

TERMS OF SALE

1. Terms

- 1.1. These terms govern all contracts for the sale of goods or goods and services, between F Bender Limited ("the Company") and any purchaser of the goods ("the Purchaser"). They can only be varied with the prior written consent of the Company, issued by an authorised representative.
- 1.2. "goods" means all or any part of the items and substances supplied by the Company to the Purchaser and "contract" means any contract between the Company and the Purchaser for the sale of goods.
- 1.3. The clause headings do not form part of the contract.

2. Delivery and Specifications

- 2.1. Time shall not be of the essence with regard to delivery and any dates quoted are an estimate only. The Company may make partial deliveries.
- 2.2. Delivery shall take place at the Company's premises unless agreed otherwise in which case any and all extra costs of delivery shall be charged to the Purchaser.
- 2.3. All illustrations and specifications relating to the goods are approximate only and the Company reserves the right to make such alterations as it thinks fit. Performance figures are approximate and not to be relied upon.
- 2.4. The Purchaser agrees that an order for goods by reference to a product name, number or description shall be to the Company's basic standard version of those goods and that supply of them will fulfil the Company's obligations.
- 2.5. The Company will endeavour to match colours in printing designs, logos, etc onto the goods, but perfect colour match shall not be required.
- 2.6. Where goods are supplied by the Company with barcode identification, reasonable efforts shall be made to ensure such codes are clear and decipherable by the Purchaser. However, the Company shall not be liable for any loss arising from unreadable or indecipherable barcodes.
- 2.7. If the Company is unable to deliver the quantity of goods contracted for it shall be entitled to deliver such quantity as it can deliver and charge accordingly. In any event, the Company may deliver up to 15% more or less in quantity (however measured) than stipulated by the Purchaser, and the Purchaser shall pay for the quantity actually delivered.
- 2.8. If the Purchaser does not accept delivery of the goods when tendered, risk in them passes to the Purchaser, and the Company may pass on to the Purchaser any and all additional costs and expenses incurred from, but not limited to, storage and delivery thereof.
- 2.9. The Company reserves the right to refuse to supply any and all undelivered orders to the Purchaser in the event that, at the time of ordering, the Purchaser is deemed by the Company to be in breach of any of the terms or conditions of the contract, or there are amounts which the Company deem overdue for payment at the time of the Purchaser placing an order and/or the Purchaser's trading account is over the credit limit allocated by the Company.

3. Cancellation

The Purchaser shall indemnify the Company against all loss (including loss of profit) or expense however indirect or remote resulting from cancellation or other breach of the contract by the Purchaser.

4. Prices

- 4.1. All prices quoted are exclusive of any taxes duties or charges, packing costs and transport costs from the Company's premises unless otherwise stated. Quotations are valid for 30 days or until withdrawn, if earlier.
- 4.2. If no price is quoted, it shall be the Company's standard list price at the date of order.

4.3. The Company reserves the right to vary the price of the goods by a reasonable amount attributable to any changes in the cost to the Company of purchasing the goods or any materials incorporated in them, or procuring necessary services, or to fluctuations in currency exchange rates between the date of the contract and the date of delivery of the goods.

5. Payment

5.1. Payment is due immediately on order unless otherwise agreed in writing. Interest will be charged on accounts at the rate of 2% per calendar month or part in which payment is overdue. Interest remains payable after Judgment.

5.2. Any additional credit terms or limits must be agreed in writing by authorised representatives of the Company and the Purchaser prior to supply. Credit terms and limits the Company chooses to offer will be agreed with the Purchaser in writing under separate cover, however will be deemed to be an inclusive term of the contract. If the Purchaser does not provide written agreement to the offered credit terms and limits prior to placing an order (usually at the time of opening the account), then any and all orders will be accepted on a cash with order basis only. The Company reserves the right to withdraw any or all additional credit terms and limits at any time if in the view of the Company the Purchaser is in breach of any of the terms of the contract.

6. Set-off and Lien

6.1. No payments may be withheld nor may any counterclaims of the Purchaser be set off against any payment due.

6.2. To secure any amount payable or claimed on any account, the Company shall have a general and particular lien on all money and property which the Purchaser owns or is entitled to possess and may sell it as the Purchaser's agent to reduce the Purchaser's liability to the Company.

7. Force Majeure

The Company shall not be liable for any non-performance of its obligations due to causes beyond the reasonable control of the Company or of the Company's suppliers, or due to labour disputes, or unavailability of stocks, equipment or personnel.

8. Claims

8.1. The Company shall not be liable for any claim in respect of goods or services alleged to be defective unless made in writing to the Company within seven days of delivery and any allegedly defective goods are returned for inspection by the Company.

8.2. The Company shall not be liable for any claims for loss or damage to the goods in transit unless the goods were then at the risk of the Company and the claim is made in writing to the Company within a period of seven days from the date of delivery or within 3 days from when the goods should have been delivered.

9. Warranty and Representations

9.1. Where goods manufactured and supplied by the Company and in use for the purpose for which they are supplied are within one month of the date of delivery by the Company proved to be defective in materials or workmanship then the Company at its discretion may (a) replace such goods or (b) allow the Purchaser a reasonable credit in respect of such goods. The warranty is invalidated where there has been misuse of or tampering with the goods.

9.2. Subject to 9.1 where goods which are defective or out of specification ("defective") form part of a single batch, the Purchaser shall test a random sample of suitable size of goods from that batch. If more than 50% of the sample is defective, the Purchaser may reject the whole batch. If 50%

- or less are defective the Purchaser may reject only such goods as are proven to be defective.
- 9.3. The Purchaser confirms that it relies only on the Company's written warranties and representations and not verbal ones. The Purchaser warrants that he has disclosed to the Company in writing all matters which may affect the fitness for their purpose of goods supplied or the effectiveness of services rendered. The conditions of the contract are limited to those stated in writing by the Company.

