

1 DEFINITIONS

In these Terms and Conditions, the following words shall have the following meanings:

“the Buyer” means the person seeking to purchase the Goods from the Company.
 “the Company” means HARRIS & BAILEY LIMITED.
 “a Consumer” means a Consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999. If the Buyer deals as a Consumer any provision of these Terms and Conditions which is of no effect shall not apply. The statutory rights of a buyer dealing as a consumer are not affected.
 “the Contract” means the Contract for the supply of Goods incorporating these terms.
 “the Goods” means the Goods offered for sale by the Company or where the context permits the services supplied by the Company.
 “the Terms” means these Terms and any special Terms agreed in writing between the Buyer and the Company.

WARNING - HEALTH AND SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS THE BUYER'S RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.**2 THE CONTRACT**

2.1 All orders are placed and accepted by the Company only under these Terms.
 2.2 These Terms exclude any other Terms and Conditions inconsistent therewith which the Buyer might seek to impose even though such other Terms and Conditions may be submitted in a later document and/or purport to exclude or supersede any Terms and Conditions inconsistent with them or may be contained in any offer acceptance or counter-offer made by the Buyer.
 2.3 No variation of these Terms is permitted unless expressly accepted by a Director of the Company in writing.
 2.4 Quotations comprise invitations to treat and may be withdrawn at any time before receipt of the Buyer's offer to purchase and shall be deemed to be withdrawn if such is not received within thirty days from the date of quotation, unless otherwise agreed by the Company in writing.
 2.5 Any offer to purchase the Goods made orally and confirmed in writing must be clearly marked “confirmation of telephone order”.
 2.6 The Buyer must ensure the accuracy of the Terms of any order, including any applicable design drawing or specification provided by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its Terms.
 2.7 The Company may make changes to the specification of the Goods necessary to conform to any applicable statutory or EU requirements, or where Goods are supplied to the Company's specifications which do not materially affect their performance.

3 CANCELLATION

3.1 No cancellation of the whole or any part of any order by the Buyer is permitted, except where expressly agreed by a Director of the Company in writing.
 3.2 In the event of such agreed cancellation, the Buyer shall indemnify the Company fully against all expenses incurred up to the time of or as the result of such cancellation.

4 REPRESENTATIONS

4.1 The Company shall not be liable in respect of any misrepresentation made by the Company, its employees, servants or agents to the Buyer, its servants or agents as to the condition of the Goods, their fitness for any purpose or as to quantity or measurements unless the representation is:
 4.1.1 made or confirmed in writing by the Company; and/or
 4.1.2 fraudulent.
 4.2 Without prejudice to Clause 4.1 of these Terms while the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and other literature, these documents are for the Buyer's general guidance only and statements made therein (in the absence of fraud on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them. If the Buyer requires advice in relation to the Goods, a specific request for advice should be made and any advice made or confirmed in writing in response to such a request shall amount to a representation and the Company shall be liable accordingly.
 4.3 For the avoidance of doubt, except where the Goods are supplied to a Buyer dealing as a Consumer, the Company's liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 10 of these Terms. The statutory rights of a Consumer are not affected.

5 PRICE

5.1 Goods are offered for sale at the Company's prices which are, unless otherwise stated, net ex works exclusive of VAT.
 5.2 Quotations are based on prices applicable to quantities specified. In the event of orders being placed for lesser quantities the Company shall be entitled to adjust the price of Goods as ordered to take account of the variation in quantity.
 5.3 The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost of raw materials, freight, labour or services or any currency fluctuations affecting the cost of imported materials.

