

James E Smith (Northern) Limited

Terms and Conditions of Trading

1. INTERPRETATION

1.1 Definitions:

“Business Day” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“Conditions” means the terms and conditions set out in this document.

“Contract” means the contract between James E Smith (Northern) and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

“Customer” means the person, entity or firm acting in the course of business who purchases the Goods from James E Smith (Northern).

“Force Majeure Event” means an event, circumstance or cause beyond a party’s reasonable control.

“Goods” means the goods (or any part of them) set out in the Order.

“James E Smith (Northern)” means James E Smith (Northern) Limited (registered in England and Wales with company number 06925697 and having its registered office at Helsinki Road, Sutton Fields Industrial Estate, HULL, HU7 OYW).

“Order” means the Customer’s order for the Goods, whether communicated orally over the telephone, by email, purchase order, written acceptance of James E Smith (Northern)’s quotation or otherwise.

1.2 Interpretation

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1 These Conditions apply to all sales of Goods by James E Smith (Northern) to Customers.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that any information, requirements or instructions provided to James E Smith (Northern) are complete and accurate.
- 2.4 The Order shall only be deemed accepted when James E Smith (Northern) issues a written acceptance of the Order or commences performance of the Order, at which point the Contract shall come into existence.
- 2.5 No Order may be cancelled by the Customer without the prior written agreement of James E Smith (Northern). Where James E Smith (Northern) agrees to a cancellation, the Customer shall be liable for any losses, costs and expenses reasonably incurred by James E Smith (Northern) as a result of the cancellation, including the cost of any Goods, materials or stock ordered, allocated, prepared or held for the Order.
- 2.6 The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.7 Any samples, drawings, descriptions, illustrations or advertising produced by or on behalf of James E Smith (Northern) are provided for illustrative purposes only and shall not form part of the Contract.
- 2.8 A quotation for the Goods does not constitute an offer and shall remain valid for 5 Business Days from its date of issue unless withdrawn earlier by James E Smith (Northern).

3. GOODS

- 3.1 The Goods are described in James E Smith (Northern)'s quotation, price list, website or other sales documentation.
- 3.2 Where the Goods are supplied, cut or prepared in accordance with any information, specification or instruction provided by the Customer (whether orally or in writing), the Customer shall be responsible for ensuring that such information, specification or instruction is accurate and complete.
- 3.3 James E Smith (Northern) shall not be liable for any defect or issue arising from information, specifications or instructions supplied by the Customer.
- 3.4 James E Smith (Northern) reserves the right to amend the Goods where necessary to comply with any applicable law or regulatory requirement.

4. DELIVERY

- 4.1 The Goods shall be delivered to the location agreed with the Customer or made available for collection by the Customer, as agreed between the parties.
- 4.2 Delivery is completed:
- 4.2.1 where the Goods are delivered by James E Smith (Northern), when the Goods are made available for unloading at the agreed delivery location; or
- 4.2.2 where the Goods are collected by the Customer, when the Goods are made available for collection.
- 4.3 Any delivery dates are estimates only and time for delivery shall not be of the essence. James E Smith (Northern) shall not be liable for any delay in delivery.
- 4.4 If the Customer fails to take delivery of or collect the Goods within 3 Business Days of being notified that they are ready, delivery shall be deemed to have taken place and James E Smith

(Northern) may invoice the Customer for the Goods and store the Goods at the Customer's risk and expense.

- 4.5 The Customer shall be responsible for loading and unloading the Goods as required and shall ensure that appropriate equipment, access, facilities and labour are available at any collection, delivery or return location.
- 4.6 If the Customer has not taken delivery of or collected the Goods within 10 Business Days of being notified that they are ready, James E Smith (Northern) may resell or otherwise dispose of the Goods and charge the Customer for any resulting shortfall together with any reasonable storage and disposal costs.
- 4.7 If James E Smith (Northern) delivers up to and including 10% more or less than the quantity ordered, the Customer may not reject the Goods and a pro rata adjustment shall be made to the invoice.
- 4.8 James E Smith (Northern) may deliver the Goods by instalments. Each instalment shall constitute a separate contract and any delay or defect affecting one instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 James E Smith (Northern) may refuse to make a delivery where it reasonably believes that delivery would be unsafe, unlawful or impracticable.
- 4.10 The Customer shall inspect the Goods immediately upon delivery. Any apparent shortage, damage or defect must be notified to James E Smith (Northern) in writing within 5 Business Days of delivery. If the Customer fails to do so, the Goods shall be deemed accepted and the Customer shall be deemed to have waived any right to reject the Goods or make a claim in respect of such apparent shortage, damage or defect, save in respect of any latent defect that was not reasonably apparent on inspection.

