



# Terms and Conditions

## 1. Purpose

- 1.1 The customer's attention is drawn to these terms and conditions of business. All orders placed with the company and contractual agreements with the company are subject to these terms and conditions at all times.
- 1.2 In the event that the customer shall be a consumer, nothing in these terms and conditions shall affect the statutory rights of a consumer.

## 2. Definitions

- "the company" shall mean Cutwel Limited whose registered office is c/o Wheawill & Sudworth Accountants, PO Box B30, 35 Westgate, Huddersfield HD7 1PA, a limited company registered in England and Wales company registration number 3202912
- "the customer" shall mean any person or persons, firm, business, partnership, company or other organisation by whom or on whose behalf an order is placed for the company to supply goods
- "the goods" shall mean any item or items of equipment supplied by the company to the customer following an order having been placed by the customer. This includes, where appropriate, all replacements thereof and additions there to
- "the premises" shall mean the delivery location address as nominated by the customer and advised to the company at the time an order is placed by the customer with the company
- "the price" shall mean the price for the goods as set out in the company's most recent catalogue
- "force majeure" shall mean an event which occurs outside the company's control.

## 3. General

- 3.1 The price detailed in the brochure is valid until such time as the price should be amended or varied either by publication of a further brochure by the company or publication of an amended price list.
- 3.2 Notwithstanding and without prejudice to clause 3.1 above, the company reserves the right to amend any price for any goods at any time, including at the time of order at the company's sole discretion and without being responsible for any form of loss.
- 3.3 The company reserves the right to withdraw any of the goods for sale at any point (whether before or after contract) at the company's sole discretion and without being responsible for any form of loss.
- 3.4 Where any variation to the goods is subsequently agreed by the company, the company reserves the right to amend the price in the brochure and/or the contract accordingly.
- 3.5 Any typographical or clerical error or omission in any quotation, price list, order, acceptance, invoice, brochure, or any other document issued by the company shall be subject to correction without any liability on the part of the company at whatever time and whenever such a correction shall be necessary.

## 4. Contract

- 4.1 Whilst the company shall endeavour to ensure that the details are accurate, at all times, the drawings, specifications, photographs, colours, weights, and information detailed in the brochure or elsewhere relating to the goods are approximate only and do not form part of the contract. The company shall not be held responsible for any variation of the same nor have any liability in respect thereof.
- 4.2 These terms and conditions shall apply to every contract. The company shall not be bound by any terms and conditions which may be inconsistent with these terms and conditions.
- 4.3 A contract shall only exist when an order has been placed by or on behalf of the customer and accepted by the company.
- 4.4 An order may be placed by the customer with the company either verbally or in writing. For the avoidance of doubt, this shall include, by telephone, face to face, letter, facsimile transmission, electronic mail or through a website or online application application provided by the company. The company may issue an acknowledgement of order to the customer, but such acknowledgment shall not represent acceptance of the contract by the company unless it specifically says so.
- 4.5 In the event that after the placing of an order, the customer shall request a modification, amendment, or variation of the contract, then any such request shall be deemed to be an amendment to the contract and shall not constitute a new contract.
- 4.6 The customer may not cancel a contract unless the company agrees this in writing and then only upon the terms of the customer shall indemnify the company in full against all costs (including the cost of all labour, materials, and services used), claims, actions, damages, charges and expenses incurred by the company as a direct or indirect result of the cancellation.
- 4.7 In accepting the cancellation of a contract under clause 4.6 the company may charge the customer a restocking fee of 20% of the total value of the contract and is required to pay the carriage fees for the returning of the goods to the company's premises.
- 4.8 Prior to acceptance of any contract by the company, whether or not the company and the customer have entered into any earlier contracts, the company may at the company's sole discretion, request that any directors of the customer enter into a personal guarantee or guarantees with the company (the terms of which shall be of the company's own choosing) prior to confirming or fulfilling any contract. In the event that the customer should refuse to provide such personal guarantee, then the company at the company's sole discretion reserves the right not to fulfil the contract and the customer shall raise no requisition nor any claim for damages in respect of the non-fulfilment of the contract.

