

# Bideford Tool Ltd

## TERMS & CONDITIONS OF SALE

### 1. DEFINITIONS

Under the terms of sale the following meaning shall apply:-

“We” and “us” means

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

“The goods” means the goods where the context permits the services to be supplied by us

“The terms” means the terms set out in this document and any special terms arranged in writing between us and you

“The contract” means the contract for the supply of goods incorporating these terms

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

“The defect” means a 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

### 2. THE CONTRACT

**2.1** All orders are accepted by us under these terms and they may not be altered other than by written agreement signed by both you and us. 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 our written agreement and you will indemnify us against all costs claims losses and expenses incurred as a result of that cancellation.

**2.4** It shall be reasonable to us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided by us to you and for giving us any necessary information relating to the goods within a sufficient time to enable us to perform the contract in accordance with its terms.

**2.5** 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. PRICE

- 3.1 Unless otherwise agreed the price of the goods shall be as published in our price list current at the date of delivery of the goods. The price is exclusive of VAT which shall be due at the rate running for the date of the VAT invoice.
- 3.2 The prices are listed or quoted based on the 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 in making obtaining handling or supplying the goods.
- 3.3 The price quoted will be at the rate applicable for the goods ordered based on the information provided by you at the time of the order. If the order changes or there is a change in specification, delivery date or delay 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. PAYMENT**

- 4.1 Unless otherwise agreed between you and us in writing all accounts are due for payment at the time of delivery.
- 4.2 We will accept payment for accounts by credit card subject to a [3]% surcharge
- 4.3 Late payments will incur interest at the rate of [8]% per annum above the base rate of Lloyds TSB Bank Plc in force from time to time from the date due until the date of payment after as well as before judgment
- 4.4 Credit facilities may be withdrawn or reduced at any time in our sole discretion
- 4.5 Even if we have previously agreed to give you credit we reserve the right to refuse to execute any order or contract if the arrangement for payment or your credit rating is not satisfactory to us. In our discretion we may require security satisfactory to us or payment for each consignment when it is available and before it is despatched in which case delivery will not be effective until we are in receipt of security or cleared funds as requested by us.
- 4.6 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 alleged to have for any reason whatsoever.
- 4.7 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 sum due from us to you.

#### **5. DELIVERY**

- 5.1 Delivery will be effective when the goods leave our premises whether carried by us or an independent carrier.

- 5.2** Delivery dates are given in good faith but are an estimate only.
- 5.3** The time for delivery shall not be of the essence of the contract.
- 5.4** For the avoidance of doubt and without detracting from any other provision within these terms we shall not be liable for any damages whatsoever whether directly or indirectly (including for the avoidance of doubt any liability to a third party) resulting from any delay in delivery of the goods or failure to deliver the goods at a reasonable time when such delay or failure is caused by our negligence or otherwise howsoever.
- 5.5** Where appropriate we reserve the right to make delivery by instalments and tender 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.
- 5.6** The price agreed [includes our normal delivery charge but we may make an additional charge if we incur further costs or expense such as (but not limited to) those caused by delivery of less than a full load; complying with your request for delivery outside our normal delivery pattern or trading hours or by instalments; orders of small value which are not economical for us to deliver free] excludes delivery which shall be charged for separately.
- 5.7** 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.
- 5.8** You may collect goods from us during our trading hours. If they are not collected within 14 days from when we notify you they are available a storage charge will be payable before the goods are released.
- 5.9** If you fail to take delivery accept or collect the goods within an 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 loss from you.
- 5.10** If you collect goods from us then this is at your sole risk and responsibility as to the size and weight and positioning of the load on the vehicle and you should indemnify us in respect of all costs claims losses or expenses we may incur as a result of your collecting the goods including any resulting from our negligence.
- 5.11** You 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 of such costs claims losses or expense are due to our negligence.

**6. INSPECTION**

- 6.1** 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 unpack goods which are intended to be stored before use.
- 6.2**
  - 6.2.1** You must advise us by telephone immediately and give us written notice within 3 working days of unloading of any defect in the goods.
  - 6.2.2** If you do not give us that notice within the time limit the goods will be deemed to have been delivered in good condition
- 6.3**
  - 6.3.1** Where it is or would be apparent on reasonable inspection the goods are not in conformity with the contract or (where the contract is a contract for sale by sample) the bulk does not compare with the sample you must advise us by telephone immediately and give us written notice within 3 working days of inspection.
  - 6.3.2** If you fail to give us the notice within that time limit the goods will be deemed to have been accepted by you and you shall not be entitled to irrevocably and unconditionally waive the right to reject the goods.
  - 6.3.3** If you fail to give us that notice within that time clause 8 shall have effect.

