



## TERMS & CONDITIONS OF SALE

### **1. Definitions :-**

- a) "the Company" means Smith Brothers Stores Ltd. We operate the website [www.sbs.co.uk](http://www.sbs.co.uk) & [www.sbsonline.net](http://www.sbsonline.net).
- b) "the Purchaser" means the person, firm or company placing an order on the Company.
- c) "Quotation" means any Quotation or terms given by the Company including any prices listed on the Company website.

**2. Orders :-** No orders placed by the Purchaser arising as a result of a Quotation, Terms or otherwise will be considered as binding on the Company unless that order has been acknowledged by the Company in writing.

**3. Effect of Conditions :-** All orders accepted by the Company will be subject to the Conditions of Sale set out herein. The Company is not willing to contact otherwise than on these Conditions and unless otherwise expressly agreed in writing these Conditions shall apply to all contracts made between the Company and the Purchaser and any documents emanating from the Purchaser which contain printed or standard Conditions which have been or shall be sent by the Purchaser and received by the Company on the understanding that they appear on the Purchaser's documents because they are printed thereon will have no legal effect whatsoever and the Purchaser waives any right which he otherwise might have to rely on such conditions.

### **4. Validity of Offer :-**

- a) Any prices and/or discounts quoted by the Company, whether verbally or written, will be considered to have a validity of not exceeding 30 days unless otherwise agreed by the Company in writing.
- b) If the Purchaser intends to place an order with the Company subject to the terms of a nominated or other sub-contract the prices and terms in the tender will not be binding on the Company unless the Purchaser has fully disclosed to the Company such items and conditions of the said sub-contract and that the Company has acknowledged the same in writing.
- c) If the Purchaser intends that the price for the goods should be paid to the Company by a third party (i.e. a Finance Company or similar institution) it must state on the order that it has received written confirmation from the third party that it will make payment to the Company in accordance with the terms of Clause 8 hereof and if it fails to do so, the Purchaser will be bound to make such payments.
- d) When using our website please follow the onscreen prompts to place an order. Each order is an offer by the Purchaser to buy the goods specified in the order (**Goods**) subject to these Terms.
- e) The Company's order process allows the Purchaser to check and amend any errors before submitting an order. The Purchaser is responsible for ensuring that the order and any specification submitted is complete and accurate.

**5. Prices :-** Unless otherwise agreed in writing the price to be paid will be deemed to have been stated in the Quotation provided that the Quotation is accepted within 30 days of issue and delivery is effected within a further 14 days. Otherwise, the Company may, at its discretion, vary the price by addition upwards to reflect market conditions, labour, material and transportation costs. All prices exclude VAT unless otherwise stated.

**6. Errors :-** The Company sells a large number of Goods through the website. It is always possible that, despite our reasonable efforts, some of the Goods on our site may be incorrectly priced or a product may have been removed from the site but the website is not updated. If the Company discovers an error with the Goods the Purchaser has ordered the Company will contact the Purchaser in writing to inform of this error and if it is a pricing error the Company will give the Purchaser the option of continuing to purchase the Goods at the correct price or cancelling the order. The Company will not process the order until we have your instructions. If the Company is unable to contact you using the contact details you provided during the order process, the Company will treat the order as cancelled and notify the Purchaser in writing. If the Company mistakenly accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, the Company may cancel supply of the Goods and refund any sums the Purchaser has paid. The Company reserves the right to amend the specification of the Goods if any approval against the goods is removed or required by any applicable statutory or regulatory requirement.

**7. Specifications :-** Whilst all descriptions, specifications, drawings and illustrations are supplied in good faith they are only intended for guidance purposes and the Company will accept no responsibility whatsoever for any errors, omissions, loss or damage from the Purchaser's reliance on such descriptions, drawings and illustrations. Further, the Company reserves the right to amend such descriptions, specifications, drawings and illustrations without notice. The Company provides no warranty, and it shall not be implied, whether through any description or otherwise, that any Goods conform to or are suitable for any specific purpose, unless written confirmation of such a warranty as to suitability of the goods for purpose addresses specific goods and the Purchaser. The Company may recommend to the Purchaser, specific Goods. These recommendations are based solely upon the information received by the Company from the Purchaser. Therefore, any recommendations by the Company to the Purchaser in relation to any Goods shall be provided only as an opinion, and shall not be construed as an express or implied warranty as to any recommendation given, unless written confirmation of a warranty to that effect is provided by the Company to the Purchaser and the Purchaser is referred to the clause immediately preceding this. The suitability of specific goods for use is ultimately the decision of the Purchaser based solely upon the knowledge of the Purchaser.

