

Terms and Conditions

These terms and conditions apply to trade customers only.

If you are a consumer and you wish to purchase our goods please contact us at sales@efka.co.uk

1. General

In these conditions (unless the context requires otherwise):

(a) 'Goods' means the goods described in the Contract.

(b) 'Company' means EFKA Frame Solutions Ltd, registered in England and Wales, with company number 10875188 and whose registered office is at Unit 25 Sycamore Road, Trent Lane Industrial Estate, Castle Donington, United Kingdom, DE74 2NP .

(c) 'Customer' means the person, firm or company who orders goods from the Company.

(d) 'Order' means an order made on the Company's order form or on any other form which the Company may in its absolute discretion choose to accept.

(e) 'Contract' means a contract for the sale of Goods by the Company to the Customer to which these conditions apply.

(f) 'IPR' means patents, rights to inventions, copyright, trade marks, business names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights in confidential information and know-how, and all other intellectual property rights, in each case whether registered or unregistered, including applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all equivalent rights subsisting now or in the future anywhere in the world.

2. Existence of Contract

(a) These conditions constitute the entire agreement between the parties and supersede all prior dealings, negotiations, statements, representations, agreements or understandings whether written or oral, expressed or implied. No variation to these conditions shall be effective unless in writing signed by an authorised representative of the Company.

(b) These conditions shall apply to all Contracts made with the Company unless varied in writing and signed by an authorised representative of the Company. These conditions shall be incorporated into the Contract to the exclusion of any terms or conditions which the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

(c) Any Order by the Customer constitutes an offer by the Customer to purchase the Goods in accordance with these conditions. Following receipt of an enquiry, the Company shall issue a quotation. By placing an order, the Customer is deemed to have accepted the quotation in full and to have satisfied itself as to its accuracy and suitability, including (without limitation) the specification, quantities and pricing.

(d) The Customer is responsible for ensuring that the quotation is complete and accurate prior to placing an order. Any amendments requested after an order has been placed and the quotation accepted may result in additional costs and/or extended lead times.

3. Specifications

(a) Samples, illustrations and descriptive matter provided in brochures, price lists and advertising matter of the Company are produced only to give an approximate idea of the Goods and no prices or other particulars contained therein shall form part of the Contract.

(b) The Company reserves the right to make non-material alterations in construction, design, operating parameters, materials and packaging as the Company considers desirable without prior notice.

4. Confidentiality

The Company's specifications, drawings, descriptions, know how, pricing and other confidential information (in whatever form and however recorded or disclosed), and any copies thereof by the Customer, which may be passed to or come into the possession of the Customer shall be treated by the Customer as confidential and shall not be disclosed to any third party or used by the Customer for any purpose other than the supply of Goods by the Company to the Customer. All confidential information provided by the Company shall remain the Company's property and shall be returned to the Company on demand.

5. Intellectual Property Rights

(a) Where Goods are made to the Customer's specification or design, the Customer is responsible to ensure the suitability of such specification or design and warrants that any drawings, designs and technical data provided by the Customer shall not infringe any IPR of any third party.

(b) All IPR subsisting in the design and manufacture of the Goods (including Goods made to Customer's specification) are the property of the Company or its licensors (as the case may be).

6. Prices

(a) Prices quoted are valid for only 30 days from date of quotation, thereafter the Company may alter the price without notice to the Customer and any Order received after such date shall be at the price given at the date of the Order. However, the Company reserves the right to alter the price quoted to take account of any increases in costs including (but not limited to) labour, overheads, transportation, raw materials and/or fluctuation of exchange rates between the quotation date and date of delivery of the Goods.

(b) Unless expressly stated to the contrary any price quoted does not include carriage costs, value added tax or any other tax to which the transaction may be subject, which shall be paid by the Customer.

7. Delivery

(a) Any delivery dates given by the Company are estimates only and are subject to change. Whilst the Company will make every effort to meet the dates, no liability will attach to the Company for any delays or loss from failure to meet them. Time of delivery is not of the essence of the Contract.

(b) Without prejudice to the generality of condition 7(a), the Company shall not be liable for any delay in or failure of delivery caused by the unavailability of any raw materials or equipment or the Customer's instructions or lack of them.

