

HARVEY & WADE LIMITED

TERMS & CONDITIONS

1. DEFINITIONS

1.1 The definitions in this clause apply in the terms and conditions set out in this document:

Force Majeure Event: shall have the meaning given in clause 16;

Goods: means the products that we are selling to you as set out in the Order;

Order: means your order for the Goods as set out overleaf;

Premises: means the place where we will provide the installation;

Installation: means the installation of the Goods as set out in the Order;

Terms: means the terms and conditions set out in this document;

Writing or written: includes faxes but not email;

we/us: means Harvey & Wade Limited, a company registered in England and Wales under company number 06389088 and with our registered office at 2 Chartfield House, Castle Street, Taunton TA1 4AS;

working day: means day other than Saturday, Sunday and public holidays when clearing banks are generally open for business in London;

you/your: means you as the customer.

1.2 Headings used in these Terms are used for the purposes of identification only and shall not constitute part of these Terms nor be taken into account in the interpretation, construction or meaning hereof.

2. BASIS OF SALE

2.1 These Terms, the Order and acceptance of your order are considered by us to set out the whole agreement between you and us for the sale of the Goods and, if applicable, the Installation. Please check that the details in the Terms or on the Order are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing by our authorised employees and agents. Please ensure that you read and understand these Terms before you sign the Order, because you will be bound by Terms once a contract comes into existence between us, in accordance with clause 2.5. If you have any questions, please ask us. You should keep a copy of these terms and conditions for your records.

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2.2 Any samples, drawings, descriptions or advertising we issue, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published solely to provide you with an approximate idea of the Goods they describe. They do not form part of the contract between you and us or any other contract between you and us for the sale or the installation of the Goods.

2.3 If any of these Terms are inconsistent with any term of the Order, the Order shall prevail.

2.4 The completed Order is an offer by you to enter into a binding contract, which we are free to accept or decline at our absolute discretion.

2.5 Subject to clause 2.6, these Terms shall become binding on you and us when we receive your deposit in accordance with clause 13.2.1 or clause 13.2.3 below at which point a contract shall come into existence between us ("Contract").

2.6 If we are unable to supply the Goods or the Installation due to operational reasons or shortage of stock we reserve the right to cancel the Contract at our absolute discretion. In such an event, the provisions contained in the Terms shall not apply. We may contact you to offer alternative products, or with a view to agreeing an extension of delivery or installation time for the Goods (in which instance the Contract will come into force when we have confirmed the Goods to be supplied and/or the delivery or installation time for the Goods).

2.7 Any prices for the Goods are given on the basis that a binding Contract shall only come into existence in accordance with clause 2.5. A quotation shall be valid for a period 60 calendar days from its date of issue, unless we notify you in writing that we have withdrawn it during this period.

2.8 Once you have placed an Order and a Contract is formed in accordance with clause 2.5, you do not have a right to cancel the Order unless the provisions of clause 3 are applicable.

2.9 We have the right to revise and amend these Terms from time to time. You will be subject to the policies and terms in force at the time that the Contract comes into existence in accordance with clause 2.5, unless any change to those policies or these Terms is required by law or government or regulatory authority (in which case, it will apply to orders you have previously placed that we have not yet fulfilled).

2.10 By entering into a Contract, you warrant that:

2.10.1 You are legally capable of entering into binding contracts;

2.10.2 You are at least 18 years old; and

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2.10.3 You have had a reasonable and fair opportunity of inspecting these Terms and you agree to be bound by them.

3. CANCELLATION

3.1 You may cancel the Contract at any time within seven working days, beginning on the day of the Contract (the "Cooling Off Period") by complying with the provisions of clause 3.2 below. In this case, you will receive a full refund of the deposit paid within 7 working days.

3.2 To cancel a Contract, you must fill out the cancellation notice set out at the end of these terms and ensure that this is received by using during the Cooling Off Period. We will usually process the refund of the deposit due to you as soon as possible and, in any case, within 30 days of the day we confirmed to you that you were entitled to a refund of the deposit.

3.3 Except where we agree in writing or as otherwise provided in these Terms, you will not be able to cancel a Contract after the Cooling Off Period, or if you have authorised us to begin the manufacturing process of the Goods (if earlier).

3.4 We may terminate the Contract with immediate effect by giving written notice to you if:

3.4.1 We have reason to believe that you will fail to pay for the Goods or that you will not comply with these Terms; or

3.4.2 You fail to pay any amount due under the Contract on the due date for payment and remain in default not less than seven (7) days after being notified in writing to make such payment; or

3.4.3 You commit a significant breach of the Contract and the breach cannot be put right; or

3.4.4 You commit a significant breach of the Contract and the breach can be put right but you fail to do so within thirty (30) days from the date we tell you about the breach; or

3.4.5 If you commit an act of bankruptcy or are the subject of a petition for bankruptcy.

3.5 You may terminate the Contract with immediate effect by giving written notice to us if:

3.5.1 We commit a significant breach of the Contract and the breach cannot be put right; or

3.5.2 We commit a significant breach of the Contract and the breach can be put right but we fail to do so within thirty (30) days from the date you tell us about the breach; or

3.5.3 We are deemed unable to pay our debts (within the meaning of section 123 of the Insolvency Act 1986).

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3.6 Termination will not affect either party's outstanding rights or duties, including our right to recover from you any money you owe us under these Terms.

3.7 If you do not, or you provide us with incomplete, incorrect or inaccurate information or instructions, we may cancel your Order by giving you written notice, or we may make an additional charge of a reasonable sum to cover any extra work that is required.

3.8 On occasion, we may be forced by events out of our control to cancel the Contract following receipt of your deposit under the Contract. In such circumstances, we reserve the right to cancel the Contract but we shall be obliged to repay your deposit in full within 14 days of providing you with such notice of cancellation.

4. AMENDMENT OF ORDER

4.1 You may ask us to amend your Order at any time before (or during) Installation. We will consider your proposed amendment and let you know if we are able to comply with it and any cost effect. If you decide you would like to go ahead with the amendment, we will amend the Order accordingly to reflect the amendment and any effect on the prices. The amended Order will constitute the Contract.

4.2 Where your amendment or cancellation is due to our failure to comply with these Terms you shall have no liability to us for the amendment or cancellation.

5. THE GOODS

5.1 We warrant that, on delivery (and, if applicable, Installation), the Goods shall:

5.2 Conform in all material respects with the manufacturer's specification subject to any qualification or representation made by us or contained in the brochures, advertisements or other documentation;

5.2.1 Be of satisfactory quality;

5.2.2 Be fit for any purpose we say the Goods are fit for and for any reasonable purpose for which you use the Goods;

5.2.3 Be free from material defects in design, material and workmanship; and

5.2.4 Comply with all applicable statutory and regulatory requirements for selling the Goods in the United Kingdom.

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5.3 The warranty in clause 5.1 is in addition to your legal rights in relation to Goods which are faulty or which otherwise do not conform with these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or trading standards office.

5.4 The warranty in clause 5.1 does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by you or any third party, if you use the Goods in a way that we do not recommend, your failure to follow our instructions, or any alteration or repair you carry out without our prior written approval.

5.5 We will take reasonable steps to procure that the Goods are packed properly and to ensure that you receive them in good condition.

5.6 These Terms apply to any repaired or replacement Goods we supply to you in the unlikely event that the original Goods are faulty or do not otherwise conform with these Terms.

6. DELIVERY

6.1 Subject to clause 2.6, we will aim to deliver the Goods to you within a reasonable period of time after the date on which we notify you that they are ready.

6.2 Delivery of the Order shall be completed when we deliver the Goods to you.

6.3 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. We will take reasonable steps to meet the delivery date agreed between us. However, occasionally delivery may be affected by factors beyond our control and so cannot be guaranteed. We will let you know if we become aware of an unexpected delay and will arrange a new delivery date with you.

