

Mats Direct UK Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "M.D." shall mean Mats Direct UK Limited, its successors and assigns or any person acting on behalf of and with the authority of Mats Direct UK Limited.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by M.D. to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by M.D. to the Customer.
- 1.5 "Services" shall mean all Services supplied by M.D. to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between M.D. and the Customer subject to clause 5 of this contract.
- 2. Application of these terms and conditions to consumers**
- 2.1 Where the Customer buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982**
- 3.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 3.2 Notwithstanding clause 3.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
- 4. Acceptance**
- 4.1 Any instructions received by M.D. from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by M.D. shall constitute acceptance of the terms and conditions contained herein.
- 4.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 4.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of M.D.
- 4.4 The Customer undertakes to give M.D. at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
- 4.5 Advice given by M.D. to the Customer during telephone conversations, in regard to suitability of Goods for a particular application, is given in good faith using the information given by the Customer; however, M.D. will not be held responsible for any loss, damage, accident, injury or penalty caused by the Goods by being used in a particular application. Furthermore, any recommendation of Goods given by M.D. during or after a site visit is given in good faith and is valid at the time of the visit; however, as circumstances may have changed when the Goods have been supplied, and or installed, no claim will be accepted by M.D. regarding loss, damage, accident, injury or penalty caused by the Goods other than those covered by professional indemnity.
- 4.6 Orders are accepted only subject to these terms and conditions to the exclusion of any conditions of trading which the buyer may have purport or may have purposed to impose.
- 5. Price and Payment**
- 5.1 At M.D.'s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by M.D. to the Customer in respect of Goods supplied; or
- (b) M.D.'s quoted Price (subject to clause 5.2) which shall be binding upon M.D. provided that the Customer shall accept M.D.'s quotation in writing within thirty (30) days. All quotations are subject to these terms and conditions, unless stated otherwise in writing, and may be withdrawn by M.D. at any time without notice.
- 5.2 M.D. reserves the right to change the Price in the event of a variation to M.D.'s quotation. Any variation as a result of orders not being accompanied by sufficient and correct information to enable the seller to proceed with the execution thereof forthwith, fluctuations in currency exchange rates or as a result of increases to M.D. in the cost of materials and labour will wither entitle the seller to amend the quotation to cover any increase of the cost due to delay, or charged for on the basis of M.D.'s quotation and will be shown as variations on the invoice.
- 5.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 5.4 Payment will be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to four and a half percent (4.5%) of the Price), direct credit, or by any other method as agreed to between the Customer and M.D.
- 5.5 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 6. Delivery of the Goods**
- 6.1 At M.D.'s sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at M.D.'s address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by M.D. or M.D.'s nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 6.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.3 M.D. may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.5 The failure of M.D. to deliver shall not entitle either party to treat this contract as repudiated.
- 6.6 M.D. shall not be liable for any loss or damage whatsoever due to failure by M.D. to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of M.D.
- 7. Risk**
- 7.1 If M.D. retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, M.D. is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by M.D. is sufficient evidence of M.D.'s rights to receive the insurance proceeds without the need for any person dealing with M.D. to make further enquiries.
- 7.3 The Customer acknowledges that:
- (a) although M.D. shall endeavour to replicate colour requests, when colouring fabric or rubber variations will occur, and although cross references are made M.D. offers no guarantee for colour matching; and
- (b) computer monitors and printed paper will render colours differently and therefore actual samples should always be sought if possible; and
- (c) M.D. cannot confirm exact colour matching of existing coloured products or brand guidelines, however M.D. will endeavour to get as close as possible using the requested product materials and production techniques.
- 8. Title**
- 8.1 It is the intention of M.D. and agreed by the Customer that ownership of the Goods shall not pass until:
- (a) the Customer has paid all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to M.D. in respect of all contracts between M.D. and the Customer.
- 8.2 Receipt by M.D. of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then M.D.'s ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until M.D. shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from M.D. to the Customer M.D. may give notice in writing to the Customer to return the Goods or any of them to M.D. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) M.D. shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to M.D. then M.D. or M.D.'s agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as M.D. has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for M.D.; and
- (f) the Customer shall not deal with the money of M.D. in any way which may be adverse to M.D.; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of M.D.; and
- (h) M.D. can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that M.D. will be the owner of the end products.
- 9. Defects**
- 9.1 The Customer shall inspect the Goods on delivery and shall within five (5) days notify M.D. of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford M.D. an opportunity to inspect the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which M.D. has agreed in writing that the Customer is entitled to reject, M.D.'s liability is limited to either (at M.D.'s discretion) replacing the Goods or repairing the Goods.
- 10. Returns**
- 10.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
- (b) M.D. has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) M.D. will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered with all packaging material and brooding material in as good condition as is reasonably possible in the circumstances.
- 10.2 M.D. may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 10.3 Non-stockist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 11. Warranty**
- 11.1 Subject to the conditions of warranty set out in clause 11.2, M.D. warrants that if any defect in any workmanship of M.D. becomes apparent and is reported to M.D. within twelve (12) months of the date of delivery (time being of the essence) then M.D. will either (at M.D.'s sole discretion) replace or remedy the workmanship.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by M.D.; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and M.D. shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without M.D.'s consent.
