

W. TOMBLING LTD. TERMS OF SUPPLY

1. Definitions

"Company" means W. Tombling Limited, registered number 600370. Registered office: Wembley House, Dozens Bank, West Pinchbeck, Spalding, Lincolnshire, PE11 3ND, United Kingdom.

"Conditions" means these terms and conditions.

"Contract" means any contract between the Company and the Customer for the sale and purchase of Supplies.

"Customer" means the person(s) or company whose order for the Supplies is accepted by the Company.

"Goods" means any goods supplied or to be supplied by the Company to the Customer.

"Services" means any services supplied or to be supplied by the company to the customer.

"Supplies" means any goods or services supplied or to be supplied by the Company to the Customer.

"Website" means <http://www.tombling.com>

"In writing" includes electronic communications.

2. Conditions

All orders are accepted by the Company subject to and in accordance with these Conditions. These Conditions override and exclude any terms or conditions in or referred to in any negotiations or course of dealing between the Company and the Customer, or set out in the Customer's standard terms and conditions. If there is any conflict between the provisions of the order and these Conditions, these Conditions will prevail unless the Company agrees otherwise in writing. Together with any terms accepted by the Company in connection with an order, these Conditions constitute the entire agreement between the Company and the Customer in relation to the Supplies ordered. No variation to these Conditions is permitted unless expressly authorised in writing by a director of the Company.

3. Prices

Prices for Supplies are in £ sterling, exclusive of VAT, which will be added at the time of despatch. The Company reserves the right to change its prices without notice at any time. Prices charged will be those prevailing when an order is accepted. Where Supplies are to be made in instalments ("Scheduled Delivery") the price payable for them will be that applicable at the time of acceptance for the total quantity ordered, but where Scheduled Delivery may continue for a period of 60 days or more, the Company reserves the right to charge the Customer further amounts if the price of the Supplies increases before the end of that period.

Prices for Supplies given in written quotations supplied by the Company are valid for 30 days after which they can be altered by the Company without giving notice to the Customer.

4. Payment

Payment is due not later than 30 days from date of despatch. Time for payment is of the essence. If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy, the Company shall be entitled to:

1. cancel the order or suspend any further deliveries or performance;
2. appropriate any payment made by the Customer to such of the Supplies (or the Supplies made under any other contracts) as the Company may see fit; and
3. charge interest (both before and after any judgement) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 until payment is made in full.

If legal action is taken to recover monies due to the Company, then the Company reserves the right to charge the Customer statutory compensation in accordance with the Late Payment of Commercial Debts Regulations 2002. The statutory compensation shall become payable immediately when legal action is commenced, whether demanded or not and may be claimed within the legal action.

5. New Accounts

A Customer wishing to open a credit account must furnish such information as may be requested by the Company and the Company may make a search with a credit reference agency. The Company reserves the right in its absolute discretion to grant, refuse or discontinue any credit facilities or reduce or suspend any credit limit at any time.

6. Orders

The Company reserves the right to decline to trade with any company or person. To avoid duplication, written confirmation of telephone orders must be clearly marked 'Confirmation Only'. The Company will not accept liability for orders not so marked and duplicate orders will be charged accordingly. Once accepted no order may be cancelled without the prior written agreement of a director of the Company. Orders for Goods are accepted by the Company by despatching the Goods.

7. Delivery

The Company reserves the right to levy a delivery and/or handling charge in the amount notified to the Customer prior to despatch for delivery. The Customer may request delivery or performance by instalments for up to 12 months from the date of order. The Company reserves the right to deliver or perform by instalments. Failure to meet a delivery or performance date where deliveries or performance are by instalments shall not prevent or restrict the Company from making further deliveries or rendering subsequent performance under the relevant Contract by instalment.

Delivery will be made to the address specified by the Customer. The Company may use any method of delivery available to it. The Company will use reasonable endeavours to meet delivery and/or performance estimates but, except as set out in section 8 below, in no circumstances shall it be liable to compensate the Customer for non-delivery, non-performance or late delivery or performance. Time for delivery and/or performance will not be of the essence.

8. Inspection, defects and non-delivery

Any claim by the Customer which is based on any defect in the quality, quantity or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Customer) be notified to the Company within twenty four (24) hours of delivery or (where the defect or failure is not apparent on reasonable inspection) within five (5) days after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company will have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

The Company will not be liable for any non-delivery of Goods or non-performance of Services unless written notice is given to the Company within five (5) days of the date when the Goods should have been delivered or Services performed in the ordinary course of events. Any liability of the Company for non-delivery or non-performance or for Goods notified as defective on delivery or Services notified as defective following performance in accordance with Condition 8, will be limited to replacing the Goods or re-performing the Services within a reasonable time or to refunding the price then paid in respect of such Supplies.

9. Returns

Except as detailed in section 10 below, no order can be cancelled or accepted for credit without the prior written agreement of the Company. If cancellation or credit is accepted by the Company, the Customer must obtain a return authorisation number from the Company, before any Goods may be returned. Goods to be returned must be received by the Company within 7 days of their delivery by the Company. The Goods must be complete, undamaged, in saleable condition and in their original packaging (which shall include any of the Company's outer packaging). It is the Customer's responsibility to ensure that the Goods are adequately protected to prevent any damage in transit. Goods should be returned to: "The Returns Department, W. Tombling Ltd. Wembley House, West Pinchbeck, Spalding, Lincolnshire. PE11 3ND", quoting the returns authorisation number.

Goods remain at the risk of the customer until returned to the Company.

All Goods accepted for return, except in accordance with Condition 10, will be subject to a re-stocking fee of 30% of the invoice value of the Goods. Certain Goods are excluded from this right of return including Activair perforated polythene ducting and specifically constructed items. Goods returned as "unwanted" or "incorrectly ordered" may be accepted at the discretion of the Company.

10. Distance selling regulations

If the Customer is buying as a 'consumer' as defined in The Consumer Protection (Distance Selling) Regulations 2000, the Customer may, provided he or she has taken reasonable care of the Goods, return the Goods complete, undamaged, in re-saleable condition and in their original packaging (which shall include any of the Company's outer packaging), and be repaid the price in respect of them within 7 days (excluding Saturday, Sunday and any UK Bank Holiday) of their delivery. It is the Customer's responsibility to ensure that the Goods are adequately protected to prevent any damage in transit. To return Goods on this basis, the Customer must notify the company in writing and return the Goods within the 7 day period to: "The Returns Department, W. Tombling Ltd. Wembley House, West Pinchbeck, Spalding, Lincolnshire. PE11 3ND", quoting the Companies invoice number. Goods should be returned by overnight carrier, the Customer is responsible for payment of all carriage costs. Following receipt of the Goods, which comply with this Condition 10, the Company will refund to the Customer the price paid in respect of the Goods.

11. Description

All specifications, drawings, illustrations, descriptions and particulars of weights, dimensions, capacity or other details are intended to give a general idea of the Supplies, but will not form part of the Contract. If the description of any Goods differs from the manufacturer's description, the latter shall be deemed to be correct. The Company shall take all reasonable steps to ensure the accuracy of details relating to Supplies, but accepts no liability in contract or tort or under statute or otherwise for any error or omission in such detail whether caused by the Company's negligence or otherwise. The Company may make changes to the Supplies as part of a continuous programme of improvement or to comply with legislation.

12. Risk and ownership

The risk of damage to, or loss of Goods, will pass to the Customer when the Goods are unloaded from the Company's carriers at the Customer's premises. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due in respect of the Goods. Until ownership passes to the Customer, the Customer must hold the goods on a fiduciary basis as the Company's bailee. If payment is not received in full by the due date, or the Customer passes a resolution for winding up, or a court shall make an order to that effect, or a receiver is appointed over any assets or the undertaking of the Customer, or an execution or distress is levied against the Customer, the Company shall be entitled, without previous notice, to retake possession of the Goods and for that purpose to enter upon any premises occupied or owned by the Customer.

13. Performance and fitness for purpose

Unless any performance figures, tolerances or characteristics have been specifically and expressly warranted by a director of the Company in writing, the Company accepts no liability for any failure of the Supplies to comply with such criteria, whether attributable to the Company's negligence or otherwise. The responsibility for ensuring that Supplies are sufficient and suitable for a particular purpose is the Customer's, unless specifically stated in writing by a director of the Company. Any advice or recommendation given by an employee of the Company which is not confirmed in writing by a director of the Company, is acted on entirely at the Customer's risk and the Company shall not be liable for any such advice or recommendation which is not so confirmed. Except as set out in Condition 15, the liability of the Company to the Customer, should any warranty, statement, advice or recommendation confirmed in accordance with this Condition 13, prove to be incorrect, inaccurate or misleading, will be limited to the refund of the price paid for the Supplies or, at the Company's option, the supply of replacement Supplies which are sufficient and suitable.

