

## TERMS AND CONDITIONS FOR SALE OF GOODS

These are the terms on which Barnes Williams (UK & Far East) Limited company number 02479877 ('Company') do business. They are designed to set out clearly the Company's responsibilities and your rights.

### 1. DEFINITIONS:

1.1 In these terms and conditions (hereinafter collectively referred to as 'Conditions'):

**'Buyer'** means you, the corporate entity or individual purchasing Goods from the Company.

**'Contract'** means any contracts made between the Company and the Buyer for the sale and purchase of Goods which shall include (but not limited to) contracts entered into between the Parties arising from the Order.

**'Damage'** means Damage as defined in Clause 5.1 below.

**'Goods'** means any product, produce, article or item the Company sells (including part or parts of it).

**'Order'** means any order (whether oral and written) for Goods made by the Buyer to the Company.

**'Parties'** means the Company and the Buyer.

**'Specification'** means the specification in respect of such Goods that are available from the Company upon request (as may be amended by the Company from time to time at its discretion).

1.2 In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

1.5 In entering into a Contract, the Buyer acknowledges that it does not rely on any representations made by the Company and/or its representatives provided that nothing in these Conditions shall affect liability of either party for fraudulent misrepresentation.

1.6 The Buyer shall not be entitled to assign the Contract without the prior written consent of the Company.

## **2. TERMS OF ACCEPTANCE**

- 2.1 The Buyer agrees that these Conditions shall be the exclusive basis on which any Contracts made between the Company and Buyer are transacted and processed unless otherwise agreed in writing by a director of the Company. For the avoidance of doubt, the Buyer terms and conditions shall not apply to any Contract(s) entered into by the Parties and the failure by the Company to object to any of the Buyer's terms and conditions shall not be deemed as the Company accepting such terms and conditions of the Buyer.
- 2.2 These Conditions shall not create any agency or partnership between the Parties or any third party.
- 2.3 Any quotations and/or estimates given by the Company shall be deemed as an 'invitation to treat' and not an offer. All quotations are valid on that day (unless otherwise stated), and subject to final confirmation.
- 2.4 A Contract is formed between the Buyer and the Company when (and not before) the Company notifies the Buyer in writing (including by e-mail) that the Buyer's Order has been accepted or that the Goods ordered are ready for collection; or delivery of the Goods is made by the Company. All Orders accepted are subject to the availability of Goods being ordered.
- 2.5 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply in any Contracts.

## **3. ORDERING**

- 3.1 An Order may be made:
- 3.1.1 by email to the following  
*[sales@barneswilliams.co.uk](mailto:sales@barneswilliams.co.uk)* and/or
- 3.1.2 by telephone to +44 (0) 1242 245 775 between the hours of 8.30am to 5.00pm from Monday – Friday.
- 3.2 An Order made by the Buyer shall clearly state (1) the type of Goods; (2) the quantities ordered; (3) when required; and (4) the location where the Goods are to be delivered. Where an Order is placed orally or in the event of any dispute as to the Order, the Company's version of the Order shall be deemed as the authoritative Order and the Buyer shall not dispute the correctness of the same.

## **4. COLLECTION OF OR DELIVERY OF GOODS**

- 4.1 The Company will notify the Buyer when the Goods are ready for collection and the Buyer shall collect the Goods from the Company's premises. All collections must be booked in

with our warehouse by telephone to +44 (0) 1242 245 775 between the hours of 8.30am to 5.00pm from Monday – Friday.

- 4.2 Where the Company agrees to deliver the Goods to the Buyer, the Goods will be delivered to the address specified in the Order or where no address is specified, to the Buyer's place of business. The Company will use reasonable endeavours to meet any delivery dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Goods.
- 4.3 For the avoidance of doubt, where Clause 4.2 applies, as the actual delivery of the Goods is be carried out by third party couriers, the Company shall be under no liability for any delay or failure to deliver the Goods except at its discretion, to return the purchase price or re-deliver the Goods.
- 4.4 If the Company is unable to effect delivery due to any fault of the Buyer, the Buyer may incur additional delivery charges.
- 4.5 The Company reserves the right to deliver Goods by instalments and in any sequence of the Order in question and the Company may invoice the Buyer separately for each and every instalment. Where Goods are delivered by instalments, the Contract shall be deemed to be severable and each instalment shall be deemed to be the subject of a separate Contract.
- 4.6 Each delivery of the Goods shall be accompanied by a delivery note from the Company showing the Order Number, the Delivery Date, the type and quantity of Goods included in the Order. The Buyer is responsible for the unloading of the Goods from the delivery vehicles. The Company may supply up to 3% more or less of the quantity of Goods ordered without adjustment in the price and the Company shall be deemed to have supplied the correct quantities of Goods as specified in the Order.

