

EB BRADSHAW & SONS LIMITED
TERMS AND CONDITIONS OF SALE

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply: 'Business Day' means a day other than a public holiday

'Conditions' means these terms and conditions of sale

'Contract' means any agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order

'Customer' means the person who purchases the Goods from the Supplier

'Force Majeure' means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies, strike, lockout or boycott or other industrial action;

'Goods' means the goods set out in the Order and to be supplied by the Supplier to the Customer

'Location' means the address for delivery of the Goods as set out in the Order

'Order' means an order for the Goods from the Supplier placed by the Customer

'Price' has the meaning given in clause 3.1;

'Specification' means the description or specification of the Goods set out in writing by the Supplier, a copy of which is available on request from the Supplier

'Supplier' means E B Bradshaw & Sons Limited, a company registered in England with company number 00222864; and

'VAT' means value added tax under the Value Added Taxes Act 1994 or any other similar tax applying to the sale of the Goods.

1.2 In these Conditions

1.2.1 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;

1.2.2 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form.

1.2.3 a reference to legislation is a reference 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.

2 Application of these conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of any Contract except to the extent otherwise agreed by a duly authorised signatory of the Supplier in writing.

2.3 No variation of these Conditions shall be binding or to any Contract shall be binding unless expressly agreed by a duly authorised signatory of the Supplier in writing.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to these Conditions.

2.5 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:

2.5.1 the Supplier's written acceptance of the Order; or

- 2.5.2 the Supplier dispatching the Goods for delivery, or the Customer collecting goods.
- 2.6 The Supplier may issue quotations and details of its prices to the Customer from time to time. These are invitations to treat only. They are not an offer to supply goods and are incapable of being accepted by the Customer.
- 2.7 Marketing and other promotional material relating to goods are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Goods shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's price list from time to time (Price).
- 3.2 Unless otherwise agreed, Prices are inclusive of packaging and delivery.
- 3.3 The Customer shall pay any applicable VAT to the Supplier in addition to the Price and the Supplier shall provide a valid VAT invoice.
- 3.4 The Supplier may increase its prices at any time by giving the Customer notice in writing.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods and which is due to any factor beyond the control of the Supplier.
- 3.6 Without prejudice to the generality of clause 3.5, the Supplier may increase the Price with immediate effect by written notice to the Customer to take account of any import duty, import tax, customs tariff or similar levy which affects the cost of goods and materials to the Supplier as a result of the United Kingdom leaving the European Union or the European Economic Area.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Goods at any time after delivery.

- 4.2 Unless otherwise agreed in writing, the Customer shall pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within 28 days of the date of invoice;
and
- 4.2.2 to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums are not paid in full by the due date the Supplier may, without limiting its other rights, charge interest on such sums at the rate of 4% above the Bank of England base rate from time to time in force. Interest shall accrue on a daily basis and apply from the due date for payment until actual payment, whether before or after judgment.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold supplies if the Customer exceeds such credit limit.

6 Delivery

- 6.1 The Goods shall be deemed delivered on completion of unloading of the Goods at the Location, or of collection of goods by the Customer.
- 6.2 The Customer shall provide safe access to and clean, dry, pest free and safe storage at the Location for the Goods and shall co-operate reasonably with the Supplier to enable the Supplier, its employees and/or contractors to unload and deliver the Goods at the Location safely and efficiently.
- 6.3 The Goods may be delivered by instalments. Any defect or shortage in an instalment shall not entitle the Customer to reject delivery or cancel the Contract or any other instalment.
- 6.4 Delivery of the Goods shall be accompanied by a delivery note stating:
- 6.4.1 the date of the Order; and
- 6.4.2 the type and quantity of the Goods in the consignment.

- 6.5 The Customer shall inspect any consignment of the Goods immediately on delivery and report any defect or shortage to the Supplier in writing before signing a copy of the delivery note and in any event within 7 days of the date of delivery. The signing of the delivery note by the Customer or any of its employees or agents shall be deemed to be an acceptance of the Goods and that the delivery and the Goods are in accordance with the Contract and the Supplier shall have no further liability for or in respect of the Goods included in the consignment other than in accordance with clause 9.1.
- 6.6 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are approximate only and late delivery shall not entitle to Customer to reject deliver, cancel the Contract, claim damages or any other remedy.
- 6.7 Pallets and other reusable containers remain the property of the Supplier and are to be returned undamaged to the Supplier or, if damaged, replaced at the Customer's expense.
- 6.8 The Supplier shall not be liable for any delay in or failure of delivery caused by:
- 6.8.1 the Customer's failure to: (i) make the Location available or prepare the Location in accordance with these Conditions; or (ii) provide the Supplier with adequate instructions for delivery or otherwise co-operate reasonably with the Supplier; or
- 6.8.2 Force Majeure.
- 6.9 If the Customer fails to accept delivery of the Goods the Supplier may:
- 6.9.1 store the Goods pending delivery, and the Customer shall pay all costs and expenses (including insurance) incurred by the Supplier in doing so; or
- 6.9.2 re-sell or otherwise dispose of the Goods and (after deducting all reasonable storage charges and costs of resale account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

8.1 Notwithstanding the passing of risk in the Goods, title to the Goods shall not pass to the Customer until the Supplier has received payment in full and cleared funds of the Price for the Goods and all other monies due and owing by the Customer to the Supplier for goods agreed to be sold by the Supplier to the Customer.

