



Terms & Conditions Of Sale

- 1. General**
 - 1.1. In these terms and conditions of sale the following words will have the following meanings:-
"Company" shall mean E & H Baxendale Limited;
"Customer" shall mean any person whom the Company supplies Goods;
"Goods" shall mean the products which the Company is to supply to the Customer;
"Services" shall mean the services to be provided by the Company;
"Order Form" shall mean the document issued by the Company setting out (1) a description of the Goods and Services (2) the price and (3) any other relevant matters;
"Price" shall mean the price for the Goods as set out on the Order Form;
"Terms" shall mean the standard terms set out in these terms and conditions of sale;
The laws of England and Wales shall govern these Terms. The Customer and the Company agree to submit to the exclusive jurisdiction of the courts of England and Wales.
 - 1.2. Any error or omission in any sales brochure, quotation, price list, acceptance or offer, invoice or other material issued by the Company (whether typographical, clerical or otherwise) may be corrected by the Company without any liability on the part of the Company.
 - 1.3. Quotations issued by the Company may be withdrawn at any time.
 - 1.4. The Company reserves the right to subcontract any order or part thereof without notifying the Customer, and in such cases the order will be processed as per the subcontractor's standard terms and conditions.
- 2. The Order Form**
 - 2.1. The quantity and description of the Goods and Services shall be set out in the Order Form.
 - 2.2. It is the sole responsibility of the Customer to ensure the Goods and Services set out on the Order Form meets their requirements and confirm in writing.
 - 2.3. The Customer must notify the Company of any changes to their requirements prior to the manufacturing of the Goods, should a complete re-design be required a design charge may apply.
 - 2.4. The Company may make changes to the Goods and Services in order to conform to any legal requirements or which do not materially affect their quality or performance.
 - 2.5. The Customer shall at its own expense supply the Company with all necessary materials and information required by the Company to provide the Goods and Services in accordance with these Terms. If a failure by the Customer to provide materials or information causes the Company to miss a deadline, the Company deadline shall be deemed to be extended by the period of the Customer's delay.
- 3. Price and Payment**
 - 3.1. Unless otherwise stated the Price does not include any Value Added Tax which the Customer shall pay in addition to the Price at the rate prevailing on the date of the invoice.
 - 3.2. If you do not have a credit account payment must be made by cash or cheque (allowing 5 working days for the cheque to clear) before the Goods can be manufactured.
 - 3.3. Customer accounts are opened subject to approval of satisfactory references.
 - 3.4. The Company shall invoice the Customer for the Goods and Services monthly in advance.
 - 3.5. Unless the subject of a genuine dispute, the Customer shall pay the Price within 30 calendar days of receipt of a valid invoice (the "Due Date").
 - 3.6. Should the Customer fail to make any payment in full on the Due Date under this agreement, the Company may charge interest on the outstanding amount.
 - 3.7. If, because of a factor beyond the control of the Company, the cost to the Company of providing the Goods and Services increases, the Company may before delivery or collection increase the Price of the Goods and Services.
 - 3.8. The Customer will pay the Price for the Goods and Services, if the Customer wants the Company to deliver the Goods, the Customer will pay the Company's charges for transport.
 - 3.9. All amounts due under these Terms shall be paid in full without any deduction or withholding other than as required by law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or part.
 - 3.10. The credit account facility may be withdrawn at any time by the Company without giving prior notice to the Customer.
- 4. Delivery of Goods**
 - 4.1. No allowances for transport will be made by the Company for Goods collected by the Customer from the Company's premises. Goods may be collected by prior arrangement with the Company, and if so agreed, the Customer shall collect the Goods within 14 days of being notified that the Goods are ready to be collected. Thereafter the Customer will incur storage charges at the current rate applied by the Company.
 - 4.2. When the Customer collects the Goods, the vehicle shall be equipped with sufficient skids to enable loading by forklift truck. The Customer shall be solely responsible for the size, weight and positioning of any load on the vehicle, and shall fully indemnify the Company for any claims or actions arising there from.
 - 4.3. Any dates quoted for delivery of Goods are approximate and the Company shall not be responsible for any delay in delivery of Goods however caused. Unless agreed in writing in advance by the Company time for delivery shall not be of the essence. The Company may deliver the Goods before the scheduled delivery date.
 - 4.4. Delivery of the Goods shall be made to the site address as confirmed by the Customer at the time of confirmation of the order. Delivery will be made to the nearest hard metalled road surface by a forty foot articulated lorry. The Customer shall be entirely responsible for the prompt unloading of the Goods and the provision of suitable labour and lifting equipment.
 - 4.5. The Company will endeavour to comply with any reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so and the Customer shall pay all reasonable and proper costs and expenses arising from such postponement.
 - 4.6. The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
 - 4.7. Delivery will be deemed to have been effected when the Goods leave the premises of the Company.
 - 4.8. Should the goods not be accepted on delivery by the Customer and be returned, the Customer shall pay all transport costs and reasonable expenses arising from such refusal. Re-delivery dates will be at the discretion of the Company and not the Customer.
 - 4.9. It is the responsibility of the Customer to inspect and notify the Company within 24 hours of any damage and shortages. The Company shall not be liable for any shortages or damaged goods if not notified within this period.
