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CONSUMER CONDITIONS OF SALE



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CONSUMER CONDITIONS OF SALE

BMF
Builders Merchants Federation

BMF CONSUMER CONDITIONS OF SALE

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THESE TERMS ONLY APPLY IF YOU ARE A CONSUMER. A CONSUMER MEANS ANY NATURAL PERSON ACTING FOR PURPOSES OUTSIDE HIS/HER TRADE, BUSINESS OR PROFESSION. IF YOU ARE ACTING IN THE COURSE OF YOUR TRADE BUSINESS OR PROFESSION PLEASE ASK FOR A COPY OF OUR BUSINESS TO BUSINESS TERMS OF SALE.

THIS IS A LEGALLY BINDING DOCUMENT TO PROTECT YOUR OWN INTERESTS. PLEASE READ THESE TERMS OF SALE CAREFULLY BEFORE PLACING YOUR ORDER AND KEEP A COPY OF THESE TERMS AND YOUR ORDER FOR FUTURE REFERENCE.

1. Definitions

In these sale Terms:

'We,' 'we', 'Our,' 'our', means

the company whose details are set out at the end of these Terms as well as its employees and agents;

'You', 'you', 'Your' and 'your'

means you the person seeking to purchase Goods from us;

'the Contract'

means the contract for the supply of Goods incorporating these Terms;

'Defect'

means the condition and/or attribute of the Goods and/or any damage, fault, condition or other circumstances that may entitle you to either reject the Goods, or seek Remedies;

'the Goods'

means the Goods to be supplied by us;

'Quotation'

means our written indication of likely cost and specification of the Goods if You were to place an order with us;

'Remedies'

means compensation (the sum required to put the breach right), repair or replacement, a reduction in price of the defective Goods or ending of the contract

'the Terms'

means these terms and any special terms agreed in writing between you and us.

2. The Basis of Our Agreement

- 2.1 These Terms apply to all Goods supplied by us. Orders are only accepted under these Terms and they may not be altered or added to without our written agreement.
- 2.2 In relation to the Contract We intend to rely upon these Terms along with any written acceptance of an order placed by you as to the terms of the agreement between us. If you require any changes to these Terms, these must be put in writing and be signed by one of Our directors.
- 2.3 An agreement between you and us for the sale of any Goods only exists after we have received and accepted your order and have confirmed it in writing such as by invoice, receipt, delivery note or by email to an email address you have given. Once we do so, there is a binding legal contract between us.
- 2.4 Our Quotations do not constitute an offer to enter into a contract with you.
- 2.5 We may change these Terms without notice to you in relation to future sales.
- 2.6 In providing any advice to you with regard to the suitability of any Goods or materials for your specifications we shall rely upon the information that you provide to us. You must ensure the accuracy of any information you provide to us including any applicable design, drawing or specification and you must give us any necessary information relating to the Goods within sufficient time to enable us to perform the contract in accordance with these Terms.

3. The Description and Price of the Goods

- 3.1 The description and price of the Goods you order will be as shown, or as described by us in any Quotation, or, in the absence of such, as shown in our, or the manufacturer's / supplier's, current catalogue or website at the time you place your order. We reserve the right to vary the price of the Goods at any time before the Contract is made. Whilst we try to ensure that all descriptions and prices are accurate and are kept up to date, errors may occur. If we discover an error in the price or description of the Goods you have ordered, we will let you know as soon as reasonably possible. We will then offer You the option of reconfirming your order or cancelling it in exchange for a full refund.

