

CREDIT TERMS AND TERMS OF TRADE

INTRODUCTION

These Credit Terms and Conditions ("**Credit Terms**") apply to any credit provided by Edward Foster & Son (Bradford) Limited ("**Company**") to you ("**you**" or "**Customer**"). By signing and submitting the Customer Application Form attached to these Credit Terms, you confirm that you have read, understood, and agree to be bound by these terms and conditions.

The Customer Application Form and these Credit Terms (collectively "**Agreement**") together form the entire agreement between the Company and the Customer in relation to the provision of credit. In the event of any inconsistency between the Customer Application Form and these Credit Terms, these Credit Terms shall prevail to the extent of the inconsistency.

These Credit Terms forms a legally binding agreement between the Customer and the Company.

AGREED CREDIT TERMS

1 PROVISION OF GOODS

- (a) The Company and the Customer agree that the Company will provide the Goods to the Customer on the terms and conditions contained in these Credit Terms.
- (b) Each time the Customer requires the Company to provide the Goods, the Customer must submit a Customer Application Form to the Company. Any accepted Customer Application Form shall form part of and be governed by the terms of these Credit Terms.
- (c) Unless otherwise agreed, all quotes set out in a Customer Application Form are estimates only and are subject to change depending on the actual quantity, specifications, or availability of the Goods supplied.

2 PAYMENT

- (a) All quotes are in Pounds Sterling and excluding VAT and any other taxes, duties, customs and excise charges.
- (b) Unless otherwise stated in a Customer Application Form:
 - (i) The Company will issue a tax invoice for the fees for Goods (as indicated in the Customer Application Form) to the Customer; and
 - (ii) The Customer must pay all invoices in full and without set-off by the 30th day following the end of the month in which the relevant goods or services were supplied, unless otherwise agreed in writing by the Company.
- (c) The Customer will also pay to the Company, on demand, on a full indemnity basis, all amounts that the Company may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis) as a result of the Customer defaulting on any of the terms of these Credit Terms.
- (d) If payment is not made in accordance with this clause 2, the Company at its entire discretion may require the Customer to pay the Company interest on all outstanding monies from the due date until the date of actual payment at the rate of 8% above the Bank of England base rate, calculated daily, until payment is received in full, together with any statutory compensation and reasonable recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998. However, before applying this interest, the Company will provide the Customer with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by the Company. The obligation to pay interest survives termination of these Credit Terms.
- (e) If payment is not made in accordance with this clause 2, the Company may:
 - (i) refuse to supply any further part of the Goods to/for the Customer until all outstanding monies, including any accrued interest, is paid in full; or
 - (ii) terminate these Credit Terms whereupon the full price for the Goods then supplied will be immediately due and payable.

- (f) The Customer may not withhold payment or make any deduction from any amount owing without the Company's prior written consent, irrespective of any claim the Customer may have against the Company for any thing or matter whether related to the provision of the Goods or not.
- (g) The Company reserves the right to change the price of the Goods it provides to the Customer from time to time, including without limitation when the Company's suppliers vary the costs of the materials that they supply to the Company.
- (h) If the Company varies any price of Goods in accordance with clause 2(g), the Company will use its best endeavours to provide reasonable notice to the Customer about such variation.
- (i) All prices quoted by the Company are the actual amounts payable to the Company, free of all deductions and set off whatsoever and the Customer will be responsible for all tariffs, taxes, import duties and all other charges and payments which may be levied, charged or assessed or imposed in respect of the Goods.

3 CREDIT LIMIT

- (a) The Company is not obliged to provide any further Goods for the Customer once the Credit Limit has been reached.
- (b) The Company may, at its option, provide further Goods to for the Customer, where to do so will result in the Credit Limit being exceeded and the Customer agrees that the Company is expressly authorised to provide those Goods and these Credit Terms will continue to apply in full to all monies owing.
- (c) The Company is under no obligation to advise the Customer when the Credit Limit has been reached or exceeded.

4 RIGHT TO REFUSE FURTHER CREDIT OR VARY THE CREDIT LIMIT

The Company may at any time, for any reason whatsoever:

- (a) vary the Credit Limit of the Customer to increase or decrease the Credit Limit; or
 - (b) refuse further credit to the Customer,
- without any liability to the Customer whatsoever.

