

TERMS AND CONDITIONS

1. Interpretation

1.1 Definitions:

Buyer	the person or firm who purchases or agrees to purchase the Goods from the Seller.	
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.	4.8
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with Clause 12.6.	
Contract	the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.	4.8.1
Delivery Date	the date quoted by the Seller when the Goods are to be delivered.	4.8.2
Delivery Location	has the meaning given in Clause 4.1.	4.9
Force Majeure Event	an event, circumstance or cause beyond a party's reasonable control.	
Goods	the goods (or any part of them) set out in the Order.	5.
Order	the Buyer's order for the Goods, as set out in the Buyer's written acceptance of the Seller's quotation.	5.1
Seller	JC Catering & Bar Supplies Limited incorporated in England and Wales with company number 5139919 and its registered address at 9, Chapel Street, Poulton-le-Fylde, Lancashire FY6 7BQ.	5.2
Specification	any specification for the Goods including any related plans and drawings.	5.3 5.4

1.2 Interpretation:

1.2.1	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).	5.5
1.2.2	A reference to a party includes its personal representatives, successors and permitted assigns.	6.
1.2.3	A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.	6.1
1.2.4	Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.	6.1.1
1.2.5	A reference to writing or written includes fax and email.	6.1.2

2. Basis of contract

2.1	These conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.	6.3
2.2	The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the order and any applicable Specification are complete and accurate.	6.3.1
2.3	The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.	6.3.2
2.4	The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.	6.3.3
2.5	Any samples, drawings, descriptions or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures and/or on the Seller's website 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 nor have any contractual force.	6.3.4
2.6	A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.	6.3.5

3. Goods

3.1	The Goods are described in the Seller's quotation as modified by any applicable Specification.	6.5
3.2	The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any such event.	6.6

4. Delivery

4.1	The Seller shall deliver the Goods to the location set out in the order or such other location as the parties may agree in writing (Delivery Location).	7.1
4.2	The Seller will make reasonable endeavours to deliver the Goods on the Delivery Date. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.	7.2
4.3	The Buyer may request that the Seller deliver the Goods in advance of the Delivery Date. The Seller may refuse any such request at its discretion.	7.3
4.4	The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.	8.
4.5	The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.	8.1 8.2
4.6	Delivery is completed on the completion of unloading of the Goods at the Delivery Location.	
4.7	If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar	8.3

description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Seller's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

If the Buyer fails to accept delivery of the Goods on the Delivery Date or the date agreed pursuant to Clause 4.3, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract in respect of the Goods:

4.8.1	delivery of the Goods shall be deemed to have been completed at 9.00am on the first Business Day after the Delivery Date or the date agreed pursuant to Clause 4.3; and
4.8.2	the Seller shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).

If ten Business Days after the Delivery Date or the date agreed pursuant to Clause 4.3 the Buyer has not accepted actual delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.

5. Installation

5.1	The Buyer may request that the Seller installs the Goods provided that such request is made before the Delivery Date or the date agreed pursuant to Clause 4.3. The Seller may refuse any such request at its discretion.
5.2	The price of installation shall be payable in addition to the price of the Goods and any other amount due.
5.3	The Seller may engage a sub-contractor of its choice to install the Goods.
5.4	Once the Goods have been installed, the Buyer shall sign a completion or commissioning certificate confirming that the Goods have been installed to a satisfactory standard. In the absence of any such certificate or objection to installation it shall be deemed that the installation has been carried out to a satisfactory standard.
5.5	The Seller will not be liable for any faults or damage to the Goods or any property resulting from the incorrect installation of the Goods by the Buyer or its representatives or agents.

6. Quality

6.1	The Seller warrants that on delivery, the Goods shall:
6.1.1	conform with their description and any applicable Specification; and
6.1.2	be free from material defects in design, material and workmanship.
6.2	Subject to Clause 6.3, if:
6.2.1	the Buyer gives notice in writing to the Seller within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 6.1;
6.2.2	the Seller is given a reasonable opportunity of examining such Goods; and
6.2.3	the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
6.3	The Seller shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 if:
6.3.1	the Buyer makes any further use of such Goods after giving notice in accordance with Clause 6.2;
6.3.2	the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
6.3.3	the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
6.3.4	the Buyer alters or repairs such Goods without the written consent of the Seller;
6.3.5	the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
6.3.6	the Goods differ from their description and/or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

Except as provided in this Clause 5, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Clause 6.1.

