

Terms and Conditions of Sale

If you are a customer, you have certain statutory rights regarding the return of defective goods and claims in respect of losses caused by our negligence or failure to carry out our obligations. These terms shall not affect your statutory rights.

1. DEFINITIONS

In these terms and conditions of sale, the following meaning shall apply:

“Company Signatory” means a person authorised by us.

“Consumer” means any natural person acting for purposes outside their trade, business or profession.

“Contract” means the contract for the supply of goods incorporating these Terms.

“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 you to damages.

“Goods” means the goods or when the context permits services to be supplied by us.

“Terms” means the terms set out in this document and any special terms agreed in writing between a Company Signatory and you.

“We” and “Us” means First Fence Limited.

“You” means the person seeking to purchase goods from us.

2. THE CONTRACT

2.1 All orders are accepted by us only under these terms and they may not be altered – other than with the written agreement of a Company Signatory. Any contrary or additional terms, unless so agreed, are excluded.

2.2 Quotations are invitations to treat only.

2.3 Orders may be cancelled only with the agreement of a Company Signatory and you will indemnify us against all costs, claims, losses or expenses incurred as a result of that cancellation.

2.4 You should be responsible to us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to us by you and for giving us any necessary information relation to the goods within a sufficient time to enable us to perform the contract in accordance with its Terms.

2.5

2.5.1 It is your responsibility to be fully conversant with the nature and performance of the goods, including any harmful or hazardous effects their use may have.

2.5.2 Without prejudice to Clause 2.5.4 of these Terms while we take every precaution in the preparation of our catalogues, technical circulars, price lists and other literature, these documents are for your general guidance only and statements included in these documents (in the absence of fraud on our part) shall not be bound by them.

2.5.3 If you require advice (including Health and Safety information) in to the goods, a specific request for advice should be made and any advice given in written by a Company Signatory in response to such a request shall amount to a representation and we shall be liable accordingly.

2.5.4 We shall not be liable in respect of any misrepresentation made by us, our employees or agents as to the condition of the goods, their fitness for any purpose or as to quality or measurements, unless the representation is:

2.5.4.1 made or confirmed by a Company Signatory; and/or

2.5.4.2 fraudulent.

2.5.5 For the avoidance of doubt, our liability for damages for misrepresentation (other than fraudulent) is excluded or limited by

Clause 8 of these Terms.

3. PAYMENT

- 3.1 Unless the sale is for cash, or other credit terms have been agreed in writing with a Company Signatory, all accounts are due for payment on the last day of the month, following the month in which the goods are delivered.
- 3.2 We will accept payment of accounts by credit card subject to a 2.5% surcharge. The amount of this surcharge may be revised by written notice to you including by announcements on our website from time to time.
- 3.3 Late payment will incur interest at 8% above the Bank of England base rate, prevailing from time to time, until the date of payment after as well as before judgment.
- 3.4 Credit facilities may be withdrawn or reduced at any time at our sole discretion.
- 3.5 Even if we have previously agreed to give you credit, we reserve the right to refuse to execute any order or Contract if the arrangements for payment or your credit rating is not satisfactory to us. In our discretion, we may require security satisfaction to us or payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until we are in receipt of security or cleared funds as requested by us.
- 3.6 In the case of short delivery, you will remain liable to pay the full invoice price of all goods delivered or available for delivery.
- 3.7 You may not withhold payment of any invoice or other amount due to us by reason of any right of set off or counterclaim, which you may have, or allege to have, for any reason whatsoever.
- 3.8 We shall be entitled at all times to set off any debt or claim of whatever nature which we may have against you against any sums due from us to you.

4. PRICE

- 4.1 Prices listed or quoted are based on costs prevailing at the time when they are given or agreed. We shall be entitled to adjust the price of the goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by us after the date of acceptance of your order and any direct or indirect costs of making, obtaining, handling, or supplying the goods.
- 4.2 Prices quoted are applicable to the quantity specified and on the information provided by you at the time of order. In the event of orders being placed for lesser quantities, or if there is any change in specifications, delivery dates, or delay is caused by your instructions or lack of instructions, we shall be entitled to adjust the price of the goods as ordered to take account of the variations.
- 4.3 The price of the goods shall be that prevailing at the date of delivery of the goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice. 4.4 We shall have the option of supplying any goods ordered by you in imperial measurements in the nearest equivalent metric measurements and the goods may be charged in metric measure allowing for conversions.

