customer for the Goods, the difference between such prices; and
 - (c) any costs incurred by New Balance in connection with any VAS performed by New Balance prior to the Contract termination date.

14. TERMINATION OF THE CONTRACT BY NEW BALANCE

- 14.1 New Balance may terminate the Contract and/or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if the Customer:
- 14.1.1 commits a material breach of the Contract, which, where remediable, is not remedied within fourteen days of receiving written notice from New Balance of such breach. Any breach by the Customer of any of clauses 10 and 12 shall constitute a material breach which is not remediable;
- 14.1.2 has failed to pay any amount due under the Contract on the due date and such amount remains unpaid thirty days after the date that New Balance has given notification to the Customer that the payment is overdue; or
- 14.1.3 ceases to carry on its business; has a liquidator, receiver or administrative receiver appointed to it; passes a resolution for its winding up; enters into any voluntary arrangement with its creditors; or is otherwise unable to pay its debts as they fall due (in each case, to include similar events under the laws of countries other than England).
- 14.2 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle New Balance to terminate the Contract under clause 14.1, it shall immediately notify New Balance in writing.
- 14.3 New Balance may terminate part or all of the Contract by giving notice to the Customer if New Balance is unable to manufacture or supply the relevant Goods because orders for the relevant Goods have not reached the required minimum order quantity specified by New Balance's third party manufacturers. New Balance shall give such notice within a reasonable time of New Balance becoming aware that the minimum order quantity has not been met. Where New Balance has already invoiced the Customer in respect of the relevant Goods, New Balance shall issue the Customer with a full credit note (or partial credit note in the event of partial termination of the Contract) in respect of such invoice(s), and/or a full refund in respect of any such invoice(s) which have already been paid by the Customer.
- 14.4 New Balance reserves the right to suspend the Contract if New Balance (acting reasonably) is concerned about the Customer's financial status and ability to pay for the Goods. In the event of any such suspension,

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New Balance shall give written notice to the Customer explaining the grounds for the suspension, and shall not be liable to the Customer in connection with the suspension.

15. NOTICES

- 15.1 Any notice given by a party in relation to the Contract shall be in writing and be sent to New Balance at the address set out in these Conditions, and to the Customer at the Customer's invoice address, unless otherwise notified to the other party in accordance with this clause 15. This clause 15 does not apply to notices given in legal proceedings or arbitration.
- 15.2 Notices may be given, and are deemed received by hand, on receipt of a signature at the time of delivery; by Royal Mail Recorded Signed For post (or an equivalent, first class service which obtains a signature on delivery), at 9.00 am on the second business day after posting; or by Royal Mail International Tracked & Signed post (or an equivalent, first class international service which obtains a signature on delivery), at 9.00 am on the fourth business day after posting.

16. GENERAL

- 16.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract. Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 16.2 Time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 16.3 New Balance may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without New Balance's prior written consent.
- 16.4 No failure, delay or omission by New Balance in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Contract by New Balance shall prevent any future exercise of it or the exercise of any other right, power or remedy by New Balance.
- 16.5 The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it, including anti-bribery laws, and shall maintain all authorisations, approvals, permits and authorities as are required to perform its obligations under or in connection with the Contract.
- 16.6 A person who is not a party to the Contract shall not have any rights to enforce any of the provisions of the Contract.
- 16.7 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Belgium.
- 16.8 The parties irrevocably agree that the courts of Brussels (Belgium) shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).