## 5. Delivery

- 5.1 In consideration of the payment of the price by the customer to the company, the company shall deliver the goods to the customer on a date to be notified, and, wherever possible, agreed with the customer. Delivery shall be effected as detailed in clause 5.2 below. In the event of delivery taking place under the provisions of clause 5.2(a) the customer shall pay the company the delivery charges.
- 5.2 Delivery of the goods shall be effected and take place either: (a) by the company arranging transportation or postage of the goods to the customer's premises (if agreed at the time of order), or (b) by the customer attending at the company's premises to collect the goods
- 5.3 The company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance of the contract from any cause at all, nor shall any such delay or failure entitle the customer to refuse to accept any delivery under the contract, performance of the contract, or to repudiate the contract.
- 5.4 Any dates quoted or provided by the company for the delivery are approximate only although the company shall use its best endeavours to supply the goods within any time notified by the company to the customer but time shall never and not be of the essence at any point. The company shall not incur any liability whatsoever for failure to supply or deliver goods by any given or such date or dates.
- 5.5 Any packaging of the goods for/or in order to necessitate delivery shall be at the absolute discretion of the company.
- 5.6 The customer shall carefully examine the goods upon delivery and shall notify the company in writing of any shortages or defects reasonably discoverable upon careful examination. This notification must be received by the company within 7 days, commencing with the day of delivery. In the absence of such notification, the company excludes all liability in respect of any defects or shortages. Any goods which the customer believes are damaged or defective must be retained together with the packing for inspection by or on behalf of the company.
- 5.7 If the company shall be satisfied that, at the company's sole discretion, the goods are satisfactory and are as detailed in the order, and are not damaged or defective then the contract shall be deemed to have been fulfilled insofar as the company's obligations under the contract are concerned.
- 5.8 For the avoidance of doubt, delivery of the goods may take place separately and on a piecemeal basis.

## 6. Price

- 6.1 The customer agrees to pay the price to the company.
- 6.2 Should the company be prevented from adhering to the delivery date by the customer's postponement or delays (howsoever arising) then the company reserves the right to amend the price to reflect any extra cost incurred to the company thereby.
- 6.3 All prices quoted in the brochure and in any sales lists are exclusive of value added tax, and, where applicable, of any substitute taxes, levies, duties, imports, fees, or charges whatsoever and howsoever payable, all of which shall be payable by the customer in full and/or reimbursed to the company as appropriate. The customer shall at all times indemnify the company against nonpayment of the same.
- 6.4 All invoices shall be issued by the company to the customer.

## 7. Payment

- 7.1 In consideration of the supply of goods by the company to the customer, the customer shall pay the company the price.
- 7.2 Unless otherwise agreed by the company at the time of contract, payment for the goods shall be due from the customer one calendar month from the month end of the date of invoice.
- 7.3 Payment shall be made either in cash, or by debit/credit card, or by cheque drawn on a UK clearing bank or by bank transfer.
- 7.4 In the event of any late payment whatsoever, the company shall be entitled to charge interest on any balance due at the rate of 4% over HSBC Bank plc bank base rate of lending the interest being calculated from the date that payment falls due until the date of payment in full, plus interest.
- 7.5 The customer shall reimburse the company all costs and expenses (including, but not limited to, legal costs) incurred in the collection of any overdue amount.
- 7.6 If required by the company, a deposit of such figure as may be required by the company to cover any up front costs of the contract shall be paid by the customer to the company upon placing an order and before any goods are supplied.
- 7.7 Unless otherwise agreed by the company, where goods are to be supplied to an overseas customer, payment shall be made by issue of irrevocable letters of credit drawn on a UK bank in either sterling or Euro denominations as follows 75% on receipt of order, and 25% on presentation of certified shipping document

## 8. Risk

The risk in the goods shall pass to the customer immediately upon despatch from the company's warehouse and the customer shall take out and ensure appropriate insurance is in place accordingly.