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.

These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

Returns

Other than for defect in accordance with Clause 6, the Buyer has no right to return the Goods to the Seller for any reason. However the Seller may exercise its absolute discretion to allow any such request in accordance with the terms of this agreement.

If the Seller agrees to a request under Clause 7.1, the Buyer may be liable to pay a re-stocking fee equal to twenty-five percent (25%) of the price of the Goods in addition to any sums payable under Clause 9 and any additional costs for packaging, insurance and transport.

For the avoidance of doubt, this Clause 7 does not affect the parties' rights and/or obligations under Clause 9.

Title and risk

The risk in the Goods shall pass to the Buyer on completion of delivery. Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

Until title to the Goods has passed to the Buyer, the Buyer shall:

- 8.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.4 notify the Seller immediately if it becomes subject to any of the events listed in Clause 11.1.2 to Clause 11.1.4; and
- 8.3.5 give the Seller such information as the Seller may reasonably required from time to time relating to:
- 8.3.5.1 the Goods; and
- 8.3.5.2 the ongoing financial position of the Buyer.
- 8.4 At any time before title to the Goods passes to the Buyer, the Seller may require the Buyer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
9. **Price and payment**
- 9.1 The price of the Goods shall be the price set out in the Order.
- 9.2 The Seller may, by giving notice to the Buyer 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:
- 9.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2 any request by the Buyer to change the Delivery Date, quantities or types of Goods ordered, or the Specification; or
- 9.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 9.3 The price of the Goods:
- 9.3.1 excludes amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 9.3.2 excludes the costs and charges of packaging, insurance, transport of the Goods and installation (if applicable), which shall be invoiced to the Buyer.
- 9.4 The Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery.
- 9.5 The Buyer shall pay each invoice submitted by the Supplier:
- 9.5.1 within 30 days of the date of the invoice; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by the Seller, and
- time for payment shall be of the essence of the Contract.
- 9.6 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under Clause 11, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.6 will accrue each day at 8% a year above Barclays Bank Plc's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 9.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
10. **Limitation of liability**
- 10.1 The limits and exclusions in this clause reflect the insurance cover the Seller has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.
- 10.2 The restrictions on liability in this Clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 10.3.1 death or personal injury caused by negligence;
- 10.3.2 fraud or fraudulent misrepresentation;
- 10.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 10.3.4 defective products under the Consumer Protection Act 1987.
- 10.4 Subject to Clause 10.3, the Seller's total liability to the Buyer shall not exceed the total amount of the Goods.
- 10.5 Subject to Clause 10.3 the following types of loss are wholly excluded:
- 10.5.1 loss of profits;
- 10.5.2 loss of sales or business;
- 10.5.3 loss of agreements or contracts;
- 10.5.4 loss of anticipated savings;
- 10.5.5 loss of use or corruption of software, data or information;
- 10.5.6 loss of or damage to goodwill; and
- 10.5.7 indirect or consequential loss.
- 10.6 This Clause 10 shall survive termination of the Contract.
11. **Termination**
- 11.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 11.1.1 the Buyer 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;
- 11.1.2 the Buyer 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), obtaining a moratorium, 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;
- 11.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.4 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clause 11.1.2 to Clause 11.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 11.5 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
12. **General**
- 12.1 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving written notice to the affected party.
- 12.2 **Assignment and other dealings.** The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.3 The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- 12.4 **Entire agreement.** The 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.
- 12.5 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.6 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.7 **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.
- 12.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.9 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 12.9.1 delivered by hand or pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 12.9.2 sent by email to the email address specified in any Order.
- 12.10 Any notice shall be deemed to have been received:
- 12.10.1 if delivered by hand, at the time the notice is left at the proper address;
- 12.10.2 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; or
- 12.10.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 12.10.3 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.11 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.12 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.13 **Governing law and jurisdiction.** The 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.
- 12.14 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 the Contract or its subject matter or formation.