

# JOHN MILLS & SONS (NEWCASTLE) LTD - TERMS AND CONDITIONS OF SALE

- 1 General**
- 1.1 In these conditions "the Company" means John Mills & Sons (Newcastle) Ltd ; "Goods" shall mean the materials or products supplied by the Company; "the Buyer" shall mean the customer who has placed an order for Goods; "Contract" means an agreement between the Company and the Buyer for the supply of Goods on these Terms and Conditions; "Order" means the written request by the Buyer to the Company for Goods to be supplied.
- 1.2 No Contract shall exist until the Company has accepted an Order from the Buyer in writing.
- 1.3 Once an Order has been accepted by the Company it can only be changed with the Company's written agreement.
- 1.4 These Terms and Conditions override any different conditions which may appear on the Buyer's documents or be implied by trade, custom, practice or course of dealing.
- 2 Prices and Charges**
- 2.1 Unless stated otherwise, all prices are quoted ex-works, exclusive of VAT and do not include instalment of the goods.
- 2.2 The Company's prices are based on its current costs of packaging, materials, labour and cost of delivery to the Buyer's premises or other agreed location (where the Company is delivering the Goods). The Company can alter its prices if delivery is delayed, through no fault of the Company, to reflect any change to these costs.
- 2.3 Any price quoted by the Company is subject to receipt of an Order within 30 days of the quote being given after which the Company reserves the right to revise the quote.
- 2.4 In addition to the Contract price, the Company may make the following (non exhaustive) charges at its discretion: (i) a minimum order charge; (ii) special packaging requested by the Buyer; (iii) administration charges for changes to an Order made more than a week after the Order is accepted; (iv) storage costs for the Goods if delivery does not take place on the agreed date through no fault of the Company; (v) cancellation charges; (vi) costs incurred by the Company to comply with additional certification requirements; (vi) third party witness inspection charges requested by the Buyer.
- 3 Payment**
- 3.1 Payment shall be made within 30 days of the date of the invoice, without any set off or deduction, in pounds sterling (£) unless agreed otherwise.
- 3.2 The Company may charge interest on overdue payments at the rate of 8% above the base rate of the Bank of England to be added on a daily basis until full payment is made.
- 3.3 The Company may invoice the Buyer for instalment or partial deliveries at the time of each delivery.
- 3.4 The Company may request overseas Buyer's to secure payment by an irrevocable letter of credit in favour of the Company for the Contract price and any bank charges which must be satisfactory to the Company and its UK Bank.
- 3.5 If the Buyer does not accept delivery of the Goods promptly on the due delivery date the price becomes payable immediately.
- 4 Delivery .**
- 4.1 Delivery shall take place either when: (i) the Goods are delivered to the Buyer's or other agreed premises; (ii) where the Buyer collects the Goods from the Company's premises, when they are ready for collection by the Buyer or nominated carrier; (iii) where the Goods are being exported, FOB and CIF as defined by Incoterms 2000. Section 32 (2) of the Sales of Goods Act 1979 shall not apply to any Contract.
- 4.2 The Company shall use its reasonable commercial endeavours to deliver the Goods by the delivery date, but time for delivery shall not be of the essence.
- 4.3 The Buyer shall be responsible for providing a safe and proper route from the highway to the Buyer's chosen delivery location and for unloading the Goods and providing any necessary craneage.
- 4.4 If Goods delivered under 4.1(ii) and (iii) and have not been collected by the Buyer or nominated carrier after the expiration of three months from the due delivery date, the Company may dispose of the Goods as it sees fit without any further notice to the Buyer and will seek full payment for those goods from the Buyer.
- 5 Property and Ownership**
- 5.1 Risk in the goods shall pass to the customer on delivery. Notwithstanding delivery and the passing of risk in the goods or any other provisions of these conditions the property in/and or title shall not pass to the customer until the company has received in cleared funds payment in full for the price of the goods and all other goods agreed to be sold by the company to the customer for which payment is then due.
