



# TERMS and CONDITIONS

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## OUR TERMS

### 1. DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

**Event Outside Our Control:** is defined in clause 11.2;

**Goods:** the goods that We are selling to you as set out in the Order;

**Order:** your order for the Goods and/or Services;

**Product:** the product We create for you as a result of the Services, as set out in the Order;

**Services:** the services that We are providing to you as set out in the Order;

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

**We/Our/Us:** Davies & Begbie Ltd, trading as "Makersmith", Workshop No 2, Farfield, Wykeham, Scarborough, North Yorkshire, YO13 9QB. Davies & Begbie Ltd's Registered Office is 2 Hallgarth, Pickering, North Yorkshire, YO18 7AW, Company Registration Number : 05612299.

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

## **2. OUR CONTRACT WITH YOU**

- 2.1 These are the terms and conditions on which We supply Goods, or Services, or both Goods and Services, to you.
- 2.2 Please ensure that you read these Terms carefully, and check that the details on the Order and these Terms are complete and accurate, before you sign and submit the Order. If you think that there is a mistake or require any changes, please contact Us to discuss. We will confirm any changes in writing to avoid any confusion between you and Us.
- 2.3 When you sign and submit the Order to Us, this does not mean We have accepted your order for Goods and/or Services. Our acceptance of the Order will take place as described in clause 2.4. If We are unable to supply you with the Goods and/or Services, We will inform you of this in writing and We will not process the Order.
- 2.4 These Terms will become binding on you and Us when We issue you with a written acceptance of an Order at which point a contract will come into existence between you and Us.
- 2.5 We shall assign an order number to the Order and inform you of it when We confirm the Order. Please quote the order number in all subsequent correspondence with Us relating to the Order.
- 2.6 Our website, brochure and other information are solely for the promotion of Our Goods in the UK. Unfortunately, We do not accept orders for delivery to addresses outside the UK.
- 2.7 The images of the Goods on Our website, in Our brochure and in other information produced by us are for illustrative purposes only. Although We have made every effort to display the colours and finishes accurately, We cannot guarantee that the published pictures accurately reflect the appearance of the Goods. Your Goods may vary slightly from those images. Although we make every effort to be as accurate as possible, all sizes, weights, capacities and dimensions are subject to reasonable tolerances and these will, if necessary, have been agreed with you.

## **3. CHANGES TO ORDER OR TERMS**

- 3.1 We may revise these Terms from time to time to reflect changes in relevant laws and regulatory requirements
- 3.2 If We have to revise these Terms under clause 3.1, We will give you written notice of any changes to these Terms before they take effect.
- 3.3 You may make a change to the Order for Goods and/or Services by contacting Us. Where this means a change in the total price of the Goods and/or Services, We will notify you of the amended price in writing.
- 3.4 If you wish to cancel an Order before it has been fulfilled, please see your right to do so in clause 12. In the case of goods made to your specific requirements you will unfortunately not be able to cancel an Order once it is made.

## **4. CUSTOM GOODS**

- 4.1 We make the Goods according to the measurements and specifications you agree with Us.
- 4.2 Please make sure your measurements and specifications are correct and accurate. Unfortunately, We cannot accept the return of Custom Goods if the reason for the return is because you provided Us with incorrect measurements or specifications. However, this will not affect your legal rights as a consumer in relation to Custom Goods that are faulty or not as described. Advice about your legal rights is available at your local Citizen's Advice Bureau or Trading Standards office.

## **5. DELIVERY OF GOODS**

- 5.1 Please note that timescales for delivery and delivery charges will vary depending on the availability of the Goods and your address.
- 5.2 We will contact you with an agreed delivery date. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See clause 11 for Our responsibilities when this happens.
- 5.3 If you have asked to collect the Goods from Our premises, you can collect the Goods from Us at any time during Our working hours.

5.4 If no one is available at your address to take delivery, We or the Carrier will advise the action you should take to rearrange delivery. If the Goods have been returned to Our premises please contact us to rearrange delivery.

5.5 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.

5.6 Delivery of an Order shall be completed when We deliver the Goods to the address you gave Us or you or a carrier organised by you collect them from Us and the Goods will be your responsibility from that time.

5.7 You own the Goods once We have received payment in full.

## **6. IF THE GOODS ARE FAULTY**

As a consumer, you have legal rights in relation to Goods that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## **7. PROVIDING SERVICES**

7.1 We will supply the Services to you from the date agreed between Us in writing until the estimated completion date set out in the Order.

7.2 We will make every effort to complete the Services on time. However, there may be delays due to an Event Outside Our Control. See clause 11 for Our responsibilities when an Event Outside Our Control happens.

7.3 We will need certain information from you that is necessary for Us to provide the Services. We will contact you in writing about this. If you do not, after being asked by Us, provide Us with this information, or you provide Us with incomplete or incorrect information, We may make an additional charge of a reasonable sum to cover any extra work that is required or We may suspend the Services by giving you written notice. We will not be liable for any delay or non-performance where you have not provided this information to Us after We have asked. If We suspend the Services under this clause 7.3, you do not have to pay for the Services while they are suspended, but this does not affect your obligation to pay any invoices.

