

## **TERMS AND CONDITIONS OF SALE**

### **B.M.I Construction Limited T/A The Fireworks Shop**

#### **1.DEFINITIONS**

**The Company** means **B.M.I Construction** Limited (Company number: 10228369) **The**

**Customer** means any person or persons, firm, business, partnership, company or other organisation with whom the Company contracts for the supply of the Goods

**The Goods** means all goods, materials, and items supplied by the Company to the Customer to include, where appropriate, all replacements thereof and additions thereto

#### **2.APPLICATION OF TERMS**

2.1 All Orders placed with the Company and contractual agreements with the Company are subject to these Conditions at all times to the exclusion of all other terms and conditions (to include but not limited to terms or conditions which the Customer purports to apply under any purchase order, specification or other document).

#### **3.QUOTATIONS**

Any quotation issued by the Company is valid for a period of 14 days from the date of issue by the Company to the Customer or, if different, such other period as may be stated in writing from the date thereof by the Company. If the quotation shall not be accepted by the Customer by way of Order to the Company within the said period of validity then the quotation shall be deemed to be withdrawn.

Notwithstanding and without prejudice to Clause 3.1 above, the Company reserves the right to withdraw any quotation issued prior to acceptance without notice or reason being given and at the Company's sole discretion.

#### **4.PRICE**

The Price shall subject to these Conditions be the price detailed on the Company's Website or in the Company's Literature or as may otherwise be notified by the Company to the Customer in writing and shall be valid until such time as amended or varied by the Company.

The Company reserves the right to amend the Price at any time including at the time of Order at the Company's sole discretion and without being responsible for any form of loss.

All prices detailed on the Company's Website or in the Company's Literature are exclusive of Value Added Tax, packaging and delivery charges (unless specifically detailed otherwise) and, where applicable, are exclusive of any substitute taxes, levies, duties, imports, fees or charges whatsoever and howsoever payable, all of which shall be payable by the Customer in full and/or re-imbursed to the Company as appropriate. The Customer shall at all times indemnify the Company against non-payment of the same.

Any typographical or clerical error or omission relating to the Price on the Company's Website, Company's Literature, Order, acceptance of Order, invoice or any other document issued by the Company shall be subject to correction without liability on the part of the Company at whatever time and whenever such a correction shall be deemed necessary by the Company.

## 5.CONTRACT

Whilst the Company shall endeavour to ensure at all times that the details portrayed on or in the Company's Website, Company's Literature or elsewhere, including Goods descriptions, dimensions, drawings, specifications, sizings, photographs, colours, weights and information relating to the Goods is accurate, at all times such details are approximate only and do not form part of the Contract. The Company shall not be held responsible for any variation of the same nor have any liability in respect thereof. The Customer's attention is in particular drawn to Clause 5.2 below.

The Company reserves the right at any time and without notice to amend, alter or change the design, make-up, materials or construction of any of the Goods and to substitute any Goods ordered by a Customer for Goods of a similar type and cost (to be determined at the Company's sole discretion) provided at all times that the changes do not affect the quality, substantial appearance of, or performance of the Goods as anticipated at the time of the Order and the Customer shall raise no requisition in respect of the same.

A Contract shall only exist when an Order has been placed by or on behalf of the Customer which has been accepted by the Company pursuant to this Clause 5.3. A Customer may place an Order either by: (i) signing a completed Company Customer Order form (which will be made available to the Customer by a representative of the Company) and returning the same to the Company by electronic mail, post or fax or (ii) utilising the Company's on-line ordering system on the Website. The Company's acceptance of an Order shall be sent to the Customer by electronic mail, post or fax and the Company's confirmation of such transmission to the Customer shall be final and binding on both parties. Any Order may be subject to payment of a deposit if so requested by the Company.

The Company shall be entitled to regard any person placing an Order with the Company as having been authorised by the Customer to do so and shall bind the Customer in its entirety.

