

TERMS & CONDITIONS OF SALE – FREEMANS OF NEWENT LTD

In these Terms & Conditions “the Company” means Freemans of Newent Ltd. “the Customer” means the person firm or company purchasing the goods from the Company under the contract between the Company and the Customer: “Contract” means the contract between the Company and the Customer. A “Consumer” shall mean a consumer as defined by the Unfair Contract Terms Act 1977 (as amended) or Unfair Terms in Consumer Contract Regulations 1999 (as amended).

The statutory rights of a Customer who is a Consumer is not affected by these Terms and Conditions

1. **Acceptance of Order**

All orders are accepted by the Company solely on these Terms and Conditions, which override any terms and conditions stipulated, incorporated or referred to by the Customer whether in its order or any negotiations. No variation or addition to these Terms and Conditions shall be incorporated into the Contract unless such variations or additions and the Company’s agreement thereto are both expressly agreed in writing. Any order placed by the Customer with any of the Company’s salesmen or other employees or representatives shall be subject to acceptance by the Company.
 2. **Returns / Cancellations**
 - a. The Company may in its sole discretion accept or refuse the return of any goods which have been incorrectly ordered. In the event that the Company decides to accept the return of such goods acceptance shall be upon such terms as the Company may determine and in particular the Company reserves the rights to charge for the carriage and handling of such goods, being 25% (minimum £5.00) of the invoiced value of the said goods whichever is the greater.
 - b. Any complaints regarding shortages or quality must be notified within 24 hours of delivery otherwise the Company cannot accept any claims.
 3. **Accounts / Payment**
 - a. Credit accounts may be opened at the discretion of the Company subject to satisfactory credit references being obtained. Payment for goods supplied on credit accounts, shall become due and payable within your payment terms.
 - b. For all other transactions, the Company shall be entitled to invoice the Customer for the price of the goods at the time of the acceptance or order / delivery of the goods and the Customer shall pay the price of the goods at the time of rendering of the Company’s invoice.
 - c. Without prejudice to the Company’s rights to enforce payment, if the Customer fails to make payment as herein provided for in Conditions 5(a) and 5(b) the Company shall be entitled to charge interest on any balance outstanding from the date the same became overdue for payment at a rate per annum equal to 4% above the Base Rate for the time being charged by the Barclays Bank PLC.
 - d. Interest shall become due and payable pursuant to Condition 5C notwithstanding the fact that a portion of the account or invoice is the subject to dispute or query.
 - e. If at any time the Customer being a credit account customer alters its constitution (being a company) or (being a sole trader or partnership) becomes incorporated or amalgamated with others, the Customer shall give prior written notice to the Company of the intended change should the Customer wish to continue credit account facilities following the intended change. The Company may commence trading with the changed entity at its sole discretion and will not be deemed to do so until a written acknowledgement and acceptance is issued by the Company’s financial controller or director.
 - f. If the Customer shall pay any account or any part thereof by cheque and should such cheque be subsequently dishonoured the Company reserves the right to debit the Customer’s account with the Company with any charge levied by the Company’s bankers relating to the handling of such dishonoured cheque and the charge shall be immediately due and payable
 - g. While the Company accepts cash payments in settlement of the Customers account the Company reserves the right to charge an administration fee on payments consisting of large amounts of coinage.
 4. **Delivery / Despatch**
 - a. Delivery of the goods shall be made by the Customer collecting the goods at the Company’s premises or, if some other place for delivery is agreed by the Company, by the Company delivering the goods to that place.
 - b. Risk of damage or loss to the goods shall pass to the Customer:
 - i. In the case of goods to be delivered at the Company’s premises, at the time when the Company notified the Customer that the goods are available for collection or
 - ii. In the case of goods to be delivered otherwise than at the Company’s premises, on delivery or if the Customer wrongfully fails to take delivery of the goods, at the time when the Company has tendered delivery of the goods.
 - c. Where the goods are delivered by and on behalf of the Company otherwise than at the Company’s premises, the Company accepts no liability whatsoever for loss or damage to goods in transit unless notified in writing within two days following despatch.
 - d. Any stated time or date for delivery is an estimate only and the Company does not bind itself to make delivery, at such time or date. Accordingly the Company shall not be liable for failure to deliver by such time or date, nor for any loss or damage arising directly or indirectly from such failure, nor shall the Customer be entitled to refuse to accept the goods because of late delivery.
 - e. If the Customer fails to take delivery of the goods or fails to give the Company adequate instruction for delivery, without prejudice to any other right or remedy available to the Company, the Company may: sell the goods at the best price readily obtainable and charge the Customer for any shortfall below the price stated.
 5. **Liability & Risk**
 - a. Nothing in these terms shall be deemed to exclude or restrict the Company’s liability for death or personal injury resulting from its negligence or fraudulent misrepresentation.
 - b. The Company accepts liability for any breach on its part of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 (as amended) or by Section 8 of the Supply of Goods (Implied Terms) Act 1973 (as amended)
 - c. The Company does not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the goods within two days of the delivery to the Customer. In such circumstances the Company’s liability shall be restricted to making good the shortage. Any delivery book or note marked “NOT EXAMINED” will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage.
 - d. The Customer must give written notice within two days to the Company for any claims regarding quality or condition of goods delivered. Only after the Company has inspected the defective goods shall any recourse be taken. The Company’s liability shall be restricted to replacing or refunding the value of the defective goods.
 - e. Subject to Conditions 5 (a) to (d) inclusive, the Company shall only be liable for loss (including consequential loss or loss of profit) damage or delay or expense of any kind whatsoever and however caused (including where caused by the negligence of the Company its servants or agents) save in respect of the Company’s liability for death or personal injury resulting from the Company’s negligence, up to a maximum amount of liability equal to the value of the goods.
 - f. Where the Company sells goods to a Customer, who is not a consumer and the Customer sells those goods directly or indirectly to a person who is a consumer, without prejudice to its rights under the Contract the Consumer shall indemnify the Company against any liability or loss whatsoever arising directly or indirectly pursuant to the Consumer Protection Act 1987.
 6. **Ownership**
 - a. Notwithstanding the risk in the goods may have passed in accordance with these conditions, ownership of the goods shall not pass to the Customer until the earliest of the following events occur:
 - i. The Company receives payment for all amounts payable to it under these conditions and for all monies outstanding from the Customer to the Company in respect of other goods provided by the Company.
 - ii. The Customer sells the goods in the ordinary course of business in which case ownership of the goods will pass to the Customer
 - iii. immediately before title in the goods is needed to pass to the Customer’s buyer.
 - iii. The Company transfers ownership in respect of specified goods by separate written agreement with the Customer.
 - b. Before ownership has passed the Customer holds the goods as mere bailee and the Company reserves the right to repossess any of the goods in respect of which payment is outstanding and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company’s servants to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in section 8 or otherwise and is without prejudice to any accrued rights to of the Company there under.
 - c. The Customer’s licence to sell in condition 6 (ii) is immediately revoked where the Customer becomes insolvent (as defined in Condition 9).
7. **Pallets and Packaging**
 - a. A charge will be made by the Company at its discretion for packaging in order to cover the costs of labour and materials.
8. **Force Majeure**