5. INSPECTION

5.1 You shall inspect the goods at the place and time of unloading or collection, but nothing in these Terms shall require you to break packaging and/or un-pack goods which are intended to be stored before use.

5.2

5.2.1 You must advise us by telephone immediately and give us written notice within two working days of unloading of any claim for short delivery. Written notice need to be via email to customerservices@firstfence.co.uk.

5.2.2 If you do not give us that notice within that time, the goods will be deemed to have been delivered in the quantities shown in the delivery documents.

5.2.3 You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the goods or claim any damages whatsoever, for short delivery howsoever caused.

5.2.4 Our liability for short delivery is limited to making good the shortage.

5.3

5.3.1 Where it is, or would have been, apparent on a reasonable inspection that the goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample, you must advise us by telephone immediately, and give us written notice within three working days of inspection.

5.3.3 If you fail to give us that notice within that time, Clause 8 shall have effect.

5.3.2 If you fail to give us that notice within that time, the goods will be deemed to have been accepted and you shall not be entitled, and irrevocably and unconditioned waive any rights, to reject the goods.

6. DELIVERY

6.1 Delivery will be effected when the goods leave our premises whether carried by us or an independent carrier, or the premises of our suppliers when the goods are delivered direct from suppliers.

6.2 Delivery dates are given in good faith, but are estimates only.

6.3 Time for delivery shall not be of the essence of the Contract.

6.4 For the avoidance of doubt, and without detracting from any other provisions of these Terms, we shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt of any liability to any third party) resulting from any delay in delivery of the goods, or failure to deliver the goods in a reasonable time – whether such delay or failure is caused by our negligence or otherwise howsoever.

6.5 You must provide the necessary labour for unloading the goods – and unloading is to be completed with reasonable speed. If our delivery vehicle is kept waiting for an unreasonable time, or is obliged to return without completing delivery, or if we provide additional staff to unload goods, an additional charge will be made.

6.6 The price agreed includes our normal delivery charges but we may make an additional charge if we incur further costs or expenses such as (but not limited to): i) those caused by delivery of less than a full load, ii) complying with your request for delivery outside our normal delivery pattern or trading by instalments, iii) orders of small value which are not economical for us to deliver free.

6.7 We reserve the right to make delivery by instalments and tender to a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments, or any claim by you in respect of any one or more instalments, shall not entitle you to treat the Contract as a whole as repudiated.

6.8 You may collect goods from us during our trading hours. If they do not collect within 14 days from when we notify you that they are available, a storage charge will be payable before goods are released.

6.9 If you fail to take delivery, accept or collect the goods within the agreed time, in our discretion, we may make an additional charge, invoice you for the goods, or treat the Contract as repudiated and, in any case, recover our losses from you.

6.10 If the goods are to be deposited other than on your private premises, you shall be responsible for compliance with all regulations, and for all steps which need to be taken for the protection at all times of persons or property.

6.11 We shall make a charge for packaging, including crate cases and pallets, which shall be credited if the crate cases or pallets are returned – carriage paid – in good condition and within 7 days of delivery. Polythene sacks are not returnable.

6.12 If you collect goods from us, you are solely responsible for the size, weight and positioning of the load on the vehicle and shall indemnify us in respect of all costs, claims, losses or expenses we may incur as a result of your collecting the goods.

6.13 You will indemnify us in respect of all costs, claims, losses or expenses we may incur as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such costs, losses, claims or expenses are due to our negligence.

7. LIABILITIES

7.1 Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our personal negligence or our liability for fraudulent misrepresentation.

7.2 Where but for the effect of Clause 8.2 of these Terms you would have been entitled to damages against us, we shall not be liable to pay damages but subject to the conditions set out in Clause 8.4 below shall at our sole discretion, either repair the goods at our own expense, or supply replacement goods free of charge or refund all (or where appropriate part) of the price of the relevant goods.

7.3 Subject to Clause 8.1 of these Terms, we 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. Instead of liability in damages, we undertake liability under Clause 8.3 below.

7.4 We shall not be liable under Clause 8.3:

7.4.1 if the defect arises from wear and tear

7.4.2 if the defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repairs of the goods, failure to follow British Standards or industry instructions relevant to the goods, or storage of the goods in unstable conditions (but this sub-clause shall not apply to any act or omission on our part).

7.4.3 unless after discovery of the defect we are given a reasonable opportunity to inspect the goods before they are used, or in any way interfered with. For the avoidance of doubt, we acknowledge that the costs of suspending works are relevant to the determination of what is reasonable opportunity and this sub-clause shall not apply to any works affecting the goods, which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

7.4.4 if the defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at time of unloading, unless you advise us by telephone immediately and written notice of any claim is given to us within two working days of the time of unloading via email to customerservices@firstfence.co.uk.

7.4.5 if the defect is discovered within four months from the date of delivery, unless you give us written notice of the defect within three working days of it being discovered.

7.4.6 if in any case the defect is discovered more than four months from the date of delivery.

7.5 If the goods are not manufactured by us, or have been processed or milled by a third party – whether or not at your request – our 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 we may have in respect of those goods.

7.6 If the goods are manufactured, processed or milled by us to the design, quantity measurement or specification of you or your agents then:

7.6.1 Subject to Clause 8.1 of these Terms, we shall not be under any liability for damages whatsoever or under Clause 8.3 of these Terms as the case may be except in the event of:

7.6.1.1 fraudulent misrepresentation.

7.6.1.2 misrepresentation where the representation was made or confirmed in writing by a Company Signatory

7.6.1.3 non-compliance with such design, quantity, measurement or specification;

7.6.1.4 breach of a written warranty signed by a Company Signatory that the goods are fit for that purpose; or

7.6.1.5 a claim maintainable against us pursuant to Clause 8.1 of these Terms.

7.6.2 You will unconditionally, fully and effectively indemnify us against all damages, costs on an indemnity basis and expenses awarded against, or incurred, by us in connection with, or paid, or agreed to be paid, by us in settlement of any claim for infringement of any patents, copyright design, trademark, or any other industrial or intellectual property rights of any other person.

7.6.3 You will further unconditionally, fully and effectively indemnify us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred, by us in connection with, or paid, or agreed to be paid, by us in settlement of any other claim arising from any such manufacturing processing or milling, including – but not limited to – any defect in the goods. This indemnity will be reduced in proportion to the extent that such loss damage, costs and expenses are due to our negligence.

7.7 You will be unconditionally, fully and effectively indemnify us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by us in connection with, or paid, or agreed to be paid by us in settlement of any claim by third party arising from the supply or use of the goods. This indemnity will be reduced in proportion to the extent that such loss, damage, costs and expenses are due to our negligence.

7.8 You (not being a Consumer) agree that where the goods (being electrical equipment) become a waste in accordance with directive 2002/96/EC (including any amendments and re-enactments thereof) and all applicable Member State implementing regulations and laws (together known as the “WEEE Directive”), you agree to bear the responsibility for ensuring, and financing all costs of collection, treatment, recovery and environmentally sound disposal of the goods in accordance with the WEEE Directive. In addition you (not being the Consumer) also agree to bear responsibility for compliance with such requirements and financing all such costs in respect of any goods (being electrical equipment) which are being replaced by goods as a new equivalent product or as a new product fulfilling the same function. Additionally you agree to indemnify and hold harmless us and any other person who is the producer of the goods within the meaning of the WEEE Directive from all such costs referred to in this clause.

7.9 Without prejudice to any other provisions in these Terms, in any event, our total liability for any one claim, or for the total of all claims arising from any one act of default on our part howsoever arising (whether arising from our negligence or otherwise), shall not exceed the purchase price of the goods – the subject matter of any claim.

8. TITLE AND RISK

8.1 Risk in the goods shall pass you when the goods are delivered.

8.2 The property in the goods shall remain with us until you pay all sums due to us, whether in respect of the Contract or otherwise.

8.3 Until title passes:

8.3.1 You shall hold the goods as our fiduciary agent and bailee.

8.3.2 We agree that you may use, or agree to sell the goods as principal and not as agents in the ordinary course of your business subject to the express condition that at our direction, the entire proceeds of any sale or insurance proceeds received in respect of the goods are held in trust for us and not mixed with any other monies, or paid into an overdrawn bank account and, at all times, be identifiable as our money.

8.3.3 The goods shall be stored separately from any other goods and you shall not interfere with any identification marks, labels, batch numbers or serial numbers on the goods.

8.4 We shall be entitled, at any time, to recover any or all of the goods in your possession to which we have title and for that purpose, we, our employees or agents may, with such transport as is necessary, enter upon any premises occupied by you, or to which you have access and where the goods may be, or are believed to be, situated.

9. NON-PAYMENT/INSOLVENCY

9.1 "Insolvent" means you becoming unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the treat of execution or distress on any of your property; the appointment of a receiver or administrative receiver over all, or any part, of your property; a proposal for a voluntary arrangement or compromise between you and your 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 your winding-up, or for an administration order in relation to you. If you suffer any analogous step or proceedings under foreign law or you are ceasing, or threatening to cease to carry on your business.

9.2 If you fail to pay the price of any goods on the due date or fail to pay any sum due to us under any Contract on the due date or you become insolvent or if you are a limited company or partnership and there is a material change in your constitution or you commit a material breach of this Contract and fail to remedy that breach, all sums outstanding between you and us shall become immediately 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)

9.2.1 require payment in cleared funds in advance of further deliveries

9.2.2 cancel or suspend any further deliveries to you under any Contract without liability on our part

9.2.3 without prejudice to the generality of Clause 7 of these Terms exercise any of our rights pursuant to that clause.

9.3 Without prejudice to Clause 9.3 if you are acting in the course of a business then in the event of late payment we reserve the right to claim compensation pursuant to the late payment of Commercial Debts (interest) Act 1998 at the prevailing rate, currently £40 for a debt less than £1000, £70 for a debt more than £1000 but less than £10,000 and £100 for a debt in excess of £10,000.

9.4 If we reasonably incur third party costs, such as tracing or debt collection agency costs, or seek to take legal proceedings to enforce our rights as a result of your breach of this Contract – including but not limited to – recovery of any sums due, you will reimburse us such reasonable agency costs or legal costs incurred on an indemnity basis.

10. FORCE MAJEURE

10.1 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.

10.2 Examples of those circumstances include act of God, extreme weather conditions – storms, hurricanes, tornadoes etc, accident, explosion, war, terrorism, fire, flood, national emergency, riot, epidemic, lock-outs, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

11. WARRANTIES

11.1 Save as provided in Section 12 of the Sale of Goods Act 1979, the Company gives no warranty and makes no representation whether express or implied as to any matter whatsoever including (without limitation) condition, merchantability or fitness for any purpose.

11.2 The Company accepts no liability for any loss or damage suffered by the Customer or any third party as a result of or caused by the use of the Goods for a use or purpose for which the Goods were not designed.

11.3 The Company shall incur no liability in respect of any defect or fault in the Goods unless:

11.3.1 the customer signs for the goods as damaged or refuses them

11.3.1 the Customer gives the company carriers such opportunity as the Company may reasonably require to examine

or inspect the defective or faulty Goods at the premises of the Customer

11.3.3 the Customer forthwith upon the discovery of such defect or fault by the Customer ceases to use the defective or faulty Goods unless otherwise authorized by the Company in writing; and

11.4 The liability of the Company under this Condition shall be limited to replacing, repairing or making good the defective or faulty Goods or, at the option of the Company, giving credit or reimbursing to the Customer the price (whether in whole or in part) paid by the Customer to the Company for the defective or faulty Goods.

12. CONSEQUENTIAL LOSS AND DAMAGE

Save as herein expressly provided and except as provided in Section 16 of the Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from breach of duty), the Company shall not be liable to the Customer or to any third party for any loss or damage (whether direct or consequential) suffered in respect of the Goods or arising from or caused by any defect or fault in the Goods and the Company shall be indemnified by the Customer against all third party claims made in respect of the Goods.

13. CUSTOMER'S SPECIFICATION

13.1 If the Customer requires the Goods to be manufactured or supplied to the Customer's design, the Customer must provide to the Company a detailed design and/or specification of the Customer's requirements when the Customer orders the Goods. The Company shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customer's design and/or specification of the Goods.

