

## C21 Video - 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 and delivery (unless otherwise stated). Rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.2 No quotation by us will constitute an offer and all quotations are subject to withdrawal without notice.
- 2.3 Subject to clause 2.2, quotations lapse 30 days after the date of quotation (unless otherwise stated).
- 2.4 Any goods to be sold from stock are subject to the same being unsold on receipt of your order.
- 2.5 **Business customers:** unless otherwise stated, the price of the goods will be our quoted price, or if the quoted price is no longer valid, the price prevailing on the date of dispatch.
- 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 (including, without limitation, increase in the cost of materials, labour, carriage or a requested variation to your order). We will endeavour to agree any such increase with you, but you agree that if we have not, you will pay any increased price subject to that increase being no greater than 10% of the price originally agreed.

### 3 Delivery

- 3.1 Although we make all reasonable efforts to affect delivery in accordance with prearranged dates, such dates are estimates only and time shall not be of the essence.
- 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, 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.

### 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 your 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 write to tell us within 7 days of delivery or the expected delivery time. You must retain all packaging and 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.
- 5.2 **Business customers:** If you have an approved credit account the following payment periods will apply (unless otherwise agreed in writing);
  - 5.2.1 Payment is due no later than 30 days following the date of invoice. The invoice will be sent when the goods are shipped.
  - 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, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002;
      - a. calculated (on a daily basis) from the date of our invoice becomes due until payment is received;
      - b. 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 5.8) 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 (*alien*).
- 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 5.8 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;
  - 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 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.
- 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 to remove the goods.
- 6.5 **Business customers:** we have your permission to enter any premises where the goods may be stored:
  - 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 the goods:
  - 7.1.1 comply with their description on our order acknowledgement form; and
  - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.6).
- 7.2 Depending on the goods you buy from us there will be a Manufacturer Warranty for those products for either one or two years from the date of invoice.
- 7.3 It is your responsibility to comply with any manufacturers licence or terms and conditions attaching to third party software supplied and delivered by us. You must indemnify us in respect of any costs, charges or expenses incurred by us as a result of your failure to comply with any such terms and conditions or licences.
- 7.4 **Business customers:** we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
  - 7.4.1 **Business customers:** we are willing to sell you an additional top-up warranty to supplement the manufacturer's warranty.
  - 7.4.2 **Business customers:** we are permitted under the Unfair Contract Terms Act 1977 to exclude liability for claims regarding the quality or fitness for purpose of goods or otherwise which consumers can make under the Sale of Goods Act 1979.
- 7.5 **Consumers:** the warranty in clause 7.1 is in addition to your statutory rights.

- 7.6 If you believe that we have delivered goods which are defective in material or workmanship, you must:
- 7.6.1 inform us (in writing), with full details, as soon as the defect becomes apparent and in any event within 12 months of the delivery date; and
- 7.6.2 allow us to investigate (we may need access to your premises and product samples).
- 7.7 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 7.6) in full, we will (at our option) complete any repairs or adjustments to the goods or replace the goods.
- 7.8 We cannot accept liability in respect of any defect arising from fair wear and tear, willful damage, abnormal working conditions, failure to follow our instructions, or the alteration or repair of the goods without our approval.
- 7.9 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 7.10 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to two million pounds (or the appropriate amount of insurance we have in place when the contract is performed).
- 7.11 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 7.12 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

## 8 Specification

- 8.1 If we prepare the goods in accordance with your specifications or instructions or using your materials you must ensure that:
- 8.1.1 specifications, instructions, or materials are supplied to us within a reasonable time;
- 8.1.2 the specifications or instructions are accurate;
- 8.1.3 materials are of good quality and suitable for our use;
- 8.1.4 goods prepared in accordance with those specifications or instructions or using your materials will be fit for the purpose for which you intend to use them; and
- 8.1.5 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.

## 9 Return of goods

- 9.1 We will accept the return of goods from you only:
- 9.1.1 by prior arrangement and where you have been allocated an authorised RMA number; and
- 9.1.2 on payment of a handling and restocking charge (this will be 25% of the purchase price (or £25 whichever is greater) plus a collection charge of £10 plus VAT and will be payable at our discretion); and
- 9.1.3 where the goods are in their original packaging and are as fit for sale on their return as they were on delivery.
- 9.2 We are unable to accept the return of goods from you that have been made to your specification.

## 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, 11.2, 11.3 and 11.4 then apply).
- 11.2 If you change your mind we may take back the goods at our discretion if they are unopened, unused and in perfect condition.
- 11.2.1 by prior arrangement and where you have been allocated an authorised RMA number; and
- 11.2.2 on payment of a handling and restocking charge (this will be 25% of the purchase price (or £25 whichever is greater) plus a collection charge of £10 plus VAT and will be payable at our discretion)
- 11.3 We cannot accept unauthorized returns which do not have an RMA.
- 11.4 If the order is cancelled (for any reason) you are then to pay us (in addition to any monies that maybe due to clause 11.2.2) for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 11.5 We may suspend or cancel the order, by written notice if:
- 11.5.1 you fail to pay us any money when due (under the order or otherwise);
- 11.5.2 you become insolvent;
- 11.5.3 you fail to honour your obligations under these terms.

## 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 non-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 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.

## 15 Company Details

- 15.1 Correspondence only address: Orchard Cottage, Carr Bank Rd, Carr Bank, Milnthorpe, LA7 7LB, Cumbria, United Kingdom. (rev8 190227).