- 3.2 Our ability to supply the Goods is subject to us holding them in stock or being able to obtain them. If on receipt of your order, the Goods you have ordered are not available either in stock or by special order we will inform you as soon as reasonably possible and if we are unable to obtain them in an agreed time we will refund or – credit you for any sum that has been paid by you or debited from your credit card for the Goods.
- 3.3 In the event that we are unable to supply the Goods to you for a reason beyond our reasonable control, we will notify you and offer you alternative similar products (if available) which are of no less quality. You shall be entitled to accept the alternative goods offered with a refund of any difference in the price if the substitute is cheaper or you shall be entitled to cancel your order and obtain a full refund.
- 3.4 Whilst we try to maintain continuity of supply in relation to our product lines, we reserve the right to discontinue any product at any time and we shall be under no obligation to supply you with a discontinued product in the future. If you have already placed your order, we will notify you as soon as reasonably possible that the Goods are not available and offer you an alternative product if one is available or a full refund.
- 3.5 In the case of certain products, variations may arise in the finish of those products where they originate from different factory batches. We shall not be liable for any loss caused by such variation where such variation does not diminish the quality of the Goods and where Goods bought for a specific job or purpose are not purchased at the same time.
- 3.6 We take every precaution in the preparation of our catalogues, technical circulars, price lists and other literature, but these documents are for your general guidance only and do not form part of the Contract (in the absence of fraud on our part). If you require advice in relation to the Goods, a specific request for advice should be made.
- 3.7 We reserve the right to increase the price of the Goods by giving notice to you prior to delivery to cover:
- 3.7.1 any increase in the cost which is due to any factor beyond our control including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials, or other costs of manufacture;
- 3.7.2 any change in delivery dates, quantities or specification of the Goods which are requested by you; or
- 3.7.3 any delay caused by any failure by you to give us adequate information or instructions, but if you do not wish to pay the higher price, you may cancel your order and claim a full refund.
- 3.8 Where you require delivery to be made, we may require you to pay a charge for the delivery of the Goods in addition to the price and, if applicable, this charge will be quoted to you at the time of contract.
- 3.9 The price of the Goods and delivery charges are inclusive of VAT unless VAT is shown as a separate element.
- 3.10 Prices and delivery charges displayed or otherwise communicated are valid and effective only in the United Kingdom.

4. Payment for the Goods

- 4.1 You can pay for the Goods and delivery charges by any method shown in our premises, in our current catalogues or on our website or which are notified to you at the time you place your order.
- 4.2 You must pay for the Goods at the time you place your order unless you hold an account with us or other credit terms which have been previously agreed in writing. If you fail to pay for the Goods on the date on which payment is due, we reserve the right to charge you interest on the amount unpaid at the rate of four per cent. per annum above Barclays Bank Plc's prevailing base lending rate from time to time, until payment is made.
- 4.3 Payment by credit card will not be effective until we are in receipt of cleared funds.
- 4.4 If you have an account with us then payment is due on the last day of the month following the month in which the Goods are delivered.
- 4.5 If there are minor faults in the Goods and you claim a reduction in the price, you (as an account holder) will not withhold more than a reasonably proportionate amount of the payment of any invoice or other amount due to us. If you withhold more than a reasonably proportionate amount we reserve the right to apply interest to the outstanding balance at the rate of four per cent. per annum above Barclays Bank Plc's prevailing base lending rate from time to time, until the balance is paid.
- 4.6 If for any reason you owe us any money we may deduct these sums in calculating any amount which we may owe you.
- 4.7 In the event of any debt or claim that we have against you, we will not withhold more than a reasonably proportionate amount of any sums due from us to you. If we withhold more than a reasonably proportionate amount, you may apply interest to the outstanding balance at the rate of four per cent. per annum above Barclays Bank Plc's prevailing base lending rate from time to time, until the balance is paid.

5. Our Delivery of the Goods

- 5.1 Before we agree to deliver the Goods to you, you must provide us with an address for delivery along with all of the information which we will reasonably require to enable us to determine whether we will be able to deliver the Goods, the appropriate method of delivery and the cost to you of providing the delivery service.
- 5.2 Prior to delivery of the Goods, we will agree with you a time for delivery of the Goods.
- 5.3 If we are unable to make an agreed delivery to your address for reasons due to our own fault, we will inform you as soon as possible and refund or re-credit you for any sum that has been paid by you or debited from your credit card for delivery.
- 5.4 If there is no one at the address you have given who is competent (over the age of 18 years) to accept delivery of the Goods by signing for them, we will seek to agree an alternative delivery date, or agree for you to collect the Goods. We reserve the right to make an additional charge for re-delivery of the Goods and you will be informed of the amount at the time we arrange an alternative date.
- 5.5 If Goods are to be deposited other than on your private premises we will deliver the Goods as near as possible to the delivery address as is safe and the public highway permits.