(c) If the Goods are to be delivered to the Customer, delivery shall be effected at the time of delivery to the address provided by the Customer. If Goods are to be collected by the Customer its servants or agents, delivery shall be effected at the time of collection.

Payment shall be due within 30 days of the date of invoice which is raised upon despatch or collection of the Goods.

(d) The Company may deliver Orders in instalments but the Customer shall not be entitled to demand delivery by instalments. Where Goods are delivered by instalments, each instalment shall be deemed to be a separate Contract and shall be invoiced and paid for separately. Failure by the Customer to make payment by the due date for any instalment entitles the Company, without prejudice to any other rights it may have under the Contract, to suspend deliveries of Goods to the Customer.

8. Payment

(a) Unless otherwise agreed in writing, payment shall be made in full:

(i) by non-credit account customers, upon acceptance of the quotation, before the order goes into production.

(ii) by credit-account customers, within 30 days of invoice date.

Payment shall be due within 30 days of the date of invoice, and the Company shall be entitled to issue its invoice upon despatch or collection of the Goods.

(b) The Customer shall pay the price in accordance with the terms of the Contract without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

(c) In respect of any invoice or account balance not paid by the due date, the Company reserves the right to suspend deliveries and to charge interest at an annual rate of 3% above the Bank of England base rate for the time being in force, calculated from day to day from the due date for payment to the date of payment in full whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

(d) Please note, payments made from third parties are not accepted unless agreed by us beforehand.

9. Loss Or Damage In Transit

(a) No liability in respect of Goods lost or damaged in transit will attach to the Company unless the Customer notifies the Company in writing within 24 hours of delivery and provides images of the packaging and shipping labels. It is the Customer's responsibility to check that Goods are received in good condition prior to signing the carrier's delivery note. The Company will not be held responsible for any delivery signed for as "in good condition" which is subsequently reported by the Customer to the Company to have been damaged in transit.

(b) The Company's liability in respect of Goods lost or damaged in transit is limited to repair or at its discretion replacement of any such Goods. If so requested by the Company, the Customer shall return the Goods in question to Unit 25, Sycamore Road, Trent Lane Ind Est, Castle Donington, DE74 2NP within 21 days of the date of the written notice referred to in condition 9(a).

10. Errors

The Company reserves the right to correct any typographical errors made by its employees, agents or servants.

11. Risk and Title in the Goods

(a) Title in the Goods shall not pass to the Customer until such time as the Goods have been paid for in full and all sums due to the Company under the Contract between the Company and the Customer have been paid in full. Risk in the Goods shall pass to the Customer on delivery.

(b) For so long as the Customer remains in possession of the Goods and whilst title thereto remains with the Company, the Customer shall: (i) store the Goods separately from other Goods held by the Customer so that they remain readily identifiable as the Company's property; (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery; (iv) notify the Company immediately if it becomes subject to any of the events set out in conditions 13(a)(i) to 13(a)(iii); and (v) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

(c) If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events set out in conditions 13(a)(i) to 13(a)(iii), or the Company reasonably believes that the Customer is about to become subject to any of the events set out in conditions 13(a)(i) to 13(a)(iii), or the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, then without limiting any other right or remedy the Company may have: (i) the Customer's right to resell the Goods or use them in the ordinary course of business ceases immediately; and (ii) the Company may at any time require the Customer to deliver up all Goods in its possession which have not been resold, and if the Customer fails to do so promptly, enter any premises where the Goods are held in order to repossess them.

12. Cancellation and Returns

(a) The Customer may only cancel an Order, once the Company has taken any steps to commence the fulfilment of the Order, with the Company's prior written consent (which may be given by email, and at the Company's sole and absolute discretion). The Company will refuse to accept any Goods returned to the Company without prior permission. Custom-made or modified products are non-returnable.

13. Termination

(a) If during the Contract:

(i) any distress or execution is levied against the Customer's property or assets, or the Customer makes or seeks to make any arrangement or composition with any of its creditors, or the Customer (being an individual) is the subject of a bankruptcy petition or order; or a petition is filed, a notice is given, resolution is passed, or order made, for the winding up of the Customer; an application or order is made for the appointment of an administrator, or an administrator is appointed, over the Customer's assets; a person becomes entitled to appoint a receiver, or a receiver is appointed, over the Customer; or the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due;

(ii) the equivalent of any of the foregoing events occurs with respect to the Customer in any jurisdiction to which it is subject;

(iii) the Customer ceases or threatens to cease trading; or

(iv) the Customer defaults in any payment or commits a breach of any of its obligations under the Contract or any other Contract with the Company, the Company shall be entitled, without prejudice to any other rights or remedies it may have, to terminate immediately the Contract and any other Contract with the Customer and/or to suspend deliveries under the Contract and/or such other Contract.

