

**Encore Packaging Solutions Ltd**  
**Terms of Trading**

**1 Price**

- 1.1 Unless otherwise stated our quoted price is per one thousand units.
- 1.2 The price quoted excludes VAT (unless otherwise stated). VAT and other taxes and duties on the goods will be those applying at the time of delivery.
- 1.3 Unless otherwise stated the price quoted also excludes delivery, artwork, printing stereotypes and cutting forms.

- 1.4 Our quotation is given on the basis that you will supply to us, in good time, full specification, including if applicable, artwork of suitable quality.
- 1.5 Our quotations lapse after 30 days (unless otherwise stated).

1.6 Prices may be altered without notice to the Customer (although we will endeavour to give reasonable notice to the Customer verbally or in writing) to reflect increases in the cost of manufacture or distribution of the goods which are due to any factors beyond our reasonable control or any changes or delays as a consequence of amendments to specification, quantities or delivery dates or delays in receiving instructions or materials from the Customer.

**2 Delivery**

- 2.1 All delivery times quoted are estimates only.
- 2.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
- 2.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and
- 2.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 2.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 2.4 We may deliver the goods in instalments.
- 2.5 Any special requirements regarding delivery shall be advised at the time of ordering.
- 2.5 You may not reject the goods or claim damages because we deliver:
- 2.5.1 for non stock items, up to 10% more or 10% less than ordered (by net invoice value);
- 2.5.2 for stock items, goods made up to the nearest whole parcel or carton.
- 2.6 You agree to pay at the contract rate for the actual quantity delivered.
- 2.7 You may not reject the goods or claim damages if any dimension or any window size or position is within plus or minus 3mm of that ordered.
- 2.8 We are not liable for errors in any proofs or mock-ups we send to you if you do not advise us of the errors in good time before we begin producing the goods.
- 2.8 Unless otherwise agreed we are not responsible for checking the accuracy of information that you supply to us in electronic form.

**3 Delivery and call offs**

- 3.1 We may decline to deliver if:
    - 3.1.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
    - 3.1.2 the premises (or the access to them) are unsuitable for our vehicle.
  - 3.2 If you unreasonably refuse delivery we may charge you for the cost of the delivery and treat your refusal as cancelling the contract and clauses 2.2.2 and 11.1 shall apply.
  - 3.3 If delivery does not take place, either on the contract date or not at all, because you are at fault or for reasons beyond our control, we may store and insure the goods at your expense. We may deliver the goods as soon as possible but we have the right to sell them after a period of 14 days storage. We may, in any event, recover our storage and insurance costs, either directly from you or from any proceeds of sale.
  - 3.4 If you require storage or call off facilities or both, the goods will be invoiced to you when ready for delivery or collection and the payment terms in clause 4.2 will apply.
  - 3.5 If we store the goods in accordance with clause 3.4 we may make a monthly storage charge beginning two calendar months after the date of our original invoice and calculated at 1.5% of the invoice price of the goods for each month or part of each month that the goods are not delivered or collected.
- 4 Payment terms and lien**
- 4.1 You are to pay us in cash or otherwise in cleared funds before delivery, unless you have an approved credit account.
  - 4.2 If you have an approved credit account, payment is due no later than 30 days after the end of the month in which the goods are invoiced. We will invoice you after we have dispatched the goods or when we tell you they are ready for collection, unless otherwise agreed in writing.
  - 4.3 If you fail to pay us in full on the due date:
    - 4.3.1 we may suspend or cancel future deliveries;
    - 4.3.2 we may cancel any discount offered to you;
    - 4.3.3 you must pay us interest at the rate equivalent to that set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998:

- a) calculated (on a daily basis) from the date of our invoice until payment;
  - b) compounded on the first day of each calendar month; and
  - c) before and after any judgement (unless the court orders otherwise).
- 4.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 4.5 We have the right to allocate any payments you make against sums you owe us in any way that we choose.
  - 4.6 You do not have the right to set off any money you may claim from us against anything you may owe us.
  - 4.7 While you owe money to us or if you become insolvent we have a right:
    - 4.7.1 to keep any property we may hold of yours until you have paid us in full (a lien);
    - 4.7.2 of stoppage in transit, and
    - 4.7.3 of resale.
  - 4.8 After the end of 14 days from the day we tell you that we are exercising a lien, we have the right to dispose of the property as if beneficially entitled to it and to apply any proceeds of sale to any money you may owe us.
  - 4.9 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.

**5 Title**

- 5.1 Until you pay all debts you may owe us:
  - 5.1.1 all goods supplied by us remain our property;
  - 5.1.2 you must store them so that they are clearly identifiable as our property;
  - 5.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
  - 5.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:
    - a) we revoke that right (by informing you in writing); or
    - b) you become insolvent.
- 5.2 You must inform us (in writing) immediately if you become insolvent.
- 5.3 If your right to use and sell the goods ends you must allow us to remove the goods.
- 5.4 We have your permission to enter any premises where the goods may be stored:
  - 5.4.1 at any time, to inspect them; and
  - 5.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 5.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 5.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

**6 Risk**

- 6.1 The goods are at your risk from the time of delivery.
- 6.2 Delivery takes place either:
  - 6.2.1 at our premises (if you are collecting them or arranging carriage); or
  - 6.2.2 at your premises (if we are arranging carriage).
- 6.3 You must inspect the goods on delivery. If any goods are damaged (or not delivered), you must write to tell us within three working days of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect the damaged goods.
- 6.4 Unless otherwise agreed, all property which is supplied to us by you or through a third party (other than stock we order) is at your risk at all times.

