

TERMS AND CONDITIONS OF SALE – CONSUMERS

1. Interpretation

1.1 The following definitions and rules of interpretation apply to these Conditions:

Accepted Order: an order (including a Special Order) provided or supplied by you and accepted by us in accordance with clause 3.1(a).

Accepted Quotation: a quotation provided or supplied by us and accepted by you.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Collection: the transfer of physical possession of the Goods to you at our premises.

Conditions: the terms and conditions set out in this document and any special or additional terms and conditions agreed in writing by us and you.

Contract: the contract between you and us for the sale of the Goods, in accordance with these Conditions.

Delivery: the transfer of physical possession of the Goods to you at the Property.

Estimated Delivery Date: the date upon which we will aim to deliver the Goods to you at the Property, or aim to have the Goods ready for you for Collection, as stated in an Accepted Order or Accepted Quotation (as the case may be).

Goods: the products, articles or items (or any part of them) to be purchased by you, including any installation or Services provided by us, as set out in an Accepted Order or Accepted Quotation (as the case may be), including all substitutions, replacements or renewals of such products, articles or items (or any part of them).

Nominated Account: our bank account to make any payments required by you under these Conditions, the details of which are set out in an Accepted Order or Accepted Quotation (as the case may be).

Price: the price of the Goods, as set out in clause 7.1.

Property: the property in respect of which the Goods are to be delivered to (where applicable), as set out in an Accepted Order or Accepted Quotation (as the case may be).

Services: the services, including any deliverables, supplied by us to you as set out in an Accepted Quotation or Accepted Order (as the case may be)

Special Order: an order for any Special Order Goods.

Special Order Goods: Goods that are not normally stocked and/or are required to be specially made or obtained by us for you.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

'We', 'us' or 'our': DAVID COVER AND SON LIMITED, a company registered in England and Wales under company number 00396804, whose registered office is at Sussex House, Quarry Lane, Chichester, West Sussex, PO19 8PE.

'You' or 'your': the person to whom we are selling the Goods to and who is required to pay for the Goods, as set out in an Accepted Order or Accepted Quotation (as the case may be).

1.2 Clause and paragraph headings shall not affect the interpretation of these Conditions.

1.3 A reference to **'writing'** or **'written'** includes e-mail.

1.4 Any words following the terms **'including'**, **'include'**, **'in particular'**, **'for example'** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. These Conditions

2.1 These Conditions are the terms and conditions on which we will supply the Goods to you.

2.2 Please read these Conditions carefully before you submit your order to us or accept a quotation. These Conditions tell you who we are, how we will supply the Goods to you, how you and we may change or end the Contract, what to do if there is a problem and other important information. If you think that there is a mistake in these Conditions, please contact us to discuss. Any changes required to these Conditions must be agreed by us in writing.

3. Our Contract with you

3.1 The Contract will come into existence between you and us when:

- (a) we issue you with acceptance in writing of your order; or
- (b) you accept a quotation provided or supplied by us, subject to clause 3.3.

3.2 If we are unable to accept your order, we will inform you of this and will not charge you for the Goods. This might be because the Goods are out of stock, because of unexpected limits on our resources which we could not reasonably plan for, or because we have identified an error on your order.

3.3 A quotation given by us does not constitute an offer and we may withdraw or revise a quotation at any time before it is an Accepted Quotation. A quotation shall only be valid for a period of 30 days from its date of issue (unless we otherwise agree in writing).

4. Order and specification

4.1 You shall be responsible to us for ensuring the accuracy of the terms of any order (including any applicable specification) you submit, and for giving us any necessary information relating to the Goods within a sufficient time to enable us to perform the Contract in accordance with its terms.

4.2 The quantity, quality and description of and any specification for the Goods shall be those set out in an Accepted Quotation or an Accepted Order (as the case may be) unless otherwise agreed in writing by us.

4.3 The images of the Goods in our brochures and on our website are for illustrative purposes only. The Goods may vary slightly from those images. All specifications are approximate only and are subject to normal margins of tolerance for the materials and construction in question. We reserve the right to amend any specification if required by any applicable statutory or regulatory requirements.

4.4 If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with a specification or direction you submit (including a Special Order), you shall:

- (a) be responsible for ensuring that any measurements provided are correct; and
- (b) indemnify us against all loss, damages, costs 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 for infringement or alleged infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from our use of your specification or from us complying with your direction as the case may be.