In the event that after the placing of an Order, the Customer shall request a modification, amendment, or variation of the Contract (including the Goods to be supplied under the Contract) then any such request shall not be binding upon the Company unless authorised in writing by a director of the Company. Any such agreed modification, amendment, or variation of the Contract shall be deemed to be an amendment to the Contract and shall not constitute a new Contract.

Subject only to Clause 5.8 below, the Customer may not cancel a Contract unless the Company agrees this in writing and then only upon terms that the Customer shall indemnify the Company in full against all costs (including the cost of all labour, materials, and services used), claims, actions, damages, charges and expenses incurred by the Company as a direct or indirect result of the cancellation.

The Company shall be entitled to cancel any Contract at any time for whatever reason and shall not be responsible to the Customer for any loss or damage arising therefrom, subject to the Company refunding to the Customer any monies paid by the Customer to be agreed between the Company and the Customer.

In relation exclusively to Distance Sales where the Regulations apply:

- (i) in accordance with the Regulations, the Customer has the right to cancel the Contract within 7 days from the date of ordering of the Goods, except where Goods are tailored to a Customer's specific requirements;
- (ii) to exercise the Customer's right of cancellation, the Customer must give written notice to the Company by letter or email giving details of the Goods ordered and (where appropriate) their delivery. Notification by telephone is not sufficient.
- (iii) once the Company has been notified of the Customer's cancellation of the Contract, the Company shall refund or re-credit the Customer within 30 days for any sum that has been paid or debited from the Customer for the Goods. This refund shall be subject to a 2.5% surcharge
- (iv) if the Customer does not cancel the Contract in accordance with this Clause 5.8, the Customer shall be deemed to have accepted the Goods.
- (v) If the Company has delivered the Goods to the Customer but the Customer has cancelled the Contract in accordance with this Clause 5.8, within 3 days of cancellation the Customer must return the Goods to the Company at the Customer's expense. Alternatively, the Customer may request that the Company collect the Goods, in which case the Company shall be entitled to charge a collection charge in respect of the same.
- (vi) All Goods returned pursuant to this Clause 5.8 must be returned in the packaging in which they were supplied and must not be damaged, opened and must be in the same state and condition as when they were supplied.

## **6. PAYMENT**

In consideration of the supply of the Goods by the Company to the Customer, the Customer shall pay the Price.

In relation to Goods which are ordered by a Customer utilising the Company's on-line ordering system on the Website, payment of the Price shall be paid by the Customer to the Company at the time of the Order. The Company accepts payment by Visa, Delta, Visa Electron, MasterCard, Eurocard, Switch, Maestro, or Solo.

In relation to all other Orders (excluding those referred to at 6.2 above), unless otherwise agreed by the Company at the time of the Contract, payment for the Goods shall be due from the Customer 30 days from the date of invoice.

The Company accepts payment by the methods referred to at 6.2 above, together with cheques drawn on a UK clearing bank, postal order or cheque.

Time for payment shall be of the essence. The Company shall be entitled to charge interest on any late payment at the rate of 4% above Barclays Bank plc minimum base rate, with interest being calculated from the date on which payment of the Price is due.

Payment of the Price shall only be deemed to have been made where the Company has received payment of the Price in cleared funds.

The Price shall be paid by the Customer without any deduction whether by way of set off, counterclaim, discount or otherwise.

## **7. DELIVERY**

Subject to Clause 7.2 below, at the time of placing an Order the Customer shall specify in writing to the Company whether it wishes to collect the Goods from the Company's Premises or whether it wishes for the Company to deliver the Goods to the Customer's Premises.

The Company shall deliver to the Customer all Goods with a combined weight of 500kg Net Explosive Content (NEC) and shall be entitled to charge delivery in accordance with these Conditions unless the Customer can demonstrate to the satisfaction of the Company that it holds the necessary authorisations and consents to transport the Goods. The Company's decision on this matter shall be final.