## 9. Retention of Title

- 9.1 Notwithstanding clause 8 above, the company shall retain title and ownership in the goods until the price and all other sums outstanding and owing by the customer to the company are paid in full.
- 9.2 Pending payment in full pursuant to clause 7 above, the following sub-clauses shall apply:
  - 9.2.1 The customer shall store the goods separately and in such a way that they can be readily identifiable as belonging to and being goods of the company.
  - 9.2.2 The customer shall at the customer's own expense immediately return the goods to the company should the company or its authorised representatives so request at any time after payment is due.
  - 9.2.3 In the event that the goods shall be in any way mixed, compounded, or entwined with the property of a third party or parties then the product or products thereof shall be deemed to be held in common with such third party or parties.
  - 9.2.4 Without prejudice to clause 8 above, the customer shall hold the goods as the company's trustee and bailee and shall keep the goods separate, properly stored, protected, insured, labelled and identified as being the company's property.
  - 9.2.5 The customer shall not sell, give away, or otherwise dispose of the goods. In the event that the customer shall do so (which for the avoidance of doubt is strictly forbidden until the price and all sums outstanding have been paid to the company) then any monies received and the proceeds of sale, or disposal, including any cheque received or other payment shall be held on trust by the customer for the company and the customer will forward the cheque or payment to the company immediately. Pending the same, the customer shall keep any monies received in a separate account so as to be identifiable as the company's monies. In particular, but without prejudice to the foregoing, the customer shall not pay the proceeds into any bank account which is overdrawn.
  - 9.2.6 The company shall be entitled at any time following the date upon which payment is due and without additional notice to enter the premises of the customer or any third party where the goods are situate or shall be stored and repossess the same accordingly. For the avoidance of doubt, the customer irrevocably consents to allow the company access onto their premises for this purpose. The customer shall reimburse the company for all reasonable expenses and fees incurred (including, but not limited to, legal expenses) in so doing.
  - 9.2.7 The company shall be entitled to maintain an action for the price of the goods notwithstanding that title to the same shall not have passed to the customer.
  - 9.2.8 The customer will immediately notify the company of any damage to the goods and will hold any insurance monies received in trust for the company absolutely. In the event that a claim is to be made under the customer's insurance, the company may, at the company's sole discretion, conduct negotiations and effect a settlement with the insurers in place of the customer. The customer at all times irrevocably authorises the company to collect any insurance monies from the insurers. The company may apply any insurance monies as the company shall see fit.

# Terms and Conditions



## 10. Quality and Warranties

- 10.1 The company warrants to the customer that the goods are free from defects in materials and workmanship. The company undertakes (subject to the remainder of this clause 10), at its option, to repair or replace the goods which are found to be defective as a result of defective materials or workmanship within three (3) months of the date of delivery.
- 10.2 The customer shall not be liable for a breach of the warranty contained in condition 10.1 unless:
- 10.2.1 the customer gives written notice of the defect to the customer within three (3) days of the time when the customer discovers or ought to have discovered the defect; and
- 10.2.2 after receiving the notice, the company is given a reasonable opportunity of examining such goods and the customer (if asked to do so by the company) returns such goods to the company's place of business at the company's cost for the examination to take place there.
- 10.3 The company shall not be liable for a breach of the warranty in condition 10.1 if:
- 10.3.1 the customer makes any use of goods in respect of which it has given written notice under condition 10.2.1; or
- 10.3.2 the defect arises because the customer failed to follow the company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice; or
- 10.3.3 the customer alters or repairs the relevant goods without the written consent of the company.
- 10.4 Any repaired or replacement goods shall be under warranty for the unexpired portion of the original three (3) month warranty period.
- 10.5 The company shall not be liable for any damage or defect to the goods caused by improper use of the goods or use outside their normal application.
- 10.6 Any goods made specifically to a customer's specification are made without any warranty whatsoever as to their fitness for any particular purpose, and the only warranty in respect of the same is that they will comply materially to such specification.
- 10.7 Except as otherwise provided for under these terms and conditions, all other warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.

