

2B Heard - Terms & Conditions

These Terms and Conditions are the standard terms that apply to the purchase of all Goods from 2B Heard Ltd, a company registered in England under number 09672716 whose registered office address is at 5 Doolittle Yard, Froghall Road, Amptill, Beds, United Kingdom, MK45 2NW, hereinafter known as "the Company". These Terms and Conditions are not intended for the sale of Goods to Consumers, as defined in the Consumer Rights Act 2015.

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- "Contract"** means the contract formed as detailed in clause 2, which shall incorporate, and be subject to, these Terms and Conditions;
- "Consumer"** means a consumer (as defined in the Consumer Rights Act 2015).
- "Customer"** means the sole trader, firm or corporate body ordering the Goods. Where the person ordering the Goods is an individual doing so on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business and the business shall be the Customer in the context of this Contract;
- "Delivery Date"** means the estimated date on which the Goods are to be delivered;
- "Goods"** means the goods which are to be supplied by us to you as specified in your Order (and confirmed by us in accordance with clause 2.1);
- "Order"** means your order for the Goods; and
- "Price"** means the price payable for the Goods.
- 1.2 Each reference in these Terms and Conditions to:
- 1.2.1 "we", "us" and "our" is a reference to the Company and includes our employees and agents;
- 1.2.2 "you" and "your" is a reference to the Customer and includes your employees and agents;
- 1.2.3 "writing" and "written" includes letters, emails and faxes; 1.2.4 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.5 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time; 1.2.6 a clause is a reference to a clause of these Terms and Conditions; and
- 1.2.7 a "Party" or the "Parties" refer to the parties to these Terms & Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.
- 1.4 Words imparting the singular number shall include the plural and vice versa.

2. The contract

- 2.1 A legally binding Contract between the parties will be created upon our acceptance of your Order. The Contract will incorporate and be subject to these Terms and Conditions. Orders will be confirmed by way of the sooner of:
- 2.1.1 Our confirmation in writing; or
- 2.1.2 The provision of our invoice for the Goods.
- 2.2 If you send us an order, we will check the prices on your order against our up-to-date price list. If the prices do not match, we will contact you to advise of the correct price and will obtain your consent before proceeding.
- 2.3 Any quotation we provide will be valid for a period of 30 days from the date of issue unless expressly stated otherwise. Prices are liable to change based upon the volume of goods in your order. Should you increase or decrease your order size it may affect the Price.
- 2.4 Orders can be placed by email, posted, through our website or by telephone.
- 2.5 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in accordance with clause 2.1, by an authorised representative of ours.
- 2.6 If the Goods are not in stock or are only partially in stock when you place your Order, we will contact you to advise of this and to ask if you would prefer us to deliver the Goods in instalments as they arrive in stock or if you would prefer to wait for the entire delivery when we have all the Goods in stock. Please note each part-delivery may incur separate delivery costs.
- 2.7 Any sales literature, price lists and other documents issued by us in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. We reserve the right to correct any typographical, clerical or other accidental errors without liability.
- 2.8 With bespoke Goods the RAL code and gloss level must be advised upon Order and will incur a surcharge as advised.
- 2.9 Upon request samples can be issued for approval with a charge and the Order will not be complete until samples have been approved.
- 3. The Goods**
- 3.1 None of our employees or agents are authorised to make any representations concerning the Goods unless confirmed by us in writing. In entering into the Contract, the Customer acknowledges that they do not rely on, and waive any claim for breach of, any such representations which are not so confirmed.
- 3.2 We reserve the right to make any changes in the specification of the Goods that may be required to conform to any applicable safety or other legal or regulatory requirements without notice.
- 3.3 The specification for the Goods shall be as set out in our sales documentation.
- 3.4 Any illustrations, photographs or descriptions we provide, whether on our website or in catalogues, brochures, price lists or other documents issued

by us are intended as a guide only and shall not be binding.

- 3.5 You may change your Order at any time before we dispatch the Goods by contacting us in writing or by telephone. If your Order is changed, we will inform you of any change to the Price.
- 3.6 No order which has been accepted by the Company may be cancelled by you except with our agreement in writing on the terms that you shall indemnify us in full against all loss (including loss of profit), costs (including all labour and materials used), restocking, charges and expenses incurred by us as a result.
- 3.7 We may cancel your Order at any time before we dispatch the Goods if Goods are no longer in stock and we are unable to re-stock (if, for example, the Goods are discontinued), if the Customer goes into administration, becomes insolvent or bankrupt or we reasonably believe this is about to occur, or an event occurs outside of our control (please see clause 16 below). The cancellation will be confirmed by us in writing. 3.8 If we cancel your Order and you have already paid for the Goods under clause 4, the payment will be refunded to you within 14 days.
- 3.9 It is your responsibility to ensure that any use, re-sale or distribution of the Goods by you is in compliance with all instructions and manuals issued by us, and any applicable statutory requirements. If the Goods are to be shipped, re-sold or distributed outside of the UK, the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon, unless otherwise agreed.
- 3.10 You are licensed by us to process the Goods in any way you may wish and/or incorporate them in or with any other products subject to the express condition that the new product(s) containing any part of the Goods shall be separately stores and marked so as to be identifiable as being made from or with the Goods the property of us.
- 3.11 If the Goods the property of us are admixed with equipment the property of you or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of us.
- 3.12 If our Goods are admixed with equipment the property of any person other than you or are processed or incorporated therein, the product thereof shall become or shall be deemed to be owned in common with that other person.

