

Beardow & Adams (Adhesives) Ltd Terms and conditions

1. General

All orders submitted to Beardow & Adams (Adhesives) Limited ("B & A") are subject to acceptance by B & A and if accepted shall be subject to the following terms and conditions which shall apply to the exclusion of all or any terms or conditions that the person or other legal entity placing such order (the Purchaser) may purport to impose in any document. The placing of an order with B & A shall be deemed to be acceptance of such terms and conditions by the Purchaser. No variations or modifications of, or substitution for, such terms and conditions shall be binding unless expressly accepted by B & A in writing.

2. Payment

Payment is to be received not later than 30 days from when the goods were made available for collection by the Purchaser or were delivered to the Purchaser. Failure to meet payment in full by the due date shall entitle B & A to charge interest from the due date until the date of actual payment (whether before or after judgment) at a rate of 2 ½ % per calendar month (APR 30%). All or any credit terms offered by B & A to the Purchaser from time to time shall be solely at B & A's discretion and B & A shall be entitled to withdraw any credit terms at any time without explanation whereupon all unpaid amounts become immediately due.

3. Prices

Unless otherwise agreed, the price of the goods shall be the price stated in B & A's price list applicable at the date of delivery of the goods or, if earlier, the date of invoice. Unless otherwise specified, prices quoted are on the basis of collection from B & A's U.K. premises. In the event that the Purchaser requests B & A to arrange delivery B & A shall be entitled to invoice the Purchaser for the cost of doing so including the cost of insuring the goods during transit. All prices quoted include the cost of packing the goods in accordance with B & A normal practice to protect against damage or deterioration under normal transport conditions and exclude value added tax which will be added to all invoices at the then applicable rate.

4. Delivery

Any dates given by B & A specifying when the goods will be ready for collection or delivered are approximate only and save as set out in this clause 4, B & A shall have no liability for any loss, injury, damages or expenses of whatever nature suffered or incurred by the Purchaser due to any delay in making goods available for collection or in delivering the same, or arising due to the failure to deliver the same, whatever the cause.

In the event that B & A Shall fail to deliver any goods or shall fail to make them available within 28 days of the date specified by B & A as the delivery or collection date, the Purchaser shall be entitled to cancel such order by notice in writing to B & A provided that this is done prior to the earlier of either B & A notifying the Purchaser that such goods are available for collection or B & A delivering the same to the Purchaser (or attempting to do so).

In the event that the Purchaser properly exercises such right of cancellation the Purchaser shall be released from the obligation to purchase such goods and B & A shall reimburse any part of the purchase price previously paid for such goods.

5. Risk of loss

Risk of loss, deterioration and damage to the goods shall pass to the Purchaser on the earlier of either (i) when the goods are collected by the Purchaser (or any person acting on behalf of the Purchaser), or (ii) when they are delivered to the Purchaser.

6. Reception facilities

The Purchaser undertakes to accept responsibility for providing safe and sufficient facilities for the reception of the goods into storage in accordance with any health and safety guidelines laid down by B & A from time to time and will indemnify and keep B & A indemnified against any third party claims or costs in connection therewith arising out of a breach of this condition.

7. Title to goods

Notwithstanding delivery, title to the goods shall not pass to the Purchaser until B & A has received in cash, or cleared funds, payment in full of the price of the goods and all other goods sold or agreed to be sold by B & A to the Purchaser for which payment is then due. Until such time as title to the goods passes to the Purchaser, the Purchaser shall hold the goods as B & A's fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as B & A's property.

Notwithstanding the above, until such time as the title to the goods passes to the Purchaser, the Purchaser shall be entitled to re-sell or use the goods in the ordinary course of its business, but shall account to B & A for the proceeds of sale, whether tangible or intangible (including any insurance proceeds received) and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties, and in the case of tangible proceeds, property stored, protected and insured.

Until such time as title to the goods passes to the Purchaser, B & A shall be entitled at any time to require the Purchaser to deliver up the goods to B & A and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and to repossess the goods.

The Purchaser shall not pledge, or in any other way encumber by way of security for any indebtedness, any of the goods which remain the property of B & A but if the Purchaser does so all monies owing by the Purchaser to B & A shall (without prejudice to any other right or remedy of B & A) forthwith become due and payable.

8. Express Warranty and Limitation of Liability

B & A warrants that the goods:

(i) shall comply at the time of delivery with the specifications referred to in the most recent version of any technical data sheet that B & A may have produced in respect of those goods (copies of which are available upon request) ; and

(ii) that the goods shall be free from manufacturing defects.

In the event that B & A supply any goods that do not conform with the warranties set out above then provided the Purchaser shall notify B & A within the time limits set out below B & A will at its option, supply replacement goods or will refund the purchase price paid for such goods (or issue a credit note if the price has not been paid).