 - 4.10. Any alleged damage or shortages shall not constitute valid grounds for the Customer to delay payment in respect of the Goods delivered.
- 5. Returns**
 - 5.1. If the Terms of clause 2.2 were not fully complied with and the Goods are to be returned a charge may be incurred.
- 6. Ownership and Responsibility**
 - 6.1. Ownership of any consignment of Goods shall not pass to the Customer until the Company has received payment in full of all sums due to it in respect of that consignment only.
 - 6.2. Until ownership in the Goods passes to the Customer, the Customer shall:
 - 6.2.1. hold the Goods on behalf of the Company, take proper care of them and take all reasonable steps to prevent any damage to or deterioration of them;
 - 6.2.2. store or keep the Goods separately from other Goods, so as to show clearly that they belong to the Company;
 - 6.2.3. not sell or part with possession of the Goods;
 - 6.2.4. keep the Goods free from any mortgage, charge, lien or other encumbrance;
 - 6.2.5. insure the Goods; and
 - 6.2.6. notify the Company immediately if any event specified in clause 8.1.2 to 8.1.9 occurs in relation to the Customer.
 - 6.3. Despite clauses 6.1 and 6.2, the Company may bring an action against the Customer for the price of the Goods and Services if the Customer fails to pay for them in full by the Due Date, even though property in the Goods has not passed to the Customer.
 - 6.4. The responsibility for loss or damage to any consignment of the Goods shall pass to the Customer on delivery.
 - 6.5. Each order for the Goods shall constitute a separate contract and any default by the Company in relation to any one order shall not entitle the Customer to treat these Terms as terminated.
- 7. Warranties and indemnities**
 - 7.1. The Company warrants and represents to the Customer that it will perform its obligations under these Terms with reasonable skill and care. All other warranties are expressly disclaimed to the fullest extent permitted by law.
 - 7.2. The Company shall not be liable to the Customer (whether in contract, tort, including negligence and breach of duty, or otherwise at law) for any:
 - 7.2.1. indirect or consequential loss; and/or
 - 7.2.2. loss of profits, revenue or goodwill of the Customer.
 - 7.3. The Company does not exclude its liability for death or personal injury if caused by its own negligence or for fraud.
- 8. Termination**
 - 8.1. Either party may terminate these Terms immediately by notice in writing if the other party:
 - 8.1.1. commits a material breach of any of the Terms (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;
 - 8.1.2. enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
 - 8.1.3. becomes insolvent;
 - 8.1.4. ceases or threatens to cease to carry on business;
 - 8.1.5. compounds or makes any voluntary arrangement with its creditors;
 - 8.1.6. is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;
 - 8.1.7. is unable to pay its debts as they fall due;
 - 8.1.8. has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or
 - 8.1.9. takes or suffers any similar action due to debt, or if the equivalent of any of the events described at clause 8.1.2 to 8.1.9 inclusive under the law of any jurisdiction occurs in relation to the other party.
 - 8.2. The expiry or termination of these Terms for any reason shall not affect any rights and/or obligations:
 - 8.2.1. accrued before the date of termination or expiry; or
 - 8.2.2. expressed or intended to continue in force after and despite expiry or termination.
 - 8.3. The Customer shall not following the termination of these Terms for any reason represent itself as being connected with the Company.
 - 8.4. On termination of these Terms (for a breach by the Customer) all outstanding or invoiced Prices shall become immediately payable.
- 9. Confidentiality**
 - 9.1. Confidential Information means all technical, commercial and financial information, product information, trade secrets, know-how and all information relating to the plans, intentions, market opportunities, transactions, affairs and/or business of a party and its Group companies and/or its or their customers and/or suppliers, and the Terms;
 - 9.2. Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under these Terms.
 - 9.3. The obligation of confidence shall not apply where the Confidential Information:
 - 9.3.1. is required to be disclosed by operation of law;
 - 9.3.2. was in the possession of the recipient prior to disclosure by the other party without restriction on disclosure or use;
 - 9.3.3. is subsequently acquired from a third party without any obligation of confidence;
 - 9.3.4. is or becomes generally available to the public through no act or default of the recipient; or
 - 9.3.5. is disclosed on a confidential basis for the purposes of obtaining professional advice.
 - 9.4. This clause 9 shall continue in force notwithstanding the expiry or termination of these Terms, whatever the reason for such termination.
- 10. Intellectual Property Rights**
 - 10.1. All intellectual property rights in reports and other deliverables created by the Company in the course of performing the Services shall belong to the Company and the Customer shall not obtain any rights therein. The Company hereby grants the Customer a licence to use the intellectual property rights in the deliverables to the extent necessary to make use of the deliverables as contemplated by the Order Form.
- 11. Force Majeure**
 - 11.1. The Company shall have no liability to the Customer in the event of non-delivery of the whole or any portion of the Goods caused directly or indirectly by act of God, weather, war, terrorism, acts of Government, strikes or lockouts, fire, breakdown of machinery, non-delivery or delay in delivery by the Company's suppliers of goods and materials required, shortage of transport, general shortage of materials and restrictions in the use of power, or any other beyond the Company's complete control. In the event of any delay in Delivery due to any of the aforesaid causes the time for delivery shall be extended to the extent of the delay caused.