You will be responsible for complying with all regulations, permits and charges and for all steps which need to be taken for the protection at all times of persons or property. You will reimburse us in respect of all reasonable losses, damages, costs and expenses we may incur as a result of such delivery whether on the public highway or elsewhere. We will remain liable for all losses caused by Our own negligence.

- 5.6 We will only enter private property if we are given specific authority. Once invited onto private property we accept no liability for damage caused to that property by our delivery drivers (whether directly employed by us or by a third party) unless caused by Our own negligence. We reserve the right to refuse to deliver the Goods to premises that are considered by our delivery drivers to be unsuitable or unsafe. We will notify You as soon as reasonably possible of the reason for non-delivery.
- 5.7 You agree to reimburse us in respect of all losses, damages, costs and expenses that we incur in complying with any specific delivery instructions which you may give us and which relate to clauses 5.5 and 5.6 above. Any amount which you reimburse to us will be reduced in proportion to the extent that such losses, damages, costs and expenses are due to our negligence.
- 5.8 Unless we state otherwise, all our quotations and estimates assume delivery of the full contracted amount of Goods. We reserve the right to levy additional charges for deliveries by instalments where requested by you.
- 5.9 Our delivery price includes the cost of delivery on week days during our normal working hours. An additional charge may be made if we agree to your request to deliver outside normal working hours or on Saturdays, Sundays and/or bank holidays.
- 5.10 If you keep our delivery vehicle waiting for an unreasonable time or the delivery driver is obliged to return without completing delivery, or if due to the nature of the Goods we have to provide additional staff to unload Goods, a reasonable additional charge will be made that reflects the extra services provided.
- 5.11 We will not be liable for any death, or personal injury to you or anyone under your control during unloading that was not caused by our negligence or by a breach of our statutory duty.

6. Your Cancellation and Return of the Goods

- 6.1 You do not have an automatic right to change your mind and cancel the contract unless it has been made by telephone, mail order or by the internet, (at a "Distance"). We may at our discretion accept the return of certain Goods not purchased from us at a Distance (see clause 6.2). This clause does not affect your right to return any faulty or mis-described Goods.
- 6.2 For contracts not made at a Distance and where you purchase Goods from us from stock we may at our discretion accept the Goods back, in which case we will issue you with a credit note for the purchase price less reasonable costs incurred. Goods to be returned must be delivered back to us at your cost with proof of purchase and be in the same condition that they were in at the time of purchase. We will be unable to accept back Goods that were not held in stock and were especially ordered on your behalf. This clause does not affect your right to return faulty or mis-described Goods.

6.3 If you cancel the Contract when it has not been made at a Distance and we have not agreed to take back the Goods you will be liable for reasonable costs that we have incurred. If we have already accepted a part-payment or deposit, we will consider whether this covers the losses we are entitled to claim and if it does not we may claim extra from you. If the part-payment or deposit is in excess of our losses, we will refund the balance. This clause does not affect your right to return faulty or mis-described Goods.

Goods ordered at a Distance

6.4 If you have ordered Goods at a Distance you have the right to cancel the Contract at any time up to the end of seven working days after you receive the Goods. A working day is any day other than the weekends and bank or other public holidays.

6.5 To exercise your right of cancellation, you must give written notice to us by hand, post, fax or email, at the address, fax number or email address shown at the end of these Terms, giving details of the Goods ordered and (where appropriate) their delivery.