The Company shall be under no liability for any loss (including consequential loss or loss of profit) damage or delay or expenses of any kind whatsoever cause wholly or in part by Act of God, outbreak of war, civil commotion, government policies or restrictions or control including restrictions on export or import or other licence, trade or industrial disputes of whatever nature, whether or not such disputes involves the Company, its servants or agents, or by any other contingency whatsoever which is beyond the control of the Company.
9. **Default**
 - a. If the Customer becomes insolvent or commits any breach of the contract the Company may stop any goods in transit and/or suspend further deliveries and by notice in writing to the Customer may forthwith determine the Contract without prejudice to the provisions of Condition 6 (b) and to any existing claim.
 - b. For the purposes of Condition 9 (a) “insolvent” shall mean the Customer becoming unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, the levying of the threat of execution or distress on any property of the Customer, the appointment of a receiver or administrative receiver over all or any part of the Customer’s property, a proposal for a voluntary arrangement or compromise between the Customer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise the passing of a resolution of voluntary winding up or summoning a meeting to pass such a resolution other than for the purposes of a bona fide amalgamation or reconstruction, the presentation of a petition for the winding up of the Customer or an administrative order in relation to the Customer, the Customer ceasing or threatening to cease to carry on its business.
10. **Severability**

Each and every obligation contained in these Terms and Conditions shall be treated as a separate obligation and if any provision of these Terms and Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality. Invalidity, voidness, voidability, unenforceability, or unreasonableness be deemed severable and the remaining Terms and Conditions and the remainder of such provision shall continue in full force and effect.
11. **Headings**

The Clause headings in these Terms and Conditions are for convenience only and shall not in any way affect the interpretation of the Contract.
12. **Governing Law**

The Contract shall in all respects be governed by and construed in accordance with English Law.
13. **Guarantee of Credit Account**
 - a. The unconditional and irrevocable guarantee for payment of all the financial obligations of the Customer to the Company granted by the Director(s) of the Company in consideration of the Company opening and making available to the Customer a credit account (“the Guarantee”) shall be a continuing security and shall not be discharged by any intermediate settlement of the credit account.
 - b. The Guarantee shall ensure for the benefit of the Company, its successors and assigns and can be assigned in whole or in part by the Company without notice to the Customer to its parent company, its ultimate parent company and any subsidiary of such ultimate parent company of the Company.
 - c. Where more than one directors of the Customer have granted the Guarantee the obligations shall take effect as joint and several obligations and the Guarantee shall not be revoked or impaired as to any of the guarantors by the death, incapacity insolvency of the other.
 - d. The Company may at its sole discretion release or discharge any of the guarantors from their obligations under the Guarantee or accept any composition from or make any other arrangements with any of the guarantors without releasing or discharging the other(s) or without prejudicing or affecting the Company’s rights and remedies against the other.
14. **DATA PROTECTION ACT 1998 if you are an unincorporated sole trader or partnership.**

Using information about you:

 - a. The Company will store and process information obtained by them which is given by you in your dealings with them on the Company’s computers and in any other way. This will be used by them for training purposes, credit or financial assessments and analysis (including credit scoring, market and product analysis), recovering monies and preparing statistics. We may also use such information to prevent fraud, bad debts and money laundering.
 - b. Telephone calls may be monitored and/or recorded for training purposes.
 - c. The Company may give information about you and how you manage your accounts to the following:
 - d. Credit reference agencies who may use and give out information for credit assessments and to prevent fraud.
 - e. People who provide a service (including insurers) or are acting as the company’s agents on the understanding that they will keep the information confidential.
 - f. We may also give out information about you if we have a duty to do so or if the law allows us to do so.
 - g. We may also make searches about you at credit reference agencies who keep a record which may be seen by other parties to make credit decisions.

Freemans of Newent Limited

Town Farm, Newent, Glos. GL 18 1HP

Tel: (01531) 828282 Fax: (01531) 828283 E-Mail: Sales@freemansofnewent.co.uk

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