

Attwater & Sons Ltd - Terms & Conditions of Sale.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions ("the Conditions").

- "the Company"** means Attwater & Sons Ltd (company number 00354338) whose registered office is at Hopwood Street Mills, Hopwood Street, Preston, Lancashire PR1 1UN;
- "the Customer"** means the person, firm or company who purchases Goods and/or Services from the Company;
- "the Contract"** means the Customer's acceptance of a quotation for Goods and/or Services by the Company under condition 2.2, which for the avoidance of doubt incorporates these Conditions;
- "Document"** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
- "the Goods"** the goods described in the quotation, or confirmation of order, supplied to the Customer by the Company (including any part or parts of them).
- "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- "the Price"** means the price of the Goods and/or Services, being either the price stated in the Company's quotation, or if no such price is quoted, the price listed in the Company's published price list current at the date of delivery, or deemed delivery.
- "the Services"** the services to be provided by the Company as detailed in the Company's quotation, together with any other services which the Company provides, or agrees to provide, to the Customer.
- "VAT"** means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. APPLICATION OF CONDITIONS

2.1. These Conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law or course of dealing.

2.2. The Customer's acceptance of a quotation for Goods and/or Services by the Company, constitutes an offer by the Customer to purchase the Goods and/or Services on these Conditions. No offer placed by the Customer shall be accepted by the Company other than:

(a) by a written acknowledgement issued by the Company; or

(b) (if earlier) by the Company starting to provide the Goods and/or Services,

when a contract for the supply and purchase of the Goods and/or Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3. The Customer shall ensure that the terms of its order are complete and accurate, and for providing the Company with any necessary information (within a reasonable time) to enable the Company to perform its obligations under the Contract. It is agreed that the Company shall, subject to the provisions of condition 9, not be liable for the consequences of any inaccurate or incomplete information provided by the Customer. If the Customer provides insufficient and/or incorrect information which inhibits or delays the Company in performing the Contract, then the Company reserves the right to increase the Price to cover any increased in costs which takes place due to the Customer not providing sufficient and/or correct information to the Company.

2.4. Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 60 days from its date, provided that the Company has not previously withdrawn it.

3. PRICES AND PAYMENT

3.1. Any prices quoted by the Company are exclusive of VAT and any other taxes unless otherwise stated. The Customer shall be solely responsible for the cost of carriage (if applicable) and carriage may be added to the Customer's final invoice where not explicitly quoted or acknowledged.

3.2. The Company reserve the right (without prejudice to any other rights of the Company) to charge interest at either:

(a) a rate of 4% above the Bank of England base rate from time to time on any payment not received by the due date until such sum is received irrespective of any other action taken in order to obtain satisfactory settlement of sums due; or

(b) at the rate determined under the Late Payment of Commercial Debts (Interest) Act 1998 on any payment not received by the due date until such sum is received irrespective of any other action taken in order to obtain satisfactory settlement of sums due

3.3. If in the Company's sole discretion the Company agrees to take the Goods back from the Customer, the Customer agrees that there will be a 20% handling/restocking fee (calculated on the Price of the Goods) plus carriage. Subject to any statutory rights available to the Customer under no circumstances may Goods supplied to Customer be returned without the Company's prior written consent and an RMA request form must be completed prior to the return of any Goods. Any agreement to issue a credit note against Goods returned may be voided if the returned Goods have been affected or further processed.

3.4. The Company shall be entitled to adjust the Price at any time before delivery should such increase be rendered necessary by circumstances beyond the Company's control, including and not limited to: - labour conditions, riots, civil commotion, strikes, lock-outs, interruptions in traffic and the state of material supplies. For the avoidance of doubt the Company shall be permitted, by notice to the Customer, to increase the Price of the Goods and/or Services if there is an increase of more than 10% of the cost of the raw material (including power supply) to the Company between the date the Company accepts the Customer's order and delivery (or deemed delivery) of the Goods and/or Services takes place.

3.5. All sums payable to the Company under the Contract shall become due immediately on its termination, notwithstanding any other provision. This condition 3.5 is without prejudice to any rights available to the Company.

3.6. Payment shall, unless the parties agree otherwise in writing, or stated to the contrary on the Company's quotation, be due on the 15th of the month following the month of delivery.

3.7. In relation to payment of the Price, time shall be of the essence of the Contract.

3.8. If the delivery of the Goods or the performance of the Services is suspended by the Customer (howsoever arising) it is agreed that the Company shall be entitled to invoice the Customer for the Goods which have been produced and/or delivered, together with the value of the Company's work in progress on the Contract (including any reasonable profit margin attributable thereto) at the time of suspension, and the provisions of condition 3.6 shall apply, notwithstanding that the Contract may not have been completed.

3.9. The Customer agrees and acknowledges that where the Company requests a deposit and/or payment on account, that the Company shall not be required or obliged to under taken any work and/or services until the deposit and/or payments on account have been made in cleared funds to the Company.

3.10. If the Customer fails to pay the Price by the due date, then without prejudice to any of the Company's rights the Company shall have the right (but is not obliged) to:-

- (a) Suspend production of the Goods and/or performance of the Services; and/or
- (b) suspend and/or cancel deliveries of any Goods and/or Services yet to be delivered under the Contract and/or
- (c) suspend and/or cancel deliveries of any Goods and/or Services yet to be delivered under any other contract between the parties; and/or
- (d) terminate the Contract

4. VARIATION OF THE CONTRACT

4.1. If the Customer requests a change to the Goods and/or Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Company's charges, included but not limited to the Price, arising from the change; and
- (c) any other impact of the change on the terms of the Contract.

4.2. The Company may charge for its time spent is assessing a request for a change of the Goods and/or Services by the Customer.

5. TERMINATION

5.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 5.1(c) to condition 5.1(g) (inclusive);

5.2. On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods which have been produced (including any part thereof) and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

5.3. On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect; condition 3, condition 5, condition 8, condition 13, condition 16 and condition 17

6. DESCRIPTION

6.1. The quantity, quality and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

6.2. All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

6.3. The Company reserves the right to make any changes to the specification of the Goods which are required to confirm to any applicable statutory requirements (including EU requirements) and/or recommended practice and to make changes to the specifications of the Goods which do not materially affect the quality or performance of the Goods.

7. DELIVERY

7.1. Delivery of the Goods shall take place at the Company's place of business and the Goods shall be at the Customer's sole risk from the time of delivery.

7.2. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary (subject to the over or under supply of Goods as provided in condition 7.7) .

7.3. Where the Company arranges for the transportation of the Goods, this shall be at the cost of the Customer and subject to the Customer promptly providing such information as the Company may reasonably require to arrange transportation.

7.4. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence of the Contract. If no dates are so specified, delivery shall be within a reasonable time.

7.5. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or, where the Company has agreed to arrange for the transportation of the Goods, and the Company is unable to transport the Goods on time because the Customer has not provided appropriate instructions, documents or authorisations:

- (a) the Goods shall be deemed to have been delivered; and
- (b) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7.6. Where the Company agrees to arrange the transportation of the Goods, and provides the Customer with a dispatch date, then the Company will use its reasonable endeavours (without litigation) to despatch the Goods on the date given, however despatch dates provided by the Company, whether orally or in writing are estimates only.

7.7. The Company shall endeavour to deliver the exact quantity as ordered by the Customer, however, due to jiggling, tooling, economical yields and manufacturing constraints this may not always be possible. The Company reserve the right to call complete any orders where the quantity delivered against the Contract is within +/-5% of the ordered quantity.

7.8. Where the Goods are supplied for export from the United Kingdom, the provisions of this condition shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.

- (a) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- (b) Unless otherwise agreed in writing between the Customer and the Company the Goods shall be delivered 'ExWorks'.
- (c) The Customer shall be solely responsible for the costs of any pre-shipment inspection mandated by the authorities of the country of export.

8. TITLE OF GOODS AND RISK

- 8.1. Ownership of the Goods shall not pass to the Customer until payment for the Goods has been received in full in cleared funds by the Company and any cheques/payments received by the Company as payment for Goods have been cleared by the Company's bank. Payment of the Price shall include, without limitation, the amount of any interest or other sum payable under the Contract by the Customer.
- 8.2. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 8.3. Risk in the Goods shall pass to the Customer upon such delivery being effected, with the Customer bearing the risk of loss or damage to the Goods (including for the avoidance of doubt during the transportation of the Goods) from the time and date of delivery. The Customer will insure the Goods against loss or damage under a policy, which protects the Company's interest in the Goods until ownership of the Goods passes to the Customer.