### **8. Delivery :-**

- a) Delivery periods are given in good faith and are based from the date of receipt of order. Whilst we will make every reasonable effort to meet delivery requirements we will not be liable for any failure to do so, nor for any consequential loss of any kind arising from late delivery.
- b) Deliveries will be made to the destination specified on your order provided this is clearly indicated.
- c) Unless otherwise agreed the cost of carriage will be chargeable to the Purchaser. Where the Purchaser requests the Company to deliver goods within a timescale which is shorter than that covered by the Company's quoted delivery costs then the Company reserves the right to vary the price by addition upwards to reflect additional costs incurred.
- d) Unless otherwise agreed the off loading and safe storage of delivered goods are the sole responsibility of the Purchaser. Where the Purchaser requests the Company to provide off-loading facilities then such facilities will be deemed to be chargeable to reflect the additional costs incurred.
- e) After delivery the goods are expressly held by the Purchaser at his own risk. The Purchaser undertakes, following delivery to maintain the goods in the pre-delivery condition and to insure the goods to their full value and against all risks until such time as payment and the title passes.
- f) The Company reserves the right to levy additional charges against the Purchaser, to cover storage, fire insurance or other costs incurred by us, in the event that the goods are held beyond reasonable period of time or should forward instructions to be withheld.
- g) Time of delivery is not of the essence.

### **9. Terms of Payment :-**

- a) Unless otherwise agreed in writing, and only for approved accounts, all goods will be invoiced on despatch for payment at the end of month following the date of invoice.
- b) Where an approved account is not established or where the total order value, excluding delivery, is less than £50.00 then, at its discretion, the Company may seek payment prior to delivery using a debit card or credit card. We accept the majority of debit and credit cards, a full list is available upon request.
- c) Time for payment shall be of the essence of the contract without prejudice to any other rights of the Company. If the Purchaser fails to pay the invoice on the due date, the Company reserves the right to claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (Interest) Act 1998 (Act) (whether before or after judgement). Any reference to the Act is also a reference to any amendment, modification or re-enactment of it. If for any reason the Act does not apply interest shall be payable on overdue amounts on a daily basis at 8% per annum over the base rate quoted from time to time but at 8% a year for any period when that base rate is below 0% by the National Westminster Bank plc and reimburse to the Company all costs and expenses, including legal costs, in the collection of any overdue amount.

**10. Passing of Property and Risk :-** The risk in the Goods shall pass to the Purchaser on completion of delivery. Title to the Goods shall not pass to the Purchaser until the Company has received payment in full (in cash or cleared funds) for:

- a) the Goods; and
- b) any other Goods that the Company has supplied to the Purchaser in respect of which payment has become due. Until title to the Goods has passed to the Purchaser, the Purchaser shall:
  - a) hold the Goods on a fiduciary basis as bailee for the Company;
  - b) store the Goods separately from all other goods held by the purchaser so that they remain readily identifiable as the Company's property;

## TERMS & CONDITIONS OF SALE

- c) not remove, deface or obscure any identifying mark or packaging relating to the Company;
- d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- f) notify the Company immediately if it becomes subject to the service of a Statutory Demand or any other action involved in the insolvency of the Purchaser; and
- g) give the Company such information relating to the Goods as the Company may require from time to time.
- h) the Purchaser may resell or use the Goods in the ordinary course of its business
- i) if before title to the Goods passes to the Purchaser:
  - i. the Purchaser's financial position deteriorates to such an extent that in the Company's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - ii. the Purchaser is served with a Statutory Demand or any other action involved in the insolvency of the Purchaser, or the Company reasonably believes that any such event is about to happen and notifies the Purchaser accordingly then provided that the Goods have not been resold then, without limiting any other right or remedy the Company may have:
    - i. the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
    - ii. the Company may at any time:
      - require the Purchaser to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; 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.

