

TERMS AND CONDITIONS OF SALE OF THE ASHTON GROUP OF COMPANIES

1. In these conditions:-
 - a. "the Company" means the company selling the goods hereunder being a member of the Thomas A Ashton Limited Group of companies,
 - b. "the Contract" means the contract for the sale and the purchase of Goods entered into by a member of the Thomas A Ashton Group of Companies with the Customer
 - c. The Thomas A Ashton group of companies comprises:-
 - i. Thomas A Ashton Limited (Company number 00560837)
 - ii. Ashton Seals Limited (Company number 00748676)
 - iii. Ashtons Manufacturing Limited (Company number 03377490)
 - iv. Ashtons (Sheffield) Limited (Company number 02237317)
 - d. "the Customer" means the person firm or company with whom the Contract is entered into
 - e. "Goods" means the products sold or to be sold by the Company to the Customer pursuant to the Contract.
2. These terms and conditions form part of and are incorporated into each Contract entered into between the Company and the Customer, whether or not these terms and conditions or a copy hereof has been signed by the Customer.
3. These terms and conditions were introduced on 1st April 2009 and to all Contracts entered into from and after that date.
4. No variation of these terms and conditions by the Customer shall be valid (and no variation shall affect these terms and conditions) unless they have been accepted in writing by a Director of the Company.
5. The Company shall sell and the Customer shall purchase the Goods in accordance with any order of the Customer which is accepted by the Company on and subject to these terms and conditions.
6. No terms and conditions other than those herein contained shall apply to the Contract unless specifically confirmed in writing in any correspondence from the member to the Customer in relation to a specific Order.
7. Any variation applying in accordance with condition 6 shall only apply to the Order in respect of which it is confirmed and shall not amount to any variation which will apply by implication or by custom and practice to any other Order.
8. No order of the Customer shall be deemed to be accepted by the Company unless and until Goods ordered by the Customer shall be despatched by the Company or until the Company otherwise communicates acceptance of the order to the Customer.
9. The Customer shall not have the right to cancel an Order once it has been accepted by the Company.
10. All communications between the Company and the Customer shall be in writing, by fax or email. Any telephone conversations in relation to an Order shall be confirmed in writing. Any such conversations not so confirmed shall have no effect.
11. Gauges, weights, chemical composition and analysis, quantities and sizes will so far as possible be adhered to, but reasonable excesses and deficiencies thereof shall be accepted by the Customer who shall not be entitled to reject all or any of the Goods or to replacement of the same on the ground that they are not precisely as specified and who shall pay for reasonable excesses on the payment terms stipulated in these Conditions of Sale.
12. Dimensions shown in brochures, advertisements or other publications that are not related directly to an Order from a Customer are approximate only and shall not be relied on by the Customer.
13. Where the Goods are of a type, size or quality not normally produced by the Company, that Company will use reasonable endeavours to execute the order but if it proves impossible or uneconomical to carry out or complete the order, the company reserves the right to cancel the Contract or the uncompleted part thereof, in which event the Customer will only be liable to pay for the part thereof actually delivered or collected and the Company shall not be liable to the Customer for loss, if any, arising from the element of the Contract not delivered.
14. The Company shall have no liability to the Customer in respect of any claim for non-conformance of Goods where the Customer cannot provide the Company with the identification and batch traceability of the Goods. In this regard the Company complies with, and the Customer shall comply with, BS EN ISO 9001:7.5.3 in that "the [Customer] shall control and record the unique identification of the [Goods]". Subject to such compliance the Company will replace free of charge or, in its sole discretion, modify or repair any Goods found (after normal use or service) to be defective or not to conform in a material respect with any contractual description expressly applied to them, provided that:-
 - a. written particulars of any defects or other complaints are given to the Company in accordance with Clause 17; and
 - b. the Goods have been appropriately stored and properly used since delivery to or collection by the Customer and have not since delivery/collection been subject to any alteration or modification; and
 - c. the Company or its nominated agents are afforded such opportunities and facilities as they may reasonably require for examination of the Goods and such examination, in the opinion of the Company or the agents nominated by the Company to conduct it, discloses that the Goods are defective or otherwise fail to accord to the contract in a material respect; and
 - d. the Goods to be collected are safely and appropriately packed by the Customer and held available for collection by or on behalf of the Company; and
 - e. Any defect or failure has not arisen from fair wear and tear, wilful damage, the Customer's negligence or abnormal working conditions; and
 - f. The Company's instructions for storage and use have been followed; and
 - g. The Customer has not attempted any repair, alteration or modification of or to the Goods or any of them.
15. The Company shall not be liable to pay any penalties or charges to the Customer in respect of the non-conformance of any of the Goods or in respect of late deliveries save where time shall have been expressed to be of the essence in the Order and shall have been accepted as such by the Company. Subject thereto the dates for delivery/collection or performance specified in the Contract are approximate only.

16. In no circumstances shall the Company be liable for any consequential loss suffered by the Customer whether caused by the Company's negligence, misrepresentation, breach of contract, warranty or howsoever; and in these terms and conditions the term "consequential loss" is agreed to include but is not limited to:
 - a. loss of profit, revenue or income;
 - b. liability under any claim brought or intimated by a third party; and
 - c. expenditure directly or indirectly caused by, related to or arising out of any defects or other failures in the Goods.
17. Notification by the Customer to the Company of:-
 - a. any defects in or damage to the Goods - must be made to the Company within 3 days of delivery, or where the defect or damage was not apparent from reasonable inspection within 3 days of discovery of the damage or defect by fax or by telephone call (subsequently confirmed in writing within three days of such call) to the Company;
 - b. Any alleged shortages in delivery - must be made within 3 days of delivery by fax or by telephone call (subsequently confirmed in writing within three days of such call) to the Company;
 - c. non-delivery - must be made within 7 days of the date of invoice by fax or by telephone call (subsequently confirmed in writing within three days of such call) to the Company and to the carrier.
18. The Company shall have no liability to the Customer in respect of any claim for defects in, damage to, shortage of or non-delivery of any Goods unless the same shall have been notified to the Company as above.
19. If the Customer shall be able to substantiate a claim for non-conformance of or defects in the Goods the liability of the Company shall be limited to the replacement of the goods within the shortest reasonable period.
20. In no circumstances shall the Company's liability or the amount of any indemnity, damages or compensation payable by the Company on any claim or claims concerning or relating, directly or indirectly, to the Goods and including but not limited to claims based on negligence, misrepresentation, breach of contract, warranty of the aforesaid guarantee, exceed in total the Company's invoice price of those of the Goods which are complained of, excluding VAT.
21. Nothing in these Conditions of Sales shall be taken as excluding or restricting or as attempting to exclude or restrict the Company's liability for death or personal injury resulting from negligence as defined in the Unfair Contract Terms Act 1977.
22. Price:-
 - a. Where the Goods are sold by reference to the Company's published price list, the price payable for the Goods shall be the price published in the price list current at the date of delivery/collection of the Goods from the Company's works.
 - b. Where the Goods are not sold by reference to the Company's published price list the price stated is based on the cost to the Company of materials, fuel and power, transport and labour at the date of acceptance of the order or quotation (whichever is the earlier).
 - c. If at the date of delivery/collection of the Goods from the Company's works there has been an increase in all or any of such costs, the price payable for the Goods may at the instance of the Company be increased accordingly.
 - d. Where the price for the Goods is varied in accordance with this condition, the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
 - e. There shall be added to the price for the Goods any value added tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods and any bank charges or commissions payable in respect of the transfer of funds to the Company (whether initially charged to or payable by the Customer or the Company).
 - f. The Goods are sold "ex works" unless otherwise stated. If the company arranges or undertakes carriage, freight, insurance and/or any other transport costs, such costs shall be for the Customer's account.
23. Settlement:-
 - a. Subject to credit for the Customer having been approved by the Company, accounts shall be paid no later than the end of the month following the month of delivery/collection (or, if not collected by the Customer, the month in which the Customer is notified of the availability of the Goods for collection); otherwise payment must be received by the Company before delivery/collection.
 - b. Payment shall, at the Company's option, be made by cash, cheque, irrevocable letter of credit or direct bank transfer.
 - c. The company shall be entitled to charge interest at 5% per annum (calculated with daily rests) above the base rate of National Westminster Bank Plc from time to time on all overdue payments.
 - d. When deliveries/collections are spread over a period, each consignment will be invoiced as delivered/collected and each month's invoices will be treated as a separate account and be payable accordingly.
 - e. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the contract shall entitle the Company to suspend further deliveries/collections and work both on the same order and on any other order from the Customer without prejudice to any other right the Company may have.
 - f. The Company reserves the right (where it has genuine doubts as to the capacity of a Customer to pay its invoices on the due date for payment to suspend delivery/collection from the Company's works or performance of any order or any part instalment without liability until payment or satisfactory security for payment has been provided.
24. Where the Customer is in default of any obligation arising from these terms and conditions, the Company shall be entitled to recover from the Customer the amount of any costs, whether legal or otherwise, incurred by it as a result of or in connection with such default on a full indemnity basis.
25. No delay shall entitle the Customer to fail to collect or to reject all or any of the Goods or to repudiate the contract.
26. The Company cannot undertake to meet any schedule of Customer's requirements supplied after the date of the contract and will have no liability for delay in meeting or failure to meet all or any such requirements.

27. If for any reason the Customer is unable to collect or accept delivery of the Goods when the Goods are due and ready for collection/delivery, the Company may arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to collect or take delivery of the Goods or to pay for them in accordance with the contract, including the right for the Company to mitigate its loss by selling on the Goods at the highest reasonably obtainable price. In such event the liability of the Customer shall be the difference between the Contract Price and the price so realised, plus reasonable handling charges imposed by the Company and interest due on any unpaid sums.
28. Notwithstanding delivery/collection, title to and property in the Goods shall not pass to the Customer until all sums due or owing on any account by the Customer to the Company have been paid in full. Until such time, the Customer shall hold the Goods as bailee of and in a fiduciary capacity for the Company and shall:
 - a. keep the Goods marked or stored separately from other Goods so as to be identifiable as the property of the Company;
 - b. deliver the Goods up to the Company upon demand; and
 - c. permit the Company or its agent to enter upon the Customer's premises in order to retake possession of the Goods.
29. The Customer shall not be entitled to any right of set off in respect of the Goods or any claims arising thereunder against any other money due from the Customer to the Company.
30. Dies, tools, jigs and fittings manufactured by the Company are the Company's property whether specifically charged in full or part to the Customer or not.
31. Where dies, tool, patterns, jigs, fittings, drawings, particulars or specifications are supplied to the Company by the Customer:-
 - a. the Company accepts no responsibility for their accuracy; and
 - b. the Company shall exercise care with such property while it is under the Company's control and shall act so as to comply with ISO 9001 in this regard.
32. The Customer shall not without the previous consent of the Company in writing divulge to any third party or make use for its own benefit of any drawings or other information which may disclose the special, technical or practical knowledge or experience of the Company.
33. The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal, are in all respect complete, accurate and entirely suitable for the Customer's requirements.
34. Unless otherwise expressly agreed in writing, the Company shall have no responsibility for the performance, suitability or durability of the Goods or any materials or workmanship comprised therein to the extent that the same are manufactured in accordance with the Customer's design, drawings, standards or specification.
35. The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings) claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instruction, whether express or implied.
36. In cases where the Company agrees to deliver the Goods by post, the risk in the Goods passes to the Customer on the consignment of the Goods properly addressed to the Customer.
37. In cases where the Company agrees to delivery the Goods otherwise than by post, the risk in the Goods passes to the Customer when the Goods are delivered to the destination on the mainland of Great Britain stipulated in the contract, or when loaded on board ship or aircraft at the UK port of departure and the Company accepts no responsibility for any damage, shortage or loss in transit thereafter.
38. In the cases where the Goods are sold "ex-works", risk in the Goods passes 21 days after the Company has notified the Customer that the Goods are ready for collection.
39. Unless agreed in writing by the Company, packing cases and packing materials will be provided free of charge to the Customer. The Company will use its reasonable endeavours to ensure suitability of packing before despatch, but no claim will be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packing.
40. The Company reserves the right to assign or sub-contract the whole or any part of the Contract.
41. The Company shall not be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone supply and the Customer shall not have the right to cancel any contract in the event of such circumstance.
42. The Contract shall in all respects be governed by and construed in accordance with English law and the English courts shall, unless the Company elects otherwise, have non-exclusive jurisdiction to hear and determine any action arising out of or connection with the contract.
43. The Customer shall be responsible for complying with any legislation, rules or regulations governing the importation of the Goods into the country of destination and for payment of any duties thereon and for obtaining any necessary licenses and permissions to enable the goods to be imported into the said country.
44. The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Company's obligation in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

45. In the event that the Customer has a receiver appointed over any of the assets, goes into liquidation or becomes bankrupt or makes any arrangement with its creditors then the Company shall be entitled to cancel or suspend further deliveries and if Goods have been delivered but not yet paid then the price shall be immediately due.
46. No waiver by the Company of any breach of these terms and conditions by the Customer shall be considered as a waiver of a subsequent breach of the same or any other provision.
47. If any provision of these terms and conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provisions in question shall not be affected and the provision held to be invalid shall be amended so that the spirit and intendment of the original provision shall be maintained and be enforceable.
48. This agreement and the schedules to it shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in this agreement.
49. Neither party will disclose to any third party details of this agreement without the prior consent of the other.
50. Any dispute under or arising out of this agreement shall be referred to a single arbitrator in accordance with the provisions of the Arbitration Act 1996.
51. In the event of any conflict between the provisions of this agreement and the provisions of any other written document the provisions of this agreement shall prevail.
52. All proceedings, notices of proceedings and other notices in connection with or to give effect to this agreement shall be served upon the Company or the Customer (as the case shall apply) at their respective addresses set out in its latest Order (in the case of the Customer) or at its registered office (in the case of the Company).