

Birtley Group Limited Terms of Trading

1 Business customers and consumers

- 1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers.
- 1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
- 1.4 If you are not a business customer, you are a consumer. You have certain statutory rights as a consumer which are not affected by these terms. Contact your local trading standards office for more information. Words in *italic type* are legal words which clarify, rather than alter, the meaning of the relevant clause.

2 Price

- 2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Our quotations lapse after 30 days (unless otherwise stated).
- 2.3 The price quoted includes delivery costs (unless otherwise stated).
- 2.4 **Business customers:** unless otherwise stated, the price quoted to business customers is an illustrative estimate only and the price charged will be our price current at the time of delivery.
- 2.5 **Business customers:** rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.6 **Business customers:** at any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

3 Delivery

- 3.1 All delivery times quoted are estimates only and will not be of the essence of the contract.
- 3.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
- 3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
- 3.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 3.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including *indirect or consequential loss*, or increase in the price of the goods).
- 3.4 If for any reason you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided adequate instructions, or if you do not collect the goods by the date we give for collection, we may:
- 3.4.1 treat the goods as having been delivered on that day (for the purposes of risk, inspection and payment); and
- 3.4.2 charge you for the storage or redelivery of those goods.
- 3.5 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
- 3.6 We may decline to deliver if:
- 3.6.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
- 3.6.2 the premises (or the access to them) are unsuitable for our vehicle.
- 3.7 Bundling of materials is carried out as a means of identification and/or separation and for safety reasons the bundling wires or strapping must not be used for lifting.

4 Risk

- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
- 4.2.1 when the goods are loaded at our premises (if you are collecting them or arranging carriage); or
- 4.2.2 when the goods are unloaded at our premises or address specified by you (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must mark and sign the delivery note as such and write to confirm your claim within seven days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods. If you fail to notify us in accordance with these requirements, you will not be entitled to reject the goods and will be deemed to have accepted the goods in accordance with the contract.

5 Payment terms

- 5.1 You are to pay us in cash or in cleared funds prior to delivery, unless you have an approved credit account. In the case of sums paid to us by cheque, payments shall be deemed to have been made when our bank account has been credited with the amount for which the cheque is drawn and not before.
- 5.2 **Business customers:** If you have an approved credit account, payment is due by the end of the month following the month in which the goods are delivered, unless otherwise agreed in writing.
- 5.3 If you fail to pay us in full on the due date we may:
- 5.3.1 suspend or cancel future deliveries;
- 5.3.2 cancel any discount offered to you;
- 5.3.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;
- a. calculated (on a daily basis) from the date of our invoice until payment;
- b. compounded on the first day of each month; and
- c. before and after any judgment (unless a court orders otherwise);
- 5.3.4 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
- 5.3.5 recover (under clause 5.7) the cost of taking legal action to make you pay.
- 5.4 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.
- 5.5 **Business Customers:** you do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.6 **Consumers:** you may only set off money you claim from us against money you owe us with our written agreement and on such terms as we may state.
- 5.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (*a lien*).
- 5.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.

- 5.9 **Consumers:** clause 6.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim those losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.

6 Title

- 6.1 **Consumers:** your statutory rights are unaffected.
- 6.2 **Business customers:** until you pay all debts you may owe us:
- 6.2.1 all goods supplied by us remain our property and title to the goods shall remain with us;
- 6.2.2 you must store them so that they are clearly identifiable as our property;
- 6.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
- 6.2.4 all goods supplied shall be held by you as bailee for us;
- 6.2.5 you may use those goods and sell them in the ordinary course of your business, but not if:
- a. we revoke that right (by informing you in writing); or
- b. you become insolvent;
- and provided that if you do resell the goods then you will hold on trust for us so much of the proceeds of sale received by you as are necessary to discharge payment in full to us.
- 6.3 **Business customers:** you must inform us (in writing) immediately if you become insolvent.
- 6.4 **Business customers:** if your right to use and sell the goods ends you must allow us (or our nominated agent) to remove the goods.
- 6.5 **Business customers:** we (or our nominated agent) shall have the right and your permission to enter any premises where the goods may be stored by you:
- 6.5.1 at any time, to inspect them; and
- 6.5.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.6 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.

7 Warranties

- 7.1 We warrant that on the date of delivery the goods:
- 7.1.1 comply with their description or specification on our acknowledgement of order form; and
- 7.1.2 are free from material defect in design, material and workmanship (as long as you comply with clause 7.4).
- 7.2 **Business customers:** we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied by the Sale of Goods Act 1979 or other statute) as to the quality of the goods or their fitness for any purpose.
- 7.3 **Consumers:** the warranty in clause 7.1 is in addition to your statutory rights.
- 7.4 If you believe that we have delivered goods that are in breach of any warranty contained in this clause 7 (as the case may be), you must:
- 7.4.1 provide us with full written details and documentary evidence of the breach within 14 days of the date of delivery of the goods;
- 7.4.2 allow us to investigate (we may need access to your premises and product samples); and
- 7.4.3 on request, return such goods to us.
- 7.5 If the goods are found to breach any warranty contained in this clause 7 (as the case may be) (following our investigations), and you have complied with those conditions (in clause 7.4) in full, we will (at our option) repair the goods, replace the goods or refund the price.
- 7.6 We shall not be liable in respect of any breach of any warranty contained in this clause 7 arising from: (i) fair wear and tear, (ii) willful damage, (iii) negligence, (iv) abnormal working conditions or faulty installation, (v) failure to follow our instructions as to storage, commissioning, installation, use or maintenance of the goods or (if there are none) good trade practice regarding the same, (vi) your further use of such goods after giving notice in accordance with clause 7.4.1, or (vii) the mis-use, alteration or repair of the goods without our written approval (which may be given at our sole discretion); provided if it is subsequently determined by us (acting reasonably) that the breach of the warranty occurred due to any of the events set out in clause 7.6 (i) to (vii) (inclusive) then you shall pay to us on demand any costs and expenses we may incur in this regard.
- 7.7 Subject to clause 7.9; we are not liable under any circumstances to you whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss, financial loss, loss of profits or production or loss of use arising from the contract or the supply of goods or their use.
- 7.8 Our total liability to you in respect of all other losses arising under or in connection with these terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the goods.
- 7.9 Nothing in these terms restricts or limits our liability for (i) breach of the terms implied by section 12 of the Sale of Goods Act 1979, (ii) death or personal injury resulting from negligence, (iii) proven fraud or fraudulent misrepresentation, or (iv) any matter in respect of which it would be illegal or unlawful for us to exclude or restrict liability.
- 8 **Specification**
- 8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:
- 8.1.1 the specifications or instructions are accurate;
- 8.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
- 8.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 8.2 **Business Customers:** We reserve the right;
- 8.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and
- 8.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.
- 8.3 If you request testing and inspection of the goods the following terms will apply;

- 8.3.1 testing and inspection will be carried out at our works and results will be final and conclusive.
- 8.3.2 We are not obliged to produce test certificates or safety critical certificates unless requested by you and will charge you a reasonable fee for certificates supplied.
- 8.3.3 You must pay for all test pieces that comply with specification.
- 8.3.4 You shall indemnify us against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with your instructions or specification, whether express or implied.

9 Return of goods

- 9.1 We will accept the return of goods from you only:
- 9.1.1 by prior arrangement (confirmed in writing);
- 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered) and
- 9.1.3 where the goods are as fit for sale on their return as they were on delivery.

10 Export terms

- 10.1 Where the goods are supplied by us to you by way of export from the United Kingdom Clause 10 of these terms applies (except to the extent that it is inconsistent with any written agreement between us).
- 10.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.
- 10.3 Unless otherwise agreed, the goods are supplied ex works our place of manufacture.
- 10.4 Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 10.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.
- 10.6 We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

11 Cancellation

- 11.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).
- 11.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 11.3 We may suspend or cancel the order, by written notice if:
- 11.3.1 you fail to pay us any money when due (under the order or otherwise);
- 11.3.2 you become insolvent in accordance with clause 14.4;
- 11.3.3 you fail to honour your obligations under these terms.
- 11.3 In the event of any such suspension we shall be entitled as a condition of resuming our former liabilities under any contracts between you and us, to require payment or such security as we may require for the payment of the goods.

12 Waiver and variations

- 12.1 Any waiver or variation of these terms is binding in honour only unless:
- 12.1.1 made (or recorded) in writing;
- 12.1.2 signed on behalf of each party; and
- 12.1.3 expressly stating an intention to vary these terms.
- 12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

13 Force majeure- business customers only

- 13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.
- 13.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

14 General

- 14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have exclusive jurisdiction.
- 14.2 If you are more than one person, each of you is liable for all of your obligations under these terms (*joint and several liability*).
- 14.3 If any of these terms are unenforceable as drafted:
- 14.3.1 it will not affect the enforceability of any other of these terms; and
- 14.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 14.4 We may treat you as insolvent if:
- 14.4.1 you are unable to pay your debts as they fall due; or
- 14.4.2 you (or any item of your property) becomes the subject of:
- a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
- b. any application or proposal for any formal insolvency procedure; or
- c. any application, procedure or proposal overseas with similar effect or purpose.
- 14.5 **Business customers:** all brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 14.6 **Business customers:** any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 14.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 14.8 The only statements upon which you may rely in making the contract with us are those set out in these terms or made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:
- 14.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
- 14.8.2 which expressly state that you may rely on them when entering into the contract.
- 14.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.