5 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these Credit Terms are excluded.
- (b) Nothing in these Credit Terms is intended to exclude or limit any rights or remedies that may arise under applicable UK law. Where the Customer is acting as a consumer, this includes rights under the *Consumer Rights Act 2015*, which may entitle the Customer to remedies such as a refund, replacement, or repair if the goods are faulty or not as described.
- (c) The warranties contained in clause 5(d) are additional to warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of these Credit Terms.
- (d) The Customer warrants to the Company that as at the date of these Credit Terms and for the duration of these Credit Terms:
 - (i) the information contained in these Credit Terms is true and correct and it has disclosed all relevant information to the Company to assess the credit-worthiness of the Customer;
 - (ii) it has the legal right and power to enter into these Credit Terms;

- (iii) the execution, delivery and performance of these Credit Terms by the Customer has been duly and validly authorised by all necessary corporate action on its part;
- (iv) these Credit Terms is a valid and binding Agreement on the Customer, enforceable in accordance with its terms;
- (v) the Customer is not bankrupt or insolvent and no receiver, liquidator, administrator or receiver and manager has been appointed over any part of its assets and no such appointment has been threatened;
- (vi) and no proceedings have been brought or threatened for the purpose of bankrupting or winding up the Customer;
- (vii) no partner, director or shareholder of the Customer is bankrupt, a discharged bankrupt or in any form of receivership, administration or liquidation; and
- (viii) it has the capacity to make the payment in accordance with these Credit Terms.

6 CONFIDENTIAL INFORMATION

The Customer acknowledges that the Customer may become acquainted with or have access to Confidential Information, and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.

7 PERSONAL DATA

The Company is bound by the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 in its collection, use, and storage of any Personal Data provided by the Customer, and will process such data lawfully, fairly, and transparently in accordance with its privacy policy.

8 NO ASSIGNMENT

- (a) The Customer must not transfer or assign its rights under these Credit Terms to anyone else, without the prior written consent of the Company, which may be granted or withheld by the Company in its sole discretion. The Customer must provide any information the Company requires to consider whether to grant its consent.
- (b) Any change in 50% or more of the shareholding of the Customer will constitute a deemed assignment which requires the Company's prior written consent in accordance with clause 8(a).
- (c) The Customer acknowledges and agrees that the Company may transfer, assign or otherwise dispose of its interest in these Credit Terms upon giving written notice to the Customer.

9 OWNERSHIP AND ASSIGNMENT

- (a) Notwithstanding anything to the contrary express or implied in these Credit Terms, the parties agree that the Company retains full title to the Goods and title will not at any time pass to the Customer until the purchase price for the Goods and all other amounts owing in respect of the Goods are paid to the Company notwithstanding:
 - (i) the delivery or collection of the Goods to/by the Customer (as the case may be);
 - (ii) installation in or attachment of the Goods to the Customer's property; and/or
 - (iii) the possession and use of the Goods by the Customer.
- (b) The Customer acknowledges and agrees that:
 - (i) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Goods without the express written consent of the Company;

- (ii) it will, if requested by the Company, return the Goods to the Company following non-fulfilment of any obligation of the Customer (including payment of monies) without limiting any other right the Company may have;
- (iii) it will deliver up the Goods to the Company upon demand by the Company and give the Company or its agents or authorised representatives the right to enter any premises occupied by the Customer and any premises where it believes any Goods may be stored (without liability for trespass or any resulting damage) and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods and agrees to indemnify the Company and its officers, directors, shareholders, agents and/or authorised representatives from any damage, injury and/or loss arising from such recovery or attempted recovery of the Goods from the Customer's possession or control;
- (iv) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Goods on trust for and as agent for the Company immediately when they are receivable or are received; and
- (v) the Company may recover as a debt due and immediately payable by the Customer all amounts owing by the Customer to the Company in any respect even though title to the Goods has not passed to the Customer.