5. QUALITY

- 5.1 James E Smith (Northern) warrants that on delivery the Goods shall:
 - 5.1.1 conform in all material respects with their description;
 - 5.1.2 be free from material defects in material and workmanship; and
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 If the Customer wishes to rely on the warranty in clause 5.1, the Customer shall:
 - 5.2.1 notify James E Smith (Northern) in writing, with full details of the alleged defect, as soon as reasonably practicable after discovery and, in any event, in accordance with clause 4.10 where the defect, shortage or damage was apparent on inspection;
 - 5.2.2 give James E Smith (Northern) a reasonable opportunity to inspect the Goods and investigate the alleged defect, including providing access to the Goods and any samples reasonably requested by James E Smith (Northern); and
 - 5.2.3 make the Goods available for inspection, collection, return, repair or replacement as reasonably requested by James E Smith (Northern).
- 5.3 If James E Smith (Northern) agrees that the Goods do not comply with the warranty in clause 5.1, it may, at its option, repair or replace the Goods, refund the price of the Goods in whole or in part, or issue a credit note or allowance in respect of the Goods, and such remedy shall be the Customer's sole remedy in respect of the relevant Goods.

- 5.4 James E Smith (Northern) shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- 5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.4.2 the defect arises because the Customer failed to follow James E Smith (Northern)'s oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.4.3 the defect arises as a result of James E Smith (Northern) following any drawing, design or specification supplied by or on behalf of the Customer;
 - 5.4.4 the Customer alters or repairs such Goods without the written consent of James E Smith (Northern);
 - 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.4.6 the Goods differ from their description or any agreed information, specification or instruction as a result of changes made to ensure compliance with applicable law or regulatory requirements.
- 5.5 Except as provided in this clause 5, James E Smith (Northern) shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 Except where the Goods fail to comply with the warranty in clause 5.1, the Customer shall have no right to cancel, reject or return the Goods.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 These Conditions shall apply to any repaired or replacement Goods supplied by James E Smith (Northern).

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until James E Smith (Northern) receives payment in full (in cash or cleared funds) for the Goods and any other goods supplied by James E Smith (Northern) to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as James E Smith (Northern)'s property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify James E Smith (Northern) immediately if it becomes insolvent or is unable to pay its debts as they fall due; and

- 6.3.5 give James E Smith (Northern) such information relating to the Goods and the Customer's financial position as it may reasonably require from time to time.
- 6.4 Subject to clause 6.5, until title passes, the Customer may use or resell the Goods in the ordinary course of business provided that it does so as principal and not as agent of James E Smith (Northern). If the Customer resells the Goods before title passes, title shall pass immediately before the resale takes place.
- 6.5 At any time before title to the Goods passes to the Customer, James E Smith (Northern) may:
 - 6.5.1 by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - 6.5.2 require the Customer to deliver up all Goods in its possession and control that have not been resold, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to recover them. The Customer shall procure entry to any such third party's premises if requested to do so by James E Smith (Northern).