## 11. Remedies

- 11.1 The company shall not be liable for any non-delivery of the goods (even if caused by the company's negligence) unless the customer notifies the company in writing of the failure to deliver within seven (7) days after the scheduled delivery date.
- 11.2 Any liability of the company for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods.
- 11.3 If the company's performance of its obligations under the contract is prevented or delayed by any act or omission of the customer (other than by reason of an unforeseeable delay under clause 13), the customer shall be liable to pay to the company all reasonable costs, charges or losses sustained by it as a result, subject to the company notifying the customer in writing of any such claim it might have against the customer in this respect.
- 11.4 In the event of any claim by the customer under the warranty given in clause 10.1, the customer shall notify the company in writing of the alleged defect. The company shall have the option of testing or inspecting the goods at their current location or moving them to the company's premises (or those of its agent or sub-contractor) at the cost of the company. If the customer's claim is subsequently found by the company to be outside the scope or duration of the warranty in clause 10, the costs of transportation of the goods, investigation and repair shall be borne by the customer.
- 11.5 The company shall have no further liability and the customer shall have no claim for a breach of the warranty in clause 10, if the company fully complies with this clause 11.

## 12. Limitation of Liability

- 12.1 The following provisions set out the entire financial liability of the company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the customer in respect of:
- 12.1.1 any breach of these terms and conditions;
- 12.1.2 any use made or resale by the customer of any goods, or of any product incorporating any of the goods;
- 12.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.
- 12.2 Nothing in these conditions excludes or limits the liability of the company:
- 12.2.1 for death or personal injury caused by the company's negligence;
- 12.2.2 under section 2(3), Consumer Protection Act 1987 or section 12 of the Sale of goods Act 1979;
- 12.2.3 for any matter which it would be illegal for the company to exclude or attempt to exclude its liability; or
- 12.2.4 for fraud or fraudulent misrepresentation.
- 12.3 Subject to conditions 12.1 and 12.2:
- 12.3.1 the company shall not be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the contract (including any losses that may result from a deliberate breach of the contract by the company, its employees, agents or subcontractors); and
- 12.3.2 the company's total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the contract by the company, its employees, agents or subcontractors shall not exceed 110% of the price under the contract.

## 13. Force Majeure

The company shall be entitled, without liability on its part, and without prejudice to its other rights, to terminate the contract or any unfulfilled part thereof or, at its option, to suspend or give partial performance under it, if performance by the company or its suppliers is prevented, hindered, or delayed whether directly or indirectly by any reason or any cause whatever beyond the company's or its supplier's reasonable control, whether or not such cause existed on the date when the contract was made. Non-exhaustive illustrations include act or acts of God, war, riot, terrorism, explosion, abnormal weather conditions, fire, flood, government action, strike, lock-out, delay by suppliers, accidents and shortage of materials, labour, or manufacturing facilities.

## 14. Intellectual Property

- 14.1 The company shall have and may retain the property, copyright, and all other intellectual or industrial property rights in any drawings, designs, plans, proofs, models, prototypes, brochures and literature, specifications, and/or quotations prepared by the company.
- 14.2 The customer shall indemnify the company from all actions, costs, claims, demands, expenses and liabilities whatsoever arising from any actual or alleged infringement brought in connection with clause 14.1 above or in respect of any actual or alleged infringement of others' intellectual property rights by virtue of having been supplied by the customer with drawings, models, pictures, samples or specifications for bespoke goods.