Save as set out in this clause 8 all other conditions or warranties, express or implied (either by statute or otherwise) are hereby expressly excluded. In particular:

(i) the Purchaser shall not be entitled to rely upon (and by ordering goods from B & A confirms that it has not relied upon) any description of the goods that B & A or any other person acting on its behalf may have given in respect of those goods whether verbally or in writing or in any other format including any description of those goods contained in any marketing material or on any website, save for any description contained in the latest version of the technical data sheet as referred to above; and (ii) due to varied applications for which the goods may be used, B & A hereby excludes all conditions or warranties, express or implied (whether by statute or otherwise) relating to the fitness or suitability of the goods for use in any particular application (notwithstanding that the Purchaser may have notified B & A of such intended application). In the event that the Purchaser has any concerns over the suitability of any goods for use in a particular application then the Purchaser shall be responsible for testing the goods to ensure they are suitable for the application. The Purchaser acknowledges that in the event that any change is made to either the composition of the product to which the goods are required to bond or to the environment or conditions in which such products are intended to be used, then the goods may no longer be suitable for use with that product and that further testing may be appropriate.

B & A shall have no liability in respect of any claims relating to the quality, fitness for purpose or failure of any goods to comply with any specification, nor shall B & A have any liability for any goods which are lost or damaged in transit, or for any shortfall in the quantity of goods delivered, unless the Purchaser notifies B & A in writing within the following time limits:

TOTAL LOSS OR NON-DELIVERY - within 28 days of date of despatch of goods,

DAMAGE, PART LOSS OR SHORTAGE IN QUANTITY DELIVERED — within 7 working days of receipt of the goods by the Purchaser.

B & A's maximum liability to the Purchaser, howsoever such liability may arise and including liability for breach of contract or statutory provisions, and any liability arising for negligence, shall be limited to the invoiced value of the goods concerned provided always that nothing herein shall limit B & A's liability for death or injury caused by its negligence.

Under no circumstances shall B & A be liable for any indirect or consequential loss or expense of any kind (including but not limited to loss of profit loss of production and loss of business and damage to goodwill or reputation) however such loss is caused or arises.

9. Health & Safety

The Purchaser undertakes in respect of the goods to comply with any duty or obligation imposed on it under appropriate European or national health and safety at work regulations and shall indemnify and keep B & A fully and effectively indemnified at all times from any liability, claim, costs, penalties or loss suffered or incurred by B & A due to any failure on the part of the Purchaser to comply with the provisions of this clause 9.

10. Notices

Any notice given under these Terms and Conditions the Purchaser will be deemed delivered if despatched by B & A by pre-paid post and sent to the latest address of the Purchaser as quoted on the Purchaser's Order or in the Purchaser's correspondence. A notice despatched by post shall be deemed to have been received on the second working day after posting (in the case of correspondence sent to an address within the United Kingdom) or on the seventh working day after posting (in the case of correspondence sent to an address outside the United Kingdom).

11. Termination

If the Purchaser is in breach of any condition contained herein, or if in the opinion of B & A the financial stability of the Purchaser becomes impaired or unsatisfactory, B & A may, without prejudice to its other rights and remedies terminate any agreement which incorporate these Terms and Conditions or to which these Terms and Conditions apply.

If the Purchaser purports to cancel an order before delivery is made, or refuses to accept delivery of goods, the Purchaser shall be liable for the full purchase price, but credit shall be given for the amount obtained by B & A in disposing of such goods.

12. Dispute Resolution

12.1 If any dispute arises between the parties out of, or in connection with, this agreement, either party may serve notice on the other stating that a dispute has arisen and the matter shall then be referred to senior representatives of each party who shall use their reasonable endeavours to resolve the dispute.

12.2 If the dispute is not resolved within 14 days of referral being made under clause 12.1 above the parties shall in the next 7 days following consider whether to seek mediation and may, if agreed, refer the matter to mediation.

12.3 Until the parties have completed the steps referred to in clauses 12.1 and 12.2 and failed to resolve the dispute neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief.

The illegality, invalidity or unenforceability of any part, term or provision hereof shall not affect the legality, validity or enforceability of any other provision hereof.

14. Force majeure

Neither party shall be liable for any failure to fulfil any term (other than a payment obligation) of these Terms and Conditions if fulfilment is delayed, hindered or prevented by any circumstance whatever which is not within its immediate control, including, but without limiting the generality of the foregoing, strikes, lock-outs, labour disputes of any kind, partial or general stoppages of labour, refusals to perform any kind of work (whether any of the foregoing relate to the parties own workmen or others), war, hostilities or any local or national emergency (or the threat of apprehension of any of the foregoing events), compliance with any order or request of any community, national, provincial, port or other public authority or any person purporting to act for such authority, breakdown of or accident to plant, machinery or facilities or hindrances to transportation or failure of, or shortage in any of B & A existing or contemplated sources of supply of the goods or of raw materials and whether such failure of, or shortage be existing or apprehended by B & A.

In the event of any of the forgoing circumstances arising, B & A shall be at liberty to withhold, reduce or suspend deliveries hereunder to such extent as B & A in its absolute discretion may think fit and shall in no case be bound to purchase or arrange for deliveries from any other suppliers.

15. Concessions

Any relaxation or concession that may be granted by B & A with regard to any of the terms and conditions set out herein shall not in any way affect or prejudice B & A's strict rights hereunder. All such relaxations or concessions may be withdrawn at any time by B & A without prior notice. If there is any contradiction between the terms and conditions of B & A and those of the Purchaser, those of B & A shall be accepted.

16. Governing law and jurisdiction

These terms and conditions shall for all purposes be governed and construed accordance with the laws of England and B & A and the Purchaser hereby submit to the jurisdiction of the English courts.