6.6 If you exercise your right of cancellation after the Goods have been delivered to you, you will be responsible for returning the Goods to us at your own cost. The Goods must be returned to our address shown at the end of these Terms. You must take reasonable care to ensure the Goods are not damaged in the meantime or in transit. If the goods are damaged (or have been modified) by you or are damaged in transit in a way that you could have foreseen (such as not being sent back in the same or similar packaging as sent to you), we will assess what damage has been caused and if some or all of the goods are not in saleable condition then those goods will be rejected and a proportionate part of the refund withheld.

6.7 Once you have notified us that you are cancelling the Contract, we will refund or credit you within 30 days for any sum that has been paid by you or debited from your credit card for the Goods.

6.8 If you do not return the Goods as required under Clause 6.6, we may charge you a sum not exceeding our direct costs of recovering the Goods.

6.9 You do not have the right to cancel the Contract if your order is for perishable Goods that have been unsealed by you, or for Goods that by their nature (such as bespoke goods or items which have been personalised at your request) cannot be returned or are liable to deteriorate or expire rapidly.

7. Your Acceptance of the Goods

7.1 Your acceptance of Goods can take place in three ways:

7.1.1 by telling us that you have accepted the Goods;

7.1.2 by altering or customising the Goods in any way; or

7.1.3 by keeping the Goods longer than a reasonable time without telling us that you have rejected them.

8. Your Responsibilities on Delivery including Inspection

- 8.1 If you are not satisfied with the Goods, if they do not conform with your order, if they are damaged or faulty, if they are not of satisfactory quality or are otherwise defective you should reject them on delivery, or, if a defect is found within a reasonable time after delivery we will (subject to confirmation of the defect) exchange the Goods or refund you in full.
- 8.2 Should a short delivery (of less than the full quantity of Goods ordered) have been made, you must notify us within a reasonable time of discovery of the short delivery. Our liability for this short delivery is limited to making good the shortage and any reasonable loss or damages you have suffered due to the short delivery.
- 8.3 Where it would have been apparent on a reasonable inspection that the Goods do not conform to the Contract and you fail to give us notice of this within a reasonable time you will be deemed to have accepted the Goods and have waived any right to reject the Goods.

9. Defective Goods

- 9.1 If the Goods have a defect at the time of sale and you have not yet accepted the Goods, we will refund you in full. Where you have accepted the Goods, you lose the right to a refund. However you retain the right to the Remedies.
- 9.2 If the Goods have a defect and you have accepted them, you will be entitled to Remedies. We will not pay compensation for any consequential damage (including but not being limited to loss of profit, loss of income, loss of business, loss of revenue, loss of goodwill or any other indirect or consequential loss of any kind) resulting from use of the defective Goods, where such damage was not reasonably foreseeable to us at the time the Contract was made or where such losses can be reasonably described as arising in the course of your trade or business.
- 9.3 If you do not accept the Goods you may claim a full refund or Remedies only if the Goods are not (a) of a satisfactory quality or (b) fit for purpose or (c) as described at the time of purchase.
- 9.4 You may claim Remedies within the first six months after purchase unless we prove that the Goods conformed to the Contract at the time of sale.
- 9.5 If you claim Remedies more than six months after purchase you must prove that the Goods did not conform to the Contract at the time of sale.
- 9.6 You cannot make a claim for Remedies in the following cases:
- 9.6.1 if the defect or fault was brought to your attention on or before the time of sale;
- 9.6.2 if you inspected the Goods on or before the time of sale and the defect or fault was or should have been readily noticeable;
- 9.6.3 if the defect or fault would have become apparent on inspection within a reasonable time from delivery and notice of the defect has not been given to us within a reasonable time from when the defect became apparent;
- 9.6.4 if the defect arises from your wilful actions, negligence, abnormal working conditions, mis-use, alteration or repair of the Goods, failure to follow instructions relevant to the Goods or storage of the Goods in unsuitable conditions;

- 9.6.5 if you change your mind about wanting the Goods or if after purchase you decide that you do not like a cosmetic aspect of the Goods such as colour or shape that was clearly intrinsic to the Goods at the time of purchase;
- 9.6.6 if you chose the Goods yourself for a purpose which was neither obvious nor made known to us and you find the item unsuitable for that purpose; or
- 9.6.7 if the defect is a result of fair wear and tear.
- 9.7 Nothing in these Terms will affect the terms of manufacturers' warranties and guarantees or reduce your statutory rights relating to faulty or mis-described Goods. For further information about your statutory rights you can contact your local authority Trading Standards Department or Citizens' Advice Bureau.