The Company where requested by the Customer and agreed with the Company shall deliver the Goods to the Customer's Premises on a date to be notified and, where-ever possible, agreed with the Customer and shall be entitled to charge a delivery charge in accordance with Clause 7.6 below. Where the Customer wishes to collect the Goods from the Company's Premises, subject always to Clause 7.2 above, the Customer and Company shall agree a collection date.

Delivery of the Goods shall be effected and be deemed to have taken place by the Company delivering the Goods to the Customer's Premises or the Customer collecting the Goods from the Company's Premises. The Customer warrants to ensure that adequate access is available to the Customer's Premises to enable the Company to deliver the Goods and in the event that it is not, the Goods shall be delivered to the closest point of accessibility to be determined by the Company, its contractors, employees or representatives at their sole discretion and the Customer shall raise no objection in this regard.

Notwithstanding Clause 7.4 above, in the event that the Company deems that it is impossible to deliver the Goods, the Company reserves the right to charge to the Customer a minimum charge of £35 to cover part of the cost of failed delivery.

The Company shall be entitled to charge a delivery charge in respect of all Goods delivered by it to the Customer where the Price of such Goods is less than £1000 (exclusive of VAT and any additional charges). The delivery charge shall be confirmed by the Company to the Customer at the time of acceptance by the Company of an Order.

The Company shall not be liable for any penalty, loss, injury, damage, cost or expense arising from any delay or failure in delivery of the Goods by the Company or performance of the Contract from any cause at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery under the Contract, performance of the Contract or to repudiate the Contract.

Any dates quoted or provided by the Company to the Customer or by the Customer to the Company for delivery by the Company of the Goods are approximate only, although the Company shall use its best endeavours to supply the Goods within any time notified by the Company to the Customer but time shall never and not be of the essence at any point. In relation to Distance Sales, the Company shall endeavour to supply the Goods to the Customer within 30 days. The Company shall not incur any liability whatsoever for failure to supply or deliver Goods by any given date or dates.

Notwithstanding Clause 7.8 above, where the Customer fails to collect the Goods on any agreed collection date the Company shall be entitled to repudiate the Contract and shall be

indemnified by the Customer for any loss or damage or expense which the Company may have suffered or incurred as a result of the Customer's failure to adhere to collection of the Goods on the agreed date. Such loss, damage or expense shall include (but not be limited to) expenditure incurred by the Company in storing, transporting and insuring the Goods following the agreed date of collection.

The Customer shall carefully examine the Goods upon delivery and shall notify the Company in writing by signing and returning to the Company a delivery note confirming safe receipt of the Goods.

For the avoidance of doubt, delivery of the Goods may take place separately and on a piecemeal basis.

## **8.RETURN OF GOODS**

8.1 On delivery, the Customer shall carefully examine the Goods and shall notify the Company in writing of any shortages or defects discoverable upon careful examination within 24 hours of delivery. Any other purported notification by the Customer to the Company of such alleged shortages or defects which in the reasonable opinion of the Company should have been able to be detected upon examination on delivery shall not be valid. In the absence of such notification within this stated time and in this stated form, the Company hereby excludes all liability in respect of any defects or shortages.

8.2 Following receipt by the Company of notification by a Customer of a complaint pursuant to Clause 8.1 above, the Company shall either require the Customer to return the Goods to the Company's Premises or shall at the Customer's expense collect the Goods from the Customer's Premises.

8.3 If following the Company's examination of the Goods the Company shall be satisfied that in the Company's opinion the Goods are satisfactory and are as detailed in the Order, and are not damaged nor defective, the Company shall notify the Customer in writing of such findings which shall be final and binding on both parties.

8.4 In the event that a Customer should be of the opinion that the Goods are damaged or defective, but in the Company's reasonable opinion this cannot be ascertained until such time as the Customer has used the Goods, the Customer must notify the Company in writing within 24 hours of the Goods being used. Any other purported notification by the Customer to the Company of such alleged defects shall not be valid and the Company hereby excludes all liability in respect of any such defects.