6 PAYMENT

6.1 Accounts are due for payment without deduction by the end of the month following that in which delivery is made.
 6.2 Time for payment shall be of the essence of the Contract.
 6.3 Credit may be allowed on such terms as the Company shall at its absolute discretion from time to time prescribe. The Company reserves the right to refuse to accept orders on credit at any time and without giving any reason. In the event of non-payment in accordance with credit terms, the whole of the price of Goods delivered shall immediately become due and payable and the Company reserves the right to withhold, suspend or cancel outstanding deliveries.
 6.4 If you are an existing credit account customer and intend being a company, to alter your constitution or being a sole trader or partnership, to become incorporated or amalgamated with others, you must give prior written notice to us of the intended change if you wish to continue credit account facilities following the intended change. Continuation of trading after the change shall be at our discretion and only deemed undertaken by us if a written acknowledgment is issued by our credit controller or one of our Directors. You agree that we may obtain, retain and provide to third parties, references as to your financial standing.
 6.5 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering Goods in satisfaction of any order, notwithstanding any subsisting agreement to provide credit to the Buyer.
 6.6 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim of the Buyer and in the case of any short delivery or delivery of damaged Goods, shall remain liable to pay the full invoice price of all other Goods delivered or available for delivery.
 6.7 The Buyer shall have no right of set-off against the Company. The Company shall be entitled at all times to set-off any debt or claim which the Company may have against the Buyer against any sum due by the Company to the Buyer.
 6.8 The Buyer shall reimburse to the Company the entire costs of re-presenting any cheque or other instrument delivered to it in payment of any sum due by the Buyer.

7 DELIVERY

7.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company, or as the case may be, the premises of the Suppliers to the Company in circumstances where the Goods are delivered direct from such Suppliers.
 7.2 Delivery dates are given in good faith but are estimates only.
 7.3 Time for delivery shall not be of the essence of the Contract.
 7.4 For the avoidance of doubt and without derogation from any other provision of these Terms, the Company shall not be liable for any damages whatsoever, whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods within a reasonable time, whether such delay or failure is caused by the Company's negligence or otherwise whatsoever.
 7.5 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
 7.6 Delay or failure to deliver any one or more instalments or any claim in respect of any one or more instalments for whatever reason will not entitle the Buyer to treat the Contract as repudiated.
 7.7 The Buyer is to provide free of charge any labour necessary for unloading Goods when delivered and the responsibility of the Company's driver is limited to handling Goods off the vehicle at the kerbside.
 7.8 If the Company's vehicle is kept on site for an unreasonable time, or has to return to the Company's premises without completing delivery through lack of assistance or if additional staff have had to accompany the driver, an additional charge will be made.
 7.9 Where delivery is refused by the Buyer or is delayed, suspended or made by instalments at the request of the Buyer or where the Company is unable to deliver the Goods due to circumstances beyond its reasonable control, the Company on giving notification of readiness to deliver shall be entitled to treat the Contract as fulfilled and shall then place the Goods into store. Delivery will be deemed to have taken place for invoicing payment and the passing of risk. The Company at the Buyer's request shall and in any event may arrange insurance covering the major perils endorsing its own interest. The cost of abortive delivery, of storage and insurance of the Goods shall be for the Buyer's account.
 7.10 The Buyer shall either themselves or by their duly authorised representative, sign the delivery ticket as acknowledgement of delivery provided that on delivery to the address nominated by the Buyer the Company shall be entitled to assume that any signature given is that of such a representative.
 7.11 The Company does not undertake to deliver or collect any load over roads or ground which in the Company's discretion is considered to be unsuitable. If a vehicle used for performing the Contract with any Buyer delivers or collects a load to or from a place situated off the public highway, the Buyer is to be solely responsible for any damage or accident and is to fully indemnify the Company for any loss, damage or costs on an indemnity basis and expenses arising as a result.
 7.12 Deviations in quantity of the Goods delivered (representing not more than 10 percent by value) from that stated in the Contract shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.
 7.13 Unless otherwise expressly agreed in writing, the price only covers delivery and working on normal working days and during normal working hours. All deliveries made or work done at the Buyer's request on Bank Holidays, Saturdays and Sundays and outside normal working hours will be subject to extra charges.
 7.14 In the event of any Goods or any packing or container being delivered and deposited, whether on the public highway or elsewhere, the Buyer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection of persons or property in relation to such Goods, packing or container and shall indemnify the Company in respect of all or any loss, damages or costs on an indemnity basis and expenses it may incur as a result of such delivery.
 7.15 The Buyer shall indemnify the Company in respect of all losses, damages, costs and expenses incurred as a result of delivery in accordance with the Buyer's instructions. This indemnity will be reduced in proportion to the extent that such losses, damages, costs and expenses are due to the Company's negligence.