(b) On termination of the Contract for whatever reason the Company shall be entitled to invoice for Goods delivered but not yet invoiced and the Customer shall immediately pay to the Company all outstanding unpaid invoices and interest.

(c) Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination. On termination of the Contract for whatever reason, any conditions which expressly or by implication have effect after termination shall continue in full force and effect.

14. Limitation Of Liability

(a) Nothing in these conditions shall limit or exclude Company's liability for death or personal injury caused by its negligence; or fraud or fraudulent misrepresentation; or any other liability which cannot be limited or excluded under law.

(b) Subject to condition 14(a):

(i) the Company shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: loss of profit; loss of reputation or goodwill; loss or revenue; loss of operation or use; loss of contract or business; loss of opportunity or anticipated savings; or indirect or consequential loss, arising under or in connection with the Contract;

(ii) the total aggregate liability of the Company to the Customer (whether in contract, tort (including negligence) or otherwise) for any loss or damage of whatsoever nature and however caused shall be limited to and shall not exceed the invoice price of the Goods in respect of which such liability has arisen; and

(iii) unless otherwise set out herein, all warranties, conditions, guarantees or assurances (whether implied by statute, common law or otherwise) are excluded to the fullest extent permitted by law and the Company makes no express or implied warranties or conditions whatsoever.

15. Force Majeure

The Company shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Company's control, including riot, civil commotion, strikes, lockout, industrial disputes (whether of its own workforce or a third party's), default of suppliers or subcontractors, breakdown of plant or machinery, legislation or regulation, wilful damage, unavailability of transport, power or materials, acts of God, earthquake, flood, natural disasters, extreme adverse weather conditions, fire, accident or theft or any other event outside the Company's control. In such circumstances, the Company may suspend or postpone its obligations or any of them under the Contract until such Force Majeure Event has ceased.

16. Indemnity

The Customer shall indemnify the Company against any expense, liability, loss, claim, proceedings, damages or costs suffered or incurred by the Company arising out of a breach by the Customer of any term of the Contract (including breach of the warranty in condition 5(a)), negligence, or breach of statutory duty of the Customer, its agents or subcontractors, however caused and whether directly or indirectly, provided that the Customer shall not be called upon to indemnify the Company against any liability for personal injury or death, or loss or damage, directly and solely caused by the wrongful act or omission of the Company, its servants or agents for whose negligence the Company is liable at law.

17. General

(a) The Company may assign all or any of its rights and obligations under the Contract. The Customer may not assign any of its rights or obligations under the Contract without the Company's prior written consent.

(b) No failure delay or indulgence of the Company in exercising any power or right conferred upon it by these conditions or by statute or by common law shall operate as a waiver of any power or right and neither shall any single or partial exercise of such

power or right preclude any other or further exercise thereof or the subsequent exercise of any other power or right.

(c) If any provision of these conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of any provision of these conditions shall not prejudice or affect the validity or enforceability of the remainder.

(d) A person who is not a party to the Contract shall not have any rights to enforce its terms.

(e) The headings in these conditions are for reference only and shall not affect their construction.

18. Notices

Any notice given by a party under or in connection with the Contract shall be in writing and shall be delivered by hand, sent by pre-paid first class post, or sent by email. Notices to the Company shall be sent to its registered office address or such email address as notified by the Company from time to time. Notices to the Customer shall be sent to the address or email address provided by the Customer in the Order.

A notice shall be deemed to have been received: (i) if delivered by hand, at the time of delivery; (ii) if sent by pre-paid first class post, at 9.00 am on the second working day after posting; and (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours (9.00 am to 5.00 pm on a working day), when business hours resume.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. Governing Law

These Conditions and the Contract (including any non-contractual disputes or claims arising out of or in connection with them or their subject matter or formation) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).