

STANDARD TERMS & CONDITIONS OF SALE

VERSION 1.1

1. **Interpretation**
1.1 **Definitions:**
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: these terms and conditions set out in clause 1 to clause 18 (inclusive).
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from the Supplier (details of which are set out in the Order Acknowledgment).
Delivery By Date: the date specified for delivery of an Order in accordance with clause 3 and/or as set out in the Order Acknowledgment.
Delivery Location: the address for delivery of the Goods, as set out in the Order Acknowledgment or as otherwise agreed between the parties in writing.
Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.
Goods: the goods (or any part of them) set out in the Order Acknowledgment.
Order: an order for the Goods submitted by the Customer in accordance with clause 3.
Order Acknowledgment: as defined in clause 2.3 of these Conditions.
Price: the price for the Goods, as set out in the Order Acknowledgment or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
Specification: any specification for the Goods, including any related designs and drawings, that is set out in the Order Acknowledgment or otherwise agreed in writing by the Customer and the Supplier.
Supplier: Hallmark Panels Limited (No. 03024981) whose registered office is as Valletta House, Valletta Street Hedon Road, Hull, East Yorkshire, HU9 5NP.

1.2 **Interpretation:**
(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
(b) any phrase introduced by the terms **including**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
(c) a reference to **writing** or **written** includes fax and emails.

2. **Basis of the Contract**
2.1 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 trade, custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (**Order Acknowledgment**), at which point the Contract shall come into existence.
2.4 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. **Orders**
3.1 Orders shall be given in writing. The Supplier may accept or decline Orders at its absolute discretion. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.
3.2 After confirming an Order, the Supplier shall as soon as is practicable inform the Customer of the Supplier's estimated Delivery By Date for the Order.
3.3 The Customer is responsible for ensuring that Orders, Order Acknowledgments and any applicable Specification are complete and accurate. The Customer shall give the Supplier all necessary information that the Supplier reasonably requires in order to fulfil each Order.
3.4 The Customer must inspect the Goods immediately on delivery. Any damage, missing parts and/or errors in the Specification (or changes which the Customer may require) must be notified to the Supplier immediately. Such notification must be before any door has been fitted, or any reworking of the door may not be possible.

4. **The Goods**
4.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract.
4.2 The Supplier will use reasonable endeavours to provide Goods of the colour specified by the Customer (if any), but the Supplier does not warrant or guarantee that the colour of the Goods will exactly match those stated in any Specification or specified by the Customer.
4.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 4.3 shall survive termination of the Contract.
4.4 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. **Delivery**
5.1 The Supplier shall use its reasonable endeavours to ensure that:
(a) each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods; and
(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

5.2 The Supplier shall endeavour to deliver Goods to the Delivery Location on or before the relevant Delivery By Date, or within a reasonable period thereafter.
5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
5.4 Delivery By Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
(a) a Force Majeure Event (which includes for the purposes of this clause delays in deliveries from any supplier to the Supplier); or
(b) the Customer's failure to provide the Supplier with adequate delivery instructions, such labour as is required to unload the Goods, or any other instructions that are relevant to the supply of the Goods.

5.5 If the Supplier fails to deliver Goods by the relevant Delivery By Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods.
5.6 If ten Business Days after the day on which the Supplier attempted to make delivery of Goods the Customer has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods. The Price will remain payable by the Customer.
5.7 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

6. **Quality and fitness for purpose**
6.1 The Supplier warrants that:
(a) on the date of delivery, the Goods shall:
(i) conform in all material respects with the Specification;
(ii) be free from material defects in design, material and workmanship; and
(iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
(b) the Goods shall remain free from material defects in design, material and workmanship for the period(s) notified to the Customer (details of all warranty periods are available from the Supplier on request); and
(c) where the Supplier is not the manufacturer of the Goods (or any part of them), the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier and the Supplier's liability shall not exceed the amounts recovered (if any) from the relevant manufacturer in this regard. Details of the various manufacturers' warranties (including the various warranty periods) which may be applicable in respect of the Goods may be notified to the Customer and are available on request from the Supplier.
Any warranty periods offered by the Supplier begin from the date on which the Goods are delivered and shall not be extended to cover any additional period, whether or not any replacement parts have been provided by the Supplier.

6.2 Subject to clause 6.3, if:
(a) the Customer gives notice in writing to the Supplier within three Business Days of discovery that some or all of the Goods do not comply with the warranties set out in clauses 6.1(a) or 6.1(b);
(b) the Supplier is given a reasonable opportunity of examining such Goods; and
(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full. For the avoidance of doubt only parts will be replaced, no warranty is given by the Supplier in respect of (or liability accepted in relation to) any installation, and no refitting service will be provided by the Supplier.

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:
(a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, use, maintenance and/or cleaning of the Goods or (if there are none) good trade practice regarding the same;
(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
(d) the Customer alters or repairs such Goods without the written consent of the Supplier; or
(e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions.

6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.
6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

7. **Title and risk**
7.1 Risk in Goods shall pass to the Customer on completion of unloading of the Goods at the Delivery Location.
7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.
7.3 Until title to the Goods has passed to the Customer, the Customer shall:
(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and
(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 The Supplier may recover title to any such title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer. The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

8. **Price and payment**
8.1 The Customer shall pay for Goods in accordance with this clause 8.
8.2 The price of the Goods shall be the price set out in the Order Acknowledgment, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
8.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
(a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the Delivery By Date(s), quantities or types of Goods ordered, or the Specification; or
(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.4 **The Price excludes:**
(a) the costs of transport of the Goods (unless stated otherwise), which may be invoiced to the Customer in addition to the Price; and
(b) amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

8.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
8.6 The Customer shall pay invoices in full in cleared funds within 30 days of the invoice date. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 10:
(a) the Customer shall pay interest on the overdue amount at the rate of 8% per annum above HSB Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
(b) the Supplier may suspend all further deliveries of Goods until payment has been made in full.

8.8 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

9. **Limitation of liability**
9.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
(b) fraud or fraudulent misrepresentation;
(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
(d) defective products under the Consumer Protection Act 1987; or
(e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 **Subject to clause 9.1:**
(a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
(b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid and/or payable by the Customer for Goods under this Contract.

10. **Termination**
10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
(b) the Customer 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), 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;
(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. **General**
11.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for six weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

11.2 **Assignment and other dealings.**
(a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any of its rights or obligations under the Contract without the prior written consent of the Supplier.
(b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

11.3 **Confidentiality.**
(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or supplier of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.3(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
(b) Each party may disclose the other party's confidential information:
(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.
(d) Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

11.4 **Entire agreement.**
(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

11.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties.
11.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.8 **Notices.**
(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.9 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.10 **Governing law.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

Product Warranty periods can be found here