6.4 We reserve the right to alter the method of delivery and will notify you of the changes, if any, and obtain your acceptance to these, prior to dispatch of the Goods.

6.5 Please ensure that the Goods are as ordered and undamaged on delivery. Please inspect the Goods on delivery and check that everything is as ordered and appears in good condition.

6.6 If any of the Goods are damaged or lost you must not accept delivery of the damaged Goods. You must make a note on the delivery drivers notes and contact us with the details of the damage within 36 hours of delivery. **If you do not check the Goods before signing the driver's notes then a claim cannot be made against the delivery company.**

6.7 If you fail to take delivery of an Order, then except where this failure is caused by our failure to comply with these Terms or by an event beyond our control:

6.7.1 We reserve the right to charge you subsequent delivery charges;

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6.7.2 We may consider storage of the Goods until delivery takes place and may charge you a reasonable sum as agreed.

6.7.3 We shall have no liability to you for late delivery.

6.8 If you have not taken delivery of the Goods within (two weeks) of our initial delivery date, we may, after giving you reasonable prior notice in writing, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, pay you for any excess over the price of the Goods or charge you for any shortfall below their price.

6.9 If we are not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, we will deliver the Order in instalments. We will not charge you extra delivery costs for this. If you ask us to deliver the Order in instalments, we may charge you extra delivery costs. Each instalment shall constitute a separate Contract. If we are late delivering an instalment or one instalment is faulty, that will not entitle you to cancel any other instalment.

6.10 The quantity of any consignment of Goods as recorded by us 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.

6.11 We shall not be liable for any non-delivery of Goods (even if caused by our negligence) unless written notice is given to us within 2 days of the date when the Goods would in the ordinary course of events have been received.

6.12 We advise that you do not confirm any planned start dates with your proposed installer until the Goods are safely received and you have had an opportunity to check the Goods for any defects.

6.13 Any liability we have for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time.

7. DEFECTIVE GOODS AND REFUNDS

7.1 In the unlikely event that the Goods do not conform with these Terms, and you have complied with your obligations set out in clauses 6.5 and 6.6 above, please let us know as soon as possible after delivery. We will, if appropriate, collect the Goods on a date agreed between us or ask you to return the Goods to us in accordance with clause 7.2 below at our cost.

7.2 If we have asked you to return the defective Goods to us, please return them to us within 14 days of the date of delivery of the Goods to you.

7.3 Once we have checked that the Goods are faulty, we will either:

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7.4 Provide you with a full or partial refund; or

7.5 Replace the Goods; or

7.6 Repair the Goods

We will notify you of our proposed course of action within a reasonable period of time. We will usually process the refund due to you as soon as possible and, in any case, within 30 days of the day we confirmed to you that you were entitled to a refund for the defective Goods. Goods returned in full, including a refund of the delivery charges for sending the item to you and the cost incurred by you in returning the item to us.

7.7 If you return Goods to us which prove not to be defective, you will remain liable for the cost of returning the Goods to us, and the cost of us re-delivering them to you (we may make the Goods available for you to collect).

7.8 We will usually refund any money received from you using the same method originally used by you to pay for your purchase.

8. INSTALLATION

8.1 If we are contracted to install the Goods; we will aim to start Installation at the Premises on a date agreed between us.

8.2 We will make every effort to complete the Installation on time but there may be delays due to circumstances beyond our control. In this case, we will complete the Installation as soon as reasonably possible after arranging a new Installation date with you.

8.3 In limited circumstances we will need to provide different or no Installation to you. This will be usually where the following occurs:

8.3.1 An issue or problem becomes apparent or is revealed when we start performing the Installation which we could not have reasonably foreseen at the time we provided the estimate or survey and means that it is not safe for us to continue working; or

8.3.2 We are instructed or informed that the Installation we are performing are not in accordance with statutory or regulatory requirements or are in breach of planning consents or environmental or conservation requirements.

