

BRITFAB Limited

Terms of Trading

- 1 Price**
- 1.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 1.2 Our quotations lapse after 30 days (unless otherwise stated).
- 1.3 The price quoted excludes delivery (unless otherwise stated).
- 1.4 Rates of tax and duties on the goods will be those applying at the time of delivery.
- 1.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.
- 2 Delivery**
- 2.1 All delivery times quoted are estimates only.
- 2.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
 - 2.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
 - 2.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 2.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 2.4 We may deliver the goods in stages. Each stage is treated as a separate contract.
- 3 Delivery and safety**
- 3.1 We may decline to deliver if:
 - 3.1.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - 3.1.2 the premises (or the access to them) are unsuitable for our vehicle.
- 3.2 If delivery is delayed:
 - 3.2.1 at your request;
 - 3.2.2 under clause 3.1;
 - 3.2.3 because you fail to accept delivery when it is offered (including if you fail to collect goods within 10 days of being notified that they are ready for collection); or
 - 3.2.4 because we suspend delivery under these terms; we may treat delivery as having taken place and charge you for:
 - 3.2.5 the cost of any aborted delivery; and
 - 3.2.6 storage of the goods.
- 4 Risk**
- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
 - 4.2.1 at our premises (if you are collecting them or arranging carriage); or
 - 4.2.2 at your premises (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged (or not delivered), you must detail the shortage or damage on the delivery note and write to confirm your claim within five working days of delivery (or the expected delivery time). You must give us (and any carrier) a reasonable opportunity to inspect the damaged goods.
- 5 Payment terms**
- 5.1 You are to pay us in cash or otherwise in cleared funds on receipt of our pro-forma invoice, unless you have an approved credit account.
- 5.2 If you have an approved credit account, payment is due no later than 30 days after the date of our invoice unless otherwise agreed in writing.
- 5.3 If you fail to pay us in full on the due date:
 - 5.3.1 we may suspend or cancel future deliveries;
 - 5.3.2 we may cancel any special terms agreed including any discount offered to you;
 - 5.3.3 you must pay us interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998
 - a calculated (on a daily basis) from the date of our invoice until payment;
 - b compounded on the first day of each month; and
 - c before and after any judgment (unless a court orders otherwise);
 - 5.3.4 we may claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
 - 5.3.5 we may recover (under clause 5.7) the cost of taking legal action to make you pay.
- 5.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 5.5 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.6 While you owe money to us, we have a lien on any of your property in our possession.
- 5.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms

- 6 Title**
- 6.1 Until you pay all debts you may owe us:
 - 6.1.1 all goods supplied by us remain our property;
 - 6.1.2 you must store them so that they are clearly identifiable as our property;
 - 6.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
 - 6.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:
 - a. we revoke that right (by informing you in writing); or
 - b. you become insolvent.
- 6.2 You must inform us (in writing) immediately if you become insolvent.
- 6.3 If your right to use and sell the goods ends you must allow us to remove the goods.
- 6.4 We have your permission to enter any premises where the goods may be stored:
 - 6.4.1 at any time, to inspect them; and
 - 6.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.
- 7 Warranties**
- 7.1 We warrant that the goods:
 - 7.1.1 comply with their description on our acknowledgement of order form; and
 - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.3).
- 7.2 We offer no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 7.3 If you believe that we have delivered goods which are defective in materials or workmanship, you must:
 - 7.3.1 inform us (in writing), with full details, as soon as possible (but in any event no later than 5 days after discovery of the defect); and
 - 7.3.2 allow us to investigate (we may need access to your premises and product samples).
- 7.4 If the goods are found to be defective in material or workmanship (following our investigations, and you have complied with those conditions (in clause 7.3) in full, we will (at our option) replace the goods or refund the price.
- 7.5 We will not be liable under clause 7.4 if:
 - 7.5.1 the goods have been misused, or altered without our approval; or
 - 7.5.2 the defect is attributable to the fault of our supplier of those goods (or a part of them), in which case our only liability to you will be to obtain the benefit of any claim against that supplier or manufacturer.
- 7.6 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to £1,000,000.
- 7.8 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 7.9 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.
- 8 Specifications and drawings**
- 8.1 If we prepare the goods in accordance with your specifications or designs:
 - 8.1.1 you must ensure that the specifications or designs are accurate;
 - 8.1.2 you must ensure that goods prepared in accordance with those specifications or designs will be fit for the purpose for which you intend to use them; and
 - 8.1.3 you must ensure that our use of your specifications or designs will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 8.2 We reserve the right to make any changes in the specifications of our goods which are necessary to ensure they conform with any applicable safety or other statutory requirements.
- 8.3 We also reserve the right to make without notice any minor modifications in our specifications we think necessary or desirable. All specifications are subject to a reasonable commercial tolerance.
- 8.4 We do not guarantee that the goods (or any coating or finishing) will match any sample or any goods from another batch. We will not be liable for any claim that the goods do not comply with their specification (for example, colour or finish) if the goods are a reasonable match to the specification.
- 8.5 If we carry out drawing *work* before preparing the goods:
 - 8.5.1 we may charge you for that work, even if the order is cancelled;
 - 8.5.2 you must approve or reject any drawings we send you within the timescale we give you when we send them for approval; and
 - 8.5.3 if you do not approve drawings within the timescale set out under clause 8.5.2 we may treat the order as cancelled or delay any estimated delivery date.

- 9 Return of goods**
- 9.1 We will accept the return of goods from you only by prior arrangement for the replacement of defective goods where we have accepted your claim under clause 7.4.
- 10 Cancellation**
- 10.1 If the order is cancelled (for any reason) you are then to pay us for all drawing work (finished or in progress) and for all stock (finished or unfinished) which we hold or to which we are committed.
- 10.2 We may suspend or cancel the order, by written notice if:
 - 10.2.1 you fail to pay us any money when due (under the order or otherwise);
 - 10.2.2 you become insolvent;
 - 10.2.3 you fail to honour your obligations under these terms.
- 10.3 You may not cancel the order unless we agree in writing (and clauses 2.2.2 and 10.1 then apply).
- 11 Waiver and variations**
- 11.1 Any waiver or variation of these terms is binding in honour only unless:
 - 11.1.1 made (or recorded) in writing;
 - 11.1.2 signed on behalf of each party; and
 - 11.1.3 expressly stating an intention to vary these terms.
- 11.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.
- 12 Force majeure**
- 12.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.
- 12.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, extreme weather conditions, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 13 General**
- 13.1 Scottish law is applicable to any contract made under these terms. The Scottish courts have non-exclusive jurisdiction. Any dispute arising out of the contract must be referred to arbitration by an agreed arbitrator, or, failing that, an arbitrator appointed by the Scottish Council for International Arbitration.
- 13.2 If you are more than one person, each of you has joint and several obligations under these terms.
- 13.3 If any of these terms are unenforceable as drafted:
 - 13.3.1 it will not affect the enforceability of any other of these terms; and
 - 13.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 13.4 We may treat you as insolvent if:
 - 13.4.1 you are unable to pay your debts as they fall due; or
 - 13.4.2 you (or any item of your property) become the subject of:
 - a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
 - b. any application or proposal for any formal insolvency procedure; or
 - c. any application, procedure or proposal overseas with similar effect or purpose.
- 13.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 13.6 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 13.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 13.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:
 - 13.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
 - 13.8.2 which expressly state that you may rely on them when entering into the contract.
- 13.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.