8.2 Until title to the Goods has passed to the Customer, the Customer shall:

8.2.1 hold the Goods as bailee for the Supplier

8.2.2 store the Goods and take all reasonable care of the Goods and keep them in the condition in which they were delivered

8.2.3 keep the Goods properly insured

8.2.4 ensure that the Goods are clearly identifiable as belonging to the Supplier and not remove or alter any mark on or packaging of the Goods

8.2.5 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

8.3 If, at any time before title to the Goods has passed to the Customer, the Supplier may:

8.3.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and/or

8.3.2 enter any premises where the Goods are stored and repossess them.

9 Warranty

9.1 The Supplier warrants that the Goods shall at the time of delivery to the Customer.

9.1.1 conform in all material respects to the Specification.

9.1.2 be of satisfactory quality and fit for any purpose set out by the Supplier in the Specification.

9.2 The Supplier shall, at its option, replace, or refund the Price of any of the Goods which do not comply with clause 9.1, provided that the Customer:

9.2.1 serves a written notice on Supplier within 7 days of the date of their delivery to the Customer in the case of defects discoverable by a physical inspection within 7 days of the date on which the Customer became aware (or should reasonably have become aware) of the defect in the case of latent defects;

9.2.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the conditions in which the Goods have been stored and the uses to which the Goods had been put prior to the defect arising and such other information as the Supplier shall reasonably request to enable it to investigate the defect notified to it;

9.2.3 gives the Supplier reasonable opportunity to examine the defective Goods; and

9.2.4 returns the defective Goods to the Supplier

9.3 Except as set out in this clause 9:

9.3.1 the Supplier gives no warranties and makes no representations in relation to the Goods and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10 Indemnity

10.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.

11 Limitation of liability

11.1 The extent of the Supplier's liability under or in connection with any 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 clauses 11.5 and 11.6, the Supplier's total liability in respect of any Contract shall not exceed the Price applicable in the case of such Contract.

11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.

11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

11.4.1 loss of profit

11.4.2 loss of production

11.4.3 loss of contract

11.4.4 loss of opportunity

11.4.5 loss of savings, discount or rebate (whether actual or anticipated);

11.4.6 harm to reputation or loss of goodwill.

11.5 Notwithstanding any other provision of the Contract, the liability of the Supplier shall not be limited in any way in respect of the following:

11.5.1 death or personal injury caused by negligence

11.5.2 fraud or fraudulent misrepresentation; or

11.5.3 any other losses which cannot be excluded or limited by applicable law

12 Force majeure

12.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure provided that it:

12.1.1 promptly notifies the other party of the Force Majeure event and its expected duration; and

12.1.2 uses its reasonable endeavours to minimise the effects of that event.

12.2 If, due to Force Majeure, a party:

12.2.1 is or shall be unable to perform a material obligation; or

12.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days the other party may, within 30 days of the end of such period and provided that the effects of the Force Majeure event is continuing, terminate the Contract on immediate notice.

13 Termination

13.1 The Supplier may terminate any Contract at any time by giving notice in writing to the Customer if:

13.1.1 the Customer commits a material breach of the Contract and such breach is not remediable

13.1.2 the Customer commits a material breach of the Contract which is not remedied within 28 days of receiving written notice of such breach and requesting that the same be remedied;
or

13.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 28 days after the date that the Supplier has given notification to the Customer that the payment is overdue.

13.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

13.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so

13.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case

- 13.2.3 becomes the subject of a company voluntary arrangement or an individual voluntary arrangement under the Insolvency Act 1986
- 13.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking assets, or income
- 13.2.5 has a resolution passed for its winding-up
- 13.2.6 has a petition presented to any court for (in the case of a body corporate) its winding up or an application is made for an administration order, or any winding-up or administration order is made against it or (in the case of an individual) for bankruptcy;
- 13.2.7 is subject to any procedure for the taking control of any of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced
- 13.2.8 has a freezing order made against it
- 13.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items
- 13.2.10 is subject to any events or circumstances analogous to those in clauses 13.2.1 to 13.2.9 in any jurisdiction
- 13.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 13.2.1 to 13.2.10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 13.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

14 Notices

- 14.1 Any notice given under these Conditions shall:

- 14.1.1 be in writing
 - 14.1.2 be signed by, or on behalf of, the party giving it [(except for notices sent by email)]; and
 - 14.1.3 be sent to (in the case of the Supplier) its registered office address and (in the case of the Customer) the address set out in the Contract.
- 14.2 Notices may be given, and are deemed received:
- 14.2.1 by hand: on receipt of a signature at the time of delivery
 - 14.2.2 by first class post: at 9.00 am on the second Business Day after posting
 - 14.2.3 by email provided confirmation is sent by first class post on receipt of a delivery receipt email from the correct address.
- 14.3 This clause 15 does not apply to notices given in legal proceedings

15 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

16 Representations

The Company's employees and agents are not authorised to make any representations, written or oral, about the Goods or the supply of the Goods. The Customer shall not be entitled to place any reliance on any representation which is not contained in the Specification or otherwise confirmed by a director of the Supplier in writing.

17 Assignment

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written agreement, which the Supplier may withhold or delay in its absolute discretion.

18 Severance

If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

19 Waiver

19.1 No failure, delay or omission by the Supplier 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.

19.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

20 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Conditions shall prevail.

21 Third party rights

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

22 Governing law

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 England and Wales.

23 Jurisdiction

The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation