

BMI TERMS & CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions the following meanings shall apply:

- "BMI" means BMI Group UK Limited.
- "Customer" means the person or company, their employees or agents seeking to purchase Goods from BMI.
- the "Goods" means the goods and/or services to be supplied by BMI to the Customer.
- the "Contract" means the Contract for the supply of Goods by BMI to the Customer.
- The singular shall include the plural.

2. APPLICATION OF TERMS AND CONDITIONS

These Terms and Conditions apply to all Contracts for the sale of Goods by BMI to the Customer to the exclusion of all other terms and conditions including any purported modification or variation of these Terms and Conditions and any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or otherwise. All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Terms and Conditions. Any typographical or clerical error or omission in any sales literature, communication, documentation (including these Terms and Conditions and the Contract) or information issued by BMI to the Customer shall be subject to correction without any liability on the part of BMI. IF THE CUSTOMER DEALS AS A CONSUMER ANY PROVISION OF THESE TERMS AND CONDITIONS WHICH IS OF NO LEGAL EFFECT AGAINST A CONSUMER DOES NOT APPLY. THE STATUTORY RIGHTS OF A CONSUMER ARE NOT AFFECTED BY THESE TERMS AND CONDITIONS.

3. TERMS AND CONDITIONS

Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall only apply if agreed in writing by an authorised officer of BMI.

4. PRICE AND PAYMENT

The Goods are offered for sale at current prices which the Customer accepts are subject to change as set out in this clause 1.4. Unless otherwise stated all prices quoted are exclusive of VAT. Quotations are based on prices applicable to the quantity specified. In the event of orders being placed for lesser quantities BMI shall be entitled to adjust the price of Goods as ordered to take account of the variation of quantity. The price shall be subject to variation by BMI in the event of an increase after BMI's acceptance of an order due to any cause beyond the control of BMI and/or where BMI's current prices are increased. In such event the price shall be that in force at the date of dispatch of the Goods. Any increase

of duties, public dues, freight or insurance which occur or come into force after BMI's acceptance of any order shall be for the Customer's account. Our haulage rates shall apply, as amended from time to time. Payment of the price and VAT shall be due on or before the 30th day of the month following the month of invoice. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above National Westminster Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment. BMI shall further have the right to use the provisions under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall not be entitled to withhold payment of any amount payable to BMI by reason of any dispute or claim by the Customer and in the case of any under delivery or delivery of damaged goods shall remain liable to pay the full invoice price of all goods delivered or available for delivery. The Customer shall have no right of set off, statutory or otherwise under these Terms and Conditions in relation to this Contract and/or relating to any other company in the Customer's corporate group. BMI reserves the right at any time at its discretion to demand security for payment before beginning or continuing to deliver goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Customer. The Customer shall reimburse to BMI the entire cost of presenting any cheque or other instrument delivered to it in payment of any sum due by the Customer. Any failure by the Customer to pay cleared funds by or on the due date will represent a breach of contract entitling BMI to suspend or terminate and/or to claim damages and any forbearance by BMI shall not constitute a waiver of its right to rescind in respect of any subsequent failures to pay on the relevant due date. Any agreed discounts, deductions or rebates shall only be available if the price is paid by the due date. The price of the Goods includes the price of any pallets supplied. If applicable, a credit will be given when pallets are returned within a reasonable time in a clean and undamaged condition in accordance with BMI's Pallet Recovery Policy, a copy of which is available on request.

5. SAMPLE GOODS

In no circumstances will BMI sell its Goods by sample. The supply of sample Goods to the Customer or prospective Customers is not intended to provide them with a contractual specification of the Goods or to constitute a sale or offer of sale by sample. Accordingly, the Customer gives no representations or warranties that Goods will match or be similar to any samples provided to the Customer.

6. DELIVERY OF GOODS

Delivery shall be deemed to have been effected when the Goods leave the premises of BMI or its agent or (five) 5 working days after delivery or collection is offered to the Customer. BMI shall arrange for haulage of the Goods to the Customer's address or (duly) nominated place of delivery. The costs of haulage and any insurance which the Customer reasonably directs BMI to incur shall be reimbursed by the Customer and shall be due on the date for payment of the price. The carrier shall be deemed to be

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the Customer's agent. The Customer must provide the necessary labour and be responsible for unloading or, as the case may be on collection, loading the Goods. If the Customer fails to take or make arrangements to accept delivery or collect the Goods or if BMI are unable to deliver because of inadequate access or instructions delivery shall be deemed to have been effected and BMI may do any one or more of the following (without prejudice to any other right or remedy BMI may have): make additional charges for failed delivery; store the Goods at the Customer's risk and cost; invoice the Customer for the Goods; terminate the Contract without liability on BMI's part; and/or recover from the Customer all costs and losses incurred by BMI. Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence of the Contract.

BMI shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by BMI in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by BMI's negligence or otherwise. If BMI fails to deliver the Goods BMI's entire liability shall be limited to the price of the Goods. Unless otherwise stated all quotations assume delivery in full loads. BMI shall deliver the Goods as near as possible to the delivery address as a safe hard road permits. BMI reserves the right to refuse to deliver the Goods to premises considered in the discretion of the driver to be unsuitable. One of the Customer's duly authorised representatives shall sign BMI's delivery note (or otherwise confirm receipt of the delivery in a manner acceptable to BMI) on the occasion of each delivery. In the absence of the Customer's duly authorised representative the driver shall be deemed to be the Customer's representative for this purpose and will sign the delivery note. If Goods are to be deposited other than on the Customer's private premises the Customer shall be responsible for compliance with all applicable regulations and guidance and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify BMI in respect of all losses, damages, costs and expenses incurred by BMI as a result of such delivery whether on the public highway or elsewhere. Save where otherwise agreed the unloading of the Goods on delivery from any vehicle is the responsibility of the Customer who shall unload without undue delay. Where it is agreed that BMI will unload the Customer shall indemnify BMI in respect of all losses, damages, costs and expenses incurred as a result of loading, unloading or delivery in accordance with the Customer's instructions. This indemnity will be reduced in proportion to the extent that such losses, damages, costs or expenses are due to BMI's negligence. If the Goods are collected from BMI's premises the Customer's employees, agents and sub-contractors shall obey the site rules relating to and the instructions of BMI's authorised representatives at those premises.

Notwithstanding that BMI may have delayed or failed to deliver the Goods (or any of them) on the estimated delivery date the Customer shall, provided that delivery shall be tendered at any time within 30 days of the

delivery date, be bound to accept delivery and to pay for the Goods in full. Where forwarding instructions are required from the Customer and BMI has given notice that the Goods are ready for dispatch the Customer shall give such instructions in reasonable time and shall also require delivery within 30 days from the date of BMI's notice and if BMI does not receive such forwarding instructions it shall (without affecting the obligation to sell and deliver goods equivalent to the Goods if readily available) be at liberty to dispose of the Goods that are the subject of the notice of readiness as it thinks fit.

Deviations in quantity of the Goods delivered (representing not more than 5% by value) from that stated in the Contract shall not give the Customer any right to reject the Goods or to claim damages and the Customer shall be obliged to accept and pay at the agreed rate for the quantity of the Goods delivered.

Prices only cover delivery and working on normal working days and during normal working hours. All deliveries made or work done at the Customer's request on Bank Holidays, weekends and outside working hours shall be subject to extra charges, any such additional charges to be notified by BMI to the Customer upon receipt of the relevant order.

7. ACCURACY OF DESCRIPTION OF GOODS

All descriptions, specifications, drawings and particulars of weights and dimensions submitted by BMI or otherwise contained in BMI's pricelists, technical literature, or other published matter are approximate only and none of these shall form part of any Contract or give rise to any independent or actual liability upon BMI, being intended merely to present a general idea of the Goods as described therein.

8. QUALITY AND LIABILITY

All terms, conditions and warranties, representations, promises, advice or recommendations whether implied or stated expressly by BMI or its employees or agents or otherwise (other than those express warranties, if any, set out in the current edition of BMI's specification) relating to the Goods, including to the quality and/or fitness for purpose of the Goods or any of the Goods, are excluded to the fullest extent legally permissible. BMI may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements and/or which do not materially affect the quality or fitness for purpose of the Goods.

All warranties and conditions implied by statute or otherwise are excluded from these Terms and Conditions provided that nothing in these Terms and Conditions shall (i) restrict or exclude liability for death or personal injury caused by the negligence of BMI and/or (ii) purport to limit any liability that cannot legally be limited and/or (iii) affect the statutory rights of a

Customer dealing as a consumer. BMI shall not be liable for any losses, costs, damages or expenses including, without limitation loss of profits, loss of sales or business, loss of contracts, loss of anticipated savings, loss of or damage to goodwill, damage to property of the Customer or any third party or any consequential loss or indirect loss suffered by the Customer or any customer of or purchaser from the Customer as to which the Customer shall hold BMI fully and effectively indemnified whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from BMI's negligence).

In the event of any breach of the Contract and/or these Terms and Conditions by BMI the remedies of the Customer shall be limited to damages. Subject to the immediately preceding paragraph of this paragraph 1.8 under no circumstances shall the liability of BMI exceed the price of the Goods to which the Contract applies.

9. HEALTH AND SAFETY AT WORK

BMI gives notice to the Customer that information and product literature is available concerning conditions necessary to ensure that the Goods supplied will be safe and without risk to health when used, handled, processed, stored or transported by a person at work. The Customer should immediately contact BMI if it is not in possession of such information or literature.

BMI also gives notice to the Customer if Goods are sold in containers which will have any necessary hazard information as part of the container identification label. The Customer undertakes to comply with any stated conditions for the prevention of Health & Safety Hazards.

10. TIME LIMITATION

The Customer shall inspect the Goods on delivery or collection as the case may be and shall within 3 days of the Goods arrival at the Customer's premises or when the Customer has had first sight of the Goods (whichever is the earlier) notify BMI of any alleged defect, shortage in quantity or damage. The Customer shall afford BMI an opportunity to inspect the Goods if BMI thinks it necessary to do so within a reasonable time following delivery and before any use is made of them. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods.

The Customer shall notify BMI of any non-delivery within 2 days of the date of dispatch (as stated on the invoice). Notwithstanding the receipt by BMI of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons, pallets

or other packaging indicated on the advice sheet. If the Goods are not in accordance with the Contract for any reason the Customer's sole remedy shall be limited to BMI making good any shortage by replacing such Goods or, if BMI shall elect, by refunding a proportionate part of the price.

11. RISK AND RETENTION OF TITLE

Risk in the Goods shall pass from BMI to the Customer when the goods are delivered. Notwithstanding delivery having been made title in the Goods shall not pass from BMI until the Customer shall have paid the price plus VAT in full and no other sums whatever shall be due from the Customer to BMI. Until title in the Goods passes to the Customer the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for BMI. The Customer shall (i) store the Goods (at no cost to BMI and in an appropriate environment taking into account the nature of the Goods) separately from all other goods in its possession and marked in such a way that they are clearly identified as BMI's property, (ii) not remove, deface or obscure any identifying batch mark, label or packaging on or relating to the Goods and (iii) notify BMI immediately if it becomes subject to any of the events listed in paragraph 1.12. Notwithstanding that the Goods (or any of them) remain the property of BMI the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value (and not, for the avoidance of doubt, at a discount) for the account of BMI. Any such sale or dealing shall be a sale or use of BMI's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings in which event title to the Goods shall pass from BMI to the Customer immediately before the time at which resale by the Customer occurs. Until such time as title in the Goods passes from BMI the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold or been irrevocably incorporated into another product. If the Customer fails to do so BMI may enter upon any premises owned occupied or controlled by the Customer or any third party where the Goods are situated and repossess the Goods (or any other goods previously supplied by BMI to the Customer in accordance with these Terms and Conditions). On the making of such request any rights the Customer may have shall cease.

The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of BMI. Without prejudice to the other rights of BMI, if the Customer does so all sums whatever owing by the Customer to BMI shall forthwith become due and payable. The Customer shall insure and keep insured the Goods to the full price against 'all risks' to the reasonable satisfaction of BMI until the date that title in the Goods passes from BMI, and shall whenever requested by BMI produce a copy of the policy of insurance. Without prejudice to the other rights of BMI, if the Customer fails to insure the Goods and/or produce a copy of the policy all sums whatever owing by the Customer to BMI shall forthwith become due and payable. ➔

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12. INSOLVENCY

This paragraph applies if the Customer (i) fails to make payment for the Goods in accordance with these Terms and Conditions or (ii) commits any other breach of the Contract or (iii) if any distress or execution shall be levied upon any of the Customer's goods or (iv) if the Customer offers to make any arrangement with its creditors or (v) if any petition in bankruptcy is presented against the Customer or (vi) the Customer is unable to pay its debts as they fall due or (vii) if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if any petition for the appointment of an administrator is presented against the Customer or if the Customer shall suffer any analogous proceedings under foreign law. If this paragraph applies all sums outstanding in respect of the Goods shall become payable to BMI immediately. BMI may in its absolute discretion and without prejudice to any other rights which it may have immediately and without notice (i) suspend all future deliveries of Goods to the Customer and/or (ii) terminate the Contract without liability upon its part and/or (iii) exercise any of its rights pursuant to paragraph 1.12.

13. CANCELLATION

BMI may cancel a Contract at any time before the Goods are delivered by giving written notice. On giving such notice BMI shall promptly repay to the Customer any sums paid in respect of the Price. BMI shall not be liable for any loss or damage whatever arising from such cancellation. No cancellation of the whole or any part of any order by the Customer shall be permitted except where agreed in advance by an authorised officer of BMI save that any Goods made or supplied to order shall be made and/or supplied on a 'take or pay' basis and any cancellation shall be on terms which include an indemnity in favour of BMI against any losses, costs, damages and expenses incurred (howsoever arising and including loss of profit). Where the Goods are returned by the Customer without BMI's consent other than under the provisions of these Terms and Conditions they will not be accepted for credit.

14. INTELLECTUAL PROPERTY

Unless otherwise agreed in writing by an authorized officer of BMI all goods sold in retail packaging may be resold by the Customer only in the packaging supplied by BMI and in no case may any trade mark other than those applied by BMI be marked on or applied in relation to the Goods. No right or licence is granted under the Contract to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or resell the Goods. The specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of BMI. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of BMI then the Customer warrants that the use of those designs or specifications

for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and shall indemnify BMI in respect of without limitation any claims, losses, costs or damages howsoever incurred by BMI as a result of any breach of such warranty.

15. FORCE MAJEURE

BMI shall not be liable for any delay in performing or failure to perform any of its obligations under this agreement caused by events beyond its reasonable control (which shall include industrial action by its employees) ('Force Majeure Event'). BMI shall promptly notify the Customer in writing of any Force Majeure Event including the reasons for the delay or stoppage (and the likely duration) and shall take all reasonable steps to overcome the delay or stoppage. Where it is subject to a Force Majeure Event BMI shall have its performance under this Agreement suspended for the period that the Force Majeure Event continues and will have an extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage. Any costs arising from the delay or stoppage will be borne by the party incurring those costs.

16. ASSIGNMENT

The Customer shall not assign, transfer, purport to assign or transfer any Contract to which these Terms and Conditions apply or the benefit thereof or any part of it to any other person whatsoever unless agreed in advance in writing by an authorised officer of BMI. Any purported assignment or transfer not approved in writing in advance by BMI shall be ineffective and BMI shall have the immediate right to terminate the Contract. BMI shall have the right to assign or transfer its rights under the Contract at any time.

17. NOTICES

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the other party at its address as detailed herein or such other address as the relevant party may from time to time notify to the other party in writing and shall be deemed to have been served and sent by post 48 hours after posting.

18. THIRD PARTIES

For the avoidance of doubt nothing contained in these Terms and Conditions shall confer on any third party any benefit or the right to enforce these Terms and Conditions except where otherwise agreed in writing by an authorised officer of BMI.

19. GOVERNING LAW

These Terms and Conditions are subject to the law of England and Wales. All disputes shall be subject to the non-exclusive jurisdiction of the courts of England and Wales. Nothing in this paragraph shall prevent BMI from commencing proceedings against the Customer in any other court of competent jurisdiction nor shall the commencement of proceedings in one or more jurisdictions preclude the commencement of proceedings in any other jurisdiction whether concurrently or not.