4. Price & Payment

- 4.1 We reserve the right to increase the Price for Orders accepted by us, if the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates. We will contact you to advise of any increase in writing.
- 4.2 A 50% deposit is payable with all Orders of bespoke Goods.
- 4.3 Any Prices we provide are exclusive of VAT, delivery costs and any other taxes or levies which are imposed or charged by any competent authority.
- 4.4 We will invoice you once your Order has been confirmed.
- 4.5 All invoices are payable in full, without any deduction, retention or set off, upon receipt of invoice, or otherwise in accordance with such credit terms as may have been agreed in writing between the parties. Payment shall be made on the due date notwithstanding that delivery may not have taken place. The time for the payment shall be of the essence of the Contract.
- 4.6 We reserve the right to request payment up front if you do not have an account with us, if you exceed your credit limit, if, for any reason, we are not satisfied of your creditworthiness, or if we so decide at our sole discretion. In this event, no Goods will be released for delivery until such time as any pro-forma invoice issued by us has been paid in full.
- 4.7 If you do not make payment to us by the due date, we may cancel your Order(s) and suspend any further deliveries to you and charge you interest on the overdue sum at the rate of 4% per annum above the Bank of England base lending rate from time to time. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment. You must pay any interest due when paying an overdue sum and you agree to indemnify us for all costs and expenses which may incur (including legal costs). We will not charge interest if you have promptly contacted us to dispute an invoice in good faith. No interest will accrue while such a dispute is ongoing.
- 4.8 We reserve the right to sell all, or any part of, the Goods in order to cover the costs of any overdue payments, if payment is not received within 60 days. Any shortfall will be reimbursed by you.
- 4.9 Where currency exchange is necessary, the invoice will be calculated by reference to the rate of exchange on the date of payment of the invoice.
- 4.10 We may, at any time, review, alter or withdraw credit terms provided to the Customer, where applicable, and require C.O.D. or C.W.O.

5. Delivery

- 5.1 When we confirm acceptance of your Order, we will provide an estimated delivery date (Bespoke Goods may carry an 8-12 week lead time).
- 5.2 Please note that estimated delivery dates may vary according to the availability of Goods, your location, and circumstances beyond our control. Time for delivery shall not be of the essence of the Contract.
- 5.3 Delivery will be deemed to have taken place when the Goods have been delivered to the delivery address indicated in your Order.
- 5.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by us to deliver any one or more of the instalments in accordance with these Terms and Conditions shall not entitle you to treat the Contract as a whole as repudiated.
- 5.5 If for any reason we are unable to deliver the Goods at your chosen delivery address, we will leave a note informing you that the Goods have been

returned to our premises, requesting that you contact us to arrange re-delivery. The re-delivery and storage may be chargeable. We may also, at our discretion, charge for restocking and administration costs.

5.6 We may, at our discretion, decline to deliver the Goods to your chosen delivery address if we deem it to be unsuitable for any reason. In this event, we will contact you and request another delivery address or cancel your order.

5.7 Where appropriate you shall, at your own expense, ensure that the site for delivery or installation of the Goods is ready to receive the Goods not later than 5 working days before the estimated date of delivery and you shall ensure that all necessary installation facilities are provided.

5.8 Packing of the Goods will be to our normal specification in the non refundable packaging.

5.9 Where the Customer arranges the delivery, you will be liable for any charges.

5.10 If delivery is delayed at your request, we reserve the right to charge you for storage of the Goods from the date of commencement of such delay. We also reserve the right to invoice you at the original delivery date and for credit terms, if applicable, to run from such date and such date shall also be the commencement date for the warranty period.

5.11 If carriage has been arranged by us, you must notify us within 3 working days of receipt of the goods of any damage in transit and provide any information we may require.

6. Risk and Retention of Title

6.1 Risk of damage to or loss of the Goods shall pass to you at the time of delivery.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to you until we have received in cleared funds payment in full of the price of the Goods.

6.3 Until payment has been made to us in accordance with these Terms and Conditions and title in the Goods has passed to you, you shall be in possession of the Goods as bailee for us and you shall store them separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by us and shall insure the against all reasonable risks.

6.4 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property, but if you do so, all money owing by you to us shall (without prejudice to any other right or remedy of ours) become immediately due and payable.

6.5 We shall be entitled at any time to require you to deliver up to us any goods in which we retain title and, if you fail to do so forthwith, to enter upon any premises of yours or any third party during normal business hours where the Goods are stored and repossess the Goods.

6.6 Your right to possession of the Goods in which we maintain legal and beneficial title shall terminate if any of the events listed in clause 12.1 occurs.

7. Consumers Only - Cancelling and Returning Goods if You Change Your Mind

7.1 If you are a Consumer in the European Union, you have a legal right to a "cooling off" period within which you can cancel the Contract for any reason. This period begins once your Order is complete and we have sent you your Order Confirmation, i.e. when the Contract between you and us is formed.

7.2 If the Goods are being delivered to you in a single instalment (whether single or multiple items), the cooling off period ends 14 calendar days after the day on which you receive the Goods.

7.3 If the Goods are being delivered in separate installments on separate days, the cooling off period ends 14 calendar days after the day on which you receive the final installment of Goods.

7.4 If you wish to exercise your right to cancel under this clause 7, you must inform us of your decision within the cooling off period. You may do so in any way you wish. Cancellation by email or by post is effective from the date on which you send us your message. Please note that the cooling off period lasts for whole calendar days. If, for example, you send us an email or letter by 23:59:59 on the final day of the cooling off period, your cancellation will be valid and accepted.

7.5 Please note that you may lose your legal right to cancel under this clause 7 if the Goods are made to order with custom or premium finished products.

7.6 Please ensure that you return Goods to us no more than 14 calendar days after the day on which you have informed us that you wish to cancel under this clause 7.

7.7 You may return Goods to us in person during our business hours of 9:30 – 14:30 Monday – Thursday or you may return them by another suitable delivery service of your choice to our returns address provided with the Goods. Please note that you must bear the costs of returning Goods to us if cancelling under this clause 7.

7.8 Refunds under this clause 7 will be issued to you within 14 calendar days of the following:

7.8.1 The day on which we receive the Goods back; or

7.8.2 If we have not yet provided an Order Confirmation or have not yet dispatched the Goods, the day on which you inform us that you wish to cancel the Contract.

7.9 Refunds may be reduced for any diminished value in the Goods resulting from your excessive handling of them. "Excessive handling" means any more handling than is reasonably required to ascertain the nature and characteristics of the Goods in question (e.g. no more than would be permitted in a shop). Please note that if we issue a refund before we have received the Goods and have had a chance to inspect them, we may

subsequently charge you an appropriate sum if we find that the Goods have been handled in a way that would otherwise entitle us to reduce your refund.

7.10 Refunds under this clause 7 will be made using the same payment method that you used when ordering the Goods unless you specifically request that we make a refund using a different method.

8. Business Customers Only - Cancellation

8.1 No Order which has been accepted by us may be cancelled by a business Customer except with our agreement in writing on the terms that the Customer shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, restocking, charges and expenses incurred by us as a result of such cancellation.

8.2 If, on delivery, you are not satisfied with the Goods and wish to return them, you may do so only provided:

8.2.1 you inspect the Goods on delivery. Where the Goods cannot be examined the delivery note or such other note as appropriate shall be marked "not examined".

8.2.2 you inform us that you wish to return the Goods within 7 days of delivery;

8.2.3 the Goods remain in their original condition (as delivered); 8.2.4 the Goods are returned at your risk and you agree to bear the cost of delivery to us; and

8.2.5 you indemnify us against any cost incurred by us in rectifying any deterioration of the Goods caused by incorrect storage or use while in your possession.

8.3 If, on receipt, the Goods are proven by us to be damaged or defective, and you comply with clause 8.2 above, we may refund the cost of delivery at our discretion.

8.4 All Goods must be returned to us under this clause 8 in their original condition, in their original, un-opened packaging, accompanied by proof of purchase.

8.5 Replacement of the Goods (or the defective part thereof), or any credit or refund offered at our discretion, shall be issued to you only upon the receipt of the Goods in accordance with this clause 8.

8.6 If you require an advance replacement and we agree to this, you will be required to pay for the advance replacement up front and we will credit or refund this to you only once we receive the original Goods, provided we have confirmed the Goods were damaged or defective. The original Goods must be returned to us within 30 days. In sending an advance replacement, we are not admitting any liability for any defect or otherwise.

9. Site Investigations

9.1 In the event we are required to attend site to investigate any issue with the Goods, you or your representative must be available on site at the agreed day and time.

9.2 If we do not receive the required notice and/or we are unable to gain access through no fault of our own, we reserve the right to charge for the aborted visit, together with any other costs incurred by us.