5. Your rights to make changes

5.1 Except in the case of Special Order Goods, and subject to clause 5.2, if you wish to make a change to the Goods you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods, the timing of supply (including the Estimated Delivery Date) or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the

change or the consequences of making the change are unacceptable to you, you may want to end the Contract by contacting us in writing.

- 5.2 In the case of Special Order Goods, you will not be able to make a change to your order once the order is an Accepted Order, nor make a change to our quotation once the quotation is an Accepted Quotation.

6. Our rights to make changes

- 6.1 We may change the Goods:

- (a) to reflect changes in relevant laws and regulatory requirements; or
- (b) to implement minor technical adjustments and improvements.

- 6.2 If we need to make more significant changes to the Goods (for example changes not foreseen or made aware to you in the pre-contract information provided) we will notify you and you may then contact us within 14 days of the date of such notice to either agree to such changes or end the Contract and receive a full refund of any monies paid to us in accordance with clause 8.2. If you do not contact us within 14 days from the date of our notice to you, we will end the Contract and refund to you any monies paid to us in accordance with clause 8.2.

- 6.3 We reserve the right to revise and amend these Conditions from time to time. You will be subject to the Conditions in force at the date of the Accepted Order or Accepted Quotation (as the case may be).

7. Price

- 7.1 The price of the Goods shall be our quoted price in our quotation or the price listed in our price list current at the date of an Accepted Order or Accepted Quotation (as the case may be) where:

- (a) no price has been quoted;
- (b) you provide us with an order; or
- (c) a quoted price is no longer valid.

- 7.2 We reserve the right to increase the Price in the following circumstances:

- (a) to reflect any increase in the cost to us which is due to any factor beyond our control;
- (b) any change in the Estimated Delivery Date, quantities or specifications for the Goods which you request; or

- (c) any delay caused by any of your instructions or by your failure to give us adequate information or instructions.

7.3 Unless otherwise agreed in writing the Price is net and shall not be subject to any discount.

7.4 The Price is exclusive of VAT and any other applicable taxes and duties or similar charges which may be payable by you at the rate and in the manner from time to time prescribed by law.

7.5 The cost of pallets and returnable containers will be charged to you in addition to the Price but credit may be given to you provided they are returned undamaged to us before the due payment date.

7.6 Our prices may change at any time, but price changes will not affect Accepted Orders or Accepted Quotations (as the case may be). It is always possible that, despite our best efforts, some of the Goods we sell may be incorrectly priced. We will normally check prices before accepting your order or submitting our quotations, however where the Goods' correct price at the date of your order or our quotation is less than our stated price at this date, we will charge the lower amount. If the Goods' correct price at the date of your order or our quotation is higher than the price stated, we will contact you for your instructions before we accept your order. If we accept and process your order or you accept our quotation where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may end the Contract, refund you any sums you have paid and require the return of any Goods provided to you.

8. Payment terms

8.1 Subject to any special terms agreed in writing between you and us, we shall be entitled to invoice you for the Price on or at any time after Delivery or Collection of the Goods, unless the Goods are Special Order Goods and are to be collected by you or you wrongfully fail to take delivery of the Special Order Sale Goods, in which event we shall be entitled to invoice you for the Price at any time after we have notified you that the Special Order Goods are ready for Collection or (as the case may be) we have tendered delivery of the Special Order Goods.

8.2 The Price shall be due for payment:

- (a) in the case of Collection, on the date of Collection or in the case of Special Order Goods, on the date of ordering; or

- (b) in the case of Delivery, on the date you submit your order to us or the date of an Accepted Quotation (as the case may be),

by way of same day electronic transfer of immediately available funds to our Nominated Account (or other bank account as notified by us in writing).

- 8.3 If you fail to make a payment due to us under these Conditions by the due date, then, without limiting our remedies under clause 12 (Termination), you 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 will accrue each month at the rate of 2% per month on the overdue sum outstanding from time to time (with a part of a month being treated as a full month for the purpose of calculating interest). You must pay us interest together with any overdue amount.
- 8.4 If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.

