

MX5 City - Terms and Conditions of Sale

Conditions of Sale

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person who offers to purchase Goods from the Seller and to whom the Seller agrees to sell the Goods.

"Conditions" means the Seller's standard terms and conditions of sale set out in this document as amended from time to time by the Seller.

"Confirmation of Order" means the confirmation in whatever form made by the Seller to the Buyer prior to payment being effected and Goods being despatched.

"Contract" means the contract between the Buyer and the Seller under which the Buyer offers to buy the Goods from the Seller and the Seller agrees to sell the Goods to the Buyer.

"Goods" means the MX5 City products and any parts of them which the Seller agrees to supply to the Buyer in accordance with these Conditions.

"Nominated Card" means the payment card details provided by the Buyer to the Seller at the time of placing the order and from which payment for the Goods will be effected.

"Seller" means Martin Dooner trading as MX5 City, office is at Sheffield Road, Conisbrough, Doncaster, South Yorkshire, DN12 2BY.

"Writing" includes letters, e-mail and facsimile transmission.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended from time to time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods from the Seller in accordance with these Conditions and at the price set out in any written quotation made by the Seller to the Buyer or in the absence of any written quotation at the prices set out in the current price list as set out on the Seller's website or in the Seller's current catalogue from time to time.

2.2 All purchases of the Goods are subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions.

2.3 No variation to these Conditions shall be binding unless the proposed variation is confirmed in Writing by the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations or warranties in relation to the Goods or their quality or their fitness for a particular purpose unless it is confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it shall not rely on any such representations or warranties which are not so confirmed but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

2.5 Any advice or recommendation given by the Seller its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any loss, damage or inconvenience arising out of reliance upon such advice or recommendation which is not so confirmed.

2.6 Every effort is made to ensure that the prices shown in all the Seller's sales literature and on the Seller's website are correct at the time of publication. Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be corrected by the Seller as soon as practicable once it has become aware of the error or omission but the Seller shall not be liable for any loss or damage arising out of such error or omission.

3. Orders

3.1 No order submitted by the Buyer either in writing, online or over the telephone shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller.

3.2 Once the order has been accepted by the Seller it shall be binding on the parties. Acceptance of the order is conditional upon the availability of the Goods ordered.

3.3 If any of the Goods ordered are unavailable or should events occur beyond its reasonable control; the Seller reserves the right to cancel the order and shall inform the Buyer as soon as possible.

3.4 If part of the Goods ordered are available, the Seller shall contact the Buyer in order to confirm whether or not the Buyer would like to proceed to purchase that part of the Goods that are available.

3.5 It is the Buyer's responsibility to check that all details and aspects of the order are correct and suitable for the requirements of the Buyer.

3.6 The quantity quality and description of the Goods shall be those set out in the Seller's quotation or on the description of the Goods either on the Seller's website or in the Seller's current catalogue from time to time.

3.7 Every effort is made to ensure that the Goods which are to be supplied correspond as closely as possible to

those displayed in the Sellers catalogue or on-line. The Buyer acknowledges however that they may not be exactly the same as that description.

3.8 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements and/or which do not materially affect their quality or performance.

4. Price of the Goods

4.1 The price of the Goods shall be the price stated in the quotation issued by the Seller to the Buyer or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date on which the order is confirmed by the Seller.

4.2 Special Offers. We reserve the right to end any offer at any time including prior to the published date. Special offers are not valid in conjunction with any other offer.

4.3 Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply.

4.4 When an order is priced based on a quotation issued by the Seller prices quoted shall be valid for 30 days from the quotation date or until earlier acceptance by the Buyer to the Seller.

4.5 The Seller reserves the right by giving notice in Writing to the Buyer at any time before despatch of and payment for the Goods, to increase the price of the Goods to reflect any increase in the costs to the Seller which arise out of any factor which is beyond the control of the Seller (such as without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour materials or other costs of manufacture), any change in the agreed delivery date or quantities of the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate written information or instructions. If this is the case the Seller will give the Buyer the opportunity to reaffirm the Contract at the increased price or to decline to proceed with the purchase.

4.6 Except as otherwise stated under the terms of any written quotation or in any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on an ex-works basis.

4.7 Where the Seller agrees to deliver the Goods the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

4.8 Where the Buyer decides to collect the Goods from the Seller's premises they may do so free of charge.

4.9 The price payable under 4.1 above is inclusive of any applicable value added tax.

5. Terms of payment

5.1 The Buyer shall at the time of ordering the Goods provide to the Seller the card details for the account from which payment for the Goods shall be made. Receipts for payment will be issued only upon request.

5.2 Unless agreed otherwise in Writing by the Seller the Seller shall be entitled to deduct payment for the Goods from the Buyer's Nominated Card upon despatch of the Goods.

5.3 If payment by the Buyer cannot be effected at the time of despatch of the Goods then without prejudice to any other right or remedy available to the Seller, the Seller shall have the right to cancel the contract or suspend any further deliveries to the Buyer.

