

**Ashtons Tools and Fasteners Limited**  
**Terms and Conditions for the Supply of Goods**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in these Conditions.

**1.1 Definitions:**

<b>Ashtons</b>	Ashtons Tools and Fasteners Limited, a company registered in England and Wales with company number 04452250 whose registered office is at Unit 12, Premier Park, Acheson Way, Trafford Park, Manchester M17 1GA.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 10.8.
<b>Contract</b>	the contract between Ashtons and the Customer for the supply of Goods in accordance with these Conditions.
<b>Customer</b>	the person or firm who purchases the Goods from Ashtons.
<b>Force Majeure Event</b>	has the meaning given to it in clause 9.
<b>Goods</b>	the goods supplied to the Customer by Ashtons under any Contract.
<b>Order</b>	the Customer's order for the supply of Goods, as may be set out in the Customer's purchase order form or the Customer's written acceptance of Ashtons quotation, or an order placed on Ashtons' website in the case of online sales.
<b>Specification</b>	the applicable specification for the Goods provided by Ashtons to the Customer and as may be set out in Ashtons' quotation, website (for online sales) or product catalogue, or if there is none, the manufacturer's specification prevailing from time to time.

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes email.

**2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when Ashtons issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Ashtons and any descriptions of the Goods contained in Ashtons' marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Ashtons shall not constitute an offer, and is only valid for a period of fourteen (14) days from its date of issue unless stated otherwise in writing.

### **3. Goods**

- 3.1 The Goods are described in the applicable Specification.
- 3.2 Ashtons reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement or if the change is made by the Goods manufacturer provided that any such change does not in the reasonable opinion of Ashtons materially alter the quality or performance of the Goods. Where possible, Ashtons will use reasonable endeavours to notify the Customer of any such change to the Specification, but will have no obligation to do so.
- 3.3 It is the Customer's responsibility to:
  - 3.3.1 ensure that the Goods listed in the Order and their Specification fully meet the Customers' requirements; and
  - 3.3.2 ensure that the Goods and their Specification are fit for purpose, suitable for their intended application and otherwise meet the Customer's requirement and in compliance with the Customer's legal obligations under any relevant law and with any health and safety requirements applicable to the Customer.
- 3.4 Ashtons warrants that on delivery, the Goods shall conform in all material respects with the Specification.
- 3.5 Subject to clause 3.2, if:
  - 3.5.1 the Customer gives notice in writing to Ashtons within three (3) Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 3.4;
  - 3.5.2 Ashtons is given a reasonable opportunity of examining such Goods;
  - 3.5.3 it is shown to Ashtons' reasonable satisfaction that any delivery of Goods materially fails to comply with the warranty given in clause 3.4; and
  - 3.5.4 the Customer (if asked to do so by Ashtons) returns such Goods to Ashtons' place of business at Ashtons' cost,Ashtons shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Replacement Goods shall be supplied subject to these Conditions.
- 3.6 Ashtons shall not be liable for the Goods' failure to comply with the warranty set out in clause 3.4 if:
  - 3.6.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 3.5;
  - 3.6.2 the defect arises because the Customer failed to follow Ashtons' or manufacturer's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 3.6.3 the Customer alters or repairs such Goods without the written consent of Ashtons;
  - 3.6.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 3.6.5 the Goods differ from the Specification as a result of changes made in accordance with clause 3.2.
- 3.7 Except as provided in clause 3.4, Ashtons makes no other warranty and makes no representation as to description or quality.
- 3.8 These Conditions shall apply to any repaired or replacement Goods supplied by Ashtons.

**4. DELIVERY OF GOODS**

- 4.1 Unless otherwise agreed in writing, delivery shall be made in accordance with the terms set out in Ashtons' quotation and, unless otherwise set out in the quotation, shall be made available by Ashtons for collection by the Customer at Ashtons' premises or other location as may be notified by Ashtons within the agreed lead times.
- 4.2 If Ashtons agrees to deliver the Goods to the Customer:
  - 4.2.1 Ashtons shall be entitled to nominate a carrier; and
  - 4.2.2 the Customer shall acknowledge receipt of the Goods by signing the appropriate delivery note and forward the signed delivery note to Ashtons as indicated on the relevant invoice.
- 4.3 Any dates and lead times quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 4.4 Ashtons may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract.
- 4.5 The Customer shall examine the Goods as soon as reasonably practicable after delivery. The Customer shall notify Ashtons in writing within two (2) Business Days of delivery, (which the Customer agrees is a reasonable time) of any incomplete or failed delivery and of any loss or damage during carriage, failing which the Customer shall be treated as having waived all claims connected with such incomplete or failed delivery and all claims connected with such loss or damage.