14. Warranty/Guarantee

The Company shall take reasonable steps to ensure that the Goods are free from defects and of good quality and, subject to the following provisions of section 14, Goods supplied by the Company shall be guaranteed in respect of defects in the Goods arising as a result of faulty materials or workmanship for a period of twelve (12) months from the date of despatch of the Goods from the Company to the Customer. To make a claim under the guarantee set out in this section 14, the Customer shall return the Goods carriage paid to: "The Returns Department, W. Tombling Ltd. Wembley House, West Pinchbeck, Spalding, Lincolnshire. PE11 1TB", within twelve (12) months of the date of despatch of those goods from the Company to the Customer. The Customer must obtain a return authorisation number from the Company, before any Goods may be returned. It is the Customer's responsibility to ensure that the Goods are adequately protected to prevent any damage in transit. Upon receipt of the Goods the Company shall determine, in its sole discretion, whether the Goods are defective due to faulty materials or workmanship of the Company. In the event that the Company determines that the Goods are defective due to the faulty workmanship or materials of the Company, the Company shall repair or replace the Goods free of charge. For the avoidance of doubt the guarantee does not apply to defects caused by wilful damage, negligence, abnormal

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working conditions, misuse or alteration or repair of the Goods without the Company's written approval. Or for defects arising from a failure to store, install, operate or assemble the Goods in accordance with the Company's instructions (whether oral or in writing). Installation of Goods should only be carried out by a qualified engineer.

Except as set out in 15 below and 8 above, this Condition is the Company's sole obligation and the Customer's sole remedy for defective supplies and is accepted by the Customer in substitution for all express or implied representations, conditions or warranties, statutory or otherwise, as to the satisfactory quality, fitness for purpose or performance of the Goods (or any materials used in connection therewith) or the standard of workmanship of the Services and all such representations, conditions and warranties are excluded.

15. Liability

The Company does not exclude its liability to the Customer:

1. For breach of the Company's obligations under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
2. For personal injury or death arising as a result of the Company's negligence;
3. Under section 2(3) Consumer Protection Act 1987;
4. For breach of the statutory implied conditions in sections 13, 14 and 15 of the Sale of Goods Act 1979, where the Customer deals as a 'consumer' as defined in the Unfair Contract Terms Act 1997.
5. For any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability or;
6. For fraud, including fraudulent misrepresentation.

And nothing in these Conditions shall affect the statutory rights of a Customer who deals as a 'consumer' as defined in the Unfair Contract Terms Act 1997. Except as provided in Conditions 8 (inspection, defects on delivery and non-delivery), 13 (performance and fitness for purpose and 14 (warranty and guarantee) and this Condition 15 above, the Company will be under no liability to the Customer whatsoever (whether in contract, tort, (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct or indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of use, depletion of goodwill, business interruption, increased purchasing or manufacturing costs, loss of opportunity, loss of contracts and like loss) howsoever caused or arising out of or in connection with:

1. Any of the Supplies, or the manufacture, sale, performance, or supply or failure or delay in performance or supply of the Supplies by the Company, or on part of the Company's employees, agents or sub-contractors;
2. Any breach by the Company of any of the express or implied terms of the Contract;
3. Any use made or resale or on-supply of any of the Supplies or any product incorporating any of the Goods or developed using the Supplies;
4. Any acts or omissions of the Company at the Customer's premises;
5. Any statement made or not made or advice given or not given by or on behalf of the Company, or;
6. Otherwise under the Contract.

And the Company hereby excludes to the fullest extent permissible at law all conditions, warranties and stipulations, express (other than those set out in these conditions or given in accordance with condition 13) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer. The Company's total liability in contract, tort, (including negligence), breach of statutory duty, misrepresentation or otherwise shall be limited to repairing or replacing Goods, or in the case of Services re-performing the Services or, at the Company's option refunding monies already paid in respect of the Supplies. Each of the Company's employees, agents and sub-contractors may rely on and enforce the exclusions and restrictions of liability in Conditions 8, 9, 13, 14 and 15 in that person's own name and for that person's own benefit.

