

BRANDS HOME & LEISURE GROUP LIMITED
TERMS AND CONDITIONS OF SALE

These are the terms and conditions on which Brands Home & Leisure Group Limited ("BHL", "We" or "Us") will do business with the Customer. Please read them carefully, particularly clause 10 (which limits BHL's liability).

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words and phrases shall have the following meanings:-

Contract means any contract between You and BHL for the sale and purchase of the Goods, incorporating these conditions.

Customer

means the person, company or organisation that agrees to purchase the Goods from BHL on the terms of this Contract.

Delivery Point the place where delivery of the Goods is to take place under clause 4.

Due Date means 30 days from the date of invoice;

Goods any goods agreed in the Contract to be supplied to You by BHL (including any part or parts of them).

Order means the official order with an order number issued by You for the Goods.

Price means the total price payable by You to BHL under this Contract in accordance with clauses 7.1 and 7.2 below;

Working Days means a day other than a Saturday, Sunday or public or bank holiday in England;

You means the Customer (and "your" shall be construed accordingly).

1.2

A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3

Words in the singular include the plural and in the plural include the singular.

1.4

A reference to one gender includes a reference to the other gender.

1.5

Condition headings do not affect the interpretation of these conditions.

2

APPLICATION OF TERMS

2.1

Subject to any variation under clause 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of Order, specification or other document).

2.2

No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of Order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3

These conditions apply to all of BHL's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of BHL. You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of BHL which is not set out in the contract. Nothing in this condition shall exclude or limit BHL's liability for fraudulent misrepresentation.

2.4

All quotations are made by BHL on the basis that the Contract between You and BHL shall not come into existence until You send an Order to BHL.

2.5

Any quotation given by BHL is valid for a period of 30 days from the date on which it was issued. We reserve the right to withdraw a quotation before the end of such 30 day period in exceptional circumstances for example, if BHL's supplier's increase their costs.

2.6

The Contract is formed when We have received an Order from You and We have notified You of the Price.

2.7

You shall ensure that your Order is complete and accurate.

3

DESCRIPTION

3.1

All samples, drawings, descriptive matter, specifications and advertising issued by BHL and any descriptions or illustrations contained in BHL's catalogues, website or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4

DELIVERY

4.1

Unless otherwise agreed in writing by BHL, delivery of the Goods shall take place at the time when We or our carrier deliver the Goods to the Customer's premises. We will invoice You for the delivery costs in accordance with clause 7.2. Delivery costs shall be as set out in Schedule 1 (and We reserve the right to amend delivery costs from time to time without prior notice to the Customer).

4.2

Any dates specified by Us for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions We shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by BHL's negligence), nor shall any delay entitle You to terminate or rescind the Contract unless such delay exceeds 15 Working Days.

4.4 If for any reason You fail to accept delivery of any of the Goods when they are ready for delivery, or We are unable to deliver the Goods on time because You have not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to You (including for loss or damage caused by BHL's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) We may store the Goods until delivery, whereupon You shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle You to repudiate or cancel any other Contract or instalment.

5 NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by BHL upon despatch from Our place of business shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary.

5.2 We shall not be liable for any non-delivery of Goods (even if caused by BHL's negligence) unless You give written notice to Us of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of BHL for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 RISK/TITLE

6.1 The Goods are at your risk from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until We have received in full (in cash or cleared funds) all sums due to BHL in respect of the Goods.

6.3 Until ownership of the Goods has passed to You, You shall:

- (a) hold the Goods on a fiduciary basis as BHL's bailee;
- (b) store the Goods (at no cost to BHL) separately from all other goods of BHL or any third party in such a way that they remain readily identifiable as BHL's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on BHL's behalf for their full price against all risks to BHL's reasonable satisfaction. On request You shall produce the policy of insurance to BHL.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- (b) any such sale shall be a sale of BHL's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against it or it makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or the Customer enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or the Customer has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or the Customer fails to observe or perform any of its obligations under the Contract or any other contract between BHL and the Customer, or the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

- 6.6 BHL shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from BHL.
- 6.7 The Customer grants BHL, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.8 Where BHL are unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by BHL to the Customer in the order in which the Goods were invoiced to the Customer.
- 6.9 On termination of the Contract, howsoever caused, BHL (but not the Customer's) rights contained in this clause 6 shall remain in effect.
- 7 PRICE
- 7.1 Unless otherwise agreed by BHL in writing, the price for the Goods shall be the price notified to You by BHL prior to or when You place the Order.
- 7.2 The price for the Goods shall be exclusive of:-
- (a) any value added tax; and
 - (b) all delivery costs or other charges in relation to carriage.
- You agree to pay all of these sums in addition to the price of the Goods on or before the Due Date.
- 7.3 In certain circumstances BHL may need to increase the Price of the Goods after the Contract has been entered into. We will only do this where the increase is necessary:-
- (a) because of any change in delivery dates for the Goods which is requested by You; and/or
 - (b) due to the failure by You to give BHL adequate information or instructions.
- 8 PAYMENT
- 8.1 Subject to clause 8.4, payment of the price for the Goods is due in pounds sterling on the Due Date.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until BHL have received cleared funds.
- 8.4 All payments payable to BHL under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless You have a valid court order requiring an amount equal to such deduction to be paid by BHL to You.
- 8.6 If You fail to pay BHL any sum due pursuant to the Contract:
- (a) You shall be liable to pay interest to BHL on such sum from the Due Date at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. BHL reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) We reserve the right to suspend deliveries of the Goods under this Contract and any other contract with You and to refuse to accept further Orders from You.
- 9 QUALITY
- 9.1 Where BHL are not the manufacturer of the Goods, BHL shall endeavour to transfer to You the benefit of any warranty or guarantee given to BHL.
- 9.2 BHL warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.3 We shall not be liable for a breach of the warranty in clause 9.2 unless:
- (a) You give written notice of the defect to Us, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when You discover or ought to have discovered the defect; and
 - (b) We are given a reasonable opportunity after receiving the notice of examining such Goods and You (if asked to do so by Us) return such Goods to BHL's place of business at BHL's cost for the examination to take place there.

- 9.4 We shall not be liable for a breach of the warranty in clause 9.2 if:
- (a) You make any further use of such Goods after giving such notice; or
 - (b) the defect arises because You failed to follow BHL's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice; or
 - (c) You alter or repair such Goods without BHL's written consent.

9.5 Subject to clause 9.3 and clause 9.4, if any of the Goods do not conform with the warranty in clause 9.2 BHL shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if BHL so requests, You shall, at BHL's expense, return the Goods or the part of such Goods which is defective to BHL.

9.6 If BHL comply with clause 9.5 We shall have no further liability for a breach of the warranty in clause 9.2 in respect of such Goods.

10 LIMITATION OF LIABILITY

10.1 Subject to clause 4, clause 5 and clause 9, the following provisions set out the entire financial liability of BHL (including any liability for the acts or omissions of BHL's employees, agents and sub-contractors) to BHL in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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.

10.3 Nothing in these conditions excludes or limits BHL's liability:

- (a) for death or personal injury caused by its negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for BHL to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and clause 10.3:

- (a) BHL's 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 shall be limited to the Contract price for the Goods giving rise to the liability and 50% of the same amount for any additional costs directly, reasonably and necessarily incurred by You in obtaining alternative products; and
- (b) BHL shall 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 ASSIGNMENT

11.1 We may assign the Contract or any part of it to any person, firm or company.

11.2 You shall not be entitled to assign the Contract or any part of it without BHL's prior written consent.

12 FORCE MAJEURE

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by You (without liability to You) if We are prevented from or delayed in the carrying on of Our business due to circumstances beyond Our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, You shall be entitled to give notice in writing to BHL to terminate the Contract.

13 GENERAL

- 13.1 Each of BHL's rights or remedies under the Contract is without prejudice to any other right or remedy of BHL whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 BHL's failure or delay in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by BHL of any breach of, or any default under, any provision of the Contract by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14 COMMUNICATIONS
- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to BHL) to Our registered office or such changed address as shall be notified to You by BHL; or
- (b) (in the case of the communications to You) to the registered office of the addressee (if it is a company) or (in any other case) to your address as set out in the Order or such other address as shall be notified to BHL by You.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a Working Day prior to 4.00 pm, at the time of transmission and otherwise on the next Working Day.
- 14.3 Communications addressed to BHL shall be marked for the attention of Managing Director.

SCHEDULE 1
DELIVERY CHARGES

PART A - FOR DELIVERIES TO UK INCLUDING NORTHERN IRELAND

Value of Order	Delivery Charge
Under £350	Whichever is the greater of, the charge imposed by the carrier or £15. BHL will notify You of the delivery charge when it confirms the Price.
£350 to £500	The charge imposed by the carrier which will depend upon the number of pallets.
Over £500	Free

PART B - FOR DELIVERY TO ISLE OF MAN, CHANNEL ISLANDS AND FOR EXPORT ORDERS

Value of Order	Delivery Charge
Over £500	Free (Goods delivered FOB (Incoterms 2000) UK mainland port nearest to destination).