10 DELIVERY OF GOODS

- (a) Unless otherwise stated in a Customer Application Form, the Customer must pay all delivery costs associated with the delivery of the Goods to the Customer at the same time as the other fees are payable under these Credit Terms or at other times requested by the Company. Any estimates for delivery provided by the Company are an estimate only, and are subject to change without notice. A change in the delivery costs does not entitle the Customer to dispute payment of such costs. Any special delivery costs incurred (as determined by the Company) will be charged at cost.
- (b) The Company may in its discretion make part deliveries of Goods as and when it considers this is required, and in that case the Customer must pay all delivery costs of each individual delivery made in accordance with these Credit Terms.
- (c) The delivery of the Goods shall take place when:
 - (i) the Customer (or its employees or agents) takes possession of the Goods at the Company's address; or
 - (ii) the Customer (or its employees or agents) takes possession of the Goods at the Customer's address (in the event that the Goods are delivered to the Customer).
- (d) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Credit Terms.
- (e) Any times provided by the Company to the Customer in respect of the delivery of the Goods are estimates only and are non-binding on the Company. Whilst the Company attempts to deliver all Goods on time, sometimes delays are inevitable and the Company will not be responsible for any losses suffered by the Customer in the event of delay.
- (f) Purchaser Orders may not be cancelled by the Customer and to the extent permitted by law, the Customer is not permitted to return any Goods supplied by the Company without the Company's prior written consent which may be withheld by the Company in its sole and absolute discretion, except where the Customer is acting as a consumer and has rights to cancel or return under applicable consumer protection laws, including the Consumer Rights Act 2015 and the Consumer Contracts Regulations 2013. Nothing in this clause limits those statutory rights.
- (g) In the event that the Company permits the Customer to return any Goods supplied by the Company, only Goods in original packing and in resalable condition will be accepted. Restocking charges apply only to non-stocked or 'special' order items, where the Company is required to return the Goods to its supplier and incurs a charge. In such cases, a re-stocking charge of up to 25% of the invoice amount plus VAT may be applied or deducted. Returns must be made within 14 days of delivery. Returns made after 14 days may be subject to a higher charge (at the Company's discretion). This clause does

not affect any statutory rights the Customer may have as a consumer under UK law, including rights to return faulty or misdescribed goods or to cancel under the Consumer Contracts Regulations 2013.

11 RISK

- (a) Title to the Goods shall remain with the Company until full payment is received. However, risk in the Goods shall pass to the Customer on delivery to the Customer or the Customer's nominated carrier or agent, whichever occurs first.
- (b) If any Goods are lost, damaged, or destroyed after delivery but before ownership passes to the Customer, the Customer shall remain liable to pay for the Goods in full. The Company shall be entitled to claim and receive any insurance proceeds payable in respect of the Goods. The Customer shall provide all reasonable assistance to the Company in pursuing any such claim, and acknowledges that a copy of these terms may be presented to the relevant insurer as evidence of the Company's entitlement.

12 INDEMNITY AND RELEASE

- (a) Except as provided under these Credit Terms and to the extent permitted by law:
 - (i) the Customer:
 - (A) releases the Company and its officers, directors, shareholders, employees, agents and contractors from any and all Claims by the Customer or any of its officers, directors, shareholders, employees, agents or invitees;
 - (B) indemnifies the Company and its officers, directors, shareholders, employees, agents and contractors against any and all Claims made by third parties against the Company;
 - (C) indemnifies the Company and its officers, directors, shareholders, employees, agents and contractors against any loss suffered by or incurred by the Customer, arising from any act, default, omission, negligence or breach of contract or otherwise, by the Customer or any of its directors, shareholders, employees, agents, contractors or invitees, except to the extent (if any that):
 - (D) the Company recovers an amount from its insurers in respect of the Claim; or
 - (E) the loss the subject of the Claim is caused by the fraudulent act or omission of the Company.
 - (ii) The Company is not liable for any Claim or any loss arising from any event or cause, beyond the control of the Company, and the Customer indemnifies the Company from any loss that it suffers in this regard, including but not limited to:
 - (A) any act or omission of the Customer, including any delay caused by the Customer;
 - (B) damage after delivery;
 - (C) any problem caused by misuse, abuse, wear and tear or abnormal movement;
 - (D) goods or appliances made by others;
 - (E) any defect in, or problem caused by, work materials or goods supplied by the Customer;
 - (F) any problem caused by or contributed to by any modification to the Goods by the Customer; or
 - (G) any defect caused or contributed to by a failure of the Customer to follow any procedure recommended by the Company or by the manufacturer of the Goods.

