

Elliott Baxter Ireland Limited – Terms & Conditions

By ordering any goods from Elliott Baxter Ireland Limited (the seller), the Buyer will be deemed to accept that these Conditions take precedence over any other conditions contained on or in any letter, order form, acceptance form, receipt or the like received by the Seller in connection with the goods so ordered and that no such other conditions will form part of the contract between the Seller and the Buyer, unless specifically agreed in writing

1 Paper and Board Trade Customs

Except where inconsistent with these Conditions or with the express terms of any contract between the Seller and the Buyer, Paper and Board Trade Customs for the time being in force, which are obtainable from the National Association of Paper Merchants, shall apply to all contracts between the Seller and the Buyers.

2 Quotations

All quotations and tenders are given by the Seller on condition that the Seller shall not be bound until it has communicated its written acceptance of the Buyer's order.

3 Cost Variation

a) Except where a price is stated to be 'fixed' by the Seller on its written acceptance of the Buyer's order any price quoted by the Seller or comprised in order or contracted is provisional only and the actual price to be paid by the Buyer shall be the Seller's price ruling at the date of despatch.

b) All prices quoted or accepted are exclusive of Value Added Tax and the contract price shall be such prices plus VAT

4 Payment

Goods invoiced up to and including the last day of a calendar month shall be paid for not later than the last business day of the following month, unless otherwise agreed in writing. If terms of payment are not complied with the seller shall have the right to charge interest at the rate of 2% for every month or part of a month between the due date of payment and final settlement and to suspend all credit transactions.

5 Buyer's Default and Remedies

a) If any of the events specified in sub-clause 5(b) below occurs, the Seller may (without prejudice to any other rights against the Buyer), by giving the Buyer written notice:

i) treat the unpaid purchase price of all goods delivered by the Seller to the Buyer as being immediately due and payable: and/or

ii) suspend delivery of any such goods ordered by the Buyer, and/or

iii) treat any or all contract between the Buyer and the Seller as being repudiated and claim damages (including, without limitation, the right to sue for the price of any undelivered goods specifically manufactured for the Buyer).

b) The Seller's rights under Clause 5(a) will arise:

i) if the Buyer fails to pay an amount when it is due under any contract with the Seller, or

ii) if the Buyer is in breach of any contract between the Buyer and the Seller, or

iii) if the Buyer passes a resolution or has a petition presented for its winding-up or the making of an administration order against it, or has a receiver appointed over the whole or any part of its assets or (being an individual) has a bankruptcy order presented against him (or suffers any similar proceedings under the law of any jurisdiction in which it or he is resident) or enters into any composition or arrangement with its creditor.

6 Delivery

a) If no time for delivery is specified in the contract, the Buyer shall be bound to accept the goods when they are ready for delivery by the Seller

b) The risk in goods shall pass to the Buyer when the goods are delivered to the Buyer, or in accordance with his instruction. Any complaint of short delivery or of damaged goods in transit must be notified within 24 hours of receipt of goods and confirmed in writing at the time by the Buyer to the Seller and any complaint of failure to deliver goods invoiced must be so notified within 20 days of the date of the invoice

c) Each delivery will constitute a separate contract and any failure or defect in any one delivery will not vitiate the contract as to the remaining deliveries.

d) Any time or date for delivery named by the Seller is an estimate only and the Seller shall not accept liability for any loss or damage or any consequential loss arising directly or indirectly from delay in delivery however caused.

7 Ownership

The Seller and the Buyer expressly agree that until the Seller has been paid in full (including any interest charged) for any goods supplied by the Seller to the Buyer.

a) the Seller remains the legal owner of the goods;

b) the Seller may recover the goods (excluding any goods ownership of which had already passed to the Buyer) from the Buyer at any time and for that purpose the Seller, its servants and agents may enter upon any land or buildings upon which the goods are situated. If the Seller resells any of the goods so recovered, the Seller shall give the Buyer credit for any sum received by the Seller in excess of the sums due from the Buyer to the Seller;

c) the Buyer will store the goods in such a way that they remain clearly identifiable as the Seller's goods;

d) the Buyer may dispose of the goods in the ordinary course of its business as principal (but any warranties, conditions, or representation given or made by the Buyer to any third party shall not be binding on the Seller who shall be indemnified by the Buyer with respect (thereto) any may pass good title in the goods to a third party being a bona fide purchaser for value without notice of the Seller's rights.

e) If the Buyer incorporates the goods into other products (with the addition of its goods or those of others) or uses such goods as material for other products (with or without such additions) legal ownership of those other products is upon such incorporation or use and by the event transferred to the Seller and the provisions of sub-clauses (b) and (d) shall apply mutatis mutandis to those other products in place of the goods.

8 Disposal before Payment

If the goods or any part thereof, whether or not incorporated into other products or used as material for other products, are resold by the Buyer before he has made full payment to the Seller as aforesaid, the Buyer shall hold upon trust for the Seller from the proceeds of such resale such sum as shall be equal to the amount then owing to the Seller in respect of the goods provided that if the Buyer has not received the proceeds of such resale in full the Seller shall be subrogated (without the need for further documentation) to the Buyer's rights against its customer to the extent of any balance still remaining due to the Seller in respect of the goods. Nothing contained herein shall affect any other rights the Seller may have against the Buyer's customer.

9 Warranties

a) The Seller warrant that the goods are of satisfactory quality and they comply with any description or specification supplied by the Seller

b) The Seller gives no warranty that the goods are suitable for any particular purpose or for use under any specific conditions, unless the Buyer has given full details of the purpose or conditions and the Seller has expressly warranted the goods suitability in writing.

c) Save as stated, the Seller accepts all liability under any warranty express or implied, statutory or otherwise.

d) If the Buyer alleges any goods fail to comply with the warranty given, it shall return the goods to the Seller, which, after it has had a reasonable time to investigate and examine the goods, may:

i) replace the goods; or

ii) accept the return of the goods and credit the Buyer with the purchase price; or

iii) make the Buyer an allowance representing the difference between the value of the goods at the time of the complaint by the Buyer and the value they would have had if they had been in accordance with the contract, providing the Buyer pays the balance not in dispute according to normal terms.

e) Goods shall not be returned without prior agreement between the Buyer and the Seller. No claim can be entertained after the goods or any part thereof have been processed in any way.

10 Limitation of the Seller's liability

a) Except as otherwise expressly mentioned in these Conditions, the Seller shall have no liability of any kind to the Buyer in respect of any loss or damage (whether direct, indirect or consequential) suffered by the Buyer, whether in contract or negligence or otherwise howsoever, other than for death or personal injury to the extent that it is caused by the negligence of the Seller, its employees or agents.

b) No forbearance or indulgence by the Seller whether in respect of these Conditions or otherwise shall in any way affect or preclude the rights of the Seller against the Buyer or be taken as a waiver of any of these Conditions.

11 Force majeure, etc

The performance of all contracts is subject to variation or cancellation by the Seller owing to any act of God, war, strikes, Governmental regulations or orders, national emergencies, lock-outs, fire, flood, drought, tempest or any other cause (whether or not of a like nature) beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the contract and the Seller shall not be held responsible for any inability to deliver caused by any such contingency.

12 Governing Law

The law of Ireland shall govern the validity construction and performance of any contract to which these Conditions apply.