



Terms and Conditions of Sale

In these Terms and Conditions of Sale (the “Terms”) the following words shall, unless the context otherwise requires, have the following meanings attached:-

“we” “us” “our” means Border Precision Limited a company registered in Scotland number SC049389 with their Registered Office at 26 High Street, Jedburgh, Roxburghshire, TD8 6AE or its assignees or successors whomsoever;

“you” “your” means the person or persons (whether legal and/or natural) to whom these Terms (or any document which these Terms accompany) are addressed;

“the contract” means the agreement between us and you for the provision of goods and/or services, consisting of our quotation and your written acceptance, or your order and our acceptance or written acknowledgement of the same, as the case may be, duly incorporating these Terms;

“the goods” means the goods which were to be sold and bought under the contract the quantity and specification of which shall be as stated in the contract;

“processing” “process” means the services to have been provided by us as set out in the contract.

Your particular attention is drawn to Clauses 7.1, 7.4-8 and 10.4 which limit our liability to you.

1. Price

- 1.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 1.2 Our quotations lapse after 30 days (unless otherwise stated).
- 1.3 The price quoted excludes delivery (other than in the mainland of the United Kingdom and Northern Ireland where delivery is included unless otherwise stated).
- 1.4 Rates of tax and duties on the goods will be those applying at the time of delivery.
- 1.5 We may charge you at our current rates for any additional or experimental work which you ask us to do.

2. Delivery

- 2.1 Any times quoted by us for delivery of the goods, processing, accepting delivery of your goods or making the goods available for your collection are estimates only and time shall not be of the essence.
- 2.2 If we fail to perform any of our obligations within a reasonable time, you may by written notice cancel the contract provided that:-
 - (i) such notice shall be effective only on our receipt of it;
 - (ii) such notice will be of no effect if received by us after the earlier of (a) the goods having been despatched, (b) our having commenced production of goods tailored to your specification, or (c) our having commenced processing;
 - (iii) in so cancelling you agree that we shall not be liable to any extent to you or third parties under the contract (or for any failure to perform the contract) and you agree to indemnify us from any claims arising from the contract (or such failure to perform the contract).
- 2.3 If you allow us to perform any of our obligations after the estimated time for doing so, or if you accept receipt of the goods after the estimated completion time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 2.4 We may deliver or process the goods in instalments. Each instalment is treated as a separate delivery.
- 2.5 We may decline to deliver if:
 - (i) we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - (ii) the premises (or the access to them) are unsuitable for our vehicle.
- 2.6 In the event of declinature under Clause 2.5 above, delivery shall be deemed to have taken place at the time we give notice to you (by writing or otherwise) of said declinature. If you have not collected the goods within 30 days we may charge you for the costs of storing the goods, backdated to the date of notice (but the risk in the goods shall at all times remain yours).

3. Your Goods

- 3.1 Unless otherwise agreed in writing, you are responsible for delivering your goods to our premises and for collecting them after processing.
- 3.2 Such goods remain your property at all times and we will hold them at your risk. You must insure your goods for their full value against all reasonable risks which arise out of our handling, storing or processing them.
- 3.3 You must ensure that your goods:



- (i) are of good quality and free from variations in surface finish;
- (ii) are suitable for the process which you have requested;
- (iii) do not infringe the intellectual property rights of any third party or any law or regulation.

4. Risk

4.1 The goods ordered by you are at your risk from the time of delivery.

4.2 The time of delivery is when the goods are:-

- (i) received by you (if we have agreed to arrange their carriage);
- (ii) available for collection (if you are to arrange their carriage); or
- (iii) deemed to have been delivered in accordance with Clause 2.6 above.

4.3 If the contract is (apart from this provision) silent as to who is to arrange carriage then you will be deemed to be responsible for arranging carriage.

4.4 You must inspect the goods on delivery. If any goods are damaged (or not delivered), you must write to tell us within seven days of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect the damaged goods.

4.5 The extent of our liability for damaged or undelivered goods where we carry the risk is (at our absolute discretion) a refund of the price paid, or replacement of the goods.

5. Payment Terms

5.1 You are to pay us in cash or in cleared funds prior to delivery, unless you have an approved credit account. If you do not have an approved credit account the due date for purposes of Clause 5.3 below is the date on which (apart from your failure to pay) the goods would have been available for collection.

5.2 If you have an approved credit account, payment is due no later than 30 days after the date of the invoice. (unless otherwise agreed in writing).

5.3 If you fail to pay us in full on the due date:

- (i) we may suspend or cancel future deliveries;
- (ii) we may cancel any discount offered to you;
- (iii) you must pay us interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998
 - a. calculated (on a daily basis) from the date of our invoice until payment;
 - b. compounded on the first day of each month; and
 - c. before and after any judgment;
- (iv) we may claim fixed sum compensation from you under s.5A of that Act.

5.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date of payment. We may do any of those at any time without notice.

5.5 You do not have the right to set off any money you may claim from us against anything you may owe to us.

5.6 While you owe money to us, we shall have a lien over any of your property in our possession.

6. Title

6.1 Notwithstanding that risk in the goods may have passed and the goods may have been delivered, until you pay all debts you may owe us:

- (i) we retain title and ownership of all goods supplied by us;
- (ii) you must store them so that they are clearly identifiable as our property;
- (iii) you must insure them (against the risk for which a prudent owner would insure them) and hold the policy on trust for us;
- (iv) you may possess and use those goods and sell them in the ordinary course of your business, but not if;
 - a. we revoke that right (by informing you in writing);
 - b. you become insolvent, go into administration, liquidation or receivership, or sign a Trust Deed for creditors, or are subject to a petition to be wound up, or contemplate ceasing to trade; or
 - c. you attempt to encumber the goods or in any way make them subject to a charge.
- (v) if you have sold the goods or upon the incorporation or admixture of the goods into other products of you or your customers then you shall hold in trust for us the proceeds of sale of such goods or (in the case of incorporation or admixture) a fair proportion of the price received by you for the sale of your products.

- 6.2 While goods remain our property you must inform us (in writing) immediately if you become insolvent, go into administration, liquidation or receivership, or sign a Trust Deed for creditors, or are subject to a petition to be wound up, or contemplate ceasing to trade.
- 6.3 Nothing in this Clause 6 shall entitle you to return the goods, or postpone payment. You acknowledge that no goods are supplied on a sale or return basis.
- 6.4 If your right to sell and use the goods ends you must allow us to remove the goods. While the goods remain our property we have your permission to enter any premises where the goods may be stored:
- (i) at any time to inspect them; and
 - (ii) after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.
- 6.7 On termination of the contract, howsoever caused, our (but not your) rights contained in this Clause 6 shall remain in effect.

7. Warranties

- 7.1 Save as expressly provided for in this clause of these Terms we make no warranty or representation (and exclude any warranty, representation term or condition that would otherwise be implied) as to the quality of any process carried out, or the goods, or the fitness for any purpose of any finish, materials or processed goods.
- 7.2 Nothing in these Terms restricts or limits our liability for (a) death or personal injury resulting from our negligence or negligence of those for whom we are legally responsible, (b) any matter which it would be illegal for us to exclude or attempt to exclude liability, or (c) fraud or fraudulent misrepresentation.
- 7.3 We warrant the goods supplied or process carried out:
- (i) will comply with the description on our acknowledgement of an order form; and
 - (ii) will be free from substantial defect for a period of 3 months from the date of delivery (subject to Clause 7.4 and provided that you comply with Clause 7.5).
- 7.4 The warranty given in Clause 7.3 is subject to the following exclusions:-
- 7.4.1 we shall have no liability to the extent that any loss, cost or damage is attributable to any specification or anything else supplied by you;
 - 7.4.2 we shall have no liability where the defect causing your loss, damage or expense is attributable to any defect in any part or materials supplied by a third party (but we shall grant you such rights as we may have against that third party);
 - 7.4.3 we shall have no liability to you in terms of this contract for fair wear and tear, for loss damage or destruction or damage of the goods due to repairs or alterations not carried out by us or our authorised agents (or where such repairs or alterations are carried out without our written consent), for any misuse or abuse of the goods, nor for failure to follow (i) any operating instructions, training or manual supplied by us (or where appropriate by the manufacturer or their representative) in respect of the goods, or (ii) our oral or written instructions or advice, including, without limitation, advice as to the storage, installation, commissioning, testing, operation, repair or maintenance of the goods or good trade practice;
 - 7.4.4 we shall have no liability to you under the contract where you have continued to make any use of the goods after you have given us notice in accordance with Clause 7.5 below;
 - 7.4.5 we shall have no liability to you under the contract in respect of any inadequate, faulty or incompetent testing of the goods by any third party.
- 7.5 If you believe that we have delivered goods or carried out a process which is substantially defective in materials or workmanship, you must:
- (i) inform us (in writing), with full details, as soon as possible and at the latest within 14 days of the end of the warranty period; and
 - (ii) allow us to investigate (including access to your premises and product samples).
- 7.6 If, following our investigations, the goods or process are found to be substantially defective in material or workmanship and you have fully complied with the conditions in clause 7.4, we will (at our absolute discretion) replace the goods or refund the price. However, our total liability to you (other than for personal injury/death) shall be the lesser of either (a) the price paid by you, or (b) one million pounds (£1,000,000) Sterling.
- 7.7 We are not liable for any other loss or damage, even if we are negligent, (including without prejudice to the foregoing generality indirect or consequential loss, pure economic loss, loss of profits or loss of use) arising from the contract, processing, the supply of goods or their use.
- 7.8 Your rights under this Clause 7 shall not be assignable to any other person.



8. Specification

- 8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:
- (i) the specifications or instructions are accurate;
 - (ii) goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
 - (iii) your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 8.2 We reserve the right to make any changes in the specifications of our goods which are necessary to ensure they conform to any applicable safety or other statutory requirements.

9. Return of Goods

- 9.1 We will accept the return of goods only:
- (i) by prior arrangement (confirmed in writing by us); and
 - (ii) where the goods are as fit for sale on their return as they were on delivery.

10. Export Terms

- 10.1 Where the goods are supplied by us to you by way of export from the United Kingdom clause 10 of these Terms applies (in place of any Clauses inconsistent herewith).
- 10.2 Unless otherwise agreed in writing, the goods are supplied on an ex works of us basis.
- 10.3 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.
- 10.4 You agree that if (without prejudice to Clause 16.1) it is determined that the law applicable to the contract is that of a jurisdiction other than one within the United Kingdom, then to the fullest extent permitted by the applicable law we shall not be liable to any person for any loss, damages or others in respect of death or personal injury caused by us, even where we have acted (or omitted to act) negligently.

11. Cancellation

- 11.1 If your order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for your order.
- 11.2 We may suspend or cancel your order, by written notice, and without payment of compensation to you if:
- (i) you fail to pay us any money when due (under your order or otherwise);
 - (ii) you become insolvent, go into administration, liquidation or receivership, or sign a Trust Deed for creditors, or are subject to a petition to be wound up;
 - (iii) you breach any of your obligations under these Terms.
- 11.3 You may not cancel the order unless we agree in writing (and clause 2.2(iii) and 11.1 then apply).

12. Superiority of Terms, Waiver and Variation

- 12.1 Any contract between us shall incorporate these Terms. Accordingly, subject to any variation of these Terms agreed pursuant to Clause 12.5 below the goods shall be sold by us and bought by you (and/or the processing carried out by us for you) on the terms and conditions stated in these Terms and on the terms and conditions stated in the contract, to the exclusion of all other terms and conditions (including any terms and conditions which you purport to apply under any purchase order, confirmation order, specification, or other document). No terms and conditions endorsed on, delivered with or contained in your purchase order, confirmation order, specification, or other document shall form part of the contract simply as a result such document being referred to in the contract.
- 12.2 It is hereby agreed between you and us that if anything in the contract is inconsistent with these Terms then these Terms shall prevail unless we have granted a variation of the relevant term in accordance with the provisions of Clause 12.5 below.
- 12.3 In particular (and without limitation of the other provisions of Clause 12) you expressly agree that performance by us of our obligations under the contract shall not indicate or imply that we have accepted any of your terms which are intimated to us after the issuance to you of these Terms.



- 12.4 Any concession or indulgence (express or implied) granted by us shall not be considered as a waiver of our rights, nor shall it personally bar us from later relying on any provision, unless we have expressly agreed to waive our rights in accordance with Clause 12.5 below as though waiver and waive were therein substituted in place of variation and vary, respectively.
- 12.5 Any variation granted by us shall have no legal effect unless it is in writing, signed by one or more of our directors or authorised signatories, and expressly bears to vary these Terms.
- 12.6 You agree that any future dealings between us will be on these Terms.
- 12.7 You acknowledge that you have not relied on any statement, promise or representation made by or given on behalf of us (including, without limitation, all brochures, catalogues and other promotional materials) which is not set out in the contract. Nothing in this condition shall limit our liability for fraud or fraudulent misrepresentation.

13. Force Majeure

We shall be under no liability to you in respect of anything which but for this provision may constitute breach of our contract arising by reason of force majeure, namely circumstances beyond our control, including (without prejudice to the foregoing generality) acts of God, war, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, terrorism, acts of local government and parliamentary authority, breakdown of equipment, labour disputes of any nature (including without limitation work to rule, overtime bans, strikes and lockouts) whether by way of example between us, you or any other employer and our/your/their employees or otherwise, and difficulty in obtaining supplies.

14. Assignment

- 14.1 We may assign, transfer, or sub-contract the contract or any rights under it (or any part of it) to any person, firm or company.
- 14.2 You shall not be entitled to assign the contract or any part of it without our prior written consent.

15. Indemnity

- 15.1 You agree to indemnify us in full and hold us harmless from all losses, claims, expenses and liabilities of whatsoever nature (and without prejudice to the foregoing generality including financing costs, loss of profit, legal and other professional costs and outlays, loss of reputation, and interest) made by third parties, or sustained or incurred by us and caused in whole or part or arising out of any act, omission or negligence by you in connection with the use or storage of the goods. For the avoidance of doubt, in relation to these Terms legal costs shall include the costs of appeal to any superior court.

16. General

- 16.1 The contract (and these Terms) shall be construed in accordance with the Laws of Scotland. The Scottish courts shall have non-exclusive jurisdiction of any matters relating to the contract and these Terms.
- 16.2 If the order is placed by, or on behalf of, a partnership or other unincorporated body each partner, or member as the case may be, is jointly and severally liable for all obligations under these Terms; and by placing an order you warrant that you have authority to bind each and every partner or member
- 16.3 If any of these Terms are held to be void or otherwise unenforceable :
- (i) it will not affect the validity or enforceability of any other of these Terms; and
 - (ii) if it would be enforceable if amended, it will be treated as so amended.
- 16.4 Except as otherwise expressly provided for in these Terms any notice by either of us which is to be served under these Terms may be served by leaving it at or by delivering it to (by first class post or by fax) the others registered office or place of business. All such notices must be signed.
- 16.5 To the fullest extent permitted by law the contract (and these Terms) shall not give rights to third parties for any claim for loss or damages against us, and it is expressly declared that nothing in these Terms shall be construed as granting any such right.
- 16.6 Each of our rights or remedies under the contract is without prejudice to any other right or remedy of ours whether under the contract or not.
- 16.7 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.