

K.B. Packaging – Terms & Conditions

These Terms and Conditions are the standard terms that apply to the purchase of all Goods from K.B. Packaging, a company registered in England and Wales under number 02071209, whose registered office address is at Merlin Way, Quarry Hill Industrial Estate, Ilkeston, Derbyshire, DE7 4RA (referred to as "the Company/we/us/our").

Please note we do not sell Goods to Consumers, as defined in the Consumer Rights Act 2015.

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- "**Contract**" means the contract formed as detailed in clause 2, which will incorporate, and be subject to, these Terms and Conditions;
- "**Customer/you/your**" means the sole trader, firm or corporate body ordering the Goods. Where the individual ordering the Goods is doing so on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business and the business will be our Customer in the context of the Contract;
- "**Delivery Date**" means the estimated date on which the Goods are to be delivered;
- "**Goods**" means the goods which are to be supplied to you as specified in your Order (and confirmed by us in accordance with clause 2.6); and "**Order**" means your order for the Goods.
- 1.2 Each reference in these Terms and Conditions to:
- 1.2.1 "writing/written" includes emails;
- 1.2.2 a statute or a provision of a statute refers to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 "these Terms and Conditions" refers to these Terms and Conditions as amended or supplemented at the relevant time;
- 1.2.4 a clause refers to a clause of these Terms and Conditions;
- 1.2.5 "party/parties" refer to the parties to these Terms & Conditions; and
- 1.2.6 any reference to a party includes their employees, agents and sub-contractors.
- 1.3 The headings used in these Terms and Conditions are for convenience only and will have no effect upon their interpretation.
- 1.4 Words imparting the singular number include the plural and vice versa. References to any persons include corporations.

2. The Contract

- 2.1 You will be required to complete and return an account application form to us before any Order can be placed.
- 2.2 If we accept your account application form, at our sole discretion, we will open an account for you and will provide you with a price list for all Goods available to Order from us.
- 2.3 Orders can be placed by email, telephone and via our website.
- 2.4 If you send us a purchase order, we will check the prices on your purchase order against our up-to-date price list. If the prices do not match, we will contact you to advise of the correct price and will obtain your consent before proceeding.
- 2.5 Any credit limit we offer to you will be subject to clause 4.4 and may be revoked at any time.
- 2.6 A legally binding Contract between you and us will be created upon our acceptance of your Order. We will not be deemed to have accepted any Order submitted by you unless and until it is confirmed by an authorised representative of ours.
- 2.7 If the Goods are not in stock or are only partially in stock when you place your Order, we will contact you to advise of this and to ask if you would prefer us to deliver the Goods in instalments as they arrive in stock or if you would prefer to wait for the entire delivery when we have all the Goods in stock. Each part-delivery may incur separate delivery costs.
- 2.8 No terms or conditions stipulated or referred to by you in any form whatsoever will in any respect vary or add to these Terms and Conditions unless we agree otherwise in writing.
- 2.9 No variation to these Terms and Conditions, or to the Contract, will be binding unless agreed in writing between the authorised representatives of the parties.
- 2.10 Any quotation we provide will be valid for a period of 30 days from the date of issue unless expressly stated otherwise.
- 2.11 Any sales literature, price lists and other documents issued by us in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. We reserve the right to correct any typographical, clerical or other accidental errors without liability.
- 2.12 You may change your Order at any time before we dispatch the Goods by contacting us in writing or by telephone. If your Order is changed, we will inform you of any change to the Price.

3. Specification

- 3.1 The specification for the Goods will be as set out in our sales documentation. The Goods will only be supplied in the minimum units as stated in our price list, or in multiples of those units. Orders received for quantities other than these minimum units will be adjusted accordingly.
- 3.2 We reserve the right to make any changes in the specification of the Goods that may be required to conform to any applicable safety or other legal or regulatory requirements without notice.
- 3.3 If any Goods are made to a pattern or specification provided by you, we have the right to supply 10% more or less of the exact quantity ordered. Any excess or shortage will be charged for or deducted pro rata.
- 3.4 Polythene gauges are subject to tolerance of +/- 10%.
- 3.5 Any illustrations, photographs or descriptions we provide, whether on our website or in catalogues, brochures, price lists or other documents issued

by us are intended as a guide only and will not be binding.

- 3.6 None of our employees or agents are authorised to make any representations concerning the Goods unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which are not so confirmed.
- 3.7 It is your responsibility to ensure that any use, re-sale or distribution of the Goods by you is in compliance with all instructions and manuals issued by us, and any applicable statutory requirements. If the Goods are to be shipped, re-sold or distributed outside of the UK, you will be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them, unless otherwise agreed.
- ### 4. Price & Payment
- 4.1 We reserve the right to alter our prices at any time. This will not affect Orders we have already accepted. However, we reserve the right to increase the price for Orders we have accepted, if the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates. We will contact you to advise of any increase in writing.
- 4.2 Any prices we provide are exclusive of VAT, delivery costs and any other taxes or levies which are imposed or charged by any competent authority.
- 4.3 We will invoice you once your Order has been confirmed, in accordance with clause 2.6. If the Goods are not in stock or are only partially in stock when you place your Order, we will invoice for the out-of-stock Goods when they become available for dispatch. Therefore, we may issue part-invoices for the Order.
- 4.4 However, we reserve the right to request payment up front if do not have an account with us, if you exceed your credit limit, if for any reason we are not satisfied of your creditworthiness, or if we so decide at our sole discretion. In this event, no Goods will be released for delivery or collection until such time as any pro-forma invoice issued by us has been paid in full.
- 4.5 All invoices are payable in full, without any deduction, retention, set off or withholding, strictly within 30 days from the date of invoice, or otherwise in accordance with such credit terms as may have been agreed in writing between the parties. Payment must be made on the due date notwithstanding that delivery may not have taken place and/or that the title in the Goods has not passed to you. The time for payment is of the essence of the Contract.
- 4.6 If you do not make payment to us by the due date, we may cancel your Order(s), suspend any further deliveries to you and/or charge you interest on the overdue sum at the rate of 8% per annum above the Bank of England base lending rate from time to time, together with any costs we may incur in attempting to recover any outstanding debt. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment. You must pay any interest due when paying an overdue sum.
- ### 5. Delivery
- 5.1 When we confirm acceptance of your Order, we will provide an estimated delivery date. Please note that estimated delivery dates may vary according to the availability of Goods, your location, and circumstances beyond our control. Time for delivery is not of the essence of the Contract.
- 5.2 The cut-off time for next-day dispatch within mainland Great Britain is 3.30pm on a working day, subject to stock availability.
- 5.3 Delivery will be deemed to have taken place when the Goods have been delivered to the delivery address indicated in your Order or on collection from our premises.
- 5.4 Where the Goods are to be delivered in instalments, each delivery will constitute a separate Contract and failure by us to deliver any one or more of the instalments in accordance with these Terms and Conditions will not entitle you to treat the Contract as a whole as repudiated.
- 5.5 If for any reason we are unable to deliver the Goods to your chosen delivery address, we will leave a note informing you that the Goods have been returned to our premises, requesting that you contact us to arrange re-delivery. The re-delivery and storage will be chargeable. We may also, at our discretion, charge for restocking and administration costs.
- ### 6. Risk and Retention of Title
- 6.1 Risk of damage to or loss of the Goods will pass to you:
- 6.1.1 in the case of Goods to be collected, at the time when we notify you that the Goods are available for collection; or
- 6.1.2 in the case of Goods to be delivered, at the time of delivery or, if you wrongfully fail to take delivery of the Goods, at the time when we tendered delivery of the Goods.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods will not pass to you until we have received in cleared funds payment in full of the price of the Goods.
- 6.3 Until payment has been made to us and title in the Goods has passed to you, you will be in possession of the Goods as bailee for us and you must store them separately and in an appropriate environment, ensure that they are identifiable as being supplied by us and insure them against all reasonable risks.
- 6.4 You are not entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property, but if you do so, all money owing by you to us will (without prejudice to any other right or remedy of ours) become immediately due and payable.
- 6.5 We will be entitled at any time to require you to deliver up to us any Goods