- 5.2 Until such time as the property in goods passes to the customer the company shall be entitled at any time to require the customer to deliver up the goods to the company and if the Customer fails to do so forthwith the customer irrevocably authorises the Company and its agents and employees to enter upon any premises of the customer or any third party, without notice where the goods are stored and repossess the goods' at the cost of the customer
- 5.3 Until such time as property in the goods passes to the customer the customer shall hold the goods as bailee shall store the goods separately so that they are identifiable as the property of the company and shall fully insure and protect the goods but the customer shall be entitled to resell or use the goods in the normal course of business the customer shall not be entitled to pledge or charge any of the goods which remain the property of the company but if the Customer does so pledge or charge the goods all moneys owing to the company by the customer shall become immediately due & payable
- 5.4 The Company is entitled to access the Buyer's premises or other premises where the Goods are stored upon reasonable notice to reclaim the Goods up until full payment for the Goods has been made.
- 6 Damage or Loss in Transit**
- 6.1 In order for any Goods to be returned or replaced, the Buyer must examine the packaging and Goods on receipt and notify the Company and the nominated carrier of any shortage, loss, or damage within 3 working days of delivery.
- 6.2 If the Goods are lost in transit or there is a delay in delivery the Buyer must notify the Company and the nominated carrier within 14 working days of the due delivery date.
- 6.3 Any claim under 6.1 will only be valid if the Buyer has examined the Goods prior to signing an advice note.
- 7 Specification, Dimensions and Weights**
- 7.1 All drawings, designs, dimensions weights and specifications provided to the Buyer are estimates only and the Company shall have no liability to the Buyer for any deviation from such estimates.
- 7.2 The Company is not responsible for any errors, omissions or defects in any drawings, designs or specifications prepared by the Buyer or a third party and the Buyer shall indemnify the Company from any losses arising in this respect.
- 7.3 Unless agreed otherwise, the Goods are supplied unpainted and are not tested for NDG/special testing.
- 7.4 The Buyer must inform the Company whether Directive 97/23/EC ("PED") and/or 94/9/EC ("ATEX") as modified or amended by any subsequent directives or regulations apply to the Goods to be supplied. The Company accepts no liability for any loss arising where the Buyer has failed to inform the Company that either Directive applies.
- 7.5 The Company may charge the Buyer for any additional costs in complying with the Directives in 7.4. (The Buyer should request the Company's ATEX policy for specific details relating to this Directive).
- 8 Samples, Illustrations and Drawings**
- 8.1 Any samples, illustrations and drawings sent to the Buyer are to enable the Buyer to judge the quality of the Goods and for illustration purposes only.
- 8.2 All samples, illustrations and drawings remain the property of the Company and are to be returned by the Buyer to the Company upon request and are to be kept confidential whilst in the Buyer's possession.
- 8.3 Any samples, illustrations or drawings sent to the Buyer are estimates only and do not have any contractual effect. The Company expressly excludes any liability for any misrepresentation in this respect.
- 9 Tools, Dies, Documents etc.**
- 9.1 All intellectual property rights pertaining to tools, dies, patterns, other equipment and all documents supplied or produced to the Buyer in connection with the Contract remain the property of the Company at all times.
- 9.2 The Buyer shall not permit any third party to use the Company's equipment nor disclose to any third party any documents, any design details, dimensions, measurements or other information without the Company's prior written consent.
- 10 Indemnity for Intellectual Property Infringement**
- 10.1 The Buyer warrants that it has the right or permission to use any design or instruction given to the Company and the Buyer shall not cause the Company to infringe any patents, registered designs, copyright, or trademarks to produce or supply the Goods.
- 10.2 The Company excludes liability for infringement of any intellectual property rights where the Goods or parts of the Goods supplied are to the Buyer's designs. The Buyer shall indemnify and keep the Company indemnified in respect of any damages or costs incurred from any action brought against the Company for such infringement.
- 11 Buyer's Materials and Parts**
- 11.1 The Buyer's materials to be used in the Goods shall be delivered to the Company's premises by the Buyer.
- 11.2 The Buyer warrants that all parts and materials supplied to the Company shall be suitable for the Goods to be supplied and the Company is not responsible for any subsequent error or loss to the Goods as a result of the Buyer's failure in this respect.
