

M Barnwell Services Ltd.

Terms & Conditions Of Sale



1 In these conditions:

- i "the Seller" means M Barnwell Services Ltd and Associated Companies;
- ii "the Purchaser" means the person who accepts the quotation of the Seller for the sale of goods and whose order for goods is accepted by the Seller;
- iii "Conditions" means standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Buyer and the Seller;
- iv "Contract" means the Contract of Sale and Purchase of the goods;
- v "delivery date" means the date specified by the Seller when the goods are to be delivered.

2 Price

- 2.1 Unless previously withdrawn, all quotations are open for acceptance for a period of thirty days from the date of the quotation. All quotations must be accepted by the Purchaser in writing and confirmed by the Seller in writing to create a Contract.
- 2.2 The price of the goods shall be as stated in the Order and unless otherwise stated shall be:-
 - 2.2.1 The Seller's quoted price or, where no quotation is given, the price listed by the Seller in the published price list at the date the Order is made.
 - 2.2.2 The price shall be exclusive of any applicable Value Added Tax which shall be payable by the Buyer subject to receipt of a VAT invoice.
 - 2.2.3 Ledger accounts are opened subject to satisfactory references. Payment is due thirty days from the date of the invoice.

3 Delivery

- 3.1 Delivery dates are approximate and delay in delivery shall not give the Purchaser the right to cancel any Order.
- 3.2 Delivery of the goods shall be made to the Buyer's address shown on the delivery note at the date notified to the Buyer by the Seller. The Buyer shall make all the arrangements necessary to take delivery of the goods when they are tendered for delivery.
- 3.3 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the goods or any of them promptly or at all.
- 3.4 The Seller may deliver the goods by separate instalments in accordance with the pre-delivery Schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract of Sale. The failure of the Buyer to pay for one or more of the said instalments on the due date shall entitle the Seller without notice to suspend further delivery of the goods pending payment by the Buyer and/or to treat this Contract as repudiated by the Buyer.

4 Buyer

Neither the Seller nor the Buyer shall be liable to each other or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the goods or services, if the delay or failure was beyond that party's reasonable control.

5 **Risk**

- 5.1 The goods shall be delivered to the Buyer at the Buyer's address. The risk in the goods shall pass to the Buyer upon such delivery taking place.
- 5.2 The Seller shall arrange for the carriage of goods to the Buyer's address. The cost of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatever and shall be due for payment of the price on the date. The carrier shall be deemed to be the Buyer's Agent.

6 **Non-Delivery**

Notification of non-delivery shall be made twenty-one days from the date of the advice note. Damage or discrepancy shall be notified within three days of receipt of goods.

7 **Variation in quantity**

We reserve the right to deliver and invoice up to 10% more or less than the quantity ordered of special goods or material.

8 **Title**

- 8.1 In spite of delivery having been made, property of the goods shall not pass to the Seller until:-
- 8.1.1 The Buyer shall pay the price and VAT in full.
- 8.1.2 No other sums whatsoever shall be due from the Buyer to the Seller.
- 8.2 Until the property in the goods passes to the Buyer in accordance with Clause 8.1, the Buyer shall hold the goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the goods at no cost to the Seller separately from all other goods in its possession and mark them in separate ways so as they are identifiable as the Seller's property.
- 8.3 The Seller shall be entitled to recover the price plus VAT notwithstanding that the property of goods has not passed from the Seller. Notwithstanding that the goods or any of them remain the property of the Seller, the Buyer may sell or use the goods in the ordinary course of the Buyer's business.

9 Goods supplied by the Seller are guaranteed only against faulty workmanship and defective material. Any goods which within twelve months from the delivery date prove to be defective when delivered will be replaced free of charge. The above guarantee is given by the Seller subject to the following conditions:-

- 9.1 The Seller shall be under no liability in respect of any defect in the goods arising from any drawing design or specification supplied by the Buyer.
- 9.2 The goods have at all material times been used and maintained in accordance with instructions as to operational use and maintenance detailed in the manuals and instruction sheets provided by the Seller to the Buyer from time to time.
- 9.3 Ownership of replaced goods shall revert to the Seller.
- 9.4 The Seller shall be under no liability in respect of any defect in respect of fair wear and tear or for damage, negligence, misuse or alteration or repair to the goods without the Seller's approval.
- 9.5 The Seller shall be under no liability under the above guarantee if the total price of the goods has not been paid by the due date for payment

10 The Seller may cancel the Contract at any time before the goods are delivered by giving written notice. On giving such notice, the Seller will promptly repay to the Buyer any sums paid in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

11 **General**

11.1 The Seller may licence or sub-contract all or any part of its rightful obligations under this Contract without the Buyer's consent.

11.2 No waiver by the Seller or any breach of contract by the Buyer shall be considered the waiver of any subsequent breach of the same or any other provision.

11.3 The contract shall be governed by the Laws of England.