- in which we retain title and, if you fail to do so immediately, to enter upon any premises of yours or any third party during normal business hours where the Goods are stored and repossess the Goods.
- 6.6 Your right to possession of the Goods in which we maintain legal and beneficial title will terminate if any of the events listed in clause 9.3 occurs.
- 7. Returns and Refunds**
- 7.1 If you are not satisfied with the Goods and wish to return them, you may do so only provided:
- 7.1.1 you inspect the Goods on delivery or on collection as the case may be. Where the Goods cannot be examined, the delivery note or such other note as appropriate must be marked "not examined".
- 7.1.2 you inform us that you wish to return the Goods within 72 hours of delivery;
- 7.1.3 the Goods remain in their original condition (as delivered);
- 7.1.4 the Goods are returned at your risk and you agree to bear the cost of delivery to us; and
- 7.1.5 you indemnify us against any costs incurred by us in rectifying any deterioration of the Goods caused by incorrect storage or use while in your possession.
- 7.2 If, on receipt, the Goods are proven by us to be damaged or defective, and you comply with clause 7.1 above, we may refund the cost of delivery, at our discretion.
- 7.3 All Goods must be returned to us under this clause 7 in their original condition, in their original packaging, accompanied by proof of purchase.
- 7.4 Replacement of the Goods (or the defective part of them), or any credit or refund offered at our discretion, will be issued to you only upon the receipt of the Goods in accordance with this clause 7.
- 7.5 If the Goods are not returned in the original packaging, we will charge or deduct a small fee from the refund or credit as applicable.
- 7.6 We may also, at our discretion, charge for restocking and administration costs.
- 8. Warranty**
- 8.1 Goods sold within mainland Great Britain are offered with a manufacturer's warranty, subject to payment having been received by us in full in accordance with clause 4 and the limitations in clause 11.4.1.
- 8.2 The terms of the warranty will be provided separately and form part of the Contract by this reference. Additional copies are available on request.
- 9. Cancellations**
- 9.1 You may not cancel any Order which we have accepted, except with our agreement in writing on the basis that you will indemnify us in full against all loss (including loss of profit), costs (including all labour and materials used), restocking, charges and expenses incurred by us as a result.
- 9.2 We may cancel your Order at any time before we dispatch the Goods if Goods are no longer in stock and we are unable to re-stock (if, for example, the Goods are discontinued), if you go into administration, become insolvent or bankrupt or we reasonably believe this is about to occur, or an event occurs outside of our control (please see clause 14 below). If we cancel your Order under this clause 9.2 and you have already paid for the Goods under clause 4, we will confirm the cancellation in writing and the payment will be refunded to you within 14 days.
- 9.3 We may cancel any Order and/or suspend further deliveries, terminate your account and charge interest in accordance with clause 4.6 if:
- 9.3.1 you fail to perform or observe any of your obligations under the Contract or if you are otherwise in breach of the Contract;
- 9.3.2 you become subject to an administration order or enter into a voluntary arrangement or (being an individual or firm) become bankrupt or (being a company) go into liquidation;
- 9.3.3 an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets;
- 9.3.4 you cease, or threaten to cease, to carry on business; or
- 9.3.5 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and we notify you accordingly.
- 9.4 If clause 9.3 applies then, without prejudice to any other right or remedy available to us, payment for any Goods that have been delivered but not paid for will become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10. Assignment and Sub-Contracting**
- 10.1 You may not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.
- 10.2 We may at any time assign, transfer, charge or deal in any other manner with all or any of our rights or obligations under the Contract, but we will obtain your prior consent.
- 10.3 We may use sub-contractors and, in this event, we will be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.
- 11. Liability**
- 11.1 The following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- 11.1.1 any breach of these Terms and Conditions or the Contract;
- 11.1.2 any use made or resale by you of any of the Goods, or of any product incorporating any of the Goods; and
- 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Terms and Conditions seeks to exclude or limit our liability for death or personal injury caused by our negligence; fraud or fraudulent misrepresentation, or any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.
- 11.4 Subject to clauses 11.2 and 11.3:
- 11.4.1 we will be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subsection to improper conditions, failure to follow our instructions (whether given orally or in writing), misuse, attempted repair or alteration of the Goods without our prior approval, or any other breach of these Terms and Conditions or act or omission on your part, or that of your employees, agents or any third party not authorised by us;
- 11.4.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract will be limited to the total sums paid under the Contract; and
- 11.4.3 we will not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11.5 Where the assembly of the Goods is not completed by us, you must follow the instructions provided with the Goods. Failure to do so will result in the invalidation of our liability for damage caused to or by the Goods. In the event you are not provided with any instructions, it is your responsibility to request these prior to assembly.
- 12. Confidentiality:** Both parties agree that they will not use any confidential information provided by the other, except to perform their obligations under the Contract. Each party will maintain the information's confidentiality and will not share it with any third party, unless authorised to do so by the other party in writing.
- 13. Intellectual Property**
- 13.1 We own and reserve all copyright, intellectual property and any other rights (if any) which may subsist in the Goods and any other document, drawing, specification or other information provided to you.
- 13.2 You may not, under any circumstances, copy, alter, modify or adapt the Goods or reverse engineer, decompile, disassemble, modify or create derivative works from the Goods.
- 13.3 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such rights and you will indemnify us for any such infringement.
- 13.4 You warrant that any logo, image, specification, document or instruction you supply or give to us will not cause us to infringe the intellectual property rights of any third party. You agree to indemnify us against all loss, damages, costs and expenses awarded against us or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or other intellectual property rights resulting from your breach of this clause 13.4.
- 14. Force Majeure:** Neither party will be liable for any failure or delay in performing their obligations under the Contract where such failure or delay results from any cause that is beyond that party's reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storm, earthquake, pandemic, epidemic, act of terrorism or war, governmental action or any other event that is beyond the control of the party in question.
- 15. Notices:** Notices will be deemed to have been duly received and properly served 24 hours after an email is sent or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.
- 16. Data Protection:** Both parties agree to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018, the UK General Data Protection Regulation 2016 and any subsequent amendments to them.
- 17. Third Party Rights:** The Contract is between you and us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms and Conditions pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18. Severance:** If one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that/those provisions will be deemed severed from the remainder of these Terms and Conditions (and the Contract, as appropriate). The remainder of these Terms and Conditions will be valid and enforceable.
- 19. Waiver:** No failure or delay by either party in exercising any of its rights under the Contract will be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of the Contract will be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 20. Law and Jurisdiction**
- 20.1 These Terms and Conditions and the relationship between you and us (whether contractual or otherwise) will be governed by, and construed in accordance with, the laws of England and Wales.
- 20.2 Any dispute, controversy, proceedings or claim between you and us relating to the Contract or these Terms and Conditions (whether contractual or otherwise) will be subject to the jurisdiction of the courts of England and Wales.