### **11. Loss and Damage in Transit :-**

- a) It is the responsibility of the Purchaser to examine the Goods immediately on arrival and any shortage or damage be reported to us and to the carriers within 3 days of receipt.
- b) Non delivery of Goods must be reported to us within 10 days of the despatch dates given on the advice note.
- c) The Purchaser will be liable to indemnify the Company for any loss it suffers where it is unable to claim against the carriers by reason of non-fulfilment of these Conditions.

### **12. Returned Goods :-** Any Goods returned to the Company for any reason other than faulty condition will only be accepted with the prior written agreement of the Company.

Where such agreement exists then the Purchaser will be responsible for the cost of safe packing and delivery of Goods including adequate insurance against damage and loss.

Where such Goods are returned to the Company by agreement and provided that the Goods are received in a condition which is consistent with the condition on despatch then a credit will be issued to the value of the returned Goods less any restocking charge of not less than 15% of the invoice value of the Goods subsequently returned.

### **13. Fitness for Purpose :-** The Purchaser is solely responsible for suitability of the Goods for which they are bought and is reliant upon his own skill and judgement in this respect.

### **14. Representation :-** Any statements or claims made by the Company, its representatives, distributors and agents either prior to or during the course of executing a contract between the Purchaser and the Company are superseded by the Conditions herein and as such they are not material.

### **15. Guarantee :-**

- a) The Company extends to the Purchaser the terms of warranty, guarantee and conditions that it has, in turn received from the manufacturer. Provided that all amounts due in accordance with clause 9 hereof have been received by the Company.
- b) All guarantees and warranties are subject to the equipment having been stored, installed, commissioned and maintained in accordance with good practice and the manufacturer's recommendations.
- c) To facilitate prompt replacement of any item or component we will despatch parts at the Purchaser's request on a chargeable basis. When the defective item is returned to us and provided that the fault has been verified under the terms of the guarantee then the invoice will be credited or cancelled. Where no such item or component is subsequently returned within a reasonable period then the Company reserves the right to seek payment for the goods supplied.
- d) The Company explicitly excludes any labour, consequential or other costs associated with the replacement of Goods, items or components under the terms of the guarantee.

### **16. Exclusion of Liability :-**

- a) The Company's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the lesser of the Price attributable to that Contract or £5,000.
- b) Nothing in this agreement shall limit or exclude the liability of either party for:
  - i. death or personal injury resulting from negligence; or
  - ii. fraud or fraudulent misrepresentation; or
  - iii. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- c) Without prejudice to Clause 16(b), the Company shall not under any circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
  - i. loss of profit;
  - ii. loss of goodwill;
  - iii. loss of business;
  - iv. loss of business opportunity;
  - v. loss of anticipated saving;
  - vi. loss or corruption of data or information; or
  - vii. special, indirect or consequential damage.
  - viii. suffered by the other party that arises under or in connection with this agreement.
- d) The Purchaser shall be responsible for ensuring that all Goods subsequently installed on the Purchaser's premises or elsewhere do not contravene existing laws and regulations and are approved by the Purchaser's insurers.

### **17. Force Majeure :-** Any delay or failure of performance in executing our obligations shall not be determined as a fault or give rise to any claim for lock-outs, restriction of supplies, breakdown of plant or machinery, shortage of labour, war, riots, civil unrest or any other circumstances reasonably beyond our control.

### **18. Severance :-** If any provision or part-provision of these conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause 18 shall not affect the validity and enforceability of the rest of the conditions.

### **19. Entire agreement :-**

- a) These conditions and the Quotation constitute the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party acknowledges that under these conditions it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these conditions.

### **20. Variation :-** No variation of these conditions shall be effective unless it is in writing.

### **21. Law and Jurisdiction :-** These Conditions shall be subject to English Law and the exclusive jurisdiction of the English Courts.