10. Ownership and Responsibility for the Goods

- 10.1 Risk passes to you as soon as we have delivered the Goods and you will then be responsible for them. If you delay a delivery, our responsibility for everything other than damage due to our negligence will end on the date that we agreed to deliver them as set out by the Contract.
- 10.2 We will retain title (ownership) to the Goods until you pay the full price (cash or cleared funds) of the Goods and any other sums outstanding between you and us whether in respect of this Contract or otherwise.
- 10.3 Until title passes you shall:
- 10.3.1 hold the Goods on trust on our behalf;
- 10.3.2 store the Goods separately from all other Goods or products in such a way that they remain identifiable as the Goods; and
- 10.3.3 not affix the Goods to any land or building in such a way that they become incapable of removal without material injury to the land or building.

11. Your Non-Payment / Insolvency

- 11.1 If you are declared bankrupt, enter into an Individual Voluntary Arrangement with your creditors, fail to pay any invoice or any sum due to us under any contract or you commit a material breach of the Contract and fail to remedy that breach, all sums outstanding between you and us shall become immediately due and payable and we shall be entitled to do any one or more of the following (without prejudice to any other right or remedy we may have):
- 11.1.1 require payment in cleared funds in advance of any further orders you may make;
- 11.1.2 cancel or suspend any further deliveries to you under this or any other contract without liability on our part to the extent that we have not already received payment in cleared funds;
- 11.1.3 claim interest and compensation on the sums outstanding from the due date until payment is received in accordance with clause 4.2 above; and
- 11.1.4 terminate this or any other contract with you without liability on our part, provided that we shall complete orders on which you have made payment in full.

11.2 You will reimburse our costs including legal costs, which we incur in enforcing a breach of the Contract arising from your act or omission.

12. Data Protection

By placing your order, you allow us to use your personal details for the purpose of supplying the Goods (including passing your details on to our employees/agents). We may share your information within our company network for purposes connected to or relating to the fulfilment of your order or for other internal accounting or compliance purposes. We will not use your details for any other purpose without seeking your prior consent.

13. Events Beyond Our Control

We reserve the right to defer the date of delivery or to cancel the Contract or, with your consent (not to be unreasonably withheld or delayed), reduce the volume of Goods ordered by you (without liability to you) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control, provided that, if the event in question continues for a continuous period in excess of 30 days, you shall be entitled to terminate the Contract by giving 14 days prior written notice and you shall be entitled to a refund in respect of any Goods not delivered to you.

14. General

14.1 We will try and solve any disagreements quickly and efficiently. If you are not happy with the way we deal with any disagreement and you want to take Court proceedings, then the following will apply in the case of any dispute:

14.1.1 If you live in England or Wales then English law will apply and the English courts will have non-exclusive jurisdiction in the case of any dispute; or

14.1.2 If you live in Scotland then Scots law will apply and the Scottish courts will have non-exclusive jurisdiction in the case of any dispute.

14.2 Any waiver by us of any breach or default of these Terms does not mean that we will continue to waive that or any subsequent breach.

14.3 If any clause or sub-clause of these Terms is held to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms will not be affected and they will remain in full force and effect.

14.4 Any reference in these Terms to any Statute, Statutory Provision or Regulation includes a reference to that Statute, Statutory Provision or Regulation as amended extended or re-enacted at the relevant time.

14.5 The headings of these Terms are for convenience only and shall not affect their interpretation.

14.6 Termination of the Contract shall not affect the rights and obligations that have already accrued at the time of termination.

14.7 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.

c. BMF March 2010