

**Zehnder****Terms of Trading**

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| <b>1</b> | <b>Price</b>  |
| 1.1      | The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.  |
| 1.2      | Our quotations lapse after 90 days (unless otherwise stated).   |
| 1.3      | The price quoted includes delivery (unless otherwise stated).   |
| 1.4      | Unless otherwise stated, the price quoted is an illustrative estimate only and the price charged will be our price current at the time of delivery.   |
| 1.5      | Rates of tax and duties on the goods will be those applying at the time of delivery.  |
| 1.6      | At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.  |
| <b>2</b> | <b>Delivery</b>   |
| 2.1      | All delivery times quoted are estimates only.   |
| 2.2      | If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:  |
| 2.2.1    | you may not cancel if we receive your notice after the goods have been dispatched; and  |
| 2.2.2    | if you cancel the contract, you can have no further claim against us under that contract.   |
| 2.3      | If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).   |
| 2.4      | If for any reason you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided adequate instructions, or if you do not collect the goods by the date we give for collection, we may:  |
| 2.4.1    | treat the goods as having been delivered on that day (for the purposes of risk, inspection and payment); and  |
| 2.4.2    | charge you for the storage and redelivery of those goods.   |
| 2.5      | We may deliver the goods in instalments. Each instalment is treated as a separate contract.   |
| 2.6      | We may decline to deliver if:   |
| 2.6.1    | we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or   |
| 2.6.2    | the premises (or the access to them) are unsuitable for our vehicle.  |
| <b>3</b> | <b>Risk</b>   |
| 3.1      | The goods are at your risk from the time of delivery.   |
| 3.2      | Delivery takes place either:  |
| 3.2.1    | when the goods are loaded at our premises (if you are collecting them or arranging carriage); or  |
| 3.2.2    | when the goods are unloaded at your premises or address specified by you (if we are arranging carriage).  |
| 3.3      | You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within three days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods or verify the shortage. If you fail to notify us in accordance with these requirements, you will not be entitled to reject the goods and will be deemed to have accepted the goods in accordance with the contract. |
| <b>4</b> | <b>Payment terms</b>  |
| 4.1      | You are to pay us in cleared funds prior to delivery, unless you have an approved credit account.   |
| 4.2      | If you have an approved credit account, payment is due no later than 30 days following the end of the month in which the goods are delivered, unless otherwise agreed in writing.   |
| 4.3      | If you fail to pay us in full on the due date we may:   |
| 4.3.1    | suspend or cancel future deliveries;  |
| 4.3.2    | cancel any discount offered to you;   |
| 4.3.3    | charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;  |
|          | a. calculated (on a daily basis) from the date of our invoice until payment;  |
|          | b. compounded on the first day of each month; and   |
|          | c. before and after any judgment (unless a court orders otherwise);   |
| 4.3.4    | claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and  |
| 4.3.5    | recover (under clause 4.7) the cost of taking legal action to make you pay.   |
| 4.4      | If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.   |
| 4.5      | You do not have the right to set off any money you may claim from us against anything you may owe us.   |
| 4.6      | While you owe money to us, we have a lien on any of your property in our possession.  |
| 4.7      | You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.  |
| <b>5</b> | <b>Title</b>  |
| 5.1      | Until you pay all debts you may owe us:   |
| 5.1.1    | all goods supplied by us remain our property;   |
| 5.1.2    | you must store them in suitable conditions and so that they are clearly identifiable as our property;   |
| 5.1.3    | you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;   |
| 5.1.4    | you may use those goods and sell them in the ordinary course of your business, but not if:  |
|          | a. we revoke that right (by informing you in writing); or   |
|          | b. you become insolvent.  |
| 5.2      | You must inform us (in writing) immediately if you become insolvent.  |
| 5.3      | If your right to use and sell the goods ends you must allow us to remove the goods.   |
| 5.4      | We have your permission to enter any premises where the goods may be stored:  |
| 5.4.1    | at any time, to inspect them; and   |
| 5.4.2    | after your right to use and sell them has ended, to remove them, using reasonable force if necessary.   |
| 5.5      | Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.  |
| 5.6      | You are not our agent. You have no authority to make any contract on our behalf or in our name.   |

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**Warranties**

We warrant that the goods:  
comply with their description on our order acknowledgement form; and  
be free from material defect;  
for a period of two years from the date of delivery (as long as you comply with clause 6.3).  
We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.  
If you believe that we have delivered goods that are defective in materials or workmanship, you must:  
inform us (in writing), with full details, as soon as possible and in any case within two years from the date of delivery; and  
allow us to investigate (we may need access to your premises and product samples).  
If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 6.3) in full, we will (at our option) repair or replace the goods.  
We cannot accept liability in respect of any defect arising from fair wear and tear, willful damage, mis-use, abnormal working conditions, failure to follow our instructions, or the alteration or repair of the goods without our or the manufacturer's approval.  
Where we are not the manufacturer of the goods or parts, our liability is limited to any benefit that we may receive under any guarantee given by the manufacturer of the goods or parts.  
We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.  
Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to the appropriate amount of insurance we have in place when the contract is performed.  
For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.  
Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

**Specification and Samples**

We cannot accept liability for failure of the goods to attain any performance figures quoted by us unless we have specifically guaranteed them to you in writing.  
If we prepare the goods in accordance with your specifications or instructions you must ensure that:  
the specifications or instructions are accurate;  
goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and  
your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.  
We are not responsible for the performance or suitability of goods manufactured in accordance with your specifications and instructions.  
We reserve the right;  
to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and  
to make without notice any minor modifications in our specifications we think necessary or desirable.  
All samples supplied are for illustrative purposes only and remain our property. All samples are to be returned to our office, carriage paid within one month of receipt unless we agree otherwise in writing.  
We will make available on request information regarding the design, construction and installation of the goods to ensure that, as far as is reasonably practicable, they are safe and without risk when properly used. It is your responsibility to take such steps as are necessary to ensure that the appropriate information is made available to any person to whom you supply the goods or to whom you reasonably consider would require such information.

**Return of goods**

We will only accept the return of goods from you in exceptional circumstances and where the goods are part of our stock range, we cannot accept the return of bespoke goods. Returned goods will only be accepted;  
by prior arrangement (confirmed in writing);  
on payment of an agreed handling charge (unless the goods were defective when delivered); and  
where the goods are as fit for sale on their return as they were on delivery.

**Export terms**

Where the goods are supplied by us to you by way of export from the United Kingdom Clause 9 of these terms applies (except to the extent that it is inconsistent with any written agreement between us).  
The Incoterms of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.  
Unless otherwise agreed, the goods are supplied ex works our place of manufacture.  
Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.  
We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

**Cancellation**

You may not cancel the order unless we agree in writing (and clauses 2.2.2 and 10.2 then apply).  
If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.  
We may suspend or cancel the order, by written notice if:  
you fail to pay us any money when due (under the order or otherwise);  
you become insolvent;  
you fail to honour your obligations under these terms.

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**Waiver and variations**

Any waiver or variation of these terms is binding in honour only unless:  
made (or recorded) in writing;  
signed on behalf of each party; and  
expressly stating an intention to vary these terms.  
All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

**Force majeure**

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.  
Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

**General**

English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.  
If you are more than one person, each of you has joint and several obligations under these terms.  
If any of these terms are unenforceable as drafted:  
it will not affect the enforceability of any other of these terms; and  
if it would be enforceable if amended, it will be treated as so amended.  
We may treat you as insolvent if:  
you are unable to pay your debts as they fall due; or  
you (or any item of your property) become the subject of:  
a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);  
b. any application or proposal for any formal insolvency procedure; or  
c. any application, procedure or proposal overseas with similar effect or purpose.  
All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.  
Any typographical, clerical or other error or omission in any literature, quotation, price list, or other document issued by us will be subject to correction without liability being incurred by us.  
Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.  
No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.  
The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:  
contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or  
which expressly state that you may rely on them when entering into the contract.  
Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

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