8.5 The Company shall not accept returned Goods where:

8.5.1 In the Company's reasonable opinion the Goods have been misused, mis-applied, damaged or destroyed by the Customer;

8.5.2 In the Company's reasonable opinion the Goods have been stored incorrectly or inappropriately which may have affected their performance or condition at the time of use;

8.5.3 The Goods have not been returned to the Company in the same or similar packaging to that in which they were supplied;

8.5.4 The Goods have been returned to the Company in packaging which has been opened

8.6 In relation to Distance Sales, nothing in this Clause 8 shall derogate from the Customer's

rights under the Regulations.

## **9 RISK**

9.1 The risk in the Goods shall pass to the Customer immediately upon delivery and the Customer shall take out and ensure appropriate insurance is in place accordingly.

## **10. RETENTION OF TITLE**

10.1 Notwithstanding clause 9.1 above, the Company shall retain title and ownership in the Goods until the Price and all other sums outstanding and owing by the Customer to the Company are paid in full.

10.2 Pending payment in full of the Price and any other sums due to the Company pursuant to these Conditions, the following sub-clauses shall apply;

10.2.1 The Customer shall store the Goods separately and in such a way that they can be readily identifiable as belonging to and being Goods of the Company;

10.2.2 The Customer shall at the Customer's own expense immediately return the Goods to the Company should the Company or its authorised representatives so request at any time after payment is due

10.2.3 In the event that the Goods shall be in any way mixed, compounded, or entwined with the property of a third party or parties then the product or products thereof shall be deemed to be held in common with such third party or parties.

10.2.4 Without prejudice to clause 10.1 above, the Customer shall hold the Goods as the Company's trustee and bailee and shall keep the Goods properly stored, protected, insured, labelled and identified as being the Company's property.

10.2.5 Unless expressly authorised by the Company, the Customer shall not sell, give away, transfer or otherwise dispose of the Goods until the Price and all sums outstanding have been paid to the Company. In the event that the Customer should do so then any monies received and the proceeds of sale, or disposal, including any cheque received or other payment shall be held on trust by the Customer for the Company and the Customer will forward the cheque or payment to the Company immediately. Pending the same, the Customer shall keep any monies received in a separate account so as to be identifiable as the Company's monies. In particular, but without prejudice to the foregoing, the Customer shall not pay the proceeds into any bank account which is overdrawn.

10.2.6 The Company shall be entitled at any time following the date upon which payment is due and without additional notice to enter the premises of the Customer or any third party where the Goods are situate or shall be stored and repossess the same accordingly. For the avoidance of doubt, the Customer irrevocably consents to allow the Company access onto their premises for this purpose. The Customer shall reimburse the Company for all reasonable expenses and fees incurred (including, but not limited to, legal expenses) in so doing.

10.2.7 The Company shall be entitled to maintain an action for the Price of the Goods notwithstanding that title to the same shall not have passed to the Customer.

10.2.8 The Customer will immediately notify the Company of any damage to the Goods and will hold any insurance monies received in trust for the Company absolutely. In the event that a claim is to be made under the Customer's insurance, the Company may, at the Company's sole discretion, conduct negotiations and effect a settlement with the insurers in place of the Customer. The Customer at all times irrevocably authorises the Company to collect any insurance monies from the insurers. The Company may apply any insurance monies as the Company shall see fit.

## **11 WARRANTY**

11.1 In lieu of all warranties, conditions, or liabilities imposed by law, the Company's sole liability in respect of any defect in, damage to, or failure of the Goods supplied or for any loss, injury, or damage attributable thereto is limited to making good by replacement or repair defects which under proper use appear therein and arise solely from defective design, workmanship, or faulty materials within a period of 3 calendar months from the date of delivery.

11.2 The Company will only accept liability under clause 11.1 above provided that the Customer notified the Company of such defects in the manner and at such times as are set out at Clause 8 above.

11.3 At no time shall the Company be liable for any defect in, failure of, or damage to the Goods as a result of misuse by the Customer or any third party, due lack of care and attention, lack of general maintenance, or inappropriate use.