7.4 We may have to suspend the Services if We have to deal with technical problems or to make improvements, agreed between you and Us in writing, to the Services. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency. You do not have to pay for the Services while they are suspended under this clause 7.4 but this does not affect your obligation to pay for any invoices.

7.5 If you do not pay Us for the Services when you are supposed to We may suspend the Services with immediate effect until you have paid Us the outstanding amounts We will contact you to tell you this. This does not affect Our right to charge you interest.

7.6 If We design the Product for you, We will own the copyright, design right and all other intellectual property rights in the Product and any drafts, drawings or illustrations We make in connection with the Product for you, unless agreed otherwise.

## **8. IF THERE IS A PROBLEM WITH THE SERVICES**

8.1 As a consumer, you have legal rights in relation to Services not carried out with reasonable skill and care, or if the materials We use are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## **9. PRICE AND PAYMENT**

9.1 The price of the Goods and/or the Services will be agreed between you and Us when you place your Order. Our prices may change at any time, but price changes will not affect Orders that you have already placed.

9.2 These prices include VAT. However, if the rate of VAT changes between the date of the Order and the date of delivery or performance, We will adjust the rate of VAT that you pay, unless you have already paid for the Goods and/or Services in full before the change in the rate of VAT takes effect.

9.3 The prices for the Goods exclude delivery costs, which will be added to the total amount due.

9.4 Where We are providing Goods and or Services to you, you must make payment for Goods in advance unless agreed otherwise.

## **10. OUR LIABILITY TO YOU**

10.1 If We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of Our breach or if it was contemplated by you and Us at the time we entered into this contract.

10.2 If We are installing the Goods or Product and/or providing Services in your property, We will make good any damage to your property caused by Us in the course of installation or performance. However, We are not responsible for the cost of repairing any pre-existing faults or damage to your property that We discover in the course of installation and/or performance by Us.

10.3 We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

10.4 We do not exclude or limit in any way Our liability for:

- (a) death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples); and
- (e) defective products under the Consumer Protection Act 1987.

## **11. EVENTS OUTSIDE OUR CONTROL**

11.1 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 an Event Outside Our Control.

11.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

11.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:

- (a) We will contact you as soon as reasonably possible to notify you; and
- (b) Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Goods to you, We will arrange a new delivery date with you after the Event Outside Our Control is over. Where the Event Outside Our Control affects Our performance of Services to you, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.

## **12. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

12.1 Unfortunately, as the Custom Goods are made to your requirements, you will not be able to cancel your Order once made (but this will not affect your legal rights as a consumer in relation to Custom Goods that are faulty or not as described).

12.2 Once We have begun to provide the Services to you, you may cancel the contract for the Services at any time by providing Us with notice in writing. Any advance payment you have made for Services that have not been provided will be refunded to you.



12.3 Once We have begun to provide the Services to you, you may cancel the contract for Services with immediate effect by giving Us written notice if:

- (a) We break this contract in any material way and We do not correct or fix the situation within fourteen days of you asking Us to in writing;
- (b) We go into liquidation or a receiver or an administrator is appointed over Our assets;
- (c) We change these Terms under clause 3.1 to your material disadvantage;
- (d) We are affected by an Event Outside Our Control.

### **13. OUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

13.1 We may have to cancel an Order before the start date for the Services or before the Goods are delivered, due to an Event Outside Our Control or the unavailability of stock or (in the case of Services) key personnel or key materials without which We cannot provide the Services. If this happens:

- (a) We will promptly contact you to let you know;
- (b) if you have made any payment in advance for Services that have not been provided to you, or Goods that have not been manufactured for you, We will refund these amounts to you;
- (c) where We have already started work on your Order for Services or Custom Goods, We will not charge you anything and you will not have to make any payment to Us.

13.2 Once We have begun to provide the Services to you, We may cancel the contract for the Services at any time by providing you with notice in writing. If you have made any payment in advance for Services that have not been provided to you, We will refund these amounts to you.

13.3 We may cancel the contract for Services at any time with immediate effect by giving you written notice if:

- (a) you do not pay Us when you are supposed to. This does not affect Our right to charge you interest; or
- (b) you break the contract in any other material way and you do not correct or fix the situation within Seven days of Us asking you to in writing.

### **14. INFORMATION ABOUT US AND HOW TO CONTACT US**

14.1 We are Davies & Begbie Ltd, trading as “Makersmith”, Workshop No 2, Farfield, Wykeham, Scarborough, North Yorkshire, YO13 9QB, whose Registered Office is 2 Hallgarth, Pickering, North Yorkshire, YO18 7AW, Company Registration Number : 05612299, a company registered in England and Wales. Our registered VAT number is 875489755.

14.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephone on 01723 336322, e-mailing at [questions@makersmith.works](mailto:questions@makersmith.works) or in writing.

### **15. HOW WE MAY USE YOUR PERSONAL INFORMATION**

15.1 We will use the personal information you provide to Us to:

- (a) provide the Goods and/or Services;
- (b) process your payment for such Goods and/or Services; and
- (c) inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.

15.2 We will not give your personal data to any third party.

## 16. OTHER IMPORTANT TERMS

16.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.

16.2 This contract is between you and Us. No other person shall have any rights to enforce any of its terms.

16.3 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.

16.4 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

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