## **5. INSPECTION LOSS OR DAMAGE**

- 5.1 Any Goods delivered to the Buyer or made available for the Buyer for collection shall be deemed to be in good order and comply with the Specifications unless the Buyer informs the Company otherwise e.g. spillages, shortages and/or infestations to the Goods (collectively as 'Damage') within 7 working days from the day of collection or receipt of the Goods (as the case may be) unless the Damage is not ascertainable from reasonable inspection; in which case, the Buyer shall inform the Company of such Damage as soon as it is practicable. The Buyer shall allow the Company to inspect such allegedly Damaged Goods.
- 5.2 Subject to Clause 8.2, if the Goods are indeed damaged, the Company shall (at its sole discretion), replace the Goods in question or reimburse the Buyer for the whole or part of the price of the Goods (if the quantity of Goods is more than 1).

5.3 These terms and conditions shall apply to any replacement Goods supplied by the Company.

## **6. PRICE AND PAYMENT**

6.1 Any price quoted or provided by the Company to the Buyer is based on its current price as on the date the quotation is made or provided by to the Buyer but the actual price payable for the Goods shall be based on the actual current price of the Company as at the time of acceptance of the Order. All prices quoted are *exclusive* of VAT but include delivery costs (unless otherwise stated).

6.2 Notwithstanding Clause 6.1 above, the Company may increase the price of the Goods before delivery is affected if the cost of the Goods to the Company were to increase due to factors outside the Company's control e.g. increase in duty rates, freight or foreign exchange costs and the Buyer agrees to such increase.

6.3 The Buyer shall make payment to the Company in respect of the Goods within the payment terms that have been agreed with the Company.

6.4 No payment for the Goods shall be deemed to have been received until the Company has received cleared funds for the whole sum specified in such invoice.

6.5 If the Buyer fails to settle any payment due to the Company within the stipulated time, the Company shall be entitled (without prejudice to any other right or remedy it may have) to charge the Buyer interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date the payment was due until the payment is made whether before or after judgement; and/or suspend further deliveries of any Goods ordered by the Buyer.

6.6 The Buyer shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company.

## **7. CANCELLATIONS**

7.1 Without prejudice to Clause 8.2, no cancellations of Orders shall be permitted unless agreed in advance by a director of the Company.

7.2 Without prejudice to Clause 5, if Goods have been delivered, the Goods may not be returned unless agreed in advance by a director of the Company. Any return which has been agreed shall be subject to the following conditions:

7.2.1 The Goods being in the same condition as at the time of delivery of made available for collection;

- 7.2.2 (Where applicable) the packaging of the Goods remain intact and unbroken and in reasonable condition;
  - 7.2.3 The Goods are returned at the cost of the Buyer; and
  - 7.2.4 The returned Goods are received within 14 days from when a director of the Company agreed to accept the returned Goods.
- 7.3 Where Goods are cancelled or returned pursuant to this Clause 7, the Company reserves the right to charge a reasonable administration cost.

## **8. WARRANTIES AND LIABILITY**

- 8.1 The Company warrants that the Goods will substantially conform to the Specification and that they comply with all legislation and regulations in force from time to time in the UK relating to food quality and safety insofar as they apply to importers of the Goods.
- 8.2 The Company shall carry out such tests including those under the HACCP procedures (as is required by law) and where applicable issue such certificates. Such procedures are set out on the Company's website at - (<http://barneswilliams.co.uk/technical.php>) or available upon request. For the avoidance of doubt, the Company reserves the right to make changes to such procedures from time to time and it is the Buyers responsibility to check for such changes.
- 8.2 Notwithstanding Clause 8.2, the Buyer acknowledges that certain Goods e.g. natural Goods ordered cannot be guaranteed to be free from harmful pathogens or infestation. In addition, the Buyer further acknowledges that the Company has no knowledge as to the suitability and purposes for which such Goods obtained from the Company would be used for. It is the Buyer's sole responsibility to ensure that the Goods are suitable for such use intended by the Buyer and the Company does not warrant that the Goods are suitable for the Buyer's intended use. If the Buyer is unsure as to the suitability of the Goods for its intended purpose, the Buyer is strongly advised to seek independent expert advice or to carry out such further testing so as to ensure that such Goods are suitable for its intended use.
- 8.3 The Company shall ensure that the Goods are properly packed and secured in a manner as to enable them to reach their destination in good condition.
- 8.4 The Company shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with these Conditions
- 8.5 Except for the warranties set out in Clauses 8.1 to 8.5 above, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions and/or Contracts.

