



EBFP

Early Birds Fire Protection

TERMS & CONDITIONS



www.ebfp.co.uk

EBFP Ltd - Terms & Conditions of Sale

1. DEFINITIONS AND GENERAL

1.1 In these terms and conditions:

"BUYER" means the direct purchaser of the goods from the Seller. "CONDITIONS" means the terms and conditions of sale set out in this document.

"CONTRACT" means the contract for the provision of Goods (and services) made between the Buyer and the Seller which includes these Conditions, the Quotation and any special terms and conditions agreed between the Buyer and the Seller.

"GOODS" means any goods (including services) agreed in the Contract to be supplied by the Seller to the Buyer. "ORDER" means any order for the Goods submitted by the Buyer to the Seller.

"QUOTATION" means the Seller's standard form written quotation for the Goods.

"SELLER" means Early Birds Fire Protection Ltd. (Company No.10416500) whose registered office is at Early Birds Fire Protection Ltd., The Street, Hamstreet, Kent, TN26 2HE.

"VAT" means value added tax and any other taxes in force.

"WRITING" includes telex, cable, facsimile transmission, emails and similar means of communication. "WEEE" means waste electrical and electronic equipment. The uniform laws on international sales shall not apply.

2. BASIS OF THE CONTRACT

2.1 Quotations are not binding on the Seller who may refuse to accept any Order at its discretion and may withdraw the Quotation before acceptance of an Order. An Order shall be deemed to be accepted only when the Seller has sent a written acceptance or has commenced work upon or despatched or otherwise appropriated items for the performance of the Order.

2.2 Each Order so accepted constitutes a separate legally binding Contract between the Seller and the Buyer.

2.3 The Contract will be subject to these Conditions only and no qualifications or condition contained in any request for quotation, Order, or other communication from the Buyer shall form any term of the Contract unless expressly accepted in writing by a director of the Seller. This does not prevent the Seller from correcting typographical or other errors or omissions in documents or information issued by the Seller.

2.4 These Conditions constitute the entire understanding of the parties and supersede all prior promises, representations, and undertakings.

2.5 Unless otherwise stated therein a Quotation will lapse thirty days after its date of issue. Any Quotation that has lapsed must be reconfirmed with the Seller prior to an Order being accepted.

2.6 Orders are accepted subject to the credit status of the Buyer being satisfactory to the Seller and the Seller may cancel the Contract if its credit enquiries at any time prove unsatisfactory to it.

2.7 The Order must be accompanied by all information necessary for the Seller to proceed with the Contract. The Buyer is responsible for ensuring the accuracy of any Order submitted by the Buyer. If work is delayed or additional costs incurred through lack of such information or changes in information, the Seller may amend the Contract price to cover the additional costs (including insurance and/or storage) and/or extend the delivery date.

2.8 All prices quoted are based on information available at the time of Quotation. The Seller reserves the right to vary prices at any time without notice prior to the date of the order being accepted and the price payable by the Buyer shall be the price applicable at the date of the order being accepted.

2.9 Delivery of the Goods to the Buyer is conclusive proof that the Buyer has accepted the Conditions to the exclusion of any other terms and conditions (if any) and in those of the Buyer.

2.10 No addition, variation or substitution to the Contract shall be binding or form any part of the Order unless agreed in writing between the authorised representatives of the Buyer and Seller [prior to the date of the Contract].

2.11 The Seller reserves the right to modify Goods ordered which are required to conform with any applicable safety or statutory instruments or which do not materially affect their quality or performance.

3. PRICE

Unless otherwise agreed in writing the price is ex-sellers works and is expressed in pounds sterling net and is exclusive of VAT and all other taxes, levies, import duties and charges of a similar nature and all carriage, insurance, packing and freight charges. Any overseas taxes and duties will be the responsibility of the Buyer.

Where such price is based upon a currency other than pounds sterling any fluctuations in the exchange rate of such currency against pounds sterling between the date of Order and the date of the Seller's invoice which adversely affect the Seller shall be passed on to the Buyer who shall pay the same in accordance with the clause 5 hereof.

4. CREDIT TERMS

The Seller may set and vary credit terms from time to time and withhold all or any further supplies if the Buyer exceeds such credit limits.

5. TERMS AND PAYMENT

5.1 The Seller may invoice the Buyer for the price of Goods on, or at any time after, delivery unless they are to be collected by the Buyer, or the Buyer wrongfully fails to take delivery of them, in which event the Seller may invoice the Buyer for the price at any time after the Seller has notified the Buyer that they are ready for collection, or (as the case may be) has tendered delivery of them.

5.2 The Buyer shall make payment by the due date appearing on the invoice, notwithstanding that delivery may not have taken place, or property in the Goods may not have passed to the Buyer. Payment is deemed to be made when the Seller's bank account is credited with the amount due in cleared funds. The Buyer is responsible for payment of any bank or transmission charge in addition to the price. The Seller may invoice and apply for payment for each delivery separately.

5.3 The Buyer shall make all payments hereunder in full without deduction, set off or counter claim whatsoever from, or against the same, except as required by law and regardless of any delays in delivery or performance or any corrections or adjustments that may be necessary to the Goods.

5.4 The time for performance of the Buyer's obligation (whether as to payment or otherwise) shall be of the essence so that failure to perform shall entitle the Seller at his option, to treat the Contract as repudiated by the Buyer or to delay shipment or otherwise withhold performance (in which event the Seller's time for performance shall be extended accordingly). In the case of delivery by instalments, failure to perform in respect of one delivery shall entitle the Seller, at its option, to cancel or delay or withhold performance in respect of that delivery or other deliveries, or to treat the whole Contract as repudiated by the Buyer.

5. TERMS AND PAYMENT cont/....

5.5 If any monies payable by the Buyer to the Seller are not paid when due, or if the Buyer is in breach of any of its obligations (whether under the Contract or any other agreement with the Seller), or makes any voluntary composition or arrangement with its creditors, or becomes bankrupt or (being a company) enters into liquidation, or has an administration order made in respect of it, or suffers the appointment of a receiver to all or any of its assets, or if a resolution for the winding up of the Buyer is passed or a court makes an order to that effect, the Buyer shall immediately pay to the Seller all monies payable by the Buyer under the Contract or any other agreement with the Seller (whether or not then otherwise due for payment) and without prejudice to any other rights or remedies and at its option:

(a) the Seller shall have the following rights in respect of the Contract and every other agreement with the Buyer:

(i) to suspend or cancel the delivery of any further Goods and any other performance by the Seller (and if suspended the Seller's time for performance shall be extended accordingly).

(ii) to terminate all or any part of the Contract with the Buyer.

(b) the Buyer shall pay to the Seller by way of full indemnity all costs of any nature incurred by the Seller arising from the breach by the Buyer (including, but not

5.6 The Buyer shall pay interest (after as well as before judgment) on any monies payable by the Buyer to the Seller which are not paid when due on a daily basis at an annual rate of 4 percentage points above the base rate of Barclays Bank from time to time compounded with monthly rests calculated from the date of due payment until the date of actual payment.

5.7 The Seller shall be entitled to make a claim against the Buyer for the unpaid amount.

5.8 The Buyer shall indemnify the Seller (after as well as before judgment and on as many occasions as necessary to indemnify fully the Seller) against any loss or expense which the Seller may suffer in the event of any delay in payment or other breach of Contract by reason of any change in currency exchange rates between the date payment fell due and the date payment is actually received by the Seller and no proof or evidence of any actual loss shall be required by the Buyer.

5.9 The Seller will make an administration charge of £25 for each and every cheque not honoured by the Seller's bank in addition to any other remedy the Seller may choose to take.

5.10 The Seller will not accept any retentions, financial or liquidated and/or ascertained damages by the Buyer and/or your business/organization agreeing to any quotations you are agreeing to the agreed costs and our terms listed within this document at which this supersedes any other formal document and/or purchase order, therefore we have the right to ensure that this is personally guaranteed by the Directors of the buyer's business/organization we are working on behalf of.

6. DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that they are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering them to that place.

6.2 Whilst every effort will be made by the Seller to adhere to any agreed delivery dates, such dates are not guaranteed and the Seller shall not be liable for any expense, loss or damage whatsoever (including but not limited to any indirect or consequential loss to the Buyer arising from third party claims or otherwise) due to delay to deliver the Goods (or any of them) promptly or at all howsoever caused. Time for delivery shall not be of the essence and late delivery shall not be grounds for the Buyer rejecting Goods or terminating the Contract. The Goods may be delivered by the Seller in advance of the agreed delivery date upon giving reasonable notice to the Buyer.

6.3 The Seller reserves the right to make deliveries by instalments. The Buyer shall accept delivery of the Goods by instalments if the Seller so requests.

6.4 If the Buyer, having been notified the Goods are ready for delivery or (as the case may be) collection, fails to accept delivery or make collection, or if the delivery date is varied at the Buyer's request or if no adequate delivery instructions are provided by the Buyer, then without prejudice to any other right or remedy available to it, the Seller may invoice the Buyer for the price of the Goods (which the Buyer shall pay as though the Goods had been delivered) and may:

(a) store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage and insurance and all other expenses incurred by it in respect of those Goods; or

(b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling costs) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.5 If the Buyer fails to accept delivery fourteen days after being notified that the Goods are ready for despatch, the Seller may, at its option and in addition to the rights, treat this as a cancellation of the order with effect from the date the Seller notified the Buyer that the Goods were ready for dispatch. In these circumstances clause 5.4 shall apply.

6.6 Where the Goods are delivered by instalments, each delivery shall be deemed to be a separate Contract and failure by the Seller to deliver any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated or reject any other instalments.

6.7 The Buyer shall in good time for delivery obtain any necessary import or export licences in respect of the Goods.

7. DAMAGE OR LOSS IN TRANSIT

7.1 Delivery is the responsibility of the Buyer and the Seller arranges delivery solely as the Buyer's agent. The Seller accepts no responsibility for any loss or damage in transit.

7.2 The Goods must be examined upon receipt and any damage or discrepancy noted on the carrier's sheet. Notification of damage or incomplete delivery must be confirmed in writing to the carrier within 3 days of the delivery and to the Seller immediately. In the absence of such notice, the Goods shall be deemed to comply with the Contract and the Buyer shall accept them.

7.3 The Seller will not be liable for any claim unless these procedures are followed.

8. FORCE MAJEURE

8.1 If the Seller's ability hereunder is limited, delayed or prevented in whole or in part to perform its obligations by any course not reasonably within its control, including without limitation, pandemic, theft, fire, flood, war, hostilities, riots, civil commotion, labour dispute, lock out, site flood, accident to plant or machinery, shortage of any material, labour, electricity or other supply or by any law, rule, regulation, order or other action of any public authority, transportation delays or the refusal or delay in granting any necessary export or import licence the Seller shall be excused, discharged and released without penalty from performance of the Contract to the extent that such performance is so limited, delayed or prevented. If the Goods or any part thereof have been delivered, the Buyer shall pay to the Seller a proportion of the price appropriate to the Goods. If no Goods have been delivered and the Contract becomes impossible to perform for reasons not reasonably within the Seller's control, the Seller's liability shall be limited to repayment to the Buyer of any relevant monies paid by the Buyer to the Seller.

9. RISK

9.1 Risk of damage to or loss of Goods shall pass to the Buyer:

(a) in the case of Goods to be delivered to the Buyer at the time of delivery; or if the Buyer wrongly fails to take delivery of Goods then at the time the Seller tendered delivery of Goods; or

(b) in the case of Goods to be collected at the time the Goods are collected or at the time when the Seller notifies the Buyer that the Goods are available for collection.

10. TITLE TO THE GOODS

10.1 Notwithstanding that the Buyer obtains possession of the Goods both the legal and equitable title therein will remain in the Seller until the Seller has received from the Buyer in full the price for the Goods with all VAT and all other monies that may be or become payable from the Buyer to the Seller in relation thereto and of the price of any other goods or services previously or subsequently supplied by the Seller to the Buyer. Until such time the Buyer shall hold the Goods as bailee in a fiduciary capacity for the Seller and shall store the Goods in such a way as to show clearly that they are the property of the Seller and shall protect and adequately store the Goods and the Seller shall be entitled to require the Buyer to deliver such Goods or any of them to it on demand, and if the Buyer fails to do so forthwith, to enter any of the Buyer's premises or its agents where the Goods are stored as licensee and repossess the Goods. In exercising the right to recover Goods, where Goods are attached or connected to any other Goods, product, plant or machinery then the Seller may remove the same and the Buyer shall be responsible for all the Seller's costs and expenses in connection with so doing, or in relation to any other Goods, whether the subject of this Contract or any other Contract for which payment has not been made.

10.2 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10.3 The Buyer may however, subject to sub-clause 11.4 below, use or sell such Goods by way of bonafide sale in the ordinary course of its business on its standard terms and conditions by way of sale as principal (not as agent) but that sale will constitute a sale by the Buyer of the Seller's property and accordingly the Buyer will account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, up to the total amount outstanding in respect of such Goods and pending such accounting will keep all such proceeds separate from any monies or property of the Buyer and third parties, and in the case of tangible proceeds, properly stored, protected and insured, and hold the same on trust for the Seller.

10.4 In any event the Seller (without prejudice to any other rights or remedies available to it) may without notice terminate all or any part of the Contract or suspend or cancel deliveries there under and shall have a general lien on all the Buyer's property then in the Seller's possession (whether as consignee or otherwise) in respect of any sums which may be owing by the Buyer to the Seller on any account whatsoever and, on the expiration of fourteen days notice, the Seller shall be entitled to dispose of the same and apply the proceeds towards satisfaction of such sums.