16. Intellectual property rights

Supplies may be subject to the intellectual and industrial property rights including patents, knowhow, trademarks, copyright, design rights, utility rights and other rights of third parties. No right or licence is granted to the Customer, except the right to use the Supplies or re-sell the Goods in the Customer's ordinary course of business. The Company shall have no liability whatsoever in the event of any claim or infringement of any such rights howsoever arising. The Company owns full copyright in the respect of its website and its reproduction in whole or part is prohibited without the Company's prior written consent.

17. Use of personal data

'Personal Data' means in relation to any Customer, or any representative of a Customer who is (in either case) a living individual, any data from which (whether alone or in combination with any other information held by the Company), the Company can identify that Customer or representative, regardless of how and when that data is provided. The Company may process Personal Data for all purposes contemplated in these Conditions or arising in the context of the relationship between the Company and the Customer including:

1. Deciding whether to enter into any contract or arrangement with that Customer. This may include credit reference searches against a Customer or its representatives;
2. Direct marketing of the Company's products and services and/or of the products and services of other companies, or third parties which the Company believes may be of interest to the Customer or its representatives, whether by post, fax, telephone, email, SMS, or otherwise;
3. Crime prevention or detection.

The processing of the Personal Data may involve:

1. The disclosure of that Personal Data to the Company's agents, advisors and representatives;
2. The disclosure of that Personal Data to third parties whose products and services the Company believes may be of interest to that Customer or representative.
3. The transfer of personal data outside of the EEA, including to countries whose laws may not provide adequate protection to Personal Data. The Company will only transfer Personal Data outside the EEA to companies who have guaranteed to the Company the same level of protection as that Personal Data would have received in the UK.

If at any time the Customer or its representatives does not wish his or her Personal Data to be used for any or all of the above purposes, he or she should contact The Data Manager, W. Tombling Ltd, Wembley House, West Pinchbeck, Spalding, Lincolnshire, PE11 3ND, United Kingdom in writing, or notify any of our sales representatives when placing an order by phone.

18. Promotions

In the event that the Company sends promotional material to the Customer in relation to goods or services available from the Company, these Conditions shall apply to all Supplies purchased from such material.

19. Country of origin

Unless otherwise confirmed by the Company in writing, nothing on the Website is to be taken as representation of the source of origin, manufacturer or production of the Goods or any part of them.

20. Trade counter

A Customer wishing to collect Goods from the trade counter must do so within 2 working days of arranging the collection. If Goods are not so collected within the said period, the Company will charge the Customer a re-stocking fee of 30% of the value of the goods ordered. Proof of Identity will be required when collecting Goods from the trade counter.

21. Export

The Customer is responsible at its own expense for obtaining any licence and complying with any export regulations in force within the United Kingdom and in the country for which the Goods are destined. Certain Goods imported from the United States of America by the Company are subject to specific restrictions. The Company reserves the right not to supply certain Customers or Countries and to require from the Customer full details of the end use and final destination of the Goods.

22. Age requirements for certain goods

Where the law requires a minimum age for the purchase of certain Goods, the Customer confirms that he or she is over the required age and that delivery of the Goods will be accepted by a person over the relevant age limit.

23. Euro

In the event that the UK changes to a single unified currency (known as the Euro or otherwise), or agrees to the fixing of the conversion rates between the European Union member states, it will not have the effect of altering any term or discharging or excusing performance under a Contract.

24. Force majeure

The Company shall not be liable to the Customer in any manner or be deemed to be in breach of these Conditions because of any delay in performing, or any failure to perform any of the Company's obligations under these Contracts if the delay or failure was due to any cause beyond the Company's reasonable control (which shall include, but not be limited to government actions, war, fire, explosion, flood, import or export regulations or embargoes, labour disputes or inability to obtain, or a delay in obtaining supplies of goods or labour). The Company may at its option, delay the performance of, or cancel the whole or any part of a Contract.

25. Recording of telephone calls

The Company reserves the right to monitor, intercept or record telephone calls and may monitor or intercept all email or other electronic communications made to its premises for training, security and quality purposes.

26. Legal construction

All Contracts shall be governed by and interpreted in accordance with English Law and the customer submits to the jurisdiction of the English Court, but the Company may enforce such Contract in any court of competent jurisdiction.

27. General

Any provision of these Conditions of Supply which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these Conditions of Supply and the remainder of such provision shall not be affected. Failure by the Company to enforce or partially enforce any provision of these Conditions of Supply will not be constrained as a waiver of any rights under these Conditions of Supply. Except as set out in Condition 15, the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of third parties) Act 1999 by any person not a party to it.

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