

WILLIAM CROXSON & SON LIMITED: GENERAL TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 Definitions

In these Terms and Conditions, the following definitions apply:

Contract: The contract between us and the Purchaser for the sale and purchase of the Goods in accordance with these Terms and Conditions.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: The goods (or any part of them) which we supply to the Purchaser under the Contract.

Intellectual Property Rights or IPRs: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: The Purchaser's order for Goods as set out in a purchase order (or otherwise as requested in writing), or as set out in the Purchaser's written acceptance of our quotation, as the case may be.

Purchaser: The person, firm, limited company or other corporate entity who / which purchases the Goods from us.

Purchaser Materials: any material owned or used by the Purchaser that is or has been incorporated within the Goods, including but not limited to any food, drink or other biological matter.

Specification: any specification for bespoke Goods to be created for the Purchaser by us, as provided by us in writing.

Terms and Conditions: The terms and conditions set out in this document as amended by us from time to time.

William Croxson & Son Limited: William Croxson & Son Limited (CRN: 00071941) whose registered office address is at Unit 1, Brockbourne House, 77 Mount Ephraim, Tunbridge Wells, England, TN4 8BS, referred to as '**we**', '**us**' or '**our**' in these Terms and Conditions.

1.2 Construction

In these Terms and Conditions, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- (b) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (c) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
- (d) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (e) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.
- (f) A reference to writing or written includes faxes and electronic communications.
- (g) In all references to time limits, time shall be of the essence, except where otherwise agreed.

2. BASIS OF THE CONTRACT

2.1 We accept Orders and sell Goods only on these Terms and Conditions. These Terms and Conditions apply to the exclusion of any terms that the Purchaser seeks to impose or incorporate (and automatically take precedence over any such other terms and/or conditions), or which are implied by trade, custom, practice or course of dealing. The Purchaser waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Purchaser that is inconsistent with these Terms and Conditions.

2.2 An Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Terms and Conditions. The Purchaser is responsible for ensuring that the terms of any Order and if applicable, any Specification, are complete and accurate and meet their requirements.

2.3 The Purchaser's act of providing a delivery instruction, accepting delivery or arranging collection of Goods constitutes an unqualified acceptance of these Terms and Conditions.

2.4 The Order shall be deemed to be accepted only when we confirm acceptance of the Order, whether expressly or impliedly, at which point the Contract shall come into existence.

2.5 Any samples, drawings, descriptive matter, weights, dimensions and shipping or other specifications whether submitted with quotations or contained in advertising issued by us and any descriptions or illustrations contained in catalogues or brochures pamphlets and price lists are approximate and explanatory only, issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between us and the Purchaser for the sale of the Goods or be deemed to constitute sale by description.

2.6 A quotation, except otherwise stated, for the Goods given by us shall not constitute an offer. Unless otherwise specified in a quotation, a quotation shall only be valid for a period of 30 calendar days from its date of issue.

3. REFERENCES

We reserve the right to require receipt of satisfactory references (trade, credit agencies, insurers and/or bankers) and subject always to our sole discretion. We reserve the right to require new references at any point. If we have not received reference(s) that we deem to be adequate within the time period that we specify, we reserve the right to stop supplying the Goods until we have received such adequate references.

4. ORDERS AND PAYMENT

4.1 Subject to clause 4.2, the price of the Goods shall be the price set out in the Order acknowledgement, or, if no price is quoted, the price set out in our price list in force at the date of delivery shall apply.

4.2 We may, by giving notice to the Purchaser at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, energy costs, transportation and other manufacturing costs);
- (b) any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give us adequate or accurate information or instructions.

4.3 Any modifications to or cancellation of an Order will only become effective after written notification by the Purchaser (at least one week before due delivery date) and written confirmation by us that the modification or cancellation is accepted.

4.4 Value Added Tax will (if chargeable) be added to the standard prices at the appropriate rate ruling on the date of dispatch.

4.5 The price of the Goods includes the costs and charges of packaging (not including pallets, see clause 7). The cost of pallets, insurance and transport of the Goods are not included in the price, unless stated in a quotation or order acknowledgement.

4.6 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Purchaser or agreed with the Purchaser, the Purchaser agrees indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification. This clause 4.6 shall survive termination of the Contract.

5. PAYMENT

5.1 We may invoice the Purchaser for the Goods on or at any time after completion of delivery. In the case of Goods which the Purchaser has wrongfully failed to accept (see clause 8, 'Delivery'), we may invoice for the Goods (including any storage costs we incur) at any stage after the first failed delivery.

5.2 The Purchaser shall pay each invoice submitted by us in full and cleared funds no later than the last day of the month following the month during which dispatch from our depot or other place for dispatch occurs as shown on the delivery note unless other arrangements have been agreed as part of the contract. Time of payment is of the essence.