10.5 The Seller shall be entitled to apply payments received from the Buyer in satisfaction of whichever invoice or part thereof as the Seller shall in its absolute discretion decide and shall be entitled to vary such application as many times as it shall desire until such time as all sums owing by the Buyer to the Seller have been paid.

11. GUARANTEE

11.1 Subject to the conditions set out below the Seller warrants that the Goods will be reasonably compliant with their specification at the time of delivery and will be free from defects in material or workmanship, for a period of twelve months from the date of delivery. The Seller's liability for breach of warranty shall be limited solely to replacing or repairing without charge, the defective Goods or part thereof.

11.2 The above warranty is given by the Seller subject to the following conditions:

(a) the Buyer shall have notified the Seller of the defect(s) in writing within seven days of the relevant defect becoming apparent where such defect was not apparent on reasonable inspection;

(b) if requested by the Seller, the Buyer shall have returned such defective Goods or part thereof suitably packaged and at the Buyer's expense and risk describing the circumstances in which such Goods or part thereof became defective;

(c) such defect shall have been proved by the Buyer to be attributable to the Seller and to have arisen solely from faulty design of materials or workmanship;

(d) the Seller reserves the right, at its sole discretion (acting reasonably), to determine whether any of the Goods are defective;

(e) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

(f) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's (or manufacturer's) instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

(g) the above warranty does not extend to parts, materials or equipment not supplied by the Seller, in respect of which the Buyer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;

(h) the Buyer has performed its obligations hereunder;

(i) before returning the alleged faulty Goods to the Seller the Buyer shall obtain from the Seller a Return Material Authorisation ("RMA") number, which shall be displayed on the outside of any packaging when the Goods are returned. Failure to return the alleged faulty Goods within one calendar month of being advised of a RMA shall mean that payment for the Goods is due in full;

(j) when replacement Goods are sent, at the Seller's discretion, as advance warranty replacements, these Goods will be invoiced in full and become payable under the conditions contained herein. On receiving the alleged faulty Goods, returned by the Buyer at his expense and risk, then providing the alleged faulty Goods are packed in the box that the replacement Goods were sent in and are complete with all leads, instructions, protection, packing materials, etc. as new and the returned Goods are shown to be covered by the above guarantee then a credit will be raised equal to that of the advance warranty replacement invoice. If the Goods are found not to be covered by the above guarantee then the Goods will be made available for collection or delivery, at the Buyer's expense and risk, and the relevant payment for the Goods is due in full;

(k) Advance Warranty Replacement Goods may be new or refurbished at the Seller's discretion. If the Buyer requires the return of his repaired Goods then these will be returned to him as set out in clause (j) above.

11.3 Subject as expressly provided in these conditions and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.4 Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these conditions.

11.5 The guarantee shall apply only to the Buyer.

11.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty in common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

12. CONSUMER RIGHTS

These terms and conditions do not affect the statutory rights of a Buyer who is a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977).

13. COMPUTER PROGRAMS AND INTELLECTUAL PROPERTY RIGHTS

13.1 Where the Goods include a software the Buyer agrees not to copy or disclose or alter the programs without the prior written consent of the Seller and will in all respects comply with the terms of any licence granted to the Buyer which relate to the use of such computer programs.

13.2 The Buyer will not do, or permit to be done, anything that may detrimentally affect the Seller's copyright, trademarks or other intellectual property rights in the Goods, furthermore The Buyer will not use the Seller's name, logo, trademarks or product codes and descriptions in any advertisements, web sites, brochures, catalogues or similar media without the written consent of the Seller

14. PRODUCT LIABILITY

14.1 The Buyer shall endeavour to ensure that Goods are operated in accordance with the instruction manuals supplied with the Goods and shall provide training to relevant personnel who come into contact with the Goods.

14.2 The Buyer shall ensure that all warnings displayed on Goods or the packaging, at the time of delivery, shall not under any circumstances be removed, defaced or otherwise obscured and further the Buyer shall contractually pass such obligation to any third party recipient of the Goods.

14.3 The Buyer shall indemnify the Seller against any loss suffered as a result of the Buyer being in breach of any part of this term.

15. EVALUATION EQUIPMENT

15.1 When the Seller offers, at his discretion, to supply the Buyer with Goods for evaluation purposes these Goods are supplied on the express understanding of the following:

(a) the Goods will be invoiced in accordance with the Quotation and subject to paragraph 3 above.