11.4 At no time shall the Company be liable for any defect in, failure of, or damage to the Goods or non performance or inadequate performance of the Contract which occurs as a result or consequence of the actions of any third party, to include, but not limited to , the Company's suppliers

## **12 LIABILITY**

12.1 The Company shall only be liable as stated in clause 11 above. This clause is in lieu of all conditions, warranties, and statements of whatever nature in respect of the Contract whether express or implied by statute, trade, custom, or otherwise and any such condition, warranty, or statement is hereby excluded.

12.2 Without prejudice to the foregoing clauses, the Company's liability for any loss or damage sustained by the Customer as a direct result of any breach of the Contract or any liability whatsoever of the Company (including negligence) in respect of the performance of the Contract shall be limited to payment of damages not exceeding the invoice value of the Contract.

12.3 The Company will not be liable for the following loss or damage which shall or may arise out of or in connection with any failure in, defect of, or damage to the whole or any part of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or its use by the Customer or howsoever caused (even if foreseeable or in the Company's contemplation)

12.3.1 Loss of profit or profits, business, or revenue whether sustained by the Customer or any third party, and/or

12.3.2 Special, indirect, or consequential loss or damage, whether sustained by the Customer or any third party, including, but not limited to, loss of profit, loss of interest, loss of Contract, loss of chance, damage to property of the Customer or any third party, and/or

12.3.3 Any loss arising from any claim made against the Customer by any person or third party, and/or

12.3.4 Any personal injury to the Customer or any other person or individual where such injuries are not caused by the Company's negligence.

12.4 The Customer shall indemnify the Company against all claims, actions, costs, expenses (including any Court costs and legal fees incurred) or other liabilities whatsoever. Non-exhaustive illustrations of the same include;

12.4.1 Any liability arising under the Consumer Protection Act 1987, unless caused by the negligent act or omission of the Company in the supply of the Goods, and/or

12.4.2 Any claim for breach of industrial and/or intellectual property rights arising out of the

order of the Customer, and/or

12.4.3 Any breach of Contract or negligent or wilful act or omission of the Customer in to the Contract.

12.5 These conditions do not purport to exclude or restrict any liability which is prohibited by Section 2 (1) and (6) of the Unfair Contract Terms Act 1977.

### **13.FORCE MAJEURE**

13.1 The Company shall be entitled, without liability on its part, and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or, at its option, to suspend or give partial performance under it, if performance by the Company is prevented, hindered, or delayed whether directly or indirectly by any reason or cause whatsoever beyond the Company's reasonable control, whether or not such cause existed on the date when the Contract was made. Non-exhaustive illustrations include act or acts of God, war, riot, terrorism, explosion, abnormal weather conditions, fire, flood, government action, strike, lock-out, delay by suppliers, accidents and shortage of materials, labour, or manufacturing facilities

### **14.TERMINATION**

14.In the event of any payment due by the Customer to the Company not being paid on the due date, or in the event of the Customer becoming insolvent or bankrupt or a petition being presented or a resolution being passed for the liquidation (otherwise for the purpose of amalgamation or reconstruction) or sequestration of the Customer or a receiver, administrator, administrative receiver or judicial factor being appointed over all or any of the assets of the Customer, or if any steps are taken in relation to any of the foregoing, or the Customer making any voluntary arrangements with its creditors generally, or if the Customer shall cease, or threaten to cease trading or carrying on business, or if the Customer shall, without prior written consent of the Company, sell or otherwise dispose of the whole or substantially the whole of its assets, or if the Company reasonably apprehends that any of the foregoing events is about to occur (and notifies the Customer accordingly), the Company shall be entitled to treat the Contract of which these conditions form part and any other Contract between the Company and the Customer as repudiated and shall be entitled to suspend deliveries to the Customer and repossess any Goods supplied without being liable for any form of loss.

### **15.ENTIRE AGREEMENT CLAUSE**

15.1 The Customer confirms that it has not relied upon any warranty, representation, or undertaking of or on behalf of the Company by any of its employees or agents (whether written or oral) in respect of the Goods and the Company shall have no liability in respect thereof.