- 11.3 Any materials removed from the Buyer's materials become the property of the Company and are accounted for in the Contract price.
- 11.4 The Company accepts liability for loss or damage to the Buyer's materials which is due to the negligence of the Company up to the maximum amount of £10,000.
- 12 LIABILITY**
- 12.1 The Company excludes liability for any loss of profit, goodwill or business and any indirect loss or damage which may arise in connection with the Contract save that the Company will be liable for death or personal injury caused by the negligence of the Company.
- 12.2 Subject to the Company's liability for death or personal injury caused by the negligence of the Company, the Company's maximum liability for breach of contract or other tortious act or omission including negligence shall be limited to the Contract price (exclusive of VAT).
- 12.3 The Company may accept higher liability at its absolute discretion if insurance can be secured for such higher amounts as requested by the Buyer and the Buyer pays the additional insurance premiums. The maximum liability of the Company in such circumstances shall be the sum received from the insurers.
- 12.4 The Company accepts no liability in respect of any claim for defect or fault in the Goods unless the Buyer notifies the Company of such claim within 1 month from the date of delivery where a defect in the Goods is immediately apparent upon inspection or within 6 months of delivery where there is latent defect.
- 13 Force Majeure**
- 13.1 If an event occurs which is beyond the control of the Company, for example but not limited to, industrial or government action, materials shortage, war, natural disaster which delays delivery of the Goods or prevents the Goods from being supplied, the Company may suspend the Contract.
- 13.2 If the force majeure event continues for 3 months or more the Company may terminate the Contract and charge the Buyer for the Goods supplied up until the date of termination.
- 14 Insolvency or Default**
- 14.1 The Company may cancel delivery or further deliveries by written notice to the Buyer in the event that the Buyer becomes insolvent, subject to a winding-up petition or compulsory or voluntary liquidation or an administrator or administrative receiver is appointed or if the Buyer ceases or threatens to cease business.
- 14.2 In the event of any of the circumstances in 14.1 occurring, the Company has a general lien over any materials or Goods in the Company's possession for any sums unpaid in respect of any Contract with the Company.
- 15 Performance Bond**
- 15.1 The Company's policy is not to accept performance bonds, but if specifically requested by the Buyer the Company may accept a performance bond but restricted to Orders over £50,000 only. The performance bond will be issued on the following terms : guarantee to be raised by Barclays Bank plc; liability to cease at the date that the guarantee expires; guarantee subject to English Law.
- 16 Arbitration**
- 16.1 If any technical questions arise in relation to the Goods supplied to the Buyer the parties agree to refer the matter to single arbitrator to be appointed by the Institution of Mechanical Engineers and in accordance with the provisions of the Arbitration Act 1996.
- 17 Severability**
- 17.1 If any of these terms and conditions are deemed void or unenforceable they shall not form part of the Contract, but the remaining terms and conditions shall continue for force and effect.
- 18 Data Protection**
- 18.1 Both parties agree to comply with the provisions of the Data Protection Act 1998.
- 19 Notices**
- 19.1 Any notice shall be considered served if sent by first class post, telex, telegraph or telefax to the other party at its last known business address. Notice sent by first class post shall be delivered 4 days after despatch and all other notices on the date of despatch.
- 20 Third Party Rights**
- 20.1 Any person who is not party to this contract has no right to enforce any terms of this contract under the Contract (Rights of Third Parties) Act 1999.
- 21 Law**
- 21.1 These terms and conditions are governed by the Laws of England and any disputes arising in connection with these terms and conditions shall be subject to the exclusive jurisdiction of the English Courts.
- 22 Cancellation**
- 22.1 Should an order be cancelled the following fees will apply: Within one week of order placement £100. Up to 4 weeks (or 30% of agreed lead-time\*) 20% of order value payable; 5 to 6 weeks (or 60% of agreed lead-time\*) 50% of order value payable; 7 to 8 weeks (or 80% of agreed lead-time\*) 75% of order value payable; 10 weeks and over (or 100% of agreed lead-time\*) 100% of order value payable
- \* this is to reflect the impact of any short lead-time where agreed.