8 INSPECTION

8.1 The Buyer shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require the Buyer to break packaging and/or unpack Goods which are intended to be stored before use.
 8.2 The Buyer must give the Company written notice within two working days of unloading of any claim for short delivery.
 8.3 If the Buyer does not give the Company that notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
 8.4 The Buyer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.
 8.5 The Company's liability for short delivery is limited to making good the shortage.
 8.6 Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (if the Contract is a Contract for sale by sample) that the bulk does not compare with the sample, the Buyer must give the Company written notice within two working days of unloading of any claim to that effect.

8.7 If the Buyer (not being a Consumer) fails to give the Company that notice within that time, the Goods will be deemed to have been accepted and the Buyer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods.
 8.8 If the Buyer (not being a Consumer) fails to give the Company that notice within that time Clause 10.7 shall have effect.

9 RISK AND TITLE

9.1 The risk in the Goods shall pass to the Buyer upon delivery.
 9.2 Until the Company has received in cash or cleared funds payment of all sums owed by the Buyer to the Company on any account whatsoever the ownership of the Goods shall remain with the Company.
 9.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separately stored, protected, insured and identified as the Company's property. The Buyer shall be entitled to re-sell or use the Goods in the ordinary course of his business, but at the direction of the Company, shall account to the Company for the proceeds of sale or insurance proceeds related to the Goods.
 9.4 The Buyer's right to re-sell or use the Goods in Clause 9.3 of these Terms may be revoked by the Company at any time and shall be automatically revoked upon the happening of any of the events set out in Clause 11.2 of these Terms.
 9.5 The Company, its servants or agents may with transport as is necessary, enter upon any premises occupied by the Buyer or to which the Buyer has access and where the Goods may be or are believed to be situated to recover any or all of the Goods to which the Company has title.
 9.6 In the event of the Goods becoming constituents of or being converted into other products while any monies are owing to the Company by the Buyer, if the Goods are not severable the Company shall have the ownership of and title to such other products as if they were the Goods and Clauses 9.3 to 9.5 of these Terms shall apply to such products mutatis mutandis subject to the Buyer's or any other owner's right to the surplus of any monies realised in excess of sums owed by the Buyer to the Company.

10 LIABILITIES

10.1 Nothing in these Terms shall exclude or restrict the Company's liability for death or personal injury resulting from its negligence or the Company's liability for fraudulent misrepresentation.
 10.2 If the Buyer deals as a Consumer any provision of these Terms which is of no effect shall not apply. The statutory rights of a Buyer dealing as a Consumer are not affected.
 10.3 In this Clause Defect means the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled the Buyer to damages.
 10.4 Subject to Clauses 10.1 to 10.3 of these Terms the Company shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever (if notwithstanding Clause 10.4 of these Terms the Buyer is entitled to recovery) nor shall the Company be liable under Clause 10.5 of these Terms unless:
 10.7.1 If the Defect would have been apparent on a reasonable inspection under Clause 8.1 of these Terms at the time of unloading written notice of any claim is given to the Company within two working days of the time of unloading; or in any other case
 10.7.2 The Defect is discovered within 4 months from the date of delivery and the Company is given written notice of the Defect within seven working days of it being discovered.
 10.8 If the Goods are not manufactured by the Company or have been processed by a third party, whether or not at the request of the Company or the Buyer, the Company's liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as the Company may have in respect of those Goods. The Company will, on written request, provide details of its rights against the manufacturer or third party and any other Terms and Conditions imposed by the manufacturer or the third party and so far as possible will, on request, assign to the Buyer any such rights.
 10.9 Except where the Buyer deals as a Consumer, the Buyer will unconditionally, fully and effectively indemnify the Company against all loss, damages or costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim by any third party arising from the supply or use of the Goods including loss arising from the Company's negligence.
 10.10 Without prejudice to any other provisions in these Terms, in any event the Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