5.3 If the Purchaser does not make full payment in cleared funds by the due date, then without limiting any other applicable remedy under these Terms and Conditions, we shall be entitled to:

- (a) charge interest from the due date until payment (both before and after judgment) at the rate of eight per cent above the Base Rate from time to time of the Bank of England; and
- (b) cancel or suspend all further deliveries under the Contract or under any other contract between the Purchaser and us without incurring any liability to the Purchaser.

5.4 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.5 Where Goods have been ordered or made by us and not paid for, we will be entitled at any time to claim and recover reimbursement from you on a full indemnity basis all costs incurred by us including (but not limited to) court, legal and out of pocket costs and expenses in connection with the enforcement of our rights hereunder (including Value Added Tax thereon).

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Purchaser on completion of delivery. Delivery shall be evidenced by the signature of any person employed by the Purchaser on a receipt note for the Goods.
- 6.2 Title to the Goods shall not pass to the Purchaser until we have received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) all other sums which are or which become due to us for sales of the Goods or any other goods or products to the Purchaser.
- 6.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall:
- (a) hold the Goods on a fiduciary basis as our bailee;
 - (b) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as our property and allow us access to the place where the Goods are stored to verify that this has been done;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify us immediately if it becomes subject to any type of insolvency event; and
 - (f) give us such information relating to the Goods as we may require from time to time.
- Nevertheless, the Purchaser may sell the Goods (including where the Goods have been incorporated with any Purchaser Materials) as our agent at full market value at any time prior to payment, provided that:
- (a) the proceeds of sale belong to and shall be held on trust for us;
 - (b) such proceeds shall not be mixed with other money or paid into any overdrawn bank account; and
 - (c) the Purchaser shall immediately account to us therefor.
- 6.4 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any type of insolvency event or we reasonably believe that any such event is about to happen and notify the Purchaser accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product with any Purchaser Materials, and without limiting any other right or remedy we may have, we may at any time require the Purchaser to return the Goods to us and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored, in order to recover them.

7. PALLETS

- 7.1 Unless otherwise agreed, all pallets used for the delivery of the Goods will be invoiced at the then current price and must be paid for by the due date applicable to the Goods, in accordance with clause 5 'Payment'.
- 7.2 Unless otherwise agreed, the pallets used for the delivery of the Goods, or pallets of the same make and model (the 'Correct Pallets'), may be returned (provided they are in good condition) to us (either at our nominated office location(s) or warehouse) or to our supplier (details of which are provided on request), as notified to you, in such minimum quantities as we shall agree and a credit at their invoiced value will be raised accordingly. Only the Correct Pallets may be returned to us or to our supplier. A credit at the invoiced value will be raised only in respect of the Correct Pallets.
- 7.3 Pallets and packaging are suitable for usual conditions of transport on the United Kingdom mainland, or for delivery to UK port but no other warranty is given in relation to pallets or packaging.

8. DELIVERY

- 8.1 We shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after we notify the Customer that the Goods are ready.
- 8.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 8.3 If we are prevented from effecting a punctual dispatch of the Goods by reason of a Force Majeure Event, we may:
- (a) extend the time for the dispatch of the Goods until the cause of the delay has ceased, (in which event we shall give notice by facsimile, telephone or email to the Purchaser concerning the delay), or
 - (b) terminate the Contract (by notice in writing to the Purchaser).
- 8.4 Each consignment shall be considered a separate and divisible Contract and a failure by us to deliver any consignment shall not invalidate the Contract as to others.
- 8.5 Where the Delivery Location is not at the Purchaser's premises and, is instead to a third party, the Purchaser shall be responsible for any additional costs of delivery, as notified to it by us on an Order or otherwise.

- 8.6 Unless otherwise agreed, glass containers are sent out in complete pallets only, and closures are supplied only in complete boxes.
- 8.7 Although we will make all reasonable efforts to effect delivery in accordance with pre-arranged dates, such dates are estimates only and time shall not be of the essence.
- 8.8 Delivery dates and times are dependent on the Purchaser providing such information and facilities as we require to perform the Contract. If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.9 Where a Contract involves more than one delivery these conditions apply to each and every delivery as separate and divisible contracts.

9. QUALITY AND COMPLIANCE

- 9.1 We shall make reasonable endeavours to ensure that any Goods supplied by us under a Contract to which these Terms and Conditions apply shall, upon delivery, be of merchantable quality, correspond with any written description provided by us, and are fit for their normal purpose and for any other purpose which has been fully and fairly notified to us in writing and accepted by us.
- 9.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 For the purpose of the Materials and Articles in Contact with Food (England) Regulations 2012, the Materials and Articles in Contact with Food (Scotland) Regulations 2012, the Materials and Articles in Contact with Food (Wales) Regulations 2012, and any similar regulations in any jurisdiction apart from the United Kingdom to which we have agreed that the Goods will be sent (and for no other purposes) and without prejudice to any exclusion or limitation of liability contained in these conditions, we confirm that, in the case of glass containers supplied by us and which it has been made known to us are intended to come into contact with food, the glass used for those containers is a packaging material suitable for food use. No other regulations or conditions in relation to the suitability of the Goods shall apply unless specifically agreed with us in writing.
- 9.4 Where we sub-contract any part of the manufacturing of the Goods, we will (upon request by the Purchaser) pass on to the Purchaser a copy of any certificate of conformance that we may receive from each manufacturer, as in place from time to time.

