

# Standard Terms and Conditions



1 Cranfield Road, Lostock  
Bolton  
BL6 4SB

## 1. Definitions

- 1.1 "Company" shall mean Heritage Somerfield Group Ltd., Trading as Heritage Trade Frames its successors and assigns or any person acting on behalf of and with the authority of Heritage Trade Frames.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 4 of this contract.

## 2. Application of these terms and conditions to consumers

- 2.1 Where the Customer buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

## 3. Acceptance

- 3.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 3.2 The Customer shall be responsible to the Company for ensuring accuracy and sufficiency of its order (including of any applicable specification and/or sample) and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform in accordance with this agreement.
- 3.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 3.5 The Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

## 4. Price and Payment

- 4.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
  - (b) the Company's quoted Price (subject to clause 4.2) provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 4.3 For the purposes of this agreement all trade discounts applied to any or all products supplied are deemed to be settlement discounts. Any failure to pay for the goods in accordance with the agreed payment terms will negate the settlement discount and the invoice shall be adjusted accordingly.
- 4.4 At the Company's sole discretion a deposit may be required.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on delivery.
- 4.6 At the Company's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
  - (b) payment shall be due before delivery of the Goods; or
  - (c) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule; or
  - (d) payment for approved Customer's shall be due thirty (30) days following the end of the month in which a invoice is posted to the Customer's address or address for notices.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Company. Any payment made by Credit Card shall incur an additional fee which shall represent 2.5% of the total invoice value.
- 4.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 5. Delivery Of Goods

5.1 At the Company's sole discretion delivery of the Goods shall take place when:

- (a) the Customer takes possession of the Goods at the Company's address; or
- (b) the Customer takes possession of the Goods at the Customer's address or other address nominated by the Customer (in the event that the Goods are delivered by the Company or the Company's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

5.2 At the Company's sole discretion the costs of delivery are:

- (a) included in the Price; or
- (b) in addition to the Price; or
- (c) for the Customer's account.

5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

5.4 In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.

5.5 In the event that the Customer is unable to take delivery of the Goods within fourteen (14) days of the notification by the Company that the Goods are ready the company may store the Goods (on its own or any third party premises) and charge the Customer for its reasonable costs of storage.

5.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

5.8 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

- (a) such discrepancy in quantity shall not exceed 10%; and
- (b) the Price shall be adjusted pro rata to the discrepancy.

5.9 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

5.10 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

## 6. Defects

6.1 The Customer shall inspect the Goods on delivery and shall within two (2) days notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.

6.2 No Goods shall be accepted for return except in accordance with 6.1 above.

## 7. Instructions to Customer

7.1 The Customer shall ensure that all materials and components are correctly assembled, installed, used and maintained in strict accordance with the Company's instructions or recommendations.

7.2 The Customer shall indemnify the Company in respect of any liability the Company may have in relation to damage caused by faulty installation, work or parts damaged after supply by the Company whether the installation work has been carried out by the Customer or by any other person to whom the Customer has supplied the Goods.

7.3 If the Customer arranges installation by another person the Customer shall keep a record of the name, telephone number and address of the installer and end user.

7.4 Where the Customer supplies any glass or other alternative materials, the Customer shall ensure that the glass or material supplied is subjected to adequate safety testing and quality controls. The Customer shall not supply a substitute to the glass as specified by the Company. Where the Customer wishes to supply what he considers to be a safer alternative to the glass specified by the Company he may only do so with written approval by the Company that the proposed alternative is suitable and falls within the stress loads for which the product has been tested.

7.5 The Customer shall use the Goods only for the purpose for which they are marketed by the Company.

7.6 For the purposes of Section 6(8) of the Health and Safety at Work Etc Act 1974 the Customer undertakes to comply with all instructions relating to the Goods received from the Company from time to time and to take such other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.

## 8. Returns

8.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 13.1; and
- (b) the Company has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

8.2 The Company will not accept the return of non-defective Goods for credit.

## 9. Cancellation

9.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

9.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

## 10. Default & Consequences of Default

10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 8% per annum and such interest shall compound monthly at such a rate after as well as before any judgment.

10.2 The Company may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

10.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

10.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

10.5 If any account remains overdue after thirty (30) days then an amount of £30.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.

10.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 11. Title

11.1 It is the intention of the Company and agreed by the Customer that ownership of the Goods shall not pass until:

- (a) the Customer has paid all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.

11.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.

11.3 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
- (f) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and

## 11. Title Cont.

(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and

(h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

## 12. Risk

12.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

12.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## 13. Warranty

13.1 The conditions applicable to the warranty are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) Failure on the part of the Customer to properly maintain any Goods; or

(ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or

(iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) Fair wear and tear, any accident or act of God.

(b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.

(c) In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

13.2 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. Whilst the Company shall honour such warranty the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## 14. Security and Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:

(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.

(c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

## 15. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982

15.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

15.2 Notwithstanding clause 15.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

## 16. Intellectual Property

16.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.

16.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.

## **17. Data Protection Act 1998**

17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:

(a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's Credit worthiness or marketing products and services to the Customer; and

(b) to disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.

17.2 The Company may also use information about the Customer to monitor and analyse its business. In this connection the Customer authorises the Company to disclose personal information to agents or third parties engaged by the Company.

17.3 The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.

17.4 Where the Customer is an individual the authorities under (clause 17.1) are authorities or consents for the purposes of the Data Protection Act 1998.

17.5 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

## **18. Limitation of Liability**

18.1 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by the Company of these terms and conditions.

18.2 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages and the Company's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.

18.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict the Company's liability to any person for death or personal injury to that person resulting from the Company's negligence.

## **19. Customer's Disclaimer**

19.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## **20. General**

20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by the Company are approximate only and the Company reserves the right without notice to the Customer to make alterations thereto and to supply the Goods so altered in performance of the Contract provided that such alterations do not materially affect the characteristics of the Goods.

20.3 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of Bolton.

20.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.

20.5 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.6 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. Except where the Company supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.

20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party