## **7. TITLE AND RISK**

- 7.1** Risk in the goods shall pass to you when the goods are delivered
- 7.2** 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.
- 7.3** Until title passes:-
  - 7.3.1** You shall hold as our fiduciary agent and bailee
  - 7.3.2** 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 of the goods
  - 7.3.3** We agree that you may use or agree to sell the goods as principal and not as our agent 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 shall at all times be identifiable as our money.
- 7.4** 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 and 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.

## **8. LIABILITIES**

- 8.1** Nothing in these terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation
- 8.2** Subject to clause **8.1** of these terms we shall not be liable by reason for any misrepresentation (unless fraudulent) or any breach of warranty condition or other term expressed or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability and damages we undertake the liability under clause **8.3** below.
- 8.3** 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 in 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 paid for the relevant goods.
- 8.4** We will not be liable under clause **8.3**:-
- 8.4.1** If a defect arises from fair wear and tear
- 8.4.2** If a defect arises from wilful damage negligence abnormal working conditions mis-use alteration or repair of the goods failure to follow British standards or industry instructions relevant to the goods or storage of the goods in unsuitable conditions (but this sub clause shall not apply to any act or omission on our part).
- 8.4.3** Unless after the 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 cost of suspending works are relevant to the determination of what constitutes a 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.
- 8.4.4** If the defect would have been apparent on a reasonable inspection under clause **6.1** of these terms at the time of unloading unless you advised us by telephone immediately and written notice of any claim is given to us within 3 working days of the time of unloading; or in any other case.
- 8.4.5** If a defect is discovered within 4 months of the date of delivery and we are given written notice of the defect within 3 working days of it being discovered.

- 8.5** If the goods are not manufactured by us or have been processed or supplied by a third party whether or not at our or your request our liability in respect of any defect in workmanship or materials for the goods will be limited to such rights against the manufacturer or the third party as we may have in respect of those goods.
- 8.6** If the goods are manufactured processed or milled by us to the design quantity measurement or specification of you or your agents then:
- 8.6.1** Subject to clause **8.1** of these terms we shall not be under any liability for damages whatsoever under clause **8.3** of these terms as the clause may be except in the event of:-
- 8.6.1.1** Fraudulent misrepresentation
- 8.6.1.2** Misrepresentation where the representation was made or confirmed by us to you in writing.
- 8.6.1.3** Non compliance with such design quantity measurement or specification
- 8.6.1.4** Breach of written warranty from us to you that the goods are fit for that purpose or
- 8.6.1.5** A claim maintainable against us pursuant to clause **8.1** of these terms
- 8.6.2** You will unconditionally and fully and effectively indemnify us against all loss damage 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 other industrial or intellectual property rights of any other person.
- 8.6.3** You will further unconditionally fully and effectively indemnify us against all loss damage 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.
- 8.7** You will unconditionally fully and effectively indemnify us against all loss damage 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 or in any claim by any third party arising from the supply or use of the goods this indemnity will be reduced in proportion to the extent of such loss damage cost and expenses are due to our negligence.
- 8.8** 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 or default on our part (whether arising from our negligence or otherwise) shall not exceed the purchase price of the goods the subject matter of any claim.

## **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 (as amended from time to time) the levying or the threat of execution or distress on any of your property or appointment of a receiver or administrative receiver over all or any part of your property; proposal for voluntary arrangement or compromise between you and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution or voluntary winding up or summoning a meeting to pass such a resolution otherwise than for the purpose of a bona fide amalgamation or reconstruction; presentation of a petition for your winding up or for an administration order in relation to you; if you suffer any analogous step proceedings under foreign law or if you cease or threaten to cease to carry on your business.

**9.2** If you fail to pay the price for 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 you are a limited company or a partnership there is a material change in your constitution or you commit a material breach of this contract and fail to remedy that breach or 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 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 generality of clause **7** of these terms exercise any of our rights pursuant to that clause.

**9.3** If we reasonably incurred third party costs such as tracing or debt collection agency costs or seek legal advice or take proceedings to enforce our rights as a result of your breach of this contract including but not limiting recovery to sums due, you will reimburse us such reasonable agency costs or legal costs incurred by us on an indemnity basis.

## **10. GENERAL**

**10.1** This contract shall be governed and interpreted in accordance with the law of England and Wales and you agree to submit to the exclusive jurisdiction of the English Courts.

**10.2** 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.

- 10.3** The waiver by us of any breach or default under these terms shall be not construed as a continued waiver of that breach nor as a waiver of any subsequent breach or the same or any other provision.
- 10.4** 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.
- 10.5** We may assign novate or sub contract 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.
- 10.6** Nothing in this contract is intended to or will grant any right to any third party to enforce any terms of this contract whether expressed or implied.