

Terms & Conditions of Sale

1 DEFINITIONS

- 1.1 'BUYER' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 'CONDITIONS' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 'DELIVERY DATE' means the date specified by the Seller when the goods are to be delivered.
- 1.4 'GOODS' means the articles which the Buyer agrees to buy from the Seller.
- 1.5 'PRICE' means the price for the Goods excluding packing, loading, unloading carriage, insurance and value added tax.
- 1.6 'SELLER' means Cottam Brush Limited of Unit 7, Monkton Business Park North, Hebburn, NE31 2JZ, United Kingdom.

2 CONDITIONS APPLICABLE

- 2.1 Subject to any variation under condition 2.4 the contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be offer by the Buyer to buy Goods subject to these conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of the Seller.

3 THE PRICE AND PAYMENT

- 3.1 Unless otherwise agreed by the Seller in writing, the Price for the Goods shall be the

price set out in the Seller's price list published on the date of delivery or deemed delivery

- 3.2 Payment of the Price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.
- 3.3 Time for payment shall be of the essence.
- 3.4 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 3.5 The Buyer shall make all payments due under the contract for sale in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 3.6 Failure by the Buyer to make punctual payment shall entitle the Seller to suspend any outstanding deliveries or to cancel the contract so far as it remains unperformed at their option and without prejudice to their rights to claim for the price of goods already delivered or manufactured at the date of cancellation and for loss or injury thereby occasioned.
- 3.7 The Seller may also charge interest on the amount outstanding from the due date to the date of receipt by the Seller (whether or not after judgment), at the annual rate of 8% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.8 In the case of contracts for the sale of Goods from Brushworld catalogue where the nett value is less than £200.00 the Buyer will pay carriage charges of £14.50 in addition to the Price if the goods are to be delivered by the

Seller to a destination in the United Kingdom mainland (excluding offshore islands). For non Brushworld catalogue goods or if the goods are to be delivered by the seller to any other destination (including offshore islands) the carriage charges will be specifically quoted by the Seller.

- 3.9 A minimum nett goods invoice value charge of £50.00 applies to all contracts for the sale of Goods.

4 THE GOODS

- 4.1 The quantity and description of the Goods shall be as set out in Seller's quotation or acknowledgement of order.
- 4.2 The Seller reserves the right to make changes in the specification of the Goods without notice to the Buyer.

5 WARRANTIES AND LIABILITY

- 5.1 Subject to condition 8 the Seller warrants that for a period of six months from delivery or deemed delivery the Goods are free from defects in workmanship and materials, and undertakes, at its option, to repair or replace the Goods which are found to be defective as a result of faulty materials or workmanship within 6 months of delivery or deemed delivery
- 5.2 The Seller shall not be liable for a breach of the warranty if:
 - 5.2.1 the Buyer makes any further use of such Goods after notifying the Seller of any such breach in accordance with condition 8; or
 - 5.2.2 the defect arises because the Buyer has failed to follow the Seller's oral or written instruction as to the storage, commissioning, use or maintenance of the Goods; or
 - 5.2.3 the Buyer has not paid for the Goods in full.
- 5.3 The Seller shall not be liable for any damage or defects to the Goods caused by improper

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use of the Goods or use outside their normal application.

- 5.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract for sale.
- 5.5 Nothing in these conditions excludes or limits the liability of the Seller:
 - 5.5.1 for death or personal injury caused by the Seller's negligence; or
 - 5.5.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - 5.5.3 for fraud or fraudulent misrepresentation.
- 5.6 Subject to condition 5.5 the Seller shall not be liable, whether in tort, contract, misrepresentation or otherwise for loss of profit, loss of business, depletion of goodwill or similar losses or loss of goods or loss of contract or loss of use or loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 5.7 Subject to condition 5.5, the Seller'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 the contract for sale shall be limited to the Price of the Goods.
- 5.8 Subject to condition 13 any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods.

6 DELIVERY OF GOODS

- 6.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

- 6.2 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery and shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.3 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery:
 - 6.3.1 risks in the Goods shall pass to the Buyer (including for loss or damage caused by the seller's negligence);
 - 6.3.2 the Goods shall be deemed to have been delivered; and
 - 6.3.3 the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.4 If the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata contract rate.
- 6.5 The Seller may deliver the Goods by separate installments each separate installment shall be invoiced and paid for in accordance with the provisions of the contract.

7 ASSIGNMENT

- 7.1 The Seller may assign the contract or any part of it to any person, firm or company.
- 7.2 The Buyer shall not be entitled to assign the contract or any part of it without the prior written consent of the Seller.

8 ACCEPTANCE OF THE GOODS

- 8.1 The Buyer shall be deemed to have accepted the Goods and the Seller shall not be liable for any damage to or shortage in or other defect in the Goods unless the Seller has received written notice at its principal office

from the Buyer of such damage, shortage or defect within seventy two hours of the time when the Buyer discovers or ought to have discovered such damage, shortage or defect.

9 TITLE AND RISK

- 9.1 The Goods are at the risk of the Buyer from the time of delivery.
- 9.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full all sums due to it in respect of:
 - 9.2.1 the Goods; and
 - 9.2.2 all other sums which are or which become due to the seller from the Buyer on any account.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 9.3.1 hold the Goods on fiduciary basis as the Seller's bailee;
 - 9.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 9.3.3 not destroy, deface or obscure any identifying marks or packaging on or relating to the Goods; and
 - 9.3.4 maintain the Goods in a satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 9.4 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

10 REMEDIES OF BUYER

- 10.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such

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Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

- 10.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
- 10.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods other than in accordance with condition 5

11 INDEMNITY

- 11.1 The Buyer shall indemnify and keep indemnified the Seller against all losses, damages, costs, claim, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any third party intellectual property rights (including but not limited to patents, registered designs, trade marks or copyright) which results from the Seller's use of the Buyer's specification instructions, or such other information. The indemnity shall apply whether or not the Buyer has been negligent or at fault and does not limit any further compensation rights of the Seller.

12 CONFIDENTIALTY

- 12.1 The Buyer shall keep in strict confidence all technical or commercial know-how specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Seller or its agents and any other confidential information concerning the Seller's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know

the same for the purpose of discharging the Buyer's obligations to the Seller, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

- 12.2 All materials, equipment and tools, drawings, specifications and data supplied by the Seller to the Buyer shall at all times be and remain the exclusive property of the Seller, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Seller, and shall not be disposed of or used other than in accordance with the Seller's written instructions or authorisation.
- 12.3 This condition 12 shall survive termination of the contract, however arising.

13 FORCE MAJEURE

The Seller reserves the right to defer the date of delivery, or to cancel the contract or reduce the amount of Goods ordered, without liability to the Buyer if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lockouts or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Seller or its sub-contractors.

14 SEVERANCE

If any Condition (or part of a condition) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not affect the

other Conditions which shall remain in full force and effect.

15 GENERAL

The formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.