6.5 We may make a reasonable charge for the storage costs of any item of your property at our premises as a consequence of your decision to defer or in some way delay delivery of the goods.

**7 Warranties**

- 7.1 We warrant that the goods:
  - 7.1.1 comply with their description on our acknowledgement of order form; and
  - 7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 6.3).
- 7.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.

7.3 If you believe that we have delivered goods which are defective in materials or workmanship, you must:

- 7.3.1 inform us (in writing), with full details, as soon as possible; and
- 7.3.2 allow us to investigate (we may need access to your premises and product samples).
- 7.4 If the goods are found to be defective in material or workmanship (following our investigations, and you have complied with those conditions (in clause 7.3) in full, we will (at our option) replace the goods or refund the price.
- 7.5 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 7.6 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to five million pounds.
- 7.7 For all other liabilities not referred to elsewhere in these terms our liability is limited to damages to the price of the goods.
- 7.8 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

**8 Specifications**

- 8.1 If the goods are prepared in accordance with your specifications or instructions or by using materials you supply you will be asked to sign your approval of and agreement to, an Order Acknowledgement and Proof and:
  - 8.1.1 you must ensure that the specifications or instructions are accurate and that the materials are suitable;
  - 8.1.2 you must ensure that those goods will be fit for the purpose for which you intend to use them; and
  - 8.1.3 you warrant that the specifications or designs or materials will not result in the infringement of any rights belonging to a third party and that you will indemnify us in respect of all loss, damage, costs or expenses (directly or indirectly and including finance costs and legal costs on a full indemnity basis) which we may incur in connection with any such claim or threatened claim by a third party.
- 8.2 Following your approval we will not be responsible for errors in the goods unless we have failed to produce the goods in accordance with such acknowledgement.
- 8.3 We have the right to reject any of your specifications, instructions or materials if (in our reasonable opinion) they are unsuitable. You are liable for any additional cost incurred as a result except where there was unreasonable delay by us in discovering that unsuitability.
- 8.4 By supplying goods to you we do not waive any intellectual property rights (including any design rights) that we may have in respect of them.
- 8.5 We reserve the right to make without notice any minor modifications in our specifications, designs or materials as we think necessary or desirable, which in our reasonable opinion do not materially affect their quality or performance.
- 8.6 We also reserve the right to make any changes in the specifications, designs or materials of our goods that are necessary to ensure they conform with any applicable safety or other statutory requirements.

**9 Return of goods**

- 9.1 We will accept the return of non-bespoke goods from you only:
    - 9.1.1 by prior arrangement (confirmed in writing);
    - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and
    - 9.1.3 where the goods are as fit for sale on their return as they were on delivery.
  - 9.2 We will not accept the return of bespoke goods unless the goods were defective when delivered.
- 10 Export terms**
- 10.1 Clause 10 of these terms shall apply to exports except where inconsistent with any written agreement between us.
  - 10.2 Where the goods are supplied by us to you by way of export from the United Kingdom or from a port outside the United Kingdom, the 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made shall apply and the goods shall be supplied ex-works unless otherwise agreed.
  - 10.3 The Incoterms are treated as amended by these terms (read as a whole) to the extent that they are inconsistent with them.
  - 10.4 You are 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 due.
  - 10.5 Where the goods are to be sent by us to you by a route including sea transport we shall be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
  - 10.6 You are responsible for arranging the testing and inspection of the goods at our premises before shipment except where otherwise agreed. We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.
  - 10.7 Payment of all amounts due to us shall be made as stipulated by us, unless otherwise agreed in writing.
  - 10.8 We shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

**11 Cancellation**

- 11.1 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
- 11.2 We may suspend or cancel the order, by written notice if:
  - 11.2.1 you fail to pay us any money when due (under the order or otherwise);
  - 11.2.2 you become insolvent;
  - 11.2.3 you fail to honour your obligations under these terms.
- 11.3 You may not cancel the order unless we agree in writing (and clauses 2.2.2 and 11.1 then apply). We may charge you the full cost of manufacture even if you cancel the order.

**12 Waiver and variations**

- 12.1 Any waiver or variation of these terms is binding in honour only unless:
  - 12.1.1 made (or recorded) in writing;

- 12.1.2 signed on behalf of each party; and  
12.1.3 expressly stating an intention to vary these terms.  
12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.
- 13 Force majeure**  
13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may then cancel or suspend any of our obligations to you, without liability.  
13.2 Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 14 General**  
14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.  
14.2 If you are more than one person, each of you has joint and several obligations under these terms  
14.3 If any of these terms are unenforceable as drafted:  
14.3.1 it will not affect the enforceability of any other of these terms; and  
14.3.2 if it would be enforceable if amended, it will be treated as so amended.  
14.4 We may treat you as insolvent if:  
14.4.1 you are unable to pay your debts as they fall due; or  
14.4.2 you (or any item of your property) become the subject of:  
a) any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);  
b) any application or proposal for any formal insolvency procedure; or  
c) any application, procedure or proposal overseas with similar effect or purpose.  
14.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.  
14.6 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.  
14.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 14.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:  
14.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or  
14.8.2 which expressly state that you may rely on them when entering into the contract.  
14.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.
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