15.2 This agreement supersedes any other arrangements, if appropriate, and whether past or present, Contracts, assurances, understandings, course of dealings, or promises between the parties hereto.

15.3 These Conditions represent the entire agreement between the Company and the Customer.

15.4 Nothing in these terms and conditions is intended to exclude nor limit the Company's liability for fraud or fraudulent misrepresentation.



## **16.COMPATIBILITY**

16.1 The Customer confirms and acknowledges that it is the sole responsibility of the Customer alone to ensure that the Goods ordered from the Company shall be appropriate for the Customer's requirements. The Company shall not at any time be liable in any way shape or form for any information or suggestion provided by the Company (its employees or agents) in relation to the use of the Goods, the capabilities of the Goods, or as to whether or not the Goods shall be suitable for the Customer's requirements, and/or compatible with any of the Customer's own Goods.

## **17. INTELLECTUAL PROPERTY**

17.1 The Company shall have and shall retain the property, copyright, and all other intellectual or industrial property rights in any designs, proofs, catalogues, brochures, pricelists, quotations, and literature generally prepared by the Company.

17.2 The Customer shall indemnify the Company from all actions, costs, claims, demands, expenses and liabilities whatsoever arising from any actual or alleged infringement brought in connection with clause 17.1.

## **18. CONFIDENTIALITY**

18.1 The Customer agrees that it shall keep the terms of any Order or Contract in particular (but not limited to) the Price confidential and shall not disclose such information to any third party without the consent of the Company. The Customer warrants that it shall procure that its employees, agents, and representatives shall keep such information confidential and that it shall indemnify the Company in relation to any loss or damage suffered as a result of any breach by the Customer of this Clause.

## **19 MISCELLANEOUS**

19.1 The Company may at the Company's sole discretion subcontract the performance of this Contract in whole or in part.

19.2 If the Customer has a complaint about the Goods, it should contact the Company at the following address:- The Fireworks Shop, Unit1 Tirpeny Street Morrision Swansea SA6 8EB.

19.3 This Contract is between the Company and the Customer as principals and shall not be assignable by the Customer without express written consent of the Company.

19.4 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

19.5 No waiver by the Company of any breach of Contract by the Customer shall be construed as a waiver of any subsequent breach of the same or any other provision hereof.

19.6 Failure or delay by the Company in enforcing or partially enforcing any provision of this Contract shall not be construed as a waiver of its rights generally under the Contract.

19.7 For the avoidance of doubt, nothing in this agreement shall confer on any third party any benefit or the right to enforce any term or terms of this agreement.

19.8 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be effected thereby.

19.9 Obligations by more than one person are joint and several and where any party under this agreement at any time is more than one person, references to it are to each person individually as well as jointly with the others comprising it.

19.10 Words importing the singular also include the plural and vice versa where the context so requires.

19.11 The headings, marginal notes, and notes for guidance in this agreement shall not be deemed to be part thereof nor taken into consideration in the interpretation or construction thereof.

19.12 All references herein to clauses are references to clauses numbered in this agreement and not to those in any other document unless otherwise stated.

19.13 These terms and conditions on behalf of the Company have been prepared to reflect the Unfair Contract Terms Act 1977. The Company considers these terms and conditions to be reasonable. Should the Customer consider that these terms and conditions may be unreasonable, given the Customer's particular circumstances, then the Customer shall inform the Company before any order is placed and Contract entered into. In such circumstances, the Company may, at the Company's sole discretion, either agree to vary these terms and conditions, enter into different terms and conditions, or insist upon the Customer being bound by these terms and conditions which, for the avoidance of doubt, the Company maintains at all times are fair and reasonable. Should the Customer not notify the Company to the contrary then the Customer shall be deemed to accept that these terms and conditions are fair and reasonable.

19.14 These Conditions shall be governed by and construed in accordance with the law of England and Wales and the parties shall submit to the jurisdiction of the English Courts in their entirety.