10. NOTIFICATIONS

- 10.1 The Contract shall be deemed to have been fully performed and the Goods accepted unless a written notification is received:
- (a) In respect of damage, delay or consignment missing, within five days of the date of receipt of consignment; or
- (b) In respect of any other matter, by us within one month of delivery.
- 10.2 Notifications shall be acceptable if in writing (including by email) or otherwise as approved by us. Notifications must include all information relevant to the damage, delay, missing consignment or any other matter and must provide evidence of the issue being notified, including (without limitation) pictures of any damage caused to Goods and/or any packaging and any other details as requested by us.
- 10.3 Goods subject to a notification must be stored free of charge in good condition and be kept available for our inspection.
- 10.4 Where the Goods are damaged or defective, any remedy offered by us is limited to those damaged Goods only and not the Order as a whole (unless such damage extends to the whole Order). The Purchaser shall be unable to cancel or reject that Order in its entirety.
- 10.5 We will not accept the return of Goods which are alleged to be defective after delivery or issue a credit note in respect of them unless we have had a reasonable opportunity to examine the Goods before they are dispatched from the Purchaser's premises. At our option replacement Goods may be supplied to the Purchaser to satisfy (in whole or in part) any liability and such replacement Goods shall be supplied on these Terms and Conditions.

11. LIABILITY

- 11.1 Except as mentioned in these Terms and Conditions, all other representations, warranties and conditions whether expressed or implied, statutory or otherwise (other than with respect to our title to the Goods) are hereby excluded.
- 11.2 The use of a description shall not of itself constitute a sale by description. Reference to capacities, colour, weight, use and quantity are all approximate and a reasonable variation shall be accepted by the Purchaser.
- 11.3 We shall not be liable in any event for any indirect or consequential loss (including loss of profit) or damage or expense arising from any breach of Contract by us, except as regards death or personal injury caused by our negligence (in which case our liability shall not be limited). In no other circumstances shall our liability to the Purchaser, whether for breach of contract, or in tort or statutory duty or otherwise exceed the value of the Order to which the claim relates in respect of which a breach or liability is claimed.
- 11.4 The Purchaser hereby agrees to indemnify us against all claims and expenses in respect of the Goods, including

the Goods incorporating Purchaser Materials and/or that are subject to any process that the Purchaser puts the Goods through, unless we are liable to the Purchaser in respect of the Goods only in accordance with these Terms and Conditions.

11.5 Without prejudice to the generality of 11.4 above, the Purchaser hereby agrees to indemnify us against any liabilities, costs and expenses which we incur by reason of any claim by any subsequent purchaser or consumer of the Goods or of any product incorporating the Goods, or by reason of any claim by any relative, dependant or personal representative of such purchaser or consumer, arising from any defect or alleged defect in the Goods or in such product.

12. IPR AND BESPOKE PRODUCTS.

12.1 The Purchaser acknowledges that all IPRs used for the manufacture of the Goods that originate from us, as well as any Product created using a Specification, shall remain our exclusive property or, where applicable, the third party licensor from which we derive the right to use.

12.2 All moulds, tools, designs, models, sketches, printing plates, screens or negatives provided by us are submitted in confidence of which the IPRs remain our exclusive property, together with any production or manufacturing processes. Any IPRs in such mouldings, tools, designs, models, sketches, printing plates, screens or negatives shall remain our exclusive property whether they have been paid for by the Purchaser or not. Without prejudice to the generality of the foregoing, we may at our sole discretion destroy or otherwise dispose of any mould, tool or design which is not used for more than three years, without incurring any liability to the Purchaser.

12.3 It is at our sole discretion as to whether any moulds, tools, designs, models, sketches, printing plates, screens or negatives relating to an Order are offered to the Purchaser to purchase.

13. GENERAL

13.1 If any of these Terms and Conditions or any provision of any contract in which they are expressly or impliedly incorporated, shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that provision Term or Condition or part shall to that extent be deemed not to form part of these Terms and Conditions or of such contract and the enforceability of the remainder of them and of the Contract shall not be affected.

13.2 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the addresses set out in the Order:

13.3 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or
- (c) if sent by email, at the time of transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.4 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.5 The Contract and these Conditions are governed by the exclusive laws of England and Wales (for contractual and non-contractual matters). The English Court shall have exclusive jurisdiction in respect of this Contract and these Conditions (for contractual and non-contractual matters).