9.3 We also reserve the right to charge for the site visit if we discover the alleged issue to be caused by anything other than a fault with the Goods. 9.4 It is your responsibility to ensure the site conditions are safe and suitable for our employees. This includes, but is not limited to, ensuring all reasonable health and safety precautions are taken and current HSE guidelines are followed at all times.

9.5 licences and consents being obtained within a reasonable time.

10. Termination

10.1 We may cancel any Order and/or suspend further deliveries, terminate your account and charge interest in accordance with clause 4.6 if: 10.1.1 you fail to perform or observe any of your obligations under the Contract or if you are otherwise in breach of the Contract;

10.1.2 you become subject to an administration order or enter into a voluntary arrangement or (being an individual or firm) become bankrupt or (being a company) go into liquidation;

10.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets;

10.1.4 you cease, or threaten to cease, to carry on business; or 10.1.5 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and we notify you accordingly.

10.2 If sub-clause 12.1 applies then, without prejudice to any other right or remedy available to us, payment for any Goods that have been delivered but not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

We shall be entitled at any time to require you to deliver up to us any Goods in which we retain ownership and, if you fail to do so forthwith, to enter upon any premises of yours or any third party during normal business hours where the Goods are stored and repossess them. 11.

Assignment: We may assign the Contract or any part of it, and may sub contract any of our obligations to any person, firm or company without your prior consent. You shall not be entitled to assign the Contract or any part of it without our prior written consent.

12. Limitation of Liability

12.1 All warranties, conditions and other terms implied by statute or common law are, except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), to the fullest extent permitted by law, excluded from the Contract.

12.2 Nothing in these Terms and Conditions excludes or limits our liability for death or personal injury caused by our negligence; fraud or fraudulent misrepresentation, or any other matter which it would be illegal for us to

exclude or attempt to exclude our liability.

- 12.3 Subject to sub-clauses 14.1 and 14.2 and the conditions set out below, we warrant that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for the period specified on the Goods or on the documents accompanying the Goods.
- 12.4 The above warranty is given by us subject to the following conditions:
- 12.4.1 we shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to improper conditions, failure to follow our instructions (whether given orally or in writing), misuse, attempted repair or alteration of the Goods without our prior approval, or any other breach of these conditions or act or omission on the part of the Customer, its employees or agents or any third party;
- 12.4.2 we shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by you;
- 12.4.3 we shall be under no liability under the above warranty, or any other warranty, condition or guarantee, if the total price for the Goods has not been paid by the due date;
- 12.4.4 the above warranty does not extend to parts, materials or equipment not manufactured by us, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to us and which we are able to assign to you or which such manufacturer gives directly;
- 12.4.5 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price;
- 12.4.6 we shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
- 12.4.7 where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) your statutory rights are not affected by these Terms and Conditions.

13. Confidentiality

- 13.1 You will regard as confidential the Contract and all information obtained by you relating to our business and/or Goods and will not use or disclose to any third party such information without our prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of your default.
- 13.2 The provisions of this clause 13 shall survive the termination of the Contract.
14. **Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, acts of terrorism or war, governmental action or any other event beyond the control of the Party in question.

15. Brexit

- 15.1 The Order includes for the cost of importing materials based upon the rates of exchange, taxes or duties and labour rates prevailing at the date of the Order being accepted. In the event of any increase in such rates, taxes or duties or should additional tariffs, taxes, or import duties be applicable on Goods following Brexit these are expressly excluded from the Order and will become due for payment.
- 15.2 We reserve the right to make an appropriate adjustment to our contract value and should any restrictions on importation of goods affect our lead times, we reserve the right to delay our programme of works accordingly.
- 15.3 In the event that there is or is likely to be an adverse impact upon costs involved in discharging our obligations under this Agreement, we reserve the right to cancel your Order.

16. **Communications:** All notices under these Terms and Conditions shall be addressed to the most recent address or email address notified to the other party, in writing and signed by, or on behalf of, the party giving notice. Notices shall be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; when sent, if transmitted by email and a successful return receipt is generated; on the fifth day following mailing, if mailed by national ordinary mail; or on the tenth day following mailing, if mailed by airmail.

17. Entire agreement

- 17.1 No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless otherwise agreed by us in writing.
- 17.2 No variation by you to these Terms and Conditions, or to the Contract, shall be binding unless agreed in writing between the authorised representatives of the parties.

18. **Data Protection:** Both parties agree to comply with all applicable data protection legislation, including, but not limited to the General Data Protection Regulations 2016, and any subsequent amendments thereto.

19. **Third Party Rights:** The Contract is between you and us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms and Conditions pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. **Severance:** The Parties agree that, in the event that one or more of the

provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable by any court or other authority, that / those provision(s) shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

21. **Waiver:** The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

22. Governing Law and Jurisdiction

- 22.1 These Terms and Conditions and the Contract shall in all respects be governed by, and construed in accordance with the laws of England and Wales.
- 22.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.