

## Terms & Conditions of FB Trading Limited

The customer's attention is drawn in particular to the provisions of clause 9.

### 1. Interpretation

#### 1.1 Definitions:

- 1 **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 2 **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
- 3 **Contract:** the contract between FB Trading and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- 4 **Customer:** the person or firm who purchases the Goods from FB Trading.
- 5 **FB Trading:** FB Trading Limited (registered in England and Wales with company number 12386801, whose registered office is at 35 Radium Street, Apartment 315, Manchester, England, M4 6AH).
- 6 **Force Majeure Event:** an event or circumstance beyond a party's reasonable control.
- 7 **Goods:** the goods (or any part of them) set out in the Order.
- 8 **Order:** the Customer's order for the Goods, as set out in the Customer's order form or in the Customer's written acceptance of FB Trading's quotation, as the case may be.
- 9 **Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and FB Trading.

#### 1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes emails but not faxes.

### 2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom,

practice or course of dealing. Any terms and conditions of the Customer shall not be binding on FB Trading even if FB Trading does not expressly reject them.

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when FB Trading's sales department issues a written acceptance of the Order, at which point the Contract shall come into existence. Agreements with individual representatives of FB Trading or verbal agreements shall not be binding on FB Trading. Should a written acceptance not have been delivered, the Contract shall come into existence when the first of the Goods have been delivered in accordance with clause 4.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by FB Trading and any descriptions or illustrations contained in FB Trading's website, catalogues or brochures (online or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by FB Trading shall not constitute an offer. A quotation shall only be valid for a period of 1 Business Day from its date of issue.

### **3. Goods**

- 3.1 The Goods are described in FB Trading's catalogue or website as modified by any applicable Specification.
- 3.2 The Customer shall indemnify FB Trading against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by FB Trading in connection with any claim made against FB Trading for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with FB Trading's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 FB Trading shall not be liable for defects or damage caused by incomplete or imprecise statements or measurements provided by the Customer in the Specification. The Customer must provide the purpose for the Goods in the Specification (including any liquids or materials intended to be stored within the Goods).

- 3.4 FB Trading reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or if such amendments do not affect the fitness for use of the Goods for their stated purpose in the Specification.

#### **4. Delivery**

- 4.1 FB Trading shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if FB Trading requires the Customer to return any packaging materials to FB Trading, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as FB Trading shall reasonably request. Returns of packaging materials shall be at FB Trading's expense.

- 4.2 FB Trading shall advise the Customer when the Goods have been dispatched and shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the invoice in respect of the Goods has been paid in full.

- 4.3 Delivery is completed on the completion of arrival of the Goods at the Delivery Location.

- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. FB Trading shall not be liable for any delay in delivery of the Goods that is caused by:

- (a) a Force Majeure Event;
- (b) failure by FB Trading's courier, carrier or shipping agent to obtain any import licenses or permits necessary for delivery of the Goods to the Delivery Location; or
- (c) the Customer's failure to provide FB Trading with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods (including in respect of any laws and regulations in force in the Delivery Location affecting the import of the Goods).

- 4.5 If FB Trading fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. FB Trading shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:

- (a) a Force Majeure Event;

- (b) failure by FB Trading's courier, carrier or shipping agent to obtain any import licenses or permits necessary for delivery of the Goods to the Delivery Location; or
  - (c) the Customer's failure to provide FB Trading with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods (including in respect of any laws and regulations in force in the Delivery Location affecting the import of the Goods).
- 4.6 If the Customer fails to accept delivery of the Goods when attempted at the Delivery Location then, except where such failure or delay is caused by a Force Majeure Event or FB Trading's failure to comply with its obligations under the Contract:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00am on the date on which delivery was attempted; and
  - (b) FB Trading shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which delivery of the Goods was attempted the Customer has not accepted actual delivery of them, FB Trading may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.8 If FB Trading delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice. Following such adjustment:
  - (a) any additional amount owing by the Customer to FB Trading shall be paid to an account nominated in writing by FB Trading within 10 Business Days; and
  - (b) any amount which is owed back to the Customer by FB Trading pursuant to this clause 4.8 shall be paid to an account nominated in writing by the Customer within 10 Business Days.
- 4.9 FB Trading may deliver the Goods by instalments and shall be entitled, at its discretion, to invoice each instalment separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality

- 5.1 FB Trading warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
  - (a) conform in all material respects with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship;

- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by FB Trading.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to FB Trading during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) FB Trading is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by FB Trading) returns such Goods to FB Trading's place of business at FB Trading's cost,

FB Trading shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 FB Trading shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow FB Trading's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of FB Trading following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of FB Trading;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (f) the defect relates to a minor discrepancy in the shade of colour of the Goods; or
- (g) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, FB Trading shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by FB Trading.