9. WARRANTY, LOSS OR DAMAGE

- 9.1. The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (b) be reasonably fit for purpose;
- 9.2. The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless:
- (a) the Customer gives written notice of the defect to the Company within 3 working days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.3. The Company shall not be liable for a breach of any of the warranties in condition 9.1 if:
- (a) the Customer makes any further use of such Goods after giving such notice; or
 - (b) the defect arises because the Customer failed to follow the Company's instructions and any oral or written instructions as to the use or maintenance of the Goods; or
 - (c) the Customer alters or modifies the Goods without the written consent of the Company.
- 9.4. Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 the Company shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate.
- 9.5. For the avoidance of doubt, the provisions of condition 9.2 (a) shall not apply where the Customer deals as a "consumer" as defined in the Unfair Contract Terms Act 1977.
- 9.6. Notwithstanding the provisions of condition 9.2 the Customer must inform the Company as soon as reasonably possible if there is any damage to the packaging of the Goods when received by the Customer.
- 9.7. Where the Company arranges for the transportation of the Goods, the Customer will be asked to sign a copy of the Company's courier's manifest as acknowledgment of receipt of Goods.
- 9.8. Any agreement by the Company to issue a credit or replacement of the damaged / missing items will only be honoured upon examination by the Company of the aforementioned Goods. Examination must disclose to the Company's satisfaction that such defects exist and have not been caused by misuse, neglect, accident, improper storage, installation or handling, or by alteration not effected by the Company.
- 9.9. Subject to condition 9.4 and condition 9.11 the following provisions of condition 9.9 to 9.13 (inclusive) set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions; and
 - (b) any breach of the Contract; and
 - (c) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - (d) any use made by the Customer of the Services or any part of them;
 - (e) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.10. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.11. Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 9.12. Subject to condition 9.10 and condition 9.11 the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 9.13. Subject to condition 9.10 and condition 9.11 and notwithstanding the provisions of condition 9.4 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be the higher of: -
- (a) the Contract Price, or
 - (b) the Customer's average order value for the immediately preceding 12 months calculated from the date of Delivery under clause 7.1

10. INTELLECTUAL PROPERTY

- 10.1. The Customer warrants and undertakes to the Company that the Customer has the legal right to use the information, and/or Documents (including any Intellectual Property Rights) provided or supplied by the Customer to the Company, and agrees to indemnify the Company and keep the Company indemnified against any claims, costs, awards, damages, interest, penalties, expenses, and losses (which includes but is not limited to both direct and indirect loss suffered by the Company including loss of profit) arising out of whether directly or indirectly the Customer's breach of any Intellectual Property Rights in any information and/or Documents provided or supplied to the Company.

11. MINIMUM ORDER

- 11.1. The Company reserves the right to impose a minimum order charge or a minimum manufacturing quantity.

12. ACCURACY

12.1. Goods will be manufactured to the Company's internal workshop tolerances, unless explicitly specified by the Customer, and agreed by the Company. Where special dimension limits are required they should be clearly stated on the enquiry and/or the order.

13. MOULDS AND TOOLS

13.1. All moulds and tools, whether charged for separately or included in the quoted Price, remain the Company's property. All prices quoted for moulds and tools are strictly net.

14. ARBITRATION

14.1. If at any time any question, dispute or difference whatsoever shall arise between the Customer and the Company in relation to any technical matter regarding the Goods and/or Services only, then either of party may give the other notice in writing of the existence of such question, dispute or difference, and failing satisfactory settlement between the parties the matter shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement of some person appointed by the President for the time being of the Institution of Electrical Engineers. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1996, or any statutory modifications thereof. For the avoidance of doubt, this arbitration condition shall only apply to any technical matter regarding the Goods and/or Services.

14.2. The formation, existence, construction, performance, validity of the Contract shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English courts.

15. MATERIAL TEST

15.1. Materials manufactured by the Company are manufactured to comply with appropriate BSEN industry standards and specifications. Literature, correspondence and documentation (including order acknowledgements) issued by the Company may refer to these standards and specifications. Subject to condition 9.1, the Company affords no guarantee or warranty that any materials supplied have been tested to, or conform to any standard or specification, unless explicitly referenced on a Certificate of Conformity accompanying the Goods.

15.2. Certificates of Conformity are a chargeable commodity and requirements for compliance to standards and specifications and/or for a Certificate of Conformity to accompany the Goods must be agreed in writing with the Company prior to the Company undertaking any work.

15.3. Should special tests or tests in the presence of the Customer or the Customer's representative be required, these, unless otherwise agreed, must be made at the Company's place of business, and the costs of such tests shall, unless the Company agrees otherwise, be borne solely by the Customer in addition to the Price. In the event of any delay on the Customer or Customer's representatives part in attending such tests, then after seven days notice that the Company is ready the tests will proceed and the Customer shall be deemed to have been present at such tests.

16. ASSIGNMENT

16.1. The Company shall have the right to sub-contract any or all of the Contract to such other person as the Company, reasonable considers able to perform the Contract or any part thereof as may be the case.

16.2. Subject to condition 16.1 neither party may assign the Contract except with the written consent of the other party.

17. FORCE MAJEURE

17.1. The Company reserves the right to defer the date of delivery or to terminate the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials ("a Force Majeure Event")

17.2. Notwithstanding the provisions of condition 17.1, in the event that the matter giving rise to a Force Majeure Event continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

18. GENERAL

18.1. Any provision of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.

18.2. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.3. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.4. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.5. Subject to condition 6.3, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.