5.4 Cancellations, returns and refunds are subject to the following conditions:-

5.4.1 the Buyer has the right to cancel an order of Goods at any time before the Goods have been delivered or for a period of 7 days starting on the day after the day on which the Buyer received the Goods;

5.4.2 if the Goods have already been despatched by the Seller, the Buyer is advised to return them to the Seller upon delivery and the following shall apply: if the Goods are returned within 14 days of the Buyer receiving them, the Buyer will be entitled to a full refund of any payment that has been made by the Buyer for the Goods (but not the cost of packaging and transportation);

5.4.3 when returning the Goods, they must be accompanied by proof of purchase (receipt or despatch note), be unused and in the same condition as they were in at the time of receipt (including all original packaging) otherwise the Seller will not be obliged to issue a full refund.

5.4.4 if Goods are returned more than 14 days after receipt by the Buyer any refund will be at the discretion of the Seller and subject to a restocking fee equal to 15% of the value of the Goods.

5.4.5 the Buyer shall not accept returns of any Goods which are made more than 90 days after the date on which they were despatched unless they are deemed to be faulty in accordance with clause 5.8.

5.5 If the Buyer amends its order for the Goods after the order has been placed, the Seller reserves the right to charge the Buyer any additional costs that the Seller will incur as a result. However this shall not exceed 25% of the value of the Goods in question. If this is the case, the Seller will inform the Buyer and give the Buyer the opportunity to either confirm the amended order at the higher price or to revert to the original order or to cancel the order.

5.6 If the Buyer believes that any of the Goods are defective or are of an unsatisfactory quality, the Buyer must immediately contact a member of the customer services team by one of the following methods:

Phone 01709 863555

E-mail info@mx5city.com

Letter MX5 City, Sheffield Road, Conisbrough, Doncaster, South Yorkshire, DN12 2BY

treat the Goods with the utmost care and return them to the Seller at the above address.

5.7 Nothing mentioned in these Conditions affects the Buyers statutory rights in the unlikely event that the Goods do not meet a standard required by the law.

5.8 On receipt of the Goods the Seller will carry out an inspection and evaluation of the Goods and if it finds that the Goods are faulty then a full refund will be given (including reasonable packaging and transportation costs). Goods that have been subject to modifications or alterations by the Buyer or which are not faulty will not be refunded.

6. Delivery

6.1 Delivery of the Goods shall be effected by delivering the Goods to the address communicated by the Buyer to the Seller at the time of placing the order and confirmed in the Confirmation of Order.

6.2 Any dates quoted for delivery of the Goods are estimates only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused.

6.3 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered and the price paid for the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time of placing the order (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:

6.6.1 store the Goods until actual delivery takes place and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) 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.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer

7.1.1 on delivery; or

7.1.2 in the case of Goods to be collected from the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.3 if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8. Warranties and liability

8.1 Subject to these Conditions the Seller warrants that the Goods will in all material respects correspond with their description at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery.

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

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

8.2.2 the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer and not in the course of business all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold to the Buyer **acting as a consumer**:-

8.4.1 the Goods will be of satisfactory quality;

8.4.2 the Seller will not be liable for any loss or damage caused by it or its employees or agents in circumstances where:

8.4.2.1 there is no breach of a legal duty of care to the Buyer by the Seller or by any of its employees or agents;

8.4.2.2 such loss or damage is not a reasonably foreseeable result of any such breach;

8.4.2.3 any increase in loss or damage results from a breach by the Buyer of any of these Conditions; and

8.4.2.4 nothing in these terms affects any liability for death or personal injury caused by a breach of a legal duty of care by the Seller or for fraud or the Buyer's statutory rights as a consumer.

8.5 Where the Buyer purchases the Goods from us **other than as a consumer**, the Seller's liability in respect of any breach of these conditions and/or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract shall be subject to the following:-

8.5.1 all warranties conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law, excluded from the Contract.

8.5.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.

8.5.3 nothing in these Conditions however shall exclude or limit the Seller's liability of for death or personal injury caused by our negligence or for fraudulent misrepresentation.

8.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with their description shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods has been delivered in accordance with the Contract.

8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet their description is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price paid for the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control including any Force Majeure Circumstance as defined in Clause 9.2.

9. Force Majeure

9.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any Force Majeure Circumstances.

9.2 In this condition "Force Majeure Circumstances" shall mean any Act of God, riot, strike, lock out, trade dispute or labour disturbance; accident, break down of plant or machinery, fire, flood, difficulty or increased expense in obtaining workmen materials or transport or other circumstances whatsoever outside the reasonable control of the Seller affecting the provision of the Goods or of raw materials therefore by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery.

9.3 If due to Force Majeure Circumstances the Seller has insufficient stock to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.

10. General

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these Conditions is held by any court or competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.