- 8.6 The Company shall not be in breach of any of the warranties set out in Clauses 8.1 to 8.5 or be liable for any Damaged Goods if:
- 8.6.1 the Buyer makes any further use of such Goods after giving such notice under Clause 5.1;
  - 8.6.2 the Damage arises because the Buyer failed to follow the Company's oral or written;
  - 8.6.3 instructions as to the storage of the Goods or (if there are none) good trade practice; or
  - 8.6.4 the Buyer alters such Goods without the written consent of the Company.
- 8.7 Nothing in this Agreement excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 8.8 Subject to Clauses 5.2, 8.6, 8.7, 8.8 and 8.10, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to:
- 8.8.1 in respect of matters for which the Company does not carry insurance, the price of the Goods; and
  - 8.8.2 in respect of matters for which the Company carries insurance, the insured value.
- 8.9 Subject to Clause 8.6, 8.7 and 8.8, the Company shall not be liable to the Buyer for any indirect or consequential loss or damage, for loss of profit, loss of management time, depletion of goodwill or otherwise, loss of productivity, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Conditions or Contracts.
- 8.10 The provisions of this Clause 8 shall survive the termination of these Conditions and/or Contracts.
- 8.11 The exclusions and limitations of liability set out in this Clause 8 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 8.

## **9. TERMINATION AND SUSPENSION**

- 9.1 Without prejudice to the rights and remedies available to the Company (whether under these Conditions, Contracts or otherwise), the Company shall be entitled to (at its sole

discretion) upon providing the Buyer with notice of such intention, terminate and/or suspend in whole or in part, any Contracts entered into between the Buyer and the Company if:

- 9.1.1 the Buyer fails or refuses to take delivery of any Goods in accordance with these Conditions;
- 9.1.2 the Buyer commits any material breach of these Conditions;
- 9.1.3 the Buyer fails to pay any sums due to the Company; and/or
- 9.1.4 the Buyer makes any composition or voluntary arrangement with its creditors or becomes bankrupt or enters into administration or goes into liquidation (other than for the purpose of amalgamation or reconstruction).

## **10. TITLE AND RISK**

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer's premises or when the Goods are made available for collection (as the case may be) but title in the Goods only shall pass upon full payment for the Goods and no other sums are then outstanding from the Buyer to the Company on any account the Buyer may have with the Company whatever whether or not such sums have become due for payment.
- 10.2 Until such time as title in the Goods have passed to the Buyer, the Buyer shall:
  - 10.2.1 Hold the Goods on a fiduciary basis only and as the Company's Bailee for the company.
  - 10.2.2 Store the Goods (without charge to the Company) separately from all other goods held by the Buyer so that the Company's Goods are clearly identifiable;
  - 10.2.3 Not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
  - 10.2.4 Maintain such Goods in good condition and insure the Goods to their full value against all risks to the reasonable satisfaction of the Company.
- 10.3 The Company shall be entitled to repossess at any time any of the Goods of which, title remains vested in the Company and in this regard, the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed so to be to retrieve the Goods and the Company shall not be liable for any damage or loss caused to the Buyer or the Buyer's premises provided that the Company has taken reasonable care when retrieving such Goods.

## **11. DIVISIBILITY CLAUSE**

- 11.1 The company reserves the right to make deliveries by instalments and render a separate invoice in respect of each such instalment.
- 11.2 If the company exercises its right to make deliveries in accordance with sub-paragraph 11.1 above, then any delay in the provision of such deliveries, or failure to deliver any further instalment or instalments, shall not entitle the Buyer to reject the contract or the delivery of any other instalment or to withhold payment in respect of any instalment previously delivered.

**12. FORCE MAJEURE**

The Company shall not be liable to the Buyer or be deemed to be in breach of these Conditions or any Contracts by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods if the delay or failure was beyond the Company's reasonable control including acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority in the United Kingdom or any of the countries the Company trades with e.g. Turkey, Peru, Thailand, Egypt or China; import or export regulations or embargoes; and/or strikes, lockouts or other industrial actions or trade disputes.

**13. INTELLECTUAL PROPERTY**

Any intellectual property rights in any document, or other material and any data or other information provided by the Company to the Buyer shall belong to the Company.

**14. NOTICE**

Any notice required to be given to the Company shall be given by first-class post addressed to the Company' trading address being Unit E, Liddington Industrial Estate, Old Station Drive, Leckhampton, Cheltenham, GL53 0DL United Kingdom.

**LAW AND JURISDICTION**

These Conditions shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with these conditions of sale, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this clause.

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