- (a) (**Indemnity**) Each party agrees to indemnify the other party and its employees, contractors and agents ("**those indemnified**") from and against any loss or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the other party's officer's, directors', shareholder's, employees', clients', contractors' or agents':
 - (i) breach of any third party intellectual property rights; or
 - (ii) negligent, wilful, fraudulent or criminal act or omission.
- (b) Without limitation to the other terms of these Credit Terms, to the maximum extent permitted by law, the total liability of each party in respect of loss or damage sustained by the other party in connection with these Credit Terms is limited to the amount paid (or on credit if not paid) by the Customer to the Company in the 3 months preceding the date of the event giving rise to the relevant liability.

13 TERMINATION

13.1 TERMINATION FOR CONVENIENCE

- (a) Either party may end these Credit Terms for no reason, by providing notice to the other party. Termination under this clause will not take effect until this Agreement is otherwise terminated in accordance with the above terms.
- (b) These Credit Terms will end 10 Business Days after the day the notice is sent (the **End Date**).
- (c) On the End Date, the Company will provide an invoice to the Customer for:
 - (i) any fees for Goods already provided or performed up to the End Date;
 - (ii) any pre-approved third party costs the Company has incurred on the Customer's behalf up to the End Date; and
 - (iii) if terminated by the Customer, the Company's pre-estimated genuine losses as a result of the Customer ending these Credit Terms,
(together, the **Outstanding Amounts**)
- (d) The Customer will pay the Outstanding Amounts to the Company within 10 Business Days after the End Date, unless otherwise agreed in a written payment plan between the parties.

13.2 TERMINATION FOR BREACH

- (a) If a party (the **Notifying Party**) considers that the other party is in breach of these Credit Terms including:
 - (i) if the Customer fails to make payment in accordance with clause 2;
 - (ii) if the Customer becomes insolvent;
 - (iii) if the Customer commits an act of bankruptcy or is made bankrupt;
 - (iv) if the Customer makes a composition or other arrangement with creditors;
 - (v) if the Customer assigns assets for the benefit of creditors generally;
 - (vi) being a company, if the Customer enters into a deed of company arrangement or has a controller, administrator, receiver or receiver and manager appointed;
 - (vii) being a company, if the Customer goes into liquidation;
 - (viii) being a partnership, if the Customer has a receiver or a receiver and manager appointed; or
 - (ix) in the event of Force Majeure (such as if there are issues with the Company's supplier and the Company is unable to supply the agreed Goods); or
 - (x) breaching any warranty or obligation contained in these Credit Terms or a Customer Application Form;

and fails to rectify the breach within 7 days of being given a notice to do (the **Breach**), the Notifying Party may provide a notice to the other party.

- (b) The notice must include the nature and details of the Breach, with reference to the relevant clause/s of these Credit Terms. The Notifying Party may, if it wishes to do so, make suggestions for resolving the Breach.
- (c) The other party will have 10 Business Days (or longer, in the Notifying Party's discretion) to rectify the Breach (the **Rectification Period**).
- (d) After the Rectification Period, the Notifying Party will:
 - (i) if the Breach has been successfully rectified, notify the other party that the agreement will continue; or
 - (ii) if the Breach has not been successfully rectified, notify the other party that these Credit Terms is terminated (**Termination for Breach Notice**).
- (e) Following a Termination for Breach Notice, the parties will stop all work under these Credit Terms unless otherwise agreed.
- (f) The termination of a Customer Application Form does not affect any other Customer Application Form which shall continue. Upon termination of this Agreement, the Customer shall be liable to pay to the Company for all Goods supplied by the Company under that Customer Application Form up until the date of termination, and such amounts shall be a debt immediately due and owing.
- (g) The indemnities, warranties and liability caps in clause 12 will apply to any disputes and resulting claims. Any pre-estimated losses in clause 13.1(c)(iii) will not limit or otherwise effect the Company's rights under these Credit Terms, at law or otherwise in equity; the Company's losses resulting from the Customer's breach are likely to far exceed its losses resulting from termination for the Customer's convenience.

13.3 OTHER CONSEQUENCES FOR TERMINATION

If these Credit Terms ends, the parties will:

- (a) agree that, unless the Agreement is terminated under 13.1(a), all existing Customer Application Form shall automatically terminate. The Customer will be liable to pay to the Company for all Goods supplied by the Company under such Customer Application Form up until the date of termination, and such amounts shall be a debt immediately due and owing;
- (b) return all property and Confidential Information to the other party;
- (c) comply with all obligations that are by their nature intended to survive the end of these Credit Terms; and
- (d) the Customer must return any Goods to the Company that it has not paid for.