8.4 We may have to suspend the Installation if we have to deal with technical problems, or to make improvements. We will let you know in advance where this occurs, unless the problem is urgent or an emergency. We will normally attempt to recommence the Installation as soon as the situation which has stopped us has been resolved. In such circumstances there may be a

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delay (sometimes a substantial delay) before we can start or continue performing the Installation.

8.5 We will provide you with the Installation:

8.5.1 Using reasonable care and skill;

8.5.2 That comply with commonly accepted building practices:

8.5.3 In compliance with the building laws and regulations in force at the time we carry out the Installation.

8.6 In the unlikely event that the Installation does not conform with these Terms, please let us know as soon as possible after we have carried it out. In such circumstances we shall remedy the faults or re-perform the Installation (depending on what is reasonable).

9. YOUR OBLIGATIONS BEFORE AND DURING INSTALLATION

9.1 It is your responsibility to ensure that the Premises are ready for Installation in all respects, that all old fittings have been removed, all electrical and plumbing works needed have been carried out (save for any that we have agreed to carry out) and the walls, floors and any surfaces are in good state of repair to receive the Installation.

9.2 You should remove any items (you are able to remove) from the areas in Premises where we will be performing the Installation by the date or time when we are due to start performing the Installation.

9.3 We suggest that you cover any items, furniture or fixtures or fittings which you will not be moving from the areas at the Premises where we will be working in order to protect them from dust or dirt.

9.4 You will allow us to gain access to the Premises at the dates and times we and you agree when we will perform the Installation.

9.5 You will obtain all necessary consents, permissions and approvals before we start performing the Installation.

9.6 During the Installation you will:

9.6.1 Co-operate with us and our sub-contractors in all matters relating to the Installation;

9.6.2 Allow us access to a water supply;

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9.6.3 Allow us to use electricity from normal 220/240 volt 3-pin sockets;

9.6.4 Allow us to leave our tools and materials at the Premises at times when we are not performing the Installation;

9.6.5 Provide us with means to access and leave the Premises;

9.6.6 Allow us to use your toilet and washing facilities; and

9.6.7 Provide a parking permit I(for a visitor) throughout the times we are providing the Installation (if required or imposed by a local or other authority).

10. TITLE AND RISK

10.1 The Goods will be your responsibility from the time of delivery.

10.2 Ownership of the Goods will only pass to you when we receive payment in full of all sums due for the Goods under the Contract.

10.3 Until title to the Goods has passed to you, you shall:

10.3.1 Hold the Goods on a fiduciary basis as our bailee;

10.3.2 Store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

10.3.3 Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.4 Maintain the Goods in satisfactory condition.

10.4 If before title to the Goods passes to you, you become subject to any of the events listed in clause 3.7.1 to 3.7.5 or we reasonably believe that any such event is about to happen and notify you accordingly, then, without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter any premises of yours or of any third party where the Goods are stored in order to recover them.

11. SUB-CONTRACTING

11.1 We may sub-contract or delegate some or all of the performance of the Contract but we will still continue to be responsible for the performance of our obligations under the Contract.

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12. INTELLECTUAL PROPERTY RIGHTS

12.1 The copyright, design right and all other intellectual property rights in any materials or other documents or items that we prepare or produce for you in connection with the provision of the Goods and the Installation will belong to us absolutely.

12.2 You may not use the materials, documents or other items details in clause 12.1 for any commercial purpose.

13. PRICE AND PAYMENT

13.1 The price of the Goods and, if applicable, the Installation will be as set out in the Order.

13.2 Payment of the sums due under the Contract will be in accordance with one 2 ways, either:

Supply of Goods only

13.2.1 A deposit of 50% when you and we enter into the Contract; and

13.2.2 The balance in cleared fund on or prior to delivery of the Goods.

Supply and Installation of Goods

13.2.3 A deposit of 50% when you and we enter into the Contract;

13.2.4 40% of the balance in cleared funds upon delivery of the Goods; and

13.2.5 The outstanding balance, in cleared funds, upon completion of the Installation

13.3 These prices [include] **OR** [exclude] VAT. However, if the rate of VAT changes between the date of the Order and the date of due payment, we will adjust the VAT you pay, unless you have already paid for the Goods in full before the change in the rate of VAT takes effect.

