

When placing an order for any Goods from Elliott Baxter Ireland Limited, the Customer will be deemed to accept these Conditions. The Customer's attention is drawn in particular to the provisions of clause 6 (Title and Risk) and clause 8 (Limitation of Liability).

1. INTERPRETATION

1.1 Definitions:

- "Business Day" a day, other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business.
- "Business Hours" the period from 9.00 am to 5.30 pm on any Business Day.
- "Conditions" the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
- "Contract" the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- "Customer" the person or firm who purchases the Goods from the Supplier.
- "Delivery Location" has the meaning given in clause 4.2.
- "Force Majeure Event" an event, circumstance or cause beyond a party's reasonable control.
- "Goods" the goods (or any part of them) set out in the Order.
- "Mill Tolerance Levels" the tolerance levels of the mill at which the Goods are manufactured. Each manufacturer may have specific tolerance levels that relate to size and/or weight variances which may be more or less than 5% of the size and/or weight of the Goods as described in the Supplier's catalogue or website. Mill Tolerance Levels are available upon written request to the Supplier.
- "Order" the Customer's order for the Goods, as set out in the Order Confirmation, whether such Order was made in writing or on the phone as the case may be.
- "Order Confirmation" the Supplier's written confirmation of the Customer's order.
- "Specification" any bespoke variation to size and/or weight of the Goods confirmed in writing by both the Customer and the Supplier. Specifications are also subject to the Mill Tolerance Levels.
- "Supplier" Elliott Baxter Ireland Limited (registered in Ireland with company number 285225).

1.2 Interpretation:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes email.

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 law, trade custom, practice or course of dealing.
- 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 are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation, at which point and on which date the Contract shall come into existence.
- 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 the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures 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 or tender for the supply of the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of twenty (20) Business Days from its date of issue. Unless, stated as "fixed", all prices for the Goods included in any such quotation or tender provided by the Supplier are provisional only and the actual price to be paid by the Customer for the Goods shall be the Supplier's price as stated on the Order Confirmation.

3. GOODS

- 3.1 The Goods are described in the Supplier's catalogue or website as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4 Any Order for Goods which includes a Specification cannot be cancelled once the Order has been sent to the manufacturer for processing and the Customer will be liable for full payment of said Order in accordance with the payment terms in clause 7 (Price and Payment).

4. DELIVERY

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of delivery, the contract number, all relevant Customer and Supplier reference numbers and the type and quantity of the Goods.
- 4.2 The Supplier 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 Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading 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. The Supplier shall not be liable for any delay in delivery of the Goods howsoever caused.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day after the day on which the Supplier notified the Customer that the Goods were ready or the date on which the Goods are delivered to the Delivery Location and accepted by the Customer, whichever occurs first; and
- 4.5.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier 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.
- 4.7 Where the Goods delivered are within the Mill Tolerance Levels the Customer may not reject the Goods, and the Supplier shall make a pro rata adjustment to the invoice for the Goods accordingly.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 The Supplier warrants that on delivery the Goods shall conform in all material respects with their description and/or the Specification and the Mill Tolerance Levels.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to the Supplier within seven (7) Business Days of Delivery that some or all of the Goods do not comply with the warranty set out in clause 5;
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5 if:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2, whether or not incorporated into other products or used as material for other products;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- 5.3.4 the Customer alters such Goods without the written consent of the Supplier;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.3.6 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, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.
- 5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier 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.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4; and
- 6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.
- 6.4 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 Customer before Customer has made full payment to the Supplier as aforesaid, the Customer shall hold upon trust for the Supplier from the proceeds of such resale such sum as shall be equal to the amount then owing to the Supplier in respect of the Goods, provided that if the Customer has not received the proceeds of such resale in full the Supplier shall be subrogated (without the need for further documentation) to the Customer's rights against its customer to the extent of any balance still remaining due to the Supplier in respect of the Goods. Nothing contained in this clause 6.4 shall affect any other rights the Supplier may have against the Customer's customer.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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 the Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to ten (10) Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- 7.3.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 7.3.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by the Supplier:
- 7.5.1 in accordance with the payment terms detailed in the invoice; and
- 7.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.

- 7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the European Central Bank's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability for:
- 8.2.1 death or personal injury caused by negligence;

- 8.2.2 fraud or fraudulent misrepresentation; or
8.2.3 any liability that legally cannot be limited.
- 8.3 Subject to clauses 8.2 and 8.5, the Supplier's total liability to the Customer shall not exceed the total amount of the price of the Goods paid or payable by the Customer to the Supplier for the Order which is the subject of the claim.
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded by the Supplier:
- 8.4.1 loss of profits;
8.4.2 loss of sales or business;
8.4.3 loss of agreements or contracts;
8.4.4 loss of anticipated savings;
8.4.5 loss of use or corruption of software, data or information;
8.4.6 loss of or damage to goodwill; and
8.4.7 indirect or consequential loss.
- 8.5 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect if:
- 9.1.1 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 5 days of that party being notified to do so;
- 9.1.2 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), obtaining a moratorium, 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;
- 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
9.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or the Supplier 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.
- 9.3 Without limiting its other rights or remedies, the Supplier 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving five (5) days' written notice to the affected party.

11. GENERAL

- 11.1 **Assignment and other dealings.**
- 11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, 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 Supplier.
- 11.2 **Confidentiality.**
- 11.2.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, pricing, customers, clients or suppliers of the other party, except as permitted by clause 11.2.2.
- 11.2.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
- (b) as may be required by law, a court of competent jurisdiction, a court appointed representative, any governmental or regulatory authority or in contemplation of legal proceedings.
- 11.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.3 **Entire agreement.**
- 11.3.1 The Contract constitutes the entire agreement between the parties.
- 11.3.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 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.**
- 11.5.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 11.5.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it 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 deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 **Notices.**
- 11.7.1 Any notice given to the Supplier under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by registered post or other tracked delivery service to the following address: Unit 502A, Grants Row, Greenogue Business Park, Rathcoole, Co. Dublin, Ireland; or
- (b) sent by email to the following address: dublinsales@ebbgroupp.com.
- 11.7.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.8 **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 Ireland.
- 11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of Ireland shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.