9. Delivery and Collection

- 9.1 Unless otherwise agreed in writing, the costs of Delivery will be in addition to the Price and set out in the Accepted Order or Accepted Quotation (as the case may be)
- 9.2 Subject to you complying with clause 8.2, we will use our reasonable endeavours to effect Delivery or make the Goods available for Collection by the Estimated Delivery Date (unless otherwise agreed in writing by you and us).
- 9.3 Where we are to deliver the Goods:
 - (a) Delivery will be as near to the Property, in our absolute discretion, as a safe hard road permits. In all other circumstances we will not accept any liability (except in respect of death or personal injury caused by our negligence) for any damage caused by the vehicle or driver;
 - (b) you shall be responsible for the unloading and storing of the Goods and we shall not be liable for any damage that occurs in the course of unloading. A maximum period of two hours is allowed for the purpose of unloading each vehicle (unless we otherwise agree in writing) and if the unloading period for any reason extends beyond two hours you will be charged on a time and cost basis at our current rates from time to time in force; and
 - (c) where we in our absolute discretion determine that mechanical handling or craning is appropriate such facilities must be provided by you and at your cost

at the Property to facilitate the unloading of the Goods from the delivery vehicles.

- 9.4 If Delivery or Collection is delayed by an event outside our control (in accordance with clause 16 (Events outside of our control)) then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the Contract and receive a refund for the Goods you have paid for but not received.
- 9.5 If no one is available at the Property to take Delivery of the Goods, we will leave you a note informing you of how to rearrange Delivery at the Property.
- 9.6 If, after a failed Delivery to you, you do not rearrange Delivery or arrange for Collection, we will contact you for further instructions and may charge you for storage costs and any further Delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange Delivery or arrange for Collection we may end the Contract and clause 13.1 will apply.

10. Title and Risk

- 10.1 Risk of damage to, or loss of, the Goods shall pass to you:
- (a) in the case of Collection, at the time when we notify you that the Goods are available for collection; or
 - (b) in the case of Delivery, at the time of Delivery or, if you wrongfully fail to take delivery of the Goods, the time when we have tendered delivery of the Goods.
- 10.2 Notwithstanding Delivery and passing of risk in the Goods, or any other provisions of these Conditions, the title in the Goods shall not pass to you until all sums due or owing by you to us on any account and/or under this Contract have been paid in full.
- 10.3 Until such time as the title in the Goods passes to you, you shall keep the Goods separate from your and those of third parties and properly stored, protected and insured and identified as our property.
- 10.4 Until such time as the property in the Goods passes to you (and provided the Goods are in existence and have not been resold), we shall be entitled at any time to require you to deliver up the Goods to us and, if you fail to do so forthwith, to enter upon the Property or any other premises owned by you or under your control where the Goods are stored and repossess the Goods.

10.5 Our demand for or recovery of the Goods shall not of itself discharge either your liability to pay the whole of the Price and take Delivery or our right to sue for the whole of the Price.

10.6 If the Goods are sold to a third party with valid title the proceeds of the sale are to be held on trust for our benefit.

11. Defective Goods

11.1 If you have any questions or complaints about the Goods please contact us in accordance with clause 18 (Notices and communications).

11.2 We agree to fully investigate any alleged defect notified to us by you provided we have received full payment of all sums due and payable to us by you under these Conditions.

11.3 We will not be responsible for:

- (a) any imperfections of a minor or insignificant nature;
- (b) any defect arising from your actions following Delivery or Collection of the Goods;
- (c) any defect arising from your failure to follow our oral or written instructions as to the use and maintenance of the Goods;
- (d) any defect arising from any alterations or repairs (or attempts to alter or repair) made by you or by someone else at your request; or
- (e) any defect arising as a result of fair wear and tear or wilful damage caused by you.

11.4 If we deem that the Goods are defective we will (subject to your agreement in writing):

- (a) provide you with a full or partial refund;
- (b) replace the Goods; or
- (c) repair the Goods.

12. Our liability to you

12.1 Subject to clause 12.2 below, if we fail to comply with these Conditions, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of these Conditions or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was

made, both we and you knew it might happen, for example, if it was contemplated by you and us at the time we entered into this Contract.

- 12.2 We only supply the Goods for domestic and private use. If you use the Goods for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 12.3 Our total liability to you in respect of all losses arising under or in connection with these Conditions or the Contract shall not exceed the total amount paid by you under the Contract.
- 12.4 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes:
- (a) liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
 - (b) for fraud or fraudulent misrepresentation; and
 - (c) which we cannot exclude or limit our liability under applicable laws.

13. Termination

- 13.1 Without affecting any other right or remedy available to us, we may end the Contract at any time by writing to you if:
- (a) you do not make any payment to us when it is due and you still do not make payment within five Business Days of us reminding you that payment is due;
 - (b) you do not, within a reasonable time, allow us to deliver the Goods to you or collect them from us; or
 - (c) you do not, within a reasonable time, allow us access to the Property to supply the Services.
- 13.2 If we end the Contract in the circumstances set out in clause 13.1 above, we will refund any money you have paid in advance for the Goods we have not provided but we may deduct or charge you as compensation for the net costs we will incur as a result of your breach of the Contract.

14. Consequences of Termination

- 14.1 Upon termination of this Contract (however caused):
- (a) without prejudice to any other rights or remedies you may have, you shall pay to us on demand:

- (i) all outstanding unpaid invoices (including interest that may have accrued) and, in respect of Goods supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt; and
 - (ii) any costs and expenses incurred by us in recovering the Goods and/or in collecting any sums due under the Contract (including any storage, repair, transport, and legal costs); and
- (b) you shall return any Goods which have not been fully paid for. If you fail to do so, then we may enter the Property (or any other premises in which the Goods are being stored) and take possession of them. Until the Goods have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 In the event that you cancel a Special Order the following handling charges may be applied against you:

- (a) the charge to us by the supplier for the return of the Special Order Goods including carriage which may be 100% of the Price if the supplier declines to re-stock the Special Order Goods;
- (b) our administrative and handling costs;
- (c) if we decide to retain the Special Order Goods in stock a minimum of 10% of our list price of the Special Order Goods, together with handling costs; or
- (d) if the Special Order Goods have been specifically designed or made by us for you and we cannot resell the Special Order Goods then you will be charged for 100% of our full costs up to the time of receipt of your cancellation in writing.

14.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of you and us that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.4 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.

15. How we may use your personal information

15.1 We will use the personal information you provide to us:

- (a) to supply the Goods to you;
- (b) to process your payment for the Price; and

- (c) if you agreed to this during the order process, to give you information about similar goods that we provide, but you may stop receiving this at any time by contacting us.
- 15.2 We will not give your personal information to third parties unless where the law either requires or allows us to do so.
- 15.3 For further information on how we will use your personal information, please view our Privacy Policy using the following link – <https://www.covers.biz/privacy-policy-cookie-restriction-mode>.
- 16. Events outside of our control**
- 16.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Conditions that is caused by events outside of our control.
- 16.2 An **'event outside of our control'** includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes the following:
 - (a) civil commotion, civil war, riot, invasion, armed conflict, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (b) acts of God, collapse of buildings, fire, explosion, inclement weather, storm, flood, earthquake, subsidence, drought, epidemic or other natural disaster;
 - (c) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (d) impossibility of the use of public or private utility networks;
 - (e) the acts, decrees, legislation, regulations or restrictions of any government;
 - (f) strikes or labour unrest (other than in relation to our own employees); or
 - (g) default by one of our suppliers or sub-contractors.
- 16.3 Our obligations under these Conditions are suspended for the period that such event outside of our control continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring such an event to a close or to find a solution by which our obligations under these Conditions can be performed despite such an event.

17. Transfer of rights and obligations

- 17.1 We may transfer our rights and obligations under these Conditions to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under these Conditions.
- 17.2 You may not transfer your rights and obligations under these Conditions to any other person without our written consent.

18. Notices and communications

- 18.1 If you wish to contact us in writing, or if any clause in these Conditions requires you to give us notice in writing (for example, to cancel the Contract), you can send this to us by hand or by pre-paid post to David Cover and Son Limited, Sussex House, Quarry Lane, Chichester, West Sussex, PO19 8PE, or by email to enquiries@covers.biz.
- 18.2 If you wish to contact us by telephone, our contact number is 01243 785141.
- 18.3 If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address or email address you provide to us in the Accepted Order or Accepted Quotation (as the case may be), or such other address or email address notified to us in writing in accordance with this clause 18.

19. Other important terms

- 19.1 Each of the clauses of these Conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect to the fullest extent permitted by law.
- 19.2 If we do not insist immediately that you do anything you are required to do under these Conditions, or if we delay in taking steps against you in respect of you breaching this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. No waiver by us of any of these Conditions shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 19.3 No other person shall have any rights to enforce any of these Conditions. Neither of us will need to get the agreement of any other person in order to end the Contract or to make any changes to these Conditions.
- 19.4 These Conditions shall be governed by English law and we both agree to the exclusive jurisdiction of the English courts.