13.2 The Customer shall indemnify and so free and relieve the Company from and against any claim, cost, charge or expense in respect of the infringement or breach of any industrial property right as a result of or caused by the manufacture or supply of the Goods by the Company in accordance with the Customer's design or specification.

14. FINANCIAL CONDITION

If the Company shall consider that the Customer's financial condition does not at any time justify the agreed terms of payment, the Company may, having given notice in writing to the Customer, cancel any unfulfilled order or the contract unless the Customer shall forthwith make payment to the Company for the Goods already delivered or supplied by the Company to the Customer or to a nominee of the Customer or shall make prior payment for the Goods ordered but non-delivered or supplied, or both, at the Customer's option. The Company shall be entitled to cancel without penalty by notice in writing to the Customer any unfulfilled order or the contract if the Customer becomes insolvent, goes into liquidation, enters into a composition with its creditors or has a receiver appointed over the whole or any part of its property and undertaking.

15. SET OFF

The Customer hereby waives any and all existing or future claims for compensation or set off against any payments due by the Customer to the Company under the contract and the Customer shall pay to the Company the amounts payable to the Company under the contract on the due date or dates for payment thereof regardless of any compensation, set off or counter claim on the part of the Customer against the Company.

16. REMEDIES

Any remedies conferred on the company by these conditions shall be without prejudice to any other remedies available to the company.

17. INVALIDITY

If any provision of the Conditions is or becomes invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of these Conditions or of the contract shall not in any way be affected or impaired.

18. HEADINGS

The headings used in these Conditions are for ease of reference only and shall not in any way affect the construction or interpretation of these Conditions.

19. HEALTH & SAFETY

Certain goods supplied by us could, if incorrectly used, give rise to risks to health and safety. Information in respect of such goods is available from us. You undertake that you will ensure compliance by your employees, agents and customers with any instructions given by us or the manufacturer or our supplier and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of any person handling, using or disposing of them.

20. WASTE & DISPOSAL

You will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste, including the appropriate disposal by you of any goods marked with a crossed out wheelie bin symbol, save where you are a consumer and it is our responsibility at law. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.

21. GENERAL

21.1 This contract shall be governed and interpreted according to the Law of England and Wales and you agree to submit to the non-exclusive jurisdiction of the English Courts.

21.2 We shall not be liable for any delay or failure to perform any of our obligations in relation to the goods due to any cause beyond our reasonable control, including industrial action.

21.3 The waiver by us 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.

21.4 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable, the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

21.5 We may assign novate, or subcontract all or part of this Contract and you shall be deemed to consent to any novation. This Contract is personal to you and it may not be assigned by you.

21.6 Nothing in this Contract is intended to, or will grant any right, to any third party to enforce any Terms of this Contract, be it express or implied.

21.7 Incorporation of your business: Until you are informed in writing by us the either the status of the account has been amended to a limited company or a fresh account opened all orders will continue to be debited to the current account and you will remain responsible to us.

22. CANCELLATION

22.1 The Company (First Fence Limited) will be entitled without prejudice to the Company's other rights, either to cancel or terminate the contract or to suspend any further deliveries in any of the following events:-

- Non-compliance by The Buyer with the Company's terms of payment
- Delays in payment when credit has been granted but the value of the order exceeds the total credit limit granted
- Cost of any storage incurred due to delayed payment has been settled in full by the Buyer to the Company (First Fence Limited)
- Delays in payment when the Contract is based on Pro Forma basis with payment in full required prior to goods being delivered

22.2 Cancellation of orders cannot be accepted without prior written consent of the Company (First Fence Limited) and on condition that all costs and expenses incurred by the Company (First Fence Limited) up to the time of cancellation, and / or all loss of profits and other loss or damage resulting to the Company (First Fence Limited) by reason of such cancellation will be reimbursed by the Buyer to the Company (First Fence Limited) forthwith.

22.3 Any Non Standard / Non Stock / Bespoke Products or goods that have been modified or painted to the Buyers instruction / specifications will be exempt from cancellation and cannot be returned for a refund or credit.

22.4 Cancellation of orders for standard products may incur a cancellation charge of 20% and also the goods may be liable to our standard re-stocking charge of 20% but this might be greater depending on the goods.