13.4 These prices [exclude] **OR** [include] delivery costs, which will be added to the total amount due.

13.5 We accept payment [by cheque or] with most credit/debit cards. We reserve a right to add a surcharge to the sums due under the Contract for any payments made using credit cards. The surcharge shall be equal to the percentage we are charged by the relevant credit card company to effect the transaction and we will notify you of this charge prior to processing the payment.

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13.6 If you fail to pay any amount due to us at the time it is due then we may charge you interest at Barclays Bank Plc's base interest rate plus 3% on any outstanding amounts remain unpaid for more than 7 days from the date of our invoice or when we asked you to first pay them.

14. REFUSAL OF PAYMENT

14.1 You will not refuse to pay any amount owing to us where there is only a minor or inconsequential defect or error in the performance of the Installation. You will be entitled only to refuse to pay no more than a proportionate amount of any amount due.

15. LIMITATION OF LIABILITY

15.1 Subject to Clause 15.2, if either of us fails to comply with these Terms, neither of us shall be responsible for any losses that the other suffers as a result, except for those losses which are foreseeable consequence of the failure to comply with these Terms.

15.2 Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories:

15.2.1 Loss of anticipated savings;

15.2.2 Loss of data; or

15.2.3 Any waste of time.

However, subject to the provisions of Clause 15.4 below, this Clause 15.2 shall not prevent claims for foreseeable loss of, or damage to, your physical property.

15.3 Our liability for losses you suffer as a result of us breaking this agreement including deliberate breaches is strictly limited to the purchase price of the Goods you purchased.

15.4 We shall not have any liability for any loss or damage to the Goods and/or any equipment, furniture or any other items of property from any cause whatsoever directly or indirectly relating to the installation of the Goods by any third party.

15.5 This does not include or limit in any way our liability:

15.5.1 For death or personal injury caused by our negligence;

15.5.2 For Fraud or fraudulent misrepresentation; or

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15.5.3 Any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Installation Act 1982; or

15.5.4 Losses for which it is prohibited by Section 7 of the Consumer Protection Act 1987 to limit liability; or

15.5.5 For any matter for which it would be illegal or unlawful for us to exclude, or attempt to exclude, our liability.

16. EVENTS OUTSIDE OUR CONTROL

16.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).

16.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

16.2.1 Strikes, lock-outs or other industrial action; or

16.2.2 Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack,

16.2.3 War (whether declared or not) or threat or preparation for war; or

16.2.4 Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or

16.2.5 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or

16.2.6 Impossibility of the use of public or private telecommunications networks.

16.3 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

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17. ASSIGNMENT

17.1 You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation, but this will not affect your rights under these Terms.

18. NOTICES

18.1 All notices sent by you to us must be sent to Harvey & Wade Limited at 38 High Street, Honiton, Devon, EX14 1PJ. We may give notice to you at the postal address you provide to us in the Order. Notice will be deemed received and properly served three days after the date of posting of any letter. In providing the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post.

19. GENERAL

19.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

19.2 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.

19.3 We shall comply with the provisions of the Data Protection Act 1998 in relation to any Personal Data (as defined in the Data Protection Act 1998) with which we come into contact with whilst providing the Goods.

19.4 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

19.5 These Terms shall be governed by English law and we both agree to the non-exclusive jurisdiction of the English courts.

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IF YOU ARE NOT 100% HAPPY WITH YOUR ORDER, PLEASE COMPLETE AND RETURN THE BELOW NOTICE AND THE ORIGINAL ORDER WITHIN 7 DAYS OF THE DATE OF THE CONTRACT.

**To: Harvey & Wade Limited
38 High Street
Honiton
Devon,
EX14 1PJ**

I/We (delete as appropriate) hereby give notice that I/We (delete as appropriate) wish to cancel our Order.

Order No:

Reason for Return:
.....
.....
.....

Signed:

Name and Address:
.....
.....

Date: