

## Brooks Bros Terms of Trading Ref: MCF 1/6/10

### 1 BUSINESS CUSTOMERS AND CONSUMERS

- 1.1 Some of these terms apply to consumers only, some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers.
- 1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
- 1.4 If you are not a business customer, you are a consumer. You have certain statutory rights as a consumer which are not affected by these terms. Contact your local trading standards office for more information. Words in *italics* are legal words which clarify, rather than alter, the meaning of the relevant clause.

### 2 PRICE

- 2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Our quotations lapse after 30 days (unless otherwise stated).
- 2.3 The price quoted includes delivery (unless otherwise stated).
- 2.4 Business customers only: unless otherwise stated, the price quoted to business customers is an illustrative estimate only and the price charged will be our price current at the time of delivery.
- 2.5 Business customers only: rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.6 Business customers only: at any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

### 3 DELIVERY

- 3.1 All delivery times quoted are estimates only.
- 3.2 If we fail to deliver within a reasonable time after the quoted delivery time, you may (by informing us in writing) cancel the contract, however:
  - 3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
  - 3.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 3.3 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).
- 3.4 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
- 3.5 We may decline to deliver if:
  - 3.5.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
  - 3.5.2 the premises (or the access to them) are unsuitable for our vehicle.

### 4 RISK

- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
  - 4.2.1 at our premises (if you are collecting them or arranging carriage); or
  - 4.2.2 at your premises or address specified by you (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within five days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods.

### 5 PAYMENT TERMS

- 5.1 You are to pay us in cash or in cleared funds prior to delivery, unless you have an approved credit account.
- 5.2 Business customers only: If you have an approved credit account, payment is due no later than 30 days after the end of the month on which the invoice is dated, unless otherwise agreed in writing.
- 5.3 If you fail to pay us in full on the due date we may:
  - 5.3.1 suspend or cancel future deliveries;
  - 5.3.2 cancel any discount offered to you;
  - 5.3.3 Business customers only: 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. before and after any judgment (unless a court orders otherwise);
  - 5.3.4 Consumers only: Charge you interest at a rate equivalent to the rate set for business debts under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;
  - 5.3.5 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
  - 5.3.6 recover (under clause 5.8) the cost of taking legal action to make you pay.
- 5.4 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 take any of these actions at any time and without notice.
- 5.5 Business Customers only: you do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.6 Consumers only: you may only set off money you claim from us against money you owe us with our written agreement and on such terms as we may state.
- 5.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (a lien).
- 5.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs, legal costs on a full indemnity basis

and the costs of instructing a debt collection agency to recover a debt due to us if any) following any breach by you of any of your obligations under these terms.

- 5.9 Consumers only: clause 5.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim those losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.

### 6 TITLE

- 6.1 Consumers only: your statutory rights are unaffected.
- 6.2 Business customers only: until you pay all debts you may owe us:
  - 6.2.1 all goods supplied by us remain our property;
  - 6.2.2 you must store them so that they are clearly identifiable as our property;
  - 6.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
  - 6.2.4 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.
- 6.3 Business customers only: you must inform us (in writing) immediately if you become insolvent.
- 6.4 Business customers only: if your right to use and sell the goods ends you must allow us to remove the goods.
- 6.5 Business customers only: we have your permission to enter any premises where the goods may be stored:
  - 6.5.1 at any time, to inspect them; and
  - 6.5.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.6 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.
- 6.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.

### 7 WARRANTIES

- 7.1 We warrant that the goods:
  - 7.1.1 comply with their description on our acknowledgement of order form; and
  - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.4).
- 7.2 Business customers only: 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.
- 7.3 Consumers only: the warranty in clause 7.1 is in addition to your statutory rights and the following limitations of liability are subject to such statutory rights.
- 7.4 If you believe that we have delivered goods which are defective in material or workmanship, you must:
  - 7.4.1 inform us (in writing), with full details, as soon as possible; and
  - 7.4.2 allow us to investigate (we may need access to your premises and product samples).
- 7.5 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 7.4) in full, we will (at our option) repair the goods, replace the goods or refund the price.
- 7.6 We are not liable for any other loss or damage arising from the contract or the supply of goods or their use, even if we are negligent, including (as examples only):
  - 7.6.1 direct financial loss, loss of profits or loss of use; and
  - 7.6.2 indirect or consequential loss
- 7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to £5,000,000.00.
- 7.8 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 7.9 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.
- 7.10 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

### 8 SPECIFICATION

- 8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:
  - 8.1.1 the specifications or instructions are accurate;
  - 8.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
  - 8.1.3 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.
- 8.2 Business Customers only: We reserve the right;
  - 8.2.1 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
  - 8.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.

### 9 RETURN OF GOODS

- 9.1 We will accept the return of goods from you only:
  - 9.1.1 by prior arrangement (confirmed in writing);
  - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered) and
  - 9.1.3 where the goods are as fit for sale on their return as they were on delivery.

### 10 EXPORT TERMS

- 10.1 Clause 10 of these terms applies (except to the extent that it is inconsistent with any written agreement between us) where

we supply the goods over an international border or overseas.

- 10.2 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 over the Incoterms to the extent that there is any inconsistency.
- 10.3 Unless otherwise agreed, the goods are supplied ex works our place of manufacture.
- 10.4 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.
- 10.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.
- 10.6 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).

### 11 CANCELLATION

- 11.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).
- 11.2 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.
- 11.3 We may suspend or cancel the order, by written notice if:
  - 11.3.1 you fail to pay us any money when due (under the order or otherwise);
  - 11.3.2 you become insolvent;
  - 11.3.3 you fail to honour your obligations under these terms.

### 12 WAIVER AND VARIATIONS

- 12.1 No failure or delay by us in enforcing any of our rights shall constitute a waiver of any of our rights. No waiver shall be effective unless in writing signed by us.
- 12.2 No variation of these terms is binding unless:
  - 12.2.1 made (or recorded) in writing;
  - 12.2.2 signed on behalf of each party; and
  - 12.2.3 expressly stating an intention to vary these terms.
- 12.3 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 terms you may have to the extent that they are inconsistent with our terms.

### 13 FORCE MAJEURE - BUSINESS CUSTOMERS ONLY

- 13.1 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.
- 13.2 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.

### 14 GENERAL

- 14.1 English law is applicable to any contract made under these terms. The English courts have non-exclusive jurisdiction.
- 14.2 If you are more than one person, each of you is liable for all of your obligations under these terms (joint and several liability).
- 14.3 If any of these terms are unenforceable as drafted:
  - 14.3.1 it will not affect the enforceability of any other of these terms; and
  - 14.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 14.4 We may treat you as insolvent if:
  - 14.4.1 you are unable to pay your debts as they fall due; or
  - 14.4.2 you (or any item of your property) becomes 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.
- 14.5 Business customers only: 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.
- 14.6 Business customers only: 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.
- 14.7 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.
- 14.8 The only statements upon which you may rely in making the contract with us are those made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:
  - 14.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
  - 14.8.2 which expressly state that you may rely on them when entering into the contract.
- 14.9 Please note that we may transfer personal information about you to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.
- 14.10 You may not assign your rights.