## 15. Termination

In the event of any payment due by the customer to the company not being paid on the due date, or in the event of the customer becoming insolvent or bankrupt or a petition being presented or a resolution being passed for the liquidation (otherwise for the purpose of amalgamation or reconstruction) or sequestration of the customer or a receiver, administrator, administrative receiver or judicial factor being appointed over all or any of the assets of the customer, or if any steps are taken in relation to any of the foregoing, or the customer making any voluntary arrangements with its creditors generally, or if the customer shall cease, or threaten to cease trading or carrying on business, or if the customer shall, without prior written consent of the company, sell or otherwise dispose of the whole or substantially the whole of its assets, or if the company reasonably apprehends that any of the foregoing events is about to occur (and notifies the customer accordingly), the company shall be entitled to treat the contract of which these conditions form part and any other contract between the company and the customer as repudiated and shall be entitled to suspend deliveries to the customer without being liable for any form of loss.

## 16. Entire Agreement Clause

- 16.1 The customer confirms that they have not relied upon any warranty, representation, or undertaking of or on behalf of the company by any of its employees or agents (whether written or oral) in respect of the goods and the company shall have no liability in respect thereof.
- 16.2 The customer further confirms and acknowledges that it is the sole responsibility of the customer alone to ensure that the goods ordered from the company shall be appropriate for the customer's requirements, and any specific purposes for the goods given by the company, its employees or agents is illustrative only and is not intended as a warranties as to their fitness for any particular purpose.
- 16.3 This agreement supersedes any other arrangements, if appropriate, and whether past or present, contracts, assurances, understandings, course of dealings, or promises between the parties hereto.
- 16.4 These terms and conditions represent the entire agreement between the company and the customer.
- 16.5 Nothing in this clause 16 is intended to exclude or limit the company's liability for fraud.

## 17. Miscellaneous

- 17.1 The company may at the company's sole discretion subcontract the performance of this contract in whole or in part.
- 17.2 In the event of these terms and conditions conflicting with any other terms and conditions, then these terms and conditions shall prevail.
- 17.3 This contract is between the company and the customer as principals and shall not be assignable by the customer without express written consent of the company.
- 17.4 Each right or remedy of the company under the contract is without prejudice to any other right or remedy of the company whether under the contract or not.
- 17.5 No waiver by the company of any breach of contract by the customer shall be construed as a waiver of any subsequent breach of the same or any other provision hereof.
- 17.6 Failure or delay by the company in enforcing or partially enforcing any provision of this contract shall not be construed as a waiver of its rights generally under the contract.
- 17.7 For the avoidance of doubt, nothing in this agreement shall confer on any third party any benefit or the right to enforce any term or terms of this agreement.
- 17.8 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be effected thereby.
- 17.9 Obligations by more than one person are joint and several and where any party under this agreement at any time is more than one person, references to it are to each person individually as well as jointly with the others comprising it.
- 17.10 Words importing the singular also include the plural and vice versa where the context so requires.
- 17.11 The headings, marginal notes, and notes for guidance in this agreement shall not be deemed to be part thereof nor taken into consideration in the interpretation or construction thereof.
- 17.12 All references herein to clauses are references to clauses numbered in this agreement and not to those in any other document unless otherwise stated.
- 17.13 These terms and conditions on behalf of the company have been prepared to reflect the Unfair Contract Terms Act 1977. The company considers these terms and conditions to be reasonable. Should the customer consider that these terms and conditions may be unreasonable, given the customer's particular circumstances, then the customer shall inform the company before any order is placed and contract entered into. In such circumstances, the company may, at the company's sole discretion, either agree to vary these terms and conditions, enter into different terms and conditions, or insist upon the customer being bound by these terms and conditions which, for the avoidance of doubt, the company maintains at all times are fair and reasonable. Should the customer not notify the company to the contrary then the customer shall be deemed to accept that these terms and conditions are fair and reasonable.
- 17.14 This contract shall be governed by and construed in accordance with the law of England and Wales and the parties shall submit to the jurisdiction of the English Courts in their entirety.