



## TERMS AND CONDITIONS OF SALE

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

**Contract:** the contract between us and you for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from us.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** any goods which are supplied by us to you the Customer.

**Order:** your order for the Goods, (this will usually be set out in our quotation document; but may be placed verbally, in which case we will follow up with written confirmation to you).

**Specification:** any specification for the Goods, including any related plans and drawings, that are supplied by you.

**we/us:** Blast-Wash UK a division of NCH (UK) Limited a company registered in England and Wales under number 816221 whose registered office is at NCH House, Springvale Avenue, Bilston, West Midlands, WV14 0QL .

**you/your:** the customer details of which are set out in the Order.

#### 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

### 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when we issue a written acceptance of the Order or from the date of any delivery of the Goods (whichever happens earlier); at which point the Contract shall come into existence; and will constitute the entire agreement between you and us.

2.4 Any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our catalogues; website; or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.



2.5 A quotation for the Goods given by us shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from the date shown in it unless expressly withdrawn by us at an earlier time.

### **3. Goods**

3.1 The Goods are as described in our sales documentation, unless expressly changed in our quotation. In accepting the quotation, you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 We reserve the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and we shall notify you in any such event.

3.4 Details of the Goods as described in the clause above and set out in our sales documentation are subject to alteration without notice and are not a contractual offer to sell the Goods which is capable of acceptance.

3.5 The quotation is valid for a period of 30 days only from the date shown in it unless expressly withdrawn by us at an earlier time.

3.6 Cancellation of any part of an Order can only be made by agreement with us and in the event of such agreement you will have to indemnify us against any financial loss or expenses which may occur due to cancellation of the Contract.

### **4. Delivery**

4.1 We shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.

4.2 We shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after we notify you that the Goods are ready.

4.3 If you do not specify a delivery address or if we both agree, you must collect the Goods from our premises.

4.4 Subject to the specific terms of any special delivery service, delivery can take place at any time of the day and must be accepted at any time between 8 am to 8 pm on a Business Day.

4.5 Delivery is completed on the completion of unloading or loading of the Goods at the Delivery Location.

4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.



- 4.7 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 If you fail to take or accept delivery of the Goods within three Business Days of us notifying you that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or our failure to comply with our obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which we notified you that the Goods were ready; and
  - (b) we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 4.9 If ten Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken or accepted actual delivery of them, we may resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the price of the Goods.
- 4.10 You must inspect the Goods on delivery or collection and acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within 7 days after delivery.
- 4.11 If you identify any damages or shortages, you must inform us in writing upon delivery, providing details.
- 4.12 Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and if required, we have