(b) the Goods must be returned to the Seller, at the Buyer's expense and risk, within 14 days of delivery. The Goods must be returned in as new condition in their original packing and complete with all necessary instructions, leads, protective packing, etc. Failure to comply with the above will, at the Seller's discretion, incur a reasonable handling charge payable by the Buyer under these Conditions, or the refusal by the Seller to accept the return of the Goods, and the Seller's decision is final. Where the Goods are refused by the Seller they will be made available for collection or delivery at the Buyer's expense and risk.

(c) If the Seller accepts the return of the Goods a credit will be raised for either the invoiced value of the Goods or the value less the handling charge levied, but no credit will be given for levies, import duties and charges of a similar nature, or carriage, insurance, packing and freight charges.

16. RESPONSIBILITY

The Seller shall not be responsible to the Buyer or any third party claiming through the Buyer, for damage to any of the Buyer's property in the possession of the Seller (whether as consignee or otherwise) or for any injury caused to any person by such property by reason of and cause beyond the reasonable control of the Seller.

17. CONFIDENTIALITY

The Buyer shall not at any time (except in respect of the operation of Goods) impart or use any confidential information as to methods of manufacture, plans, drawings, price lists, documents or other information relating to the Goods of the Seller.

18. DELEGATION

The Seller may delegate his obligations under the Contract and may assign any of its rights or benefits thereunder.

19. REGULATORY COMPLIANCE

19.1 The Goods will comply with mandatory United Kingdom ("UK") regulations applicable to the manufacture and non-consumer sale of the Goods at the date of delivery but no other warranty or undertaking as to regulatory compliance in the UK or elsewhere is given or to be implied unless specifically given in writing signed by a director of the Seller. The Buyer shall comply with applicable laws relating to the Goods, their use and disposal.

19.2 The Buyer shall accept full responsibility for the safe disposal of any WEEE that may result from the Goods in line with the current WEEE rules and regulations including but not limited to the financing and organisation of the collection, processing, recycling and final disposal of the WEEE that has resulted from the Goods and the Buyer shall indemnify the Seller in respect of all such liabilities.

20. NOTICES

20.1 Any notice hereunder shall be in writing and shall be effectively given if delivered or sent to the office of the addressee normally used for communications relating to the Agreement or last known to the sender. Notices sent by inland post shall be deemed served at noon on the second day following the date of posting and if sent by overseas mail shall be deemed served at noon on the fifth day following the day of posting and any notice sent by telex or facsimile transmission, or email shall be deemed served twelve hours after the timed transmission but, if under this condition, a notice would be deemed served on a day which is a Saturday, Sunday or public holiday in the place of receipt, it shall be deemed served on the next following day not being such a Saturday, Sunday or public holiday.

21. GENERAL

21.1 These Conditions and the Contract shall be governed by and be construed in accordance with English law. The Seller and the Buyer hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

21.2 Any delay or failure by the Seller to enforce or exercise its rights under these Conditions shall not be deemed to be a waiver of any such right nor operate to bar the enforcement or exercise thereof at any time or times thereafter.

21.3 If the Court finds any part of these Conditions void or unenforceable, that clause or part will be deleted, and the remaining provisions will continue to apply in full.

21.4 No party except the Buyer or the Seller may exercise any rights in respect of this Contract under the Contracts (Rights of Third Parties) Act 1999 (as may be amended or extended).

21.5 Clause headings do not affect the interpretation of these Conditions.

21.6 Words in the singular include the plural and vice versa.

21.7 General words such as "include" or "including" shall not be given a restrictive meaning.

22. HIRE AGREEMENTS

22.1 The Seller is letting, and the Buyer is taking on hire the Equipment for use in your business.

22.2 The Agreement starts when the Seller signs it. The hiring will commence on the Start Date (or if later, the date of delivery and/or installation) and will continue, unless terminated earlier in accordance with the terms of the Agreement, for the Minimum Period. If the Buyer wishes to end the hiring at the end of the Minimum Period then Buyer must give the Seller at least 90 days' written notice to terminate the hiring, such notice to expire on the last day of the Minimum Period. If the Buyer does not, then the hiring of the Equipment will automatically continue thereafter for the Secondary Period until either party gives to the other one month's written notice to terminate the hiring of the Products, such notice to expire on a Rental payment date.

22.3. The Buyer will authorise the Seller to amend or insert the details of the Start Date, serial number, or model of Equipment which are not known on the day the buyer signs the Agreement or which change before the Agreement starts.

22.4 This will be subject to special terms and conditions written within the signed finance lease agreement.

22.5 Where Finance is agreed by an external sourcing financier and/or finance house this agreement will be subject to the financier and buyer agreeing terms. All and any payments will be made to the Seller, and they shall not be bound by any other agreements.