**6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on loading of the Goods for transit prior to delivery (to be notified to the Customer by FB Trading), from which time the Customer undertakes to:

- (a) insure and keep insured the Goods against all risks, with a reputable insurer (in the reasonable opinion of FB Trading), for not less than the replacement value of the Goods until such time that title passes to the Customer in accordance with clause 6.2;
- (b) obtain an endorsement of FB Trading's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement; and
- (c) allow FB Trading to inspect the insurance policy upon request.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) FB Trading receives payment in full (in cash or cleared funds) for the Goods and any other goods that FB Trading has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as FB Trading's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price, in accordance with clause 6.1;
- (d) notify FB Trading immediately if it becomes subject to any of the events listed in clause 8.1; and
- (e) give FB Trading such information relating to the Goods as FB Trading may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before FB Trading receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as FB Trading's agent; and

- (b) title to the Goods shall pass from FB Trading to the Customer immediately before the time at which resale by the Customer occurs.

6.5 Should the Customer sell any of the Goods to a third party in accordance with clause 6.4, FB Trading may elect to have any right to payment due to the Customer from the third party assigned to FB Trading. Such a term shall be explicitly included in any contract for the sale of the Goods made between the Customer and a third party (or the Goods may not be sold).

6.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy FB Trading may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) FB Trading may at any time:
  - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Price and payment**

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in FB Trading's published price list in force as at the date of delivery. Prices shall not include delivery costs, which shall be added to the Order.

7.2 FB Trading may, by giving notice to the Customer at any time up to five Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond FB Trading's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give FB Trading adequate or accurate information or instructions.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to FB Trading at the prevailing rate, subject to the receipt of a valid VAT invoice; and



- (b) excludes the costs and charges of packaging and transport of the Goods, which shall be invoiced to the Customer.

7.4 FB Trading shall invoice the Customer for the Goods at the time the Order is placed.

7.5 The Customer shall pay:

- (a) 50% of the invoice in full and cleared funds within 3 Business Days of the relevant Order being placed; and
- (b) the remaining 50% of the invoice in full and cleared funds within 3 Business Days of FB Trading notifying the Customer that the Goods have been loaded for transit prior to Delivery,

such payments to be made to the bank account nominated in writing by FB Trading. Time for payment is of the essence.

7.6 If the Customer fails to make any payment due to FB Trading under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). FB Trading may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by FB Trading to the Customer.

## **8. Termination**

8.1 Without limiting its other rights or remedies, FB Trading may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or



- (d) the Customer's financial position deteriorates to such an extent that in FB Trading's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, FB Trading may suspend provision of the Goods under the Contract or any other contract between the Customer and FB Trading if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or FB Trading reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, FB Trading may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to FB Trading all of FB Trading's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 9. Limitation of liability**
- 9.1 Nothing in these Conditions shall limit or exclude FB Trading's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) any matter in respect of which it would be unlawful for FB Trading to exclude or restrict liability.
- 9.2 Subject to clause 9.1, FB Trading shall not be liable to the Customer for any losses (including losses due to leakages) arising from:
- (a) the Customer's failure to provide FB Trading with information required pursuant to clause 3.3;
  - (b) the Customer's failure to follow instructions provided by FB Trading in relation to the Goods;

- (c) the Customer storing the Goods incorrectly (including by storing any Goods outside); or
- (d) the Customer filling the Goods with any liquid or material which it had not made FB Trading aware of in the Specification and which was not subsequently specifically noted on the Order,

and the Customer shall indemnify FB Trading in respect of any such losses.

**9.3 Subject to clause 9.1:**

- (a) FB Trading shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) FB Trading's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

**10. Force majeure**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Contract by giving seven days' written notice to the affected party.

**11. General**

**11.1 Assignment and other dealings.**

- (a) FB Trading may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of FB Trading.

**11.2 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.2(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or

holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

### 11.3 **Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### 11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 11.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**11.7 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**11.8 Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

**11.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**11.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.