

Oakleaf Industries Ltd

Standard Terms and Conditions of Sale

DEFINITIONS

In these Terms of Sale, the following meanings shall apply:
"We" and "Us" means Oakleaf Industries Ltd and "Our" shall be interpreted accordingly.
"You" means the person, their employees or agents seeking to purchase Goods from Us and "Your" shall be interpreted accordingly.
"the Goods" means the Goods and/or services to be supplied by Us.
"Company Signatory" means a manager employed by Us.
"the Terms" means these Terms and any special Terms agreed in writing between Us and You.
"Consumer" means any natural person acting for purposes outside their trade, business or profession or as defined by the Unfair Contract Terms Act 1977.

1 THE CONTRACT

1.1 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Director or Company Signatory of Oakleaf Industries Ltd. Any contrary or additional Terms unless so agreed are excluded.

1.2 Orders may be cancelled only with the written agreement of a Company Signatory or Director and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation.

2 PRICE

2.1 Unless otherwise stated in Our quotation and invoice, Our prices are net £ Sterling and do not include VAT or any other government tax, charge or duty, exchange rate, installation or similar charges which items will be charged extra.

2.2 The price on Our invoice will be that covered by a valid quotation; where a valid quotation does not exist the price will be that ruling at the time of despatch of the Goods and subject to these conditions or any later agreement in writing signed by Us will remain save that We may make an additional charge to You to cover the fixed rise in the cost of manufacturing and materials arising between the date of quotation and the date of delivery.

2.3 All prices quoted or agreed by Us are based on existing currency exchange rates and We reserve the right at any time to increase the quoted or agreed price of Goods to reflect any increased cost to Us in supplying such Goods which results from any change in currency exchange rates and, where the price quoted is in a currency other than £ Sterling, to compensate Us for any relevant exchange rate fluctuation.

3 QUOTATIONS

3.1 Quotations are based on list prices ruling at the date of preparation and are valid for 30 days.

3.2 Our quotations include only the Goods and work specified in them. All other Goods and work will be charged extra.

3.3 If Your order is received by Us after the expiration of the period stated in clause 3.1 the price, delivery date or other conditions may be subject to variation.

3.4 Where an order is accepted on the terms that the whole or part of the Goods is to be delivered by Us after the expiration of three months of the acceptance of order, We reserve the right to increase the price of the Goods due for delivery after the expiration of such period.

4 DELIVERY

4.1 Delivery dates are based upon trading conditions prevailing. Should the time for delivery have to be extended due to delays or causes beyond Our control, We cannot accept any liability arising from such delays. Time for delivery shall not be of the essence of the contract.

4.2 Where We are required to deliver Goods to site You will arrange and bear responsibility for and the cost of prompt unloading, stacking and storing the Goods. Our prices include delivery to the site specified in the quotation unless this is stated to be excluded, but not the cost of unloading unless otherwise stated.

4.3 You shall inspect the Goods at the place and time of loading (collection) or unloading (delivery) but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

4.4 We do not accept liability for damage, shortage or non-delivery unless notified at the time of delivery by telephone and written notice is received by Us within 3 working days.

4.5 Our liability for short delivery or failure of the Goods to conform to the Contract which is apparent on inspection is limited to supplying the Goods as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Goods to conform to the Contract which is apparent on inspection howsoever caused. You remain liable to pay the full invoice price of Goods delivered or available for delivery in accordance with the Contract. Any other claim for damages is subject to Clause 8.

4.6 We will be entitled to deliver the Goods by instalments and tender a separate invoice in respect of each instalment. Any claim which You may have in respect of one instalment shall not affect Your liability in respect of any other instalment.

4.7 Any stipulated or quoted dates for delivery are estimates only and in no circumstances will We be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in the completion of the contract or the delivery of the Goods nor will You be entitled to rescind or repudiate the contract by reason of such delay.

4.8 Proof of delivery confirmation will only be provided if requested in writing within 14 days from the date of invoice.

4.9 If You fail to take delivery accept or collect the Goods within the agreed time at Our discretion We may make an additional charge, invoice You for the Goods or treat the contract as repudiated and in any case recover Our losses from You.

5 TITLE AND RISK

5.1 Risk in the Goods shall pass to You when the Goods are delivered. The title to the Goods shall remain with Us until You pay all sums owing to Us whether in respect of this contract or otherwise.

6 COMPLIANCE WITH REGULATIONS

6.1 You will make all necessary arrangements to comply with and satisfy Yourself that the use and performance of the installation and equipment will comply with every applicable statute, by-law or rule or decision of any competent authority or body including the obtaining of all necessary licenses, permits or other consents which are or may be required in connection with the performance of the contract and the use of the installation and equipment including ensuring that the building structure is able to accept the weight of the equipment to be installed.

7 INSTALLATION

7.1 Where We are responsible for installing or erecting the Goods, You will ensure that at the time of arrival of Our servants or agents all necessary preparations have been made for such erection or installation of the Goods. Loss of time incurred by the omission of any such preparations and the cost of any extra work carried out by Our servants or agents will be charged to You. You will indemnify Us against any claims made against Us or by Our employees, agents or contractors or any other person whatsoever, whether in respect of death, personal injury, or any other loss or damage which arises during erection or installation of the Goods and is attributable to the negligence of You or Your employees, agents or contractors.

7.2 The integrity of the structure or building to which the Goods are attached is exclusively Your responsibility. Whilst We will give advice on the preparation of suitable concrete thresholds, pads or foundations, We cannot be held responsible for the design and application for any particular structure or building. You should seek advice from an architect, surveyor or consultant, who knows the local and particular conditions of the building, in order to ensure that the foundations and points of attachment to the building are adequate to support the Goods and any load which may be applied thereto.

7.3 Any materials and consumable parts required on site in connection with the installation will so far as possible be specified in Our quotation and will be included in the contract together with materials and consumables required in connection therewith but We reserve the right to charge for additional materials and consumable parts the need for which was not foreseen at the time of Our quotation.

7.4 All material parts and other items used by Us in connection with the erection and installation on site shall be at Your sole risk and in the event of any loss or damage thereto and in the event of work done by Us being damaged or destroyed by whatever cause You will be liable to compensate Us in full therefore.

7.5 If the erection and installation is delayed or takes longer than would normally be the case because of any breach by You of the terms of the contract, then You will pay Us on demand at Our daily rate for the extra time Our employees, agents or contractors have to spend on site and for any additional costs (including storage costs) which We may incur in carrying out the erection and installation.

8 LIABILITIES

8.1 In this Clause "the Defect" shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.

8.2 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation.

8.3 If You deal as a Consumer any provision of these Terms which is of no effect shall not apply. The Statutory rights of a Consumer are not affected by these Terms.

8.4 Subject to Clauses 8.2 and 8.3 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 8.5 below.

8.5 Where but for the effect of Clause 8.4 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 8.6 below shall at Our sole discretion either repair the Goods at Our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.

8.6 We will not be liable under Clause 8.5:

a) if the defect arises from fair wear and tear
b) if the defect arises from Your negligence wilful damage mis-use alteration or repair of the Goods or abnormal working conditions, or faulty installation not provided by Us.

c) unless after discovery of the defect, We are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with.

d) if the defect would have been apparent on a reasonable inspection under Clause 4.3 of these Terms at the time of unloading unless You give Us written notice within 3 working days of the time of unloading.

8.7 For new Goods or components not manufactured by Us We will pass on to You where reasonably possible the warranty given by the original manufacturer.

8.8 If the Goods are supplied to a drawing design measurement or specification provided in writing by Us then subject to Clauses 8.2 and 8.3 of these Terms We shall not be under any liability for damages whatsoever or under Clause 8.5 of these Terms except in the proportion and to the extent that such damages have resulted primarily from Our breach of contract or negligence.

8.9 We shall not be liable under Clause 8.8 if

a) material information is withheld concealed or misrepresented by You, and/or
b) the design measurement or specification provided by Us is not in writing.

8.10 Subject to Clauses 8.2 and 8.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof

a) for any loss of profit, business, contracts, revenues or anticipated savings, or
b) for any special, indirect or consequential damage of any nature whatsoever.

8.11 Except where You deal as a Consumer You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.

8.12 Without prejudice to any other provisions of these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

8.13 Business customers are advised to insure against loss or damage which may arise as a result of faulty or damaged Goods and equipment and/or their non-delivery.

9 TERMS OF PAYMENT

9.1 Payment shall be made prior to delivery of Goods. A variation on these Terms may only exist when authorised in writing by a Director of the Company.

9.2 We reserve the right to suspend or stop deliveries and to withdraw or restrict credit facilities if any payment becomes overdue or if We believe that You may be unwilling or unable to pay for the Goods. All invoices will include VAT which will be payable by You.

9.3 Goods supplied shall remain our property until paid for in full. You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

10 NON-PAYMENT / INSOLVENCY

10.1 "Insolvent" means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.

10.2 "Associated Company" means Your subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.

10.3 If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your associated company becomes insolvent or there is a material change in You or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have)

- a) Require payment in cleared funds in advance of further deliveries.
- b) Charge interest on the monies outstanding at the rate of 4% above HSBC Bank plc base rate in force from time to time from the due date until date of payment after as well as before judgment.
- c) Cancel or suspend any further deliveries to You under any contract without liability on our part.
- d) Without prejudice to the generality of Clause 5 of these Terms exercise any of our rights pursuant to that Clause
- e) Terminate this or any other contract with You or any Associated Company without liability on our part.

10.4 Except where You deal as a Consumer You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.

10.5 Unless otherwise agreed in writing, all sums due as shown on Our invoice must be paid within fourteen days of the date thereof and We reserve the right to charge interest which shall accrue both before and after any judgement at the rate of four per cent over Barclays Bank plc Base Lending Rate from time to time per annum calculated from day to day on all amounts due but unpaid but this right shall not be exercisable without prejudice to any other rights We may have hereunder.

11 CANCELLED ORDERS

11.1 If We order Goods to Your order and You later cancel Your order for whatever reason, You will be liable to pay for the Goods and the cost of returning them to us. Subject to Clause 13 (b) of the Distance Selling Regulations, You will not have the right to cancel pursuant to Regulation 10, for the supply of goods the price of which is subject to fluctuations in the financial markets which cannot be controlled by Us.

11.2 If We deliver and invoice Goods to Your order and You wish to cancel Your orders, You will still be liable to pay for the Goods. We will endeavour to take back the Goods into our stock, subject to their being in our opinion of merchantable quality, and subject to a handling charge equal to 20% of the purchase value becoming payable by You.

11.3 If You are given prior permission by Us to return Goods wrongly ordered or surplus to Your requirements, a handling and restocking charge equal to 20% of the value of the Goods returned will be made.

12 SPECIAL ORDERS

12.1 If We order the manufacture of Goods to special dimensions ordered by You We will require a deposit of 50% of the value of the Goods which will not be refundable in the event of cancellation by You.

12.2 Your order is accepted on the basis that You will provide Us where necessary with all information to enable the design, manufacture and commissioning of the Goods to proceed without a delay. We reserve the right to increase the contract price where the correct information is not provided within a period of fourteen days of Our requesting such information or within such shorter period as may reasonably be required by Us.

12.3 Unless We specify otherwise in writing all Our drawings, weights dimensions, specifications and other descriptive matters are approximate only and do not form part of the contract. In any event We shall be entitled to make modifications to any contract descriptive of the Goods provided that these modifications do not substantially affect performance or cost.

12.4 All specifications, drawings, technical descriptions and all other material or information supplied to You by Us or relating in any way to the Goods is confidential and copyright. Without Our prior written consent no such material or information shall be disclosed to any third party nor copied, imitated or used for the manufacture of the same or similar Goods and must be returned to Us upon demand.

13 GENERAL

13.1 This contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.

13.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.

13.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

13.4 Except as provided otherwise in these Terms We shall not be liable for any delays or failures to perform any of our obligations under this contract due to any cause beyond our reasonable control including industrial action.

13.5 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

13.6 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

13.7 This contract is personal to You and may not be assigned.

13.8 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.

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