

# MMR Terms of Business

## 1. GENERAL

1.1 In these conditions the following words have the meanings shown:

"Buyer" - means the person, firm or company purchasing Goods

"Company" - means MMR Fixings Ltd

"Contract" - means the agreement between the Company and the Buyer for the purchase from the Company by the Buyer of Goods

"Contracts" - includes all agreements between the Company and the Buyer for the purchase of Goods from the Company by the Buyer

"Goods" - means the goods supplied by the Company and purchased by the Buyer on the terms of this Contract

1.2 Unless agreed otherwise, these conditions shall be incorporated in all Contracts of the Company to sell Goods and shall be the sole conditions under which the sale takes place. All other terms, conditions or other representations are excluded from the Contracts between the Buyer and the Company including any terms and conditions which the Buyer may purport to apply under any order for Goods. In the absence of such acceptance the Buyer shall be deemed to have withdrawn or waived his said conditions or stipulations and to contract solely on the basis of these terms.

1.3 These conditions shall prevail unless expressly varied in writing and signed by the General Manager on behalf of the Company.

1.4 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to vary in any way any of the conditions under this Contract unless otherwise agreed in accordance with Clause 1.3 above.

1.5 Any written quotation, estimate and/or advertised price for the Goods shall be an invitation to treat and no binding contract shall be created by placing an order until the Company has acknowledged the order to the Buyer either verbally or in writing as appropriate.

## 2. DELIVERY

2.1 Where the Company agrees to arrange carriage of the Goods from the Company's works to another location specified by the Buyer, it shall do so as the Buyer's agent and risk (but not title) to the Goods shall pass on the Goods being collected by the carrier. The Company may arrange carriage at the cost of the Buyer in such manner as it considers appropriate. Times for delivery are (unless otherwise expressly agreed in writing) estimates only and time shall not be of the essence of the contract.

2.2 Proof of delivery of Goods is available from our Customer Services Department for a period of 28 days from date of invoice. If a proof of delivery is requested more than 28 days after the date of invoice or requested again after the Company has supplied such proof of delivery, the Company will shall be under no obligation to provide such proof of delivery and, if the Company chooses to provide such proof of delivery, it shall charge an administration fee of £5.00 in all cases.

2.3 Where the Company effects insurance over the Goods during transit, it shall do so as the Buyer's agent and at the Buyer's expense and such insurance shall (subject to any written instruction by the Buyer to the Company prior to the Goods leaving the Company's works) be in such amounts, against such risks, with such insurers and for such periods as the Company considers appropriate. The proceeds of any such insurance shall be held in trust for the Company until all sums then remaining unpaid to the Company in respect of the Goods are made in full. The Company and the Buyer will on request give to each other all information with regard to insurances as may be reasonably require to protect their respective interests in the Goods under this clause.

2.4 The Buyer shall in case of any damage in transit or shortage of delivery give separate notice in writing to the carrier concerned and to the Company within three days of receipt of the Goods followed by complete particulars in writing of the damage or shortage alleged within five days of receipt of Goods.

2.5 Should the Company be prevented for any reason set out in clause 6 from delivering all of the Goods ordered by the Buyer, the Company shall deliver and the Buyer shall take such Goods as the Company shall be able to deliver and the Buyer shall be entitled to the same prices and discounts on such part of the Goods as are actually delivered to it as were chargeable on the whole order.

2.6 Each order for Goods subject to these Terms shall be a separate contract and the failure of any delivery in respect to one order shall not breach the contracts as to any other orders.

## 3. RETURN OF GOODS

3.1 Goods which are not defective and which have been supplied in accordance with the contract cannot be returned without the Company's prior written authorisation in the form of an official company returns number ("Authorised Returns"). Authorised Returns shall be subject to a handling charge of 20% of the invoice value of the Authorised Returns or £35.00 (whichever is the greater). Authorised Returns shall be sent to the Company's premises at the Buyer's expense.

3.2 The Company will only authorise the return of Goods if the Buyer notifies the Company of its wish to return the Goods within 14 days of delivery of the Goods.

3.3 Goods returned to the Company must be in a sufficiently good condition to allow them to be resold by the Company and in original packs. Items not in a re-saleable condition will not be authorised for return.

3.4 Goods which are not standard or which have been modified or made to the Buyer's specifications will not be authorised for return.

#### 4. RETENTION OF TITLE

4.1 Although risk in the goods supplied passes to the purchaser on delivery, legal title on such goods does not pass to the purchaser until MMR Fixings has received the full price payable for such goods and all other goods supplied by MMR Fixings to the purchaser for which payment is due. Until legal title passes, the purchaser shall hold the goods as MMR Fixings fiduciary agent and bailee and shall keep them properly stored, protected, insured and identified as MMR Fixings property. Until that time the purchaser is entitled to resell or use the goods in the ordinary course of its business but shall account to MMR Fixings for their proceeds of sale and pending payment shall hold such proceeds on trust for MMR Fixings absolutely. The purchaser's right to resell or use the goods shall terminate automatically if a liquidator or (administrative) receiver or administrator of the purchaser is appointed or an order is made or a resolution passed for the winding up of the purchaser. Until such time as legal title in the goods passes to the purchaser MMR Fixings may at any time require the purchaser, its liquidator, (administrative) receiver or administrator to return the goods and/or may repossess the goods by entering upon any premises of the purchaser or any third party where the goods are reasonably believed to be stored. In addition, and without prejudice to any other right or remedy available to MMR Fixings. If the purchaser is in breach of the payment terms or of any of its obligations under this clause, MMR Fixings shall be entitled to cancel the contract, suspend further deliveries, terminate any outstanding order or quotation without incurring any liability whatsoever as a consequence of this action.

4.2 If in breach of clause 3.1 above the Buyer sells the Goods prior to making payment in full then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held (in the case of the proceeds of sale in a separate account) by the Buyer as trustee for the Company.

4.3 If the Buyer fails to make payment in full of all sums due hereunder by the due date or prior to such payment the Buyer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within the meaning of Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the Buyer's creditors or if the Buyer is unable to pay its debt within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Buyer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) then the Company (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Buyer's premises without notice and remove the Goods or otherwise exercise the rights set out in clause 5.5.1, 5.5.2 and 5.5.3.

#### 5. PRICES AND PAYMENT

5.1 Prices given in quotations or when accepting orders or at any time are subject to variation and any order accepted shall be subject to the express condition that prices supplied on the Company's order acknowledgement shall apply. In all quotations, offers, orders or contracts with the Company (unless otherwise stated) all the Company's prices are exclusive of value added tax and the amount of value added tax (if any) shall be deemed added to any price so quoted and be payable by the Buyer.

5.2 For Goods sold within the United Kingdom, payment shall be strictly net and shall be made in full on or before the last day of the month following date of invoice (unless otherwise agreed in writing by the Company).

5.3 For Goods sold outside the United Kingdom, payment shall be strictly net and shall be made in cash in full, in USD (\$), on or before the last day of the month following date of invoice (unless otherwise agreed in writing by the Company). For the purpose of this clause 4.3 time shall be deemed to be of the essence of the contract.

5.4 Payment of the price or any part thereof from time to time outstanding (with interest as provided in clause 5.5.2) may if so required by the Company and without prejudice to clauses 4.1 and 4.2. above be secured and/or effected by means (at the Company's option) of: (i) irrevocable Letters of Credit which have been confirmed by a Bank in London nominated or approved by the Company and valid for a period specified by the Company; or (ii) Bills of Exchange drawn in favour of the Company and accepted by a Bank or Confirming House in London nominated or approved by and payable at delivery or at such other date or dates (if any) as may be stipulated by the Company. Such letters or (as the case may be) Bills shall be transmitted to the Company on or prior to commencement of delivery of the Goods and shall be renewed or extended as required to ensure their continuing validity notwithstanding any delay (howsoever arising) in delivery of such Goods. Upon any default in payment upon or in respect of any such Letters or Bills the whole balance then remaining due to the Company shall forthwith become payable upon demand.

