

Conditions of Sale B & B Attachments Ltd

1 Definition

1.1 In these Conditions "B & B" shall mean B & B Attachments Limited
"Customer" shall mean the person who accepts a quotation of B & B for the sale of the Goods or whose order for Goods is accepted by B & B
"Goods" means the goods (including any instalment of the goods or any part of them) which B & B is to supply in accordance with these conditions
"Contract" means the contract for the purchase and sale of the Goods

2 Prices and Payment

2.1 The price payable by the Customer shall be the price ruling at the date of despatch of the Goods by B & B to the Customer notwithstanding any other price or prices indicated, estimated or quoted to the Customer and B & B reserves the right to increase the price of the Goods at any time before delivery on giving notice to the Customer
2.2 All prices are given by B & B on an ex works basis and the Customer shall be liable to pay B & B's charges for transport packaging and insurance. The price is exclusive of any applicable Value Added Tax which the Customer shall in addition pay to B & B
2.3 The Customer shall pay the price of the Goods within 30 days after the date of B & B's invoice or the date for payment specified therein and B & B shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract
2.4 If the Customer fails to make payment on the due date then B & B shall be entitled to:
2.4.1 cancel the Contract or suspend any further deliveries to the Customer
2.4.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the customer and B & B) as B & B may think fit notwithstanding any purported appropriation by the Customer and
2.4.3 charge the Customer interest both before and after any judgement on the amount unpaid at the rate of 11/2% per annum above Lloyds Bank plc base rate from time to time until payment in full is made prior to the month being treated as a full month for the purpose of calculating interest

3 Orders & Specification

3.1 No orders submitted by the Customer shall be deemed to be accepted by B & B unless and until confirmed in writing by B & B's authorised representative
3.2 The Customer shall be responsible to B & B for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving B & B any necessary information relating to the Goods within a sufficient time to enable B & B to perform the Contract in accordance with its terms
3.3 The quantity quality and description of and any specification for the Goods shall be those set out in B & B's quotation if accepted by the Customer or the Customer's order accepted by B & B
3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by B & B in accordance with a specification submitted by the Customer, the Customer shall indemnify B & B against all loss damages costs and expenses awarded against or incurred by B & B in connection with or paid or agreed to be paid by B & B in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from B & B's use of the Customer's specification
3.5 B & B reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EEC requirements or where the Goods are to be supplied to the Customer's specification which do not materially affect their quality or performance
3.6 B & B may be cancelled by the Customer except with the agreement in writing of B & B and on terms that the Customer shall indemnify B & B in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by B & B as a result of cancellation
3.7 B & B may cancel the Contract at any time before the Goods are delivered by giving written notice. On giving such notice B & B shall promptly repay to the Customer any sums paid in respect of the price. B & B shall not be liable for any loss or damage whatever arising from such cancellation

4 Risk and Title

4.1 Risk of damage to or loss of the Goods shall pass to the Customer
4.1.1 in the case of Goods to be delivered at B & B's premises at the time when B & B notifies the Customer that the Goods are available for collection or
4.1.2 in the case of Goods to be delivered otherwise than at B & B's premises at the time of the delivery or if the Customer wrongfully fails to take delivery of the Goods at the time when B & B has tendered delivery of the Goods

4.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until B & B has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by B & B to the Customer for which payment is then due

4.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as B & B's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as B & B's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to B & B for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured

4.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) B & B shall be entitled at any time to require the Customer to deliver up the Goods to B & B and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

4.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of B & B, but if the Customer does so all moneys owing by the Customer to B & B shall (without prejudice to any other right or remedy of B & B) forthwith become due and payable

5 Delivery

5.1 Delivery of the Goods shall be made by B & B delivering the Goods to the Customer's premises (unless some other place for delivery or collection by the Customer from B & B's premises is agreed)
5.2 Any dates quoted for delivery of the Goods are approximate only and B & B shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence
5.3 If B & B fails to deliver the Goods for any reason other than any cause beyond B & B's reasonable control or the Customer's fault, and B & B is accordingly liable to the Customer, B & B's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
5.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by B & B to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated

6 Information/Health and Safety

B & B will provide to the Customer information as to the proper and safe use of the Goods and the Customer warrants it will at all times obey and comply with B & B's instructions or other information relating to the use of the Goods

7 Technical Drawing and Copyright

7.1 The specification and design of the Goods (including the copyright design right or other intellectual property in them) shall as between the parties be the property of B & B. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of B & B the Customer warrants that the use of those designs or specifications for the manufacture processing assembly or supply of the Goods shall not infringe the rights of any third party

7.2 The Customer hereby agrees fully and effectively to indemnify B & B on demand for and against all proceedings, costs, claims, damages and expenses suffered or incurred by B & B arising out of any use of those designs and specifications in breach of copyright of any third party

7.3 All specifications drawings and designs supplied to the Customer by B & B are returnable forthwith upon request and shall not without the previous consent in writing of B & B disclosed or made available to any third party

8 Warranties and liability

8.1 Subject to the conditions set out below B & B warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from delivery
8.2 The above warranty is given by B & B subject to the following conditions:

8.2.1 B & B shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer
8.2.2 B & B shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow B & B's instructions (whether oral or in writing), misuse or oxidation or repair of the Goods without B & B's approval or any repair effected with B & B's approval but using parts not supplied by B & B
8.2.3 B & B shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment or if the Goods have not been used or maintained in accordance with recommendations from B & B

8.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
8.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to B & B within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify B & B accordingly, the Customer shall not be entitled to reject the Goods and B & B shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. Goods rejected by the Customer (for whatever reason) shall be returned to B & B by the Customer carriage paid in their original packaging

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to B & B in accordance with these Conditions, B & B shall be entitled to replace the Goods (or the part in question) free of charge or, at B & B's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) but B & B shall have no further liability to the Customer. B & B may at its option and the Customer's cost effect repairs to or replacement of the Goods if such repair or replacement is (in B & B's opinion) necessary to remedy any defect caused by the Customer

8.6 Except in respect of death or personal injury caused by B & B's negligence, B & B shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of B & B, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer except as expressly provided in these Conditions

8.7 Without prejudice to any other limitation or exclusion of liability under these Conditions B & B's total liability for any one claim or the total of all claims arising from any one act or default of B & B (whether arising from B & B's negligence or otherwise) shall not exceed the price of the Goods through which the loss or damage arises

8.8 B & B shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of B & B's obligations in relation to the Goods, if the delay or failure was due to any cause beyond B & B's reasonable control

9 Insolvency of Customer

9.1 This clause applies if:
9.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
9.1.3 the Customer ceases, or threatens to cease, to carry on business; or
9.1.4 B & B reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly
9.2 If this clause applies then, without prejudice to any other right or remedy available to B & B, B & B shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

10 Export terms

10.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Customer and B & B) apply notwithstanding any other provision of these Conditions
10.2 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 thereon
10.3 Unless otherwise agreed in writing between the Customer and B & B, the Goods shall be delivered FOB the air or sea port of shipment and B & B shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979

10.4 The Customer shall be responsible for arranging for testing and inspection of the Goods at B & B premises before shipment. B & B shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit

11 General

11.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

11.2 No waiver by B & B of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

11.3 The provisions of these Conditions of sale shall be read and construed according to English law and the parties submit to the exclusive jurisdiction of the English Courts

11.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice