

**Portafix Limited            November 2024**

**Trading Agreement  
(Terms and Conditions for Sale of Goods)**

**1 Definitions**

SELLER means Portafix Limited (Registered in England 2788817)

BUYER means the person, firm or company who buys or agrees to buy Goods from the Seller.

GOODS means the items which the Buyer agrees to buy from the Seller as set out in the schedule.

CONDITIONS means the Terms and Conditions of sale as set out in this document and any special Terms and Conditions agreed in writing by the Seller.

**2 Conditions**

2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other Terms and Conditions including the Buyer's standard Conditions of purchase or any other Conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.

2.2 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.

2.3 These Conditions may not be varied unless agreed in writing between the authorized representatives of the Buyer and the Seller.

2.4 These Conditions supersede any other Conditions previously issued.

2.5 The Seller's employees or agents are not authorized to make any representation concerning the Goods unless confirmed in writing by the Seller. In entering into the contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

**3 Price**

3.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.

3.2 All prices quoted valid for 30 days (unless otherwise stated).

3.3 The price quoted excludes delivery on orders of less than £250 excluding VAT (subject to amendment) and otherwise includes delivery to the UK mainland.

3.4 Unless otherwise stated, the price quoted is an illustrative estimate only (the price charged will be the Seller's current price at the time of delivery).

3.5 Rates of tax and duties on the Goods will be those applying at the time of delivery.

3.6 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labor, materials or other costs of manufacture), any change in delivery date, quantities or specifications for the Goods which is required by the Buyer, or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

#### **4 Delivery**

4.1 The Seller will endeavor to dispatch Goods on an agreed delivery date. However, all delivery times quoted are estimates only. Time of delivery shall not be of the essence of the contract.

4.2 If the Seller fails to deliver within a reasonable time, the Buyer may (by informing the Seller in writing) cancel the contract, however:

4.2.1 The Buyer may not cancel if notice is received by the Seller after the Goods have been dispatched.

4.2.2 If the Buyer cancels the contract, the Buyer can have no further claim against the Seller under that contract.

4.3 If the Buyer accepts delivery of the Goods after the estimated delivery time, it will be on the basis that the Buyer has no claim against the Seller for delay (including indirect or consequential loss, or increase in the price of the Goods).

4.4 The Seller may deliver the Goods in quantities of 10% more or less than the quantity ordered and charge the Buyer for the quantity actually delivered.

4.5 If short delivery occurs the Buyer may not reject the Goods but shall accept the Goods as part performance of the contract, and a pro-rata adjustment to the price shall be made.

4.6 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of doing so.

4.7 If the Seller fails to deliver for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer of similar Goods (in the cheapest available market) to replace those not delivered over the price of the Goods.

#### **5 Delivery and safety**

5.1 The Seller may decline to deliver if:

5.1.1 The Seller considers that it would be unsafe, unlawful or unreasonably difficult to do so.

5.1.2 The Buyer's premises (or the access to them) are unsuitable for our vehicle.

#### **6 Risk**

6.1 The Goods are at the Buyer's risk from the time receipt of Goods takes place.

6.2 Receipt takes place either:

6.2.1 At the Seller's premises (if Buyer is collecting them or arranging carriage).

6.2.2 At Buyer's premises (if Seller is arranging carriage).

6.3 The Buyer must inspect the Goods on delivery. If any Goods are damaged (or not delivered), Buyer must give notice in writing within three working days of delivery (or within ten days of the expected delivery time). The Seller must be allowed (and any carrier) a reasonable chance to inspect the damaged Goods.

6.4 The Buyer must store all Goods so that they are identifiable by batch number. Failure to do so may invalidate a claim.

## 7 Payment terms

- 7.1 Buyer is required to pay in cash or otherwise in cleared funds on order, unless an approved credit account has been granted by the Seller.
- 7.2 If an approved credit account is provided, payment is due no later than 30 days unless otherwise agreed in writing.
- 7.3 Unless otherwise agreed in writing the Buyer will be responsible for paying their (Remitter) bank charges and Seller will be responsible for paying their (Beneficiary) bank charges. If the Seller incurs the Buyer's bank charges these will be sent by additional payment to the Seller in order to reimburse them.
- 7.4 Failure to pay in full on the due date will result in the Seller being entitled to:
- 7.4.1 Suspend or cancel future deliveries.
- 7.4.2 Cancel any discount offered to the Buyer.
- 7.4.3 Charge interest at the rate of (8%) per annum above the Bank of England base rate from time to time in force. Such interest shall accrue both before as well as after any judgement.
- 7.4.4 The Seller may recover the cost of taking legal action if deemed necessary to receive payment.
- 7.5 If the Buyer has an approved credit account, it may be withdrawn or reduced at any time without notice.
- 7.6 The Buyer does not have the right to set off any money owed by the Seller against payment of Goods unless otherwise agreed in writing.
- 7.7 Until payment is received in full the Seller has a lien on any of the Buyer's property in the Seller's possession.
- 7.8 Buyer is to indemnify the Seller in full and hold the Seller harmless from all expenses and liabilities incurred (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by the Buyer of any of their obligations under these terms.

## 8 Title

- 8.1 Until the Buyer pays all debts:
- 8.1.1 All Goods supplied remain property of the Seller.
- 8.1.2 Goods must be stored so that they are clearly identifiable as Seller's property;
- 8.1.3 Buyer must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for Seller.
- 8.1.4 Buyer may use those Goods and sell them in the ordinary course of business, but not if:
- a) Seller revokes that right (by informing Buyer in writing); or
- b) Buyer becomes insolvent.
- 8.2 Buyer must inform Seller (in writing) immediately if they become insolvent or are at risk of insolvency.
- 8.3 If Buyer's right to use and sell the Goods ends Buyer must allow Seller to remove the Goods.
- 8.4 Seller has Buyer's permission to enter any premises where the Goods may be stored:
- 8.4.1 At any reasonable time, to inspect them.
- 8.4.2 After Buyer's right to use and sell the Goods has ended, to remove them, using reasonable force if necessary.
- 8.5 Despite Seller's retention of title to the Goods, Seller has the right to take legal proceedings to recover the price of Goods supplied should payment not be received by the due date.
- 8.6 Where the contract involves the Seller's property being located on the Buyer's premises (including but not limited to Racks and Bins):
- 8.6.1 The Buyer is responsible for insuring them against damage, theft or loss for which a prudent owner would insure them.
- 8.6.2 If the Buyer is unable to return this property in a suitable state when required to do so by the Seller, they will be held liable for the costs to replace them.
- 8.7 Buyer does not have authority to make any contract on behalf of the Seller or in Seller's name.

## 9 Warranties

9.1 The Seller warrants that the Goods comply with their description on acknowledgement of order form and are free from material defect at the time of delivery (as long as Buyer complies with clause 9.4).

9.2 The Seller gives no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the Goods or their fitness for any purpose.

9.3 In particular the Seller does not warrant the Goods to the extent:

9.3.1 any defect is due to hydrogen embrittlement or related defects.

9.3.2 any defect in the Goods arises from any design, drawing or specification supplied by the Buyer.

9.3.3 any defect arises from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Seller's instructions, improper use, alteration or repair of Goods.

9.3.4 the total price of Goods has not been received by the agreed due date

9.3.5 any defect is due to improper storage, design or installation of the Goods by the Buyer and or third parties

9.3.6 the Seller is not the sole Seller of the Goods to the Buyer unless and to the extent that the Buyer can prove the Goods are from the Seller's Goods supplied.

9.4 If the Buyer believes that Goods have been delivered which are defective in materials or workmanship, Buyer must:

9.4.1 Inform Seller (in writing), with full details (including the batch number), as soon as possible.

9.4.2 Allow Seller to investigate (including access to premises and product samples).

9.5 If the Goods are found to be defective in material or workmanship following our investigations, and Buyer has complied with those Conditions (in clause 9.4) in full, Seller will (at their option) replace the Goods or refund the price.

9.6 Seller is not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of Goods or their use, even if deemed negligent.

9.7 Seller's total liability to Buyer (from one single cause) for damage to property caused by Seller's negligence is limited to £100,000.

9.8 For all other liabilities not referred to elsewhere in these terms Seller's liability is limited in damages to the price of the Goods.

9.9 Nothing in these terms restricts or limits Seller's liability for; death, personal injury resulting from Seller's negligence, fraud or fraudulent misrepresentation.

## 10 Specification

10.1 Where the Seller prepares the Goods in accordance with the Buyer's specifications, designs or instructions, or using Buyer's tools or materials:

10.1.1 Buyer must ensure that the specifications, designs or instructions are accurate and tools and materials are of good quality.

10.1.2 Buyer must ensure that Goods prepared in accordance with those specifications, designs or instructions (or using those tools or materials) will be fit for the purpose for which they intend to use them.

10.1.3 Buyer must ensure that Seller's use of Buyer's specifications, designs, instructions, tools or materials will not result in the infringement of any intellectual property rights of a third party.

10.2 Seller reserves the right to make any changes in the specifications of Goods which are necessary to ensure they conform with any applicable safety or other statutory requirements.

10.3 Seller also reserves the right to make without notice any minor modifications in specifications deemed necessary or desirable.

10.4 The specification of Goods against sample approval becomes that of the approved sample. The specification of the approved sample becomes the specification and this supersedes all previous specifications.

## **11 Return of Goods**

11.1 Seller will accept the return of Goods from Buyer only:

11.1.1 By prior arrangement (confirmed in writing).

11.1.2 On payment of an agreed handling charge (unless the Goods were defective when delivered).

11.1.3 Where the Goods are as fit for sale on their return as they were on delivery.

## **12 Export terms**

12.1 Where the Goods are supplied by way of export from the United Kingdom Clause 12 of these terms applies (except to the extent that it is inconsistent with any written agreement between parties).

12.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.

12.3 Unless otherwise agreed, the Goods are supplied ex works Andover

12.4 Where the Goods are to be sent by the Seller to the Buyer by a route including sea transport Seller is under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

12.5 Buyer is responsible for arranging testing and inspection of the Goods at Seller's premises before shipment (unless otherwise agreed). Seller is not liable for any defect in the Goods which would be apparent on inspection unless a claim is made before shipment. Seller is not liable for any damage during transit.

12.6 Seller is not liable for death or personal injury arising from the use of the Goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

## **13 Cancellation**

13.1 If the order is cancelled (for any reason) the Buyer is required to pay Seller for all stock (finished or unfinished) that Seller may then hold (or to which are committed) for the order.

13.2 Seller may suspend or cancel the order, by written notice if:

13.2.1 Buyer fails to pay any money when due (under the order or otherwise);

13.2.2 Buyer becomes insolvent;

13.2.3 Buyer fails to honour obligations under these terms.

13.3 Buyer may not cancel the order unless agreed in writing (and clauses 4.2.2 and 13.1 then apply).

## **14 Waiver and variations**

14.1 Any waiver or variation of these terms is binding in honor only unless:

14.1.1 Made (or recorded) in writing.

14.1.2 Signed on behalf of each party.

14.1.3 A written instruction expressly stating an intention to vary these terms.

14.2 All orders that Buyer places with Seller will be on these terms (or any that may be issued to replace them). By placing an order, Buyer is expressly waiving any terms they may have to the extent that they are inconsistent with the Seller's terms.

## **15 Force majeure**

15.1 If the Seller is unable to perform obligations to the Buyer (or able to perform them only at unreasonable cost) because of circumstances beyond Seller's control, the Seller may cancel or suspend any obligations to the Buyer, without liability.

15.2 Examples of those circumstances include act of God, accident, explosion, fire, flood, threat of war, terrorism, civil disturbance, sabotage, transport delays, import or export regulations, material delays, breakdown in machinery, goods failing to meet Seller's inspection criteria, strikes and other industrial disputes and difficulty in obtaining supplies.

## 16 General

16.1 The law of England and Wales is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction. Any disputes will be heard in the jurisdiction of England and Wales, in particular any court in the Greater London area.

16.2 If Buyer is more than one person, each person has joint and several obligations under these terms.

16.3 If any of these terms are unenforceable as drafted:

16.3.1 It will not affect the enforceability of any other of these terms.

16.3.2 If it would be enforceable if amended, it will be treated as so amended.

16.4 Buyer may be treated as insolvent if:

16.4.1 Buyer is unable to pay debts as they fall due.

16.4.2 Buyer (or any item of Buyer's property) becomes the subject of:

a) Any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements including a moratorium or bankruptcy).

b) Any application or proposal for any formal insolvency procedure.

c) Any application, procedure or proposal overseas with similar effect or purpose.

16.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between parties and Buyer should not rely on them in entering into any contract with the Seller.

16.6 Any notice by either party which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post, e-mail or by fax) the other's registered office or principal place of business. All such notices must be signed.

16.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the Buyer or Seller.

16.8 The only statements upon which the Buyer may rely in making the contract, are those made in writing by someone who is the Seller's authorized representative and either:

16.8.1 Are contained in Seller's estimate (or any covering letter) and not withdrawn before the contract is made.

16.8.2 Which expressly state that Buyer may rely on them when entering into the contract.

16.9 Nothing in these terms affects or limits the Seller's liability for fraudulent misrepresentation.

16.10 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

16.11 By signing any approval form, placing any order, providing and/or approving specification/samples the Buyer agrees to this trading agreement.

16.12 The contract forms the entire agreement between the Buyer and the Seller. No prior statements either orally or in writing form part of this agreement.