5.5 In the event of any default by the Buyer in making payment of any amount payable to the Company under any contract with the Company or any payment not being received when due the Company may at its option and without prejudice to its other right:

5.5.1 Suspend or cancel further deliveries under any contract with the Buyer and/or resell the Goods, and/or

5.5.2 Charge interest (whether before or after judgement) at a rate of 8 per cent per annum above the Base Rate from time to time of the Company's principal bankers in England on the amount at any time outstanding from a commencement of delivery of the Goods to which the amount relates until receipt of actual payment.

5.5.3 Under "The Late Payment of Commercial Debts (Interest) Act 1998" the Company will claim compensation for the costs of collecting late payments at the following rate. Amount Owed

Compensation

Up to £999.99	£50.00
Up to £9,999.99	£100.00
Over £10,000.00	£150.00

## 6. DEFAULT OR INSOLVENCY OF BUYER

6.1 In the event that:

6.1.1 the Buyer shall be in breach of any of its obligations under the Contract; 6.1.2 any distress or execution shall be levied on the Buyer's property or assets; or 6.1.3 if the Buyer (an individual or partnership) shall make or offer to make any voluntary arrangement or composition with its creditors or become bankrupt or if any bankruptcy petition be presented against him; 6.1.4 (if the Buyer is a company) has an administrative receiver or administrator appointed or makes a voluntary arrangement with its creditors or commences to be wound up; or 6.1.5 otherwise if the Buyer fails to pay its debts as and when they fall due; or 6.1.6 such equivalent event in Clauses 6.1.1 to Clause 6.1.5 occurs to the Buyer in its local jurisdiction;

the Company at its discretion and without prejudice to any other right or claim may by notice in writing forthwith determine wholly or in part any and all of the other Contracts between the Company and the Buyer or may (without prejudice to the Company's rights subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods.

## 7. DATA PROTECTION ACT 1988

7.1 The Company shall comply with the provisions of the Data Protection Act 1988, and the European Communities (Data Protection) Regulations 2001, as may be amended from time to time and all other applicable data protection legislation in relation to the processing of any personal data it obtains from the Buyer. The Company shall comply with its on-line Privacy Policy when the Buyer purchases the Goods from the Company through the Company's website.

7.2 The Company may process all the details it obtains from the Buyer to enable the Company to do business with the Buyer and for the specific purpose of selling the Goods to the Buyer. The Company may also request further information from third parties with the Buyer's consent for example, credit reference agencies. The Company shall obtain specific consent from the Buyer for the collection by the Company of sensitive data as defined by the Act such as racial origin, (trade union membership and commission of offences) physical or mental health or criminal convictions.

7.3 Any information gathered will only be used in the context of the business the Company conducts for the Buyer and for any other purpose required for the fair processing of the Buyer's data. The Buyer may notify the Company to cease processing the data if it is unhappy with the way the Company uses the Buyer's personal data or wishes the Company to cease using any data which the Buyer has voluntarily given to the Company.

7.4 The Company may disclose the Buyer's personal data as required by law, including but without limitation, to prevent a crime, discharge a statutory duty or as required by a court order in the context of legal proceedings or to any third parties who process personal data on the Company's behalf, such as computer maintenance companies and any group company within the Company's organisation.

## 8. WARRANTIES and REPRESENTATIONS

8.1 All Goods are sold with the benefit of and subject to the conditions of the warranty supplied with them, which is available for inspection on request.

8.2 Nothing herein or in any warranty given by the Company shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants and agents including without limitation any failure by the Buyer to comply with any recommendations of the Company as to storage and handling or use or servicing of the Goods, use of the Goods with other goods or other misuse of the Goods or accident or fair wear and tear of the Goods

8.3 Except as provided for in these conditions, any warranties, (whether express or implied by statute or common law or howsoever) including without limitation those of satisfactory or merchantable quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication of the Company) are hereby excluded.

8.4 No warranty is given that the detail in illustrations and in data supplied as to weights and measurement are accurate unless they are specifically described so to be and they are otherwise provided by way of identification of the Goods only. Defects in quality and dimension where specifically mentioned shall be deemed accepted by the Buyer. In the case of Goods sold by samples as well as by description it shall be sufficient that the bulk of the Goods correspond with the sample without also corresponding with the description. The Company reserves the right to modify the manufacture of any Goods at any time and this condition shall be held to be implicit in all quotations or communications sent out by the Company.

8.5 The Buyer acknowledges and agrees that all contracts are entered into by the Company on the basis that (unless otherwise expressly agreed in writing at the time of concluding the contract) the Buyer is not placing reliance on any representation made by the Company or by its servants or agents as to the fitness, suitability, description, design, specification or quality of the Goods and/or services to be supplied by the Company, thereunder.

8.6 Without prejudice to clauses 5.1, 5.2 and 5.3, any defective Goods shall be replaced free of charge provided that the Buyer notifies the Company as to the defect and the Company acknowledges such defect prior to the Goods being returned to the Company and the Buyer pays the carriage of such Goods back to the Company. Risk in Goods so returned shall remain with the Buyer until received by the Company. The Company will be entitled to refuse Goods returned otherwise than in accordance with this clause.

## 9. FORCE MAJEURE

9.1 The Company shall have no liability under the Contract in respect of any failure or delay in fulfilling any of the Company's obligations to the extent that fulfilment thereof is prevented, frustrated, impeded or delayed as a consequence of any "force majeure" or any occurrence whatsoever beyond the control of the Company including without prejudice to the generality of the foregoing:

9.1.1 compliance with any order, regulation, request or control of any national or local authority, governmental department or other competent authority of any country; or

9.1.2 any delays in or cancellations of deliveries or provision of services by third parties or shortages of goods, materials or parts; or

9.1.3 any strikes, lock-outs or trade disputes whether involving the Company employees or others, fire, explosion, accident, calamity or civil disturbance, action of elements, national calamity or Act of God; or

9.1.4 failure in whole (or in part) of any power of energy supply.

9.2 Whilst the Company undertakes to make reasonable endeavours within its power to overcome difficulties arising in connection with any of the events or circumstances referred to in sub-clause (9.1) of this condition, the Company reserves the right to terminate the Contract with the Buyer without incurring any liability whatsoever and in particular the Company shall not be obliged to purchase any goods from third parties to make good any such difficulty.

## 10. LIABILITY

10.1 Notwithstanding anything contrary, the Company's liability to any user for personal injury or death caused by its negligence or fraud is not limited.

10.2 The Company shall not be liable (whether or not the Company has been advised of the possibility of such loss) in contract, tort, negligence or otherwise howsoever arising for any claim, damage, loss or costs in respect of:

10.2.1 any losses special to the Buyer, any direct loss of profits, any direct loss of turnover and/or any direct loss of revenue; and

10.2.2 any indirect or consequential loss or damage howsoever caused including without limitation any losses special to the Buyer, any loss of profits, loss of turnover, loss of revenue, loss of business and/or loss of data and for the avoidance of doubt, the sub-clauses in this Clause 10.2 are intended and agreed by the Buyer to be severable.

10.3 Subject to Clause 10.1, the aggregate liability of the Company (whether in contract, tort, negligence or breach of statutory duty or otherwise) to the Buyer for any loss or damage shall be limited to the price of the Goods.

10.4 The Buyer shall be liable for and shall indemnify the Company against any and all expenses, loss, liability or proceedings suffered by a third party arising as a result of or in connection with any act, omission, negligence, and/or breach of the terms of this Contract or otherwise through the default of the Buyer.

10.5 The Company makes no representation or warranty that the use of the Goods does not infringe the rights of any third party and the Company accepts no liability in this respect.

## 11. CONFIDENTIALITY

The Buyer shall during and after the termination of the Contract keep confidential all information, written estimates, plans and illustrations, proposals and all other quotation documentation acquired from the Company or which becomes known to the Buyer in connection with the Contract. Such documentation shall always remain the property of the seller and must be produced to the Company on demand.

## 12. SALE PROMOTION DOCUMENTATION

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, illustrations, price lists, weight and measurement estimates and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

## 13. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with English law and all disputes shall be submitted to the jurisdiction of the English Courts.