- (c) in respect of all claims M.D. shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 11.3 For Goods not manufactured by M.D., the warranty shall be the current warranty provided by the manufacturer of the Goods. M.D. shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and a half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by M.D.
- 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify M.D. from and against all costs and disbursements incurred by M.D. in pursuing the debt including legal costs on a solicitor and own client basis and M.D.'s collection agency costs.
- 12.4 Without prejudice to any other remedies M.D. may have, if at any time the Customer is in breach of any obligation (including those relating to payment), M.D. may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. M.D. will not be liable to the Customer for any loss or damage the Customer suffers because M.D. exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 12.6 Without prejudice to M.D.'s other remedies at law M.D. shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to M.D. shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to M.D. becomes overdue, or in M.D.'s opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of the creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security and Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which M.D. may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to M.D. or M.D.'s nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that M.D. (or M.D.'s nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should M.D. elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify M.D. from and against all M.D.'s costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint M.D. or M.D.'s nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Intellectual Property**
- 14.1 Where M.D. has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in M.D. and shall only be used by the Customer at M.D.'s discretion.
- 14.2 The Customer shall indemnify M.D. against any claim or liability in respect of any infringements or alleged infringements of a patent, trade names, registered or provable unregistered design or copyright or any other claim resulting from compliance with the Customer's instructions, express or implied.
- 14.3 The Customer hereby authorises M.D. to utilise images of the Goods designed or drawn by M.D. in advertising, marketing, or competition material by M.D.
- 15. Cancellation**
- 15.1 M.D. may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice M.D. shall repay to the Customer any sums paid in respect of the Price. M.D. shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by M.D. (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Cancellation of orders for Goods made to the Customer's specifications or non-stockist items will definitely not be accepted, once production has commenced.
- 16. Data Protection Act 1998**
- 16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises M.D. to:
- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) to disclose information about the Customer, whether collected by M.D. from the Customer directly or obtained by M.D. from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
- 16.2 M.D. may also use information about the Customer to monitor and analyse its business. In this connection the Customer authorises M.D. to disclose personal information to agents or third parties engaged by M.D.
- 16.3 The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 16.4 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 16.5 The Customer shall have the right to request M.D. for a copy of the information about the Customer retained by M.D. and the right to request M.D. to correct any incorrect information about the Customer held by M.D.
- 17. Limitation of Liability**
- 17.1 M.D. shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by M.D. of these terms and conditions.
- 17.2 In the event of any breach of this contract by M.D. the remedies of the Customer shall be limited to damages and M.D.'s liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.
- 17.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict M.D.'s liability for the death or personal injury to any person resulting from M.D.'s negligence.
- 18. Customer's Disclaimer**
- 18.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by M.D. and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 19. Consumer Protection (Distance Selling) Regulations 2000 (DSR's)**
- 19.1 Where the Customer purchases Goods as a consumer under the Consumer Protection (Distance Selling) Regulations 2000, the Customer shall be entitled to cancel this contract for any reason without penalty within seven (7) days of the date of delivery of the Goods. Cancellation of orders for custom-made or clearly personalised Goods, Goods made to the Customer's specifications, or Goods which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly, will definitely not be accepted.
- 19.2 In the event the Customer cancels any contract prior to delivery of the Goods (and the Goods are in transit), the Customer must refuse delivery of the Goods.
- 19.3 Upon cancellation, it shall be the Customer's responsibility to return the Goods (at their own cost) to M.D. M.D. may, at their sole discretion, arrange collection of the Goods and any costs incurred shall be deducted from the Customer's refund.
- 19.4 The Customer is under a statutory duty to retain possession of the Goods and take reasonable care of them. Reasonable care means the Customer must take care to ensure that M.D. receives the returned Goods, and that those Goods are not damaged in transit.
- 19.5 M.D. shall refund the Customer the full amount paid for the Goods (less any costs to collect the Goods) within thirty (30) days of receipt of the cancellation notice.
- 20. General**
- 20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England, Scotland and Wales and are subject to the jurisdiction of the courts of Bury.
- 20.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by M.D.
- 20.4 M.D. may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.5 M.D. reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which M.D. notifies the Customer of such change. Except where M.D. supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 20.6 Notwithstanding any other provisions thereof, should the manufacture, processing, supply or despatch of the whole or any part of the Goods contracted for be interrupted, prevented or hindered, or rendered uneconomic by any causes whatsoever beyond M.D.'s control, shall be entitled either to cancel the contract or to postpone or to suspend any delivery or deliveries under the contract until, (in M.D.'s judgement) such cause has ceased to operate. M.D. shall be under no liability whatsoever in respect of any such cancellation postponement or suspension. Without limiting the generality of the causes referred to above the same shall include war, fire, accident, breakdown of plant or machinery, strikes, combinations of workmen and lockouts (whether affecting M.D.'s works or those of supplying sub-contractor or carriers); shortage, non-delivery or delay in delivery or any other circumstances (of whatsoever nature and not limited to the foregoing) which directly or indirectly interrupt, prevent or hinder or render uneconomic the due performance of the contract.