14 DEFINITIONS

In these Credit Terms, unless inconsistent with the context or subject matter, the following words and phrases have the following meanings.

Term	Meaning
Customer	means the Customer identified in the Customer Application Form.
Customer's Address for Service	means the email address of the Customer set out in the Customer Application Form.
Agreement	means the Customer Application Form and these Credit Terms.
Claim	means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity) in respect of any loss or alleged loss.

Term	Meaning
Confidential Information	means information relating directly or indirectly to the Company, its assets and the operation and affairs of the Company, including without limitation, these Credit Terms and the Goods.
Credit Limit	means the credit limit per month set out in the Customer Application Form.
Force Majeure	means an act, omission or circumstance over which the Company could not reasonably have exercised control.
Goods	means any goods supplied by the Company to the Customer from time to time.
Personal Data	has the meaning given to it in the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, and refers to any information relating to an identified or identifiable natural person (a "data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
UK GDPR	means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as supplemented by the Data Protection Act 2018 and as amended from time to time.

15 INTERPRETATION

In these Credit Terms unless inconsistent with the context or subject matter:

- (a) A reference to a person includes any other legal entity;
- (b) A reference to a legal entity includes a person;
- (c) Words importing the singular number include the plural number;
- (d) Words importing the plural number include the singular number;
- (e) A reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (f) Clause headings are for reference purposes only and must not be used in interpretation;
- (g) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (h) A reference to a statute includes all regulations and subordinate legislation and amendments;
- (i) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
- (j) A reference to a monetary amount is a reference to a GBP or £ or Pounds Sterling currency amount;
- (k) An obligation of two or more parties binds them jointly and each of them severally;
- (l) An obligation incurred in favour of two or more parties is enforceable by them severally;
- (m) References to time are to local time in London, England;
- (n) Where time is to be reckoned from a day or event, the day or event must be excluded, and reference to a month means a calendar month;

- (o) A reference to a business day means any day on which trading banks are open for business in London, England;
- (p) If any time period specified in these Credit Terms expires on a day which is not a business day, the period shall expire at the end of the next business day.
- (q) A reference to 'in writing' or 'written' shall include communications via email.

16 GENERAL

- (a) The Company may vary the terms of the Agreement at any time and will notify the Customer of the variation by providing 30 days written notice to the Customer at the Customer's Address for Service.
- (b) Any notice required to be given in accordance with these Credit Terms is deemed to be sufficiently given if provided to the Customer's Address for Service or the Company's Address for Service (as the case may be) and, if it is:
 - (i) delivered by hand, upon which the time of giving notice will be the time of delivery;
 - (ii) sent by pre-paid post, upon which the time of giving notice will be two (2) business days after the date of postage; or
 - (iii) sent by email, upon which the time of giving notice will be the time shown on the email generated by the sending machine identifying proof of transmission to the designated email address.
- (c) The following will constitute proof of receipt:
 - (i) if sent by registered post, proof of posting by registered post; or
 - (ii) if sent by email, proof of sending.
- (d) These Credit Terms is governed by the laws of England and Wales.
- (e) The parties submit to the jurisdiction of the Courts of England and Wales and Courts competent to hear appeals from them.
- (f) All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of these Credit Terms are merged in these Credit Terms and are of no further effect.
- (g) No oral explanation or information provided by a party to another affects the meaning or interpretation of these Credit Terms or constitutes any collateral agreement, warranty or understanding.
- (h) No waiver of a provision of these Credit Terms is binding unless made in writing and signed by both parties.
- (i) These Credit Terms does not give rise to any rights to any Third Party under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Credit Terms.
- (j) The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under these Credit Terms.
- (k) If a provision of these Credit Terms is void or unenforceable it must be severed from these Credit Terms and the provisions that are not void or unenforceable are unaffected by the severance.
- (l) The rights and remedies of a party to these Credit Terms are in addition to the rights or remedies conferred on the party at law or in equity.
- (m) These Credit Terms may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by electronic communications including email.
- (n) Where these Credit Terms is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (o) Time is in all cases and in every respect of the essence of these Credit Terms.