11 DEFAULT

11.1 “Insolvent” shall mean the Buyer becoming unable to pay its debts within the meaning of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 the levying or the threat of execution or distress on any property of the Buyer; the appointment of a Receiver or Administrative Receiver over all or any part of the Buyer's property; a proposal for a voluntary arrangement or compromise between the Buyer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for winding up (Company) or Bankruptcy (Individual) of a Buyer or for an administration order in relation to the Buyer or notice is given of intention to appoint an administrator of the Buyer; the Buyer ceasing or threatening to cease to carry on its business.
 11.2 If the Buyer fails to pay the Company for any Goods on the due date or the Buyer becomes insolvent or there is a material change in that Buyer's constitution or if the Buyer is in breach of any Term or Condition of this Contract and fails to remedy such breach after being so requested to do, the full balance outstanding on any account between the Company and the Buyer shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):
 11.2.1 require payment in cash or cleared funds in advance of delivery of undelivered Goods;
 11.2.2 cancel or suspend any further delivery to the Buyer under any Contract without liability on the Company's part;
 11.2.3 sell or otherwise dispose of any Goods which are the subject of any Contract with the Buyer;
 11.2.4 without prejudice to the generality of Clause 9 of these Terms exercise any of its rights pursuant to that Clause;
 11.2.5 terminate this Contract or any other Contract with the Buyer without liability on the Company's part;
 11.2.6 claim interest and compensation on the monies outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgment.
 11.3 The Buyer shall reimburse the Company's costs including legal costs on an indemnity basis which the Company incurs in enforcing its rights under this Contract including but not limited to recovery of any sums due. Such sums shall be in addition to the statutory compensation payable by the Buyer under the Late Payment of Commercial Debts Regulations 2002.

12 DATA PROTECTION

12.1 If the Buyer is an individual or a group of individuals the Buyer agrees that the Company may:
 12.1.1 Seek, hold and process any information obtained about the Buyer as a result of applications the Buyer has made to the Company for credit and/or in connection with this or any other Contract or Agreement the Buyer may have with the company;
 12.1.2 Use this information for credit assessment purposes and to administer and operate the credit account granted to the Buyer and to monitor and analyse the conduct of that credit account and to assess the Buyer's credit limit.
 12.2 The Company will not disclose any information it holds about the Buyer except to licensed credit reference agencies, other suppliers and creditors to help the Company and others make credit decisions, to help prevent or detect fraud or other crimes and to trace debtors on a confidential basis to the Company's agents and sub-contractors, to insurance companies for the purposes connected with insurance products that relate or might relate to the Buyer's credit account, to any person to whom the Company proposes to transfer its rights and/or responsibilities under this contract and to the extent it is required or permitted to do so by law.

13 GUARANTEE OF CREDIT ACCOUNT

13.1 The unconditional and irrevocable guarantee for payment of all the financial obligations of the Buyer to the Company granted by the Director(s) of the Buyer in consideration of the Company opening and making available to the Buyer a credit account (“the Guarantee”) shall be a continuing security and shall not be discharged by any intermediate settlement of the credit account.
 13.2 The Guarantee shall ensure for the benefit of the Company, its successors and assigns and can be assigned in whole or in part by the Company without notice to the Buyer, to its parent company, its ultimate parent company and any subsidiary of such ultimate parent company of the Buyer.
 13.3 Where two or more Directors of the Buyer have granted the Guarantee, the obligations shall take effect as joint and several obligations and the Guarantee shall not be revoked or impaired as to any of the guarantors by the death, incapacity or insolvency of the other.
 13.4 The Company may at its sole discretion release or discharge any of the guarantors from their obligations under the Guarantee or accept any composition from or make any other arrangements with any of the guarantors without releasing or discharging the other(s) or without prejudicing or affecting the Company's rights and remedies against the other.

14 GENERAL

14.1 The construction validity and performance of these Terms shall be governed by English Law and all disputes shall be submitted to the non-exclusive jurisdiction of the English Courts.
 14.2 The headings of these Terms are for convenience only and shall have no effect on interpretation.
 14.3 The Company shall not be liable for any delay or failure to perform any of its obligations in relation to the Goods due to any cause beyond its reasonable control including industrial action.
 14.4 If any Clause or sub-Clause of these Terms is held by any Court or other competent authority to be void or unenforceable, the validity of the other Clauses or sub-Clauses of these Terms shall not be affected and they shall remain in full force and effect.
 14.5 The waiver by the Company of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
 14.6 COSH sheets are available where appropriate and on request.
 14.7 Any reference in these Terms to any Statute, Statutory Provision or Regulation is as amended, extended or re-enacted at the relevant time.
 14.8 Termination of this Contract shall not affect rights and obligations which have already accrued at the time of termination.
 14.9 Nothing in these Terms or the Contract is intended to or will create any benefit for or right to enforce any of the Terms of the Contract to any third party.