10. Limitation of liability

- 10.1. The warranty contained in Clause 9.1 does not extend to any goods not manufactured by the Company which shall carry only the warranty (if any) of their maker (if transferable).
- 10.2. The terms of Clause 9 are in lieu of all other express or implied conditions and warranties.
- 10.3. Except in relation to that part of a claim which relates to death or personal injury, the Company's aggregate liability in tort and/or for breach of contract and/or for misrepresentation and/or for breach of statutory duty in connection with the goods/services shall not exceed the greater of (1) the sum paid to (and to be kept by) the Company for the goods/services in relation to which such liability may have arisen and (2) the amount of insurance cover actually provided to the Company to meet the claim. The Company shall have no liability in any case for loss of revenue, profit or indirect or consequential loss. To the extent that the law may prevent such limitation of liability to a third party, the Purchaser will indemnify against any claim in excess of this limit.
- 10.4. The parties have freely negotiated the contract including the price in the knowledge that the liability of the Company is to be limited. A higher price would be payable but for such limitation.

11. Risk

- 11.1. Risk in the goods shall pass to the Purchaser on delivery.
- 11.2. Until title passes to the Purchaser it shall indemnify the Company against all loss or damage to the goods or depreciation in their value and shall keep them fully insured.

12. Title

- 12.1. Title to goods remains with the Company until the Purchaser pays to the Company the full price for those goods and any other sums owing to or claimed by the Company on any account.
- 12.2. Until title passes to the Purchaser, the Purchaser shall not deal with or dispose of the goods other than for full value in its normal course of business. Any permission to deal with the goods ceases immediately if the Purchaser becomes subject to or commences any formal or informal insolvency procedures or any creditor enforces its security against the Purchaser.
- 12.3. Until title passes, the Company may at any time (regardless of any period of credit given to the Purchaser) enter onto the premises of the Purchaser or of its agents or customers to repossess all or part of the goods and any products without prejudice to any rights of the Company.
- 12.4. Until title passes, the goods shall be stored separately by the Purchaser and clearly identifiable as the property of the Company.
- 12.5. Where goods belonging to the Company are stored in common with similar items belonging to others, it shall be conclusively presumed (regardless of any evidence to the contrary) that the Company's goods are withdrawn last from store.
- 12.6. The Purchaser shall hold the goods as bailee for the Company and shall be fiduciary for the Company in respect

of the goods, any book debt arising from resale of the goods and any proceeds of resale.

13. Intellectual Property Rights

- 13.1. All intellectual property rights in the goods or in any document, invention, design, data, software or information made or compiled in connection with the goods or the contract shall be vested in the Company. The Purchaser shall have a licence to use (but not copy) it as necessary, terminable by the Company.
- 13.2. The Purchaser will immediately notify the Company in writing of any infringement of the Company's intellectual property rights which come to its attention.

14. Indemnity and Insurance by Purchaser

- 14.1. The Purchaser shall insure fully against and shall indemnify the Company against all expenses and liabilities connected with:
- 14.2. Any defect in the goods unless such liability is caused solely by the Company's negligent act or omission in the design or manufacture of the goods (in which case clause 10 applies); or
- 14.3. Any infringement of any intellectual property rights of any third party arising from the design, production, supply, use or sale of the goods or any Product or by the use of any trade mark; or
- 14.4. Any negligent or wilful act or omission of the Purchaser in connection with the use or supply of the goods; or
- 14.5. Any liability or loss arising from or connected with any specification supplied by the Purchaser for the manufacture or processing of goods by the Company; or
- 14.6. Any problems arising from use of EDI.

15. Tests

The Company will if possible carry out at the Purchaser's expense any tests required by the Purchaser on the goods prior to delivery. The Company will on request supply a written report of the test. The result of the test shall be conclusive.

16. Dispensers and Pallets

Where the Company provides the Purchaser with free issue napkin dispensers, pallets or other equipment, these remain the property of the Company. The Purchaser must return such items promptly and in any event immediately on request by the Company. If the Purchaser fails to comply, the Company may charge the customer the retail price if one exists or otherwise the cost of replacement.

17. Termination by Company

If the Purchaser breaches the contract or becomes insolvent the Company may (without prejudice to its other rights) forthwith terminate the contract or any part of it, and/or withhold delivery of goods and demand payment for all goods supplied and work in progress on goods intended for the Purchaser.

18. Rectification/Waiver

- 18.1. If any of these terms or any part of any of these terms is unenforceable or void at law, it shall not affect the remainder of such term or any other such condition or otherwise affect the contract and shall be replaced by such valid term as is as near as may be in effect to the original term.
- 18.2. Partial or non-exercise of the Company's rights shall not amount to a waiver.

19. Data Protection Act 1998

In compliance with the Data Protection Act 1998, customers operating as a partnership or sole trader are hereby given



notice that we may transfer information about you to our bankers/financiers for the purposes of providing services and for the following purposes:-

- Obtaining credit insurance
- Making credit reference agency searches
- Credit control
- Assessment and analysis (including credit scoring, market, product and statistical analysis)
- Securitisation
- Protecting our interests

We will provide you with details of our bankers/financiers and that of any credit reference agencies used on request.

20. Jurisdiction

The contract shall be governed by the laws of England and disputes arising from it shall be subject to the jurisdiction of the English Courts.