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in any valid quotation issued by James E Smith (Northern) and accepted by the Customer or, where no valid quotation has been issued, such price as James E Smith (Northern) may determine from time to time.
- 7.2 James E Smith (Northern) may increase the price of the Goods at any time before delivery to reflect:
 - 7.2.1 any increase in the cost of the Goods, including increases in taxes, duties, labour, materials, transport, shipping or exchange rates;
 - 7.2.2 any request by the Customer to change the delivery arrangements, quantities or types of Goods ordered; or
 - 7.2.3 any delay caused by the Customer or failure of the Customer to provide information or instructions.
- 7.3 The price of the Goods excludes VAT and, unless otherwise stated in the quotation, any delivery, packaging, transport or insurance costs, which shall be payable by the Customer in addition.
- 7.4 Unless the Customer has an approved credit account, payment shall be made in full and in cleared funds on or before delivery. James E Smith (Northern) may withhold delivery until payment is received.
- 7.5 Where the Customer has an approved credit account, all invoices shall be paid in full and in cleared funds by no later than the last day of the month following the month in which the invoice is issued, unless otherwise agreed in writing by James E Smith (Northern). James E Smith (Northern) may withdraw, vary or reduce any credit facility or credit limit at any time and without notice.
- 7.6 Time for payment shall be of the essence.
- 7.7 If the Customer fails to make any payment when due, James E Smith (Northern) may suspend or cancel future deliveries, withdraw or reduce any credit facility, charge interest and recover any compensation and recovery costs available under the Late Payment of Commercial Debts (Interest) Act 1998.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

8.1 Nothing in the Contract limits any liability for:

8.1.1 death or personal injury caused by its negligence;

8.1.2 fraud or fraudulent misrepresentation;

8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; and

8.1.4 any liability that cannot legally be limited.

8.2 Subject to clause 8.1, James E Smith (Northern)'s total liability arising out of or in connection with the Contract shall not exceed the total price paid or payable by the Customer for the Goods under the Contract.

8.3 Subject to clause 8.1, James E Smith (Northern) shall not be liable for:

8.3.1 loss of profits (including loss of anticipated savings);

8.3.2 loss of sales or business;

8.3.3 loss of agreements or contracts;

8.3.4 loss of or damage to goodwill; and

8.3.5 indirect or consequential loss.

8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting any other rights or remedies, James E Smith (Northern) may suspend further deliveries under the Contract or any other contract with the Customer, or terminate the Contract immediately by written notice if:

9.1.1 the Customer fails to pay any amount due under the Contract when due;

9.1.2 the Customer commits a material breach of the Contract and fails to remedy that breach within 14 days of being notified in writing to do so; or

9.1.3 the Customer becomes insolvent or James E Smith (Northern) reasonably believes that the Customer is unable, or is likely to become unable, to pay its debts as they fall due.

9.2 On termination of the Contract, the Customer shall immediately pay all outstanding invoices and accrued interest due to James E Smith (Northern).

9.3 Termination shall not affect any rights or remedies which have accrued before termination.

9.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

- 10.1 James E Smith (Northern) shall not be liable for any delay in or failure to perform its obligations under the Contract to the extent that such delay or failure is caused by a Force Majeure Event, including delays affecting the manufacture, importation, shipment, transportation or supply of the Goods.
- 10.2 If a Force Majeure Event continues for more than 3 months, James E Smith (Northern) may terminate the Contract on 14 days' written notice.

11. GENERAL

- 11.1 **Assignment and other dealings.** James E Smith (Northern) may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or otherwise deal with any of its rights or obligations under the Contract. The Customer shall not do so without the prior written consent of James E Smith (Northern).
- 11.2 **Joint and several liability.** If the Customer consists of more than one person, each person shall be jointly and severally liable for the Customer's obligations under the Contract.
- 11.3 **Entire agreement.** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied upon any statement, representation, assurance or warranty that is not expressly set out in the Contract.
- 11.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 **Waiver.** Except as set out in clause 2.6, a waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 **Severance.** If any provision of these Conditions is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 11.7 **Notices.** Any notice under these Conditions shall be in writing and may be delivered by hand, post or email to the receiving party's usual business address or email address. A notice sent by post shall be deemed received on the second Business Day after posting. A notice sent by email shall be deemed received at the time of transmission, provided that no automated delivery failure notification is received by the sender.
- 11.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.9 **Dispute Resolution.** If a dispute arises out of or in connection with the Contract, the parties shall first seek to resolve the dispute through discussions between their respective senior representatives before commencing legal proceedings. Nothing in this clause shall prevent either party from seeking urgent interim or injunctive relief at any time.
- 11.10 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.