

Terms and Conditions of Sale



CONDITIONS OF SALE

The following conditions of sale shall apply to the Contract (as defined below) between Andrews Fasteners Limited ("the Company") and the person who accepts a quotation of the Company for the sale of the Goods (as defined below) or whose order for the Goods is accepted by the Company ("the Purchaser") and shall apply to the exclusion of any other terms or conditions stipulated, imposed, incorporated or referred to by the Purchaser whether in the order or in any negotiations or which are implied by trade, custom, practice, or course of dealings.

The placing of an order by the Purchaser shall be conclusive evidence of acceptance of these conditions of sale by the Purchaser. In these conditions "Contract" means the contract for the purchase and sale of the Goods in accordance with and upon these terms and conditions of sale and "Goods" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these conditions. The headings of the clauses of these conditions are for reference only and accordingly shall not affect their interpretation.

1. ACCEPTANCE OF QUOTATIONS AND ORDERS

- a) No order shall be binding unless and until it is received by the Company in writing. The order constitutes an offer by the Purchaser to purchase the Goods in accordance with these conditions. The Purchaser is responsible for ensuring that the terms of the order and any applicable specification are complete and accurate. The order is only deemed to be accepted when the Company issues a written acceptance of the order, at which point the Contract comes into existence.
- b) The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made by or on behalf of the Company which is not set out in the Contract including any samples, drawings, illustrations or advertising provide by the Company, which are produced for the sole purpose of giving an approximate idea of the Goods and do not form part of the Contract.
- c) The Company shall not be bound to accept any request for changes to the specification after the Purchaser's order has been accepted but shall endeavour, subject to prior written agreement of any necessary revision to the price and the delivery date, to meet any reasonable request by the Purchaser for such changes.
- d) The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- e) The Purchaser may when sending its order, stipulate in writing that before leaving the Company's premises, a surface inspection or inspection with tests of the Goods is to be made at the Company's premises. A Purchaser who calls for such an inspection must specify the nature of tests to which the material will be subjected and the inspection will be limited to these tests. The Company's charge for inspection must be agreed at the time of booking the order, if not so agreed, the Purchaser shall pay the Company's reasonable invoiced costs including an element for profit.



- f) The Purchaser shall indemnify the Company against all losses, damages, penalties, costs, expenses and other liabilities to which the Company may become liable through any work required to be done in accordance with the Purchaser's specification which amounts to an infringement of or causes a claim for infringement of a Patent, Registered Design, Copyright or other intellectual or industrial property rights of third parties. It shall be the responsibility of the Purchaser to obtain all necessary licences and consents to enable the Company to manufacture or sell the Goods.
- g) No terms and conditions of the Purchaser shall apply to the Contract and these conditions apply to the Contract to the exclusion of any such terms and conditions and any other terms which are implied by trade, custom, practice or course of dealing. No variation to these conditions or the Contract shall be binding unless agreed in writing by a director of the Company.
- h) Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by a director of the Company, is followed or acted upon entirely at the Purchaser's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed in writing by a director of the Company.
- i) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2. PRICES AND PAYMENT

- a) The price payable for the Goods shall be the price quoted provided a written order is received within thirty days of the relevant quote. There shall be added to the price for the Goods any delivery, insurance or certification charges and any value added tax and any other tax or duty relating to the manufacture, transportation, export, sales or delivery of the Goods (whether initially charged on or payable by the Company or the Purchaser).
- b) The price includes standard packing but if the Contract stipulates, or the Purchaser requests, additional packing arrangements may be available, the extra costs of which will be passed on to the Purchaser. Unless specifically stated in the Contract, delivery and test certification will be charged by the Company to and payable by the Purchaser.
- c) If the Company confirms in writing that credit is approved, invoices are due for payment not later than the end of the month following the month of delivery; otherwise payment in full must be received by the Company before delivery. When deliveries are spread over a period, each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. If the Purchaser fails to pay for any goods or for any delivery or instalment when due or if the Company comes to have bona-fide doubts about the solvency of the Purchaser, the Company shall be entitled to suspend further deliveries until all sums due are paid and to require payment in full before delivery for any further orders without prejudice to any other right the Company may have.



- d) Without prejudice to such other rights as the Company may have in respect thereof, the Company reserves the right to charge interest on overdue payments from the date they become due up to the date on which payment is received by the Company at borrowing rates then current but not less than 3% above the Company's bank's rate from time to time in force. Such interest shall be payable before and after any judgment.
- e) The Company shall have an absolute right of set-off at its election of any monies due under this contract from the Purchaser to the Company against any debt or debts owing by the Company to the Purchaser in respect of any contracts or arrangements between the parties.
- f) The price is exclusive of any applicable value added tax, which the Purchaser shall be additionally liable to pay the Company.

3. TITLE RESERVATION

- a) Risk in the Goods shall pass to the Purchaser when the Goods are delivered to, or collected by the Purchaser or its agent.
- b) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds:
 - (i) payment in full of the price of the Goods; and
 - (ii) payment for all other goods agreed to be sold by the Company to the Purchaser, for which payment has not been made.
- c) Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to re-sell or use the Goods in the ordinary course of its business.
- d) Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so, immediately, to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.
- e) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company, but if the Purchaser does so, all monies owing by the Purchaser to the Company shall (without prejudice to any other right of remedy of the Company) forthwith become due and payable.
- f) Nothing in this clause shall in any way limit or modify the Purchaser's obligation to pay for the goods nor shall it be construed in whole or in part as constituting a charge capable of registration pursuant to section 860 of the Companies Act 2006.



4. FORCE MAJEURE

The Company shall not be liable to the Purchaser or be deemed to be in breach of the Contract or any other obligations of any nature whatsoever, howsoever arising to the Purchaser, by reason of any delay in performing, or any failure to perform, any of the Company's obligations, if the delay or failure was due to any cause beyond the reasonable control of the Company. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: acts of God, explosion, flood, tempest, fire or accident, war (whether declared or not) or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes, strikes, lock-outs or other industrial action or disputes of any nature (whether involving the employees of the Company or a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

5. DELIVERY

- a) The Company shall make every effort to comply with such time for delivery as may have been specified, but unless otherwise expressly agreed in writing the Company shall have no liability whatsoever, howsoever arising, in respect of late delivery. Time shall not be of the essence of the Contract.
- b) The Company may make deliveries in one or more instalments and each such instalment shall be deemed to be sold under a separate contract. Any default by the Company in delivering any instalment shall not entitle the Purchaser to repudiate the entire order or any part thereof or any future instalments.
- c) If the Purchaser makes default in taking of, or paying for, any instalment, the Company will be relieved from all obligations to make any further deliveries, but without prejudice to its rights to recover damages for breach.
- d) The Company shall have the right to supply ten per cent more or less than the quantity ordered and the Purchaser shall not be entitled to reject any Goods on such basis but the price payable by the Purchaser for the Goods in question shall be adjusted according to the quantity actually supplied.
- e) The Company shall ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the order, the reference number of the Company and the Purchaser, the type and quantity of Goods and, if the order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- f) Delivery of the Goods shall be completed on the completion of loading of the Goods on the vehicle of the carrier if there is a third party carrier, or unloading the Goods at the delivery location specified by the Company if the Company is the carrier.
- g) If the Purchaser fails to accept delivery of the Goods within three Business Days of the Company notifying the Purchaser that the Goods are ready then, except where such failure or delay is caused by a Force Majeure event or the Company's failure to comply with its obligations under the Contract:



- (i) delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Company notified the Purchaser that the Goods were ready; and
 - (ii) the Company shall store the Goods until delivery takes place, and shall charge the Purchaser for all related costs and expenses (including insurance).
- h) If 10 Business Days after the day on which the Company notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted delivery of them, the Company may re-sell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, and subject to having received payment in full in cleared funds for the Goods from the Purchaser, account to the Purchaser for any excess over the price of the Goods paid by the Purchaser or, if not previously paid for by the Purchaser, charge the Purchaser for any shortfall below the price of the Goods.

6. GUARANTEE AND LIMITS TO LIABILITY

- a) Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from material defects in material and workmanship for a period of three months from the date of delivery. In the event of a breach of this warranty, the Company shall, at its option, repair or replace the defective item or give credit, up to a maximum amount equal to the invoiced price of that item.
- b) The above warranty is given by the Company subject to the following conditions:
 - (i) the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser;
 - (ii) the Company must be afforded a reasonable opportunity of inspecting the Goods or, at the Company's option, the allegedly defective Goods must be returned to the Company at the Purchaser's risk and expense, immediately upon discovering the alleged defect;
 - (iii) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions or normal good trade practice regarding storage, maintenance, and use of the Goods, or misuse or alteration or repair of the Goods without the Company's written approval; and
 - (iv) the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer thereof to the Company. This obligation shall only apply to the extent that the Company can enforce the same or the benefit thereof can be transferred to the Purchaser, provided always that the Purchaser shall indemnify the Company against the costs, expenses or other liabilities incurred by the Company in attempting to enforce the same.

- c) Nothing in these conditions or the Contract is intended to or shall limit or exclude the liability of the Company causing death or personal injury resulting from its own or that of its employees', agents' or sub-contractors' negligence or shall exclude or limit the liability of the Company for any breach of any implied statutory undertakings as to title, quiet possession and freedom from encumbrances in relation to the Goods, or shall exclude or limit the liability of the Company for fraud or fraudulent misrepresentation.
- d) Subject as expressly set out in these conditions, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Goods and the provision of any services in relation thereto are hereby excluded to the fullest extent permitted by law.
- e) No exclusion or limitation on the liability of the Company shall apply where Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) save for liability for any loss or damage which is not foreseeable or is not consequential and where the Purchaser is a consumer, the statutory rights of the Purchaser are not affected by these conditions.
- f) The Company accepts liability to the extent caused by the Company for damage to the tangible property of the Purchaser which directly results from the negligence of the Company or its employees, agents and sub-contractors provided always that the entire liability of the Company to the Purchaser in respect of any claim shall not exceed the limit of liability set out in the public liability insurance policy of the Company from time to time.
- g) Save in relation to claims against the Company under the provisions of clause 6c), e) and f) above, under no circumstances whatsoever, howsoever arising (and whether as a result of any breach of its contractual obligations, breach of statutory duty or as a result of any representation (unless fraudulent), or as a result of any statement or tortuous act or omission, including negligence arising under or in connection with the Contract) shall the aggregate liability of the Company to the Purchaser under or in relation to the Contract in respect of any claim or claims exceed the total price invoiced by the Company to the Purchaser for the Goods.
- h) Subject to clauses 6c), e) and f) notwithstanding any other provision of these conditions or the Contract, under no circumstances whatsoever, howsoever arising (and whether as a result of any breach of its contractual obligations, breach of statutory duty, or as a result of any representation (unless fraudulent) or as a result of any statement or tortuous act or omission, including negligence arising under or in connection with the Contract) shall the Company be liable to the Purchaser for any loss of contracts, loss of profits, loss of goodwill, economic loss, or any type of special, indirect or consequential loss of any nature whatsoever (including loss or damage suffered by the Purchaser as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Purchaser incurring the same.
- i) Except where the Company is the carrier, the Company accepts no responsibility for loss, damage or deterioration to the Goods in transit and claims for such loss or damage shall be made to the carrier within the time limit specified in the carrier's terms of business or to the Company in sufficient time for the Company, subject to receiving an indemnity from the Purchaser for so doing against all costs and expenses it may incur in so doing, to make a claim against the carriers on the Purchaser's behalf.



7. CANCELLATION

The Purchaser, shall not cancel the Order for any reason without the prior written agreement of the Company, and in the event of such agreement the Purchaser shall indemnify the Company against all losses, damages, charges, costs and expenses (whether direct or indirect) incurred as a result of such cancellation on a full indemnity basis together with the Company's loss of profit.

**8. TERMINATION**

- a) If the Purchaser becomes subject to any of the events listed in clause 8b) the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser.
- b) For the purposes of clause 8a), the relevant events are:
- (i) the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (ii) the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (iii) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser or an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser or if the holder of a qualifying floating charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
 - (iv) (being an individual) the Purchaser is the subject of a bankruptcy petition or order or the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
 - (v) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (vi) any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8b)(i) to 8b)(v) (inclusive).
- c) Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in clause 8b)(i) to 8b)(vi), or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- d) On termination of the Contract for any reason the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

- e) Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination



9. GENERAL

- a) The Company 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 Purchaser 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 the Company.
- c) 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 fax.
- d) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 9c; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am 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 by fax, one Business Day after transmission.
- e) 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.
- f) A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.
- g) A person who is not a party to the Contract shall not have any rights to enforce its terms.
- h) Except as set out in these conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.
- i) This contract is to be governed by and construed in accordance with English law and the Company and the Purchaser hereby irrevocably submit to the exclusive jurisdiction of the English Courts for the purposes of determining all disputes arising in connection with the Contract, order or these conditions of sale.