**5. TITLE AND RISK**

- 5.1 The risk in the Goods shall pass to the Customer on delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the earlier of:
  - 5.2.1 Ashtons receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment of such sums; and
  - 5.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Ashtons' property;
  - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 5.3.4 notify Ashtons immediately if it becomes subject to any of the events listed in clause 8.1.2 to clause 8.1.4; and
  - 5.3.5 give Ashtons such information as Ashtons may reasonably require from time to time relating to the Goods.
- 5.4 Subject to clause 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Ashtons receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - 5.4.1 it does so as principal and not as Ashtons' agent; and
  - 5.4.2 title to the Goods shall pass from Ashtons to the Customer immediately before the time at which resale by the Customer occurs.
- 5.5 At any time before title to the Goods passes to the Customer, Ashtons may:
  - 5.5.1 by notice in writing, terminate the Customer's right under clause 5.4 to resell the Goods or use them in the ordinary course of its business; and
  - 5.5.2 require the Customer to deliver up all or some Goods in its possession that have not been resold and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **6. PRICE AND PAYMENT**

- 6.1 The price for Goods:
- 6.1.1 shall be the price set out in Ashtons' quotation or, if no price is quoted, the price set out in Ashtons' price list as at the date of the Order or, in relation to online sales only, as indicated on Ashtons' website for the relevant Goods as may be updated from time to time; and
  - 6.1.2 unless otherwise set out in Ashtons' quotation, shall be exclusive of all costs and charges of insurance, transport and delivery of the Goods, which shall be additionally invoiced to the Customer, as appropriate.
- 6.2 Ashtons reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Ashtons that is due to:
- 6.2.1.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 6.2.1.2 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Ashtons adequate or accurate information or instructions in respect of the Goods.
- 6.3 In respect of the Goods, Ashtons may invoice the Customer before, on or after delivery.
- 6.4 The Customer shall pay each invoice submitted by Ashtons:
- 6.4.1 within 30 days of the date of a valid invoice or in accordance with any other credit terms agreed by Ashtons and confirmed in writing to the Customer; and
  - 6.4.2 in full and in cleared funds to a bank account nominated in writing by Ashtons.
- 6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (**VAT**) and any other applicable taxes or duties chargeable from time to time.
- 6.6 If the Customer fails to make a payment due to Ashtons by the due date, then, without limiting Ashtons' remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. LIMITATION OF LIABILITY**

- 7.1 The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 7.2.1 death or personal injury caused by negligence;
  - 7.2.2 fraud or fraudulent misrepresentation; and
  - 7.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 7.3 Subject to clause 7.2, Ashtons' total aggregate liability to the Customer in connection with the supply of Goods under any Contract shall not exceed 125% of the total amount paid or payable by the Customer in respect of the Goods supplied under the relevant Order in respect of which the liability arose.
- 7.4 Subject to clause 7.2, Ashtons shall not be liable to the Customer for:
- 7.4.1 loss of profits;
  - 7.4.2 loss of sales or business;
  - 7.4.3 loss of agreements or contracts;
  - 7.4.4 loss of anticipated savings;
  - 7.4.5 loss of use or corruption of software, data or information;
  - 7.4.6 loss of or damage to goodwill; and

7.4.7 indirect or consequential loss.

7.5 Subject to clause 7.2, Ashtons shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.4 except as set out in clause 3, and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.6 This clause 7 shall survive termination of the Contract.

## **8. TERMINATION**

8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

8.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;

8.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

8.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

8.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

8.2 Without affecting any other right or remedy available to it, Ashtons may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and Ashtons if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.1.2 to clause 8.1.4, or Ashtons reasonably believes that the Customer is about to become subject to any of them.

8.3 On termination of the Contract the Customer shall immediately pay to Ashtons all of Ashtons' outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Ashtons shall submit an invoice, which shall be payable by the Customer immediately on receipt.

8.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **9. FORCE MAJEURE**

9.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate the Contract by giving 20 days' written notice to the affected party.

9.2 If due to a Force Majeure Event Ashtons has insufficient stocks to meet all its commitments, Ashtons may apportion available stocks between its customers at its sole discretion.

## **10. GENERAL**

10.1 Ashtons may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

10.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Ashtons.

- 10.3 The Contract, together with any documents referred to in it, constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 10.4 Both parties acknowledge that, in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not) other than as expressly set out in the Contract.
- 10.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties.
- 10.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 10.7 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 10.8 Except as set out in the Contract, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 10.9 The parties do not intend that any term of this agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 10.10 The formation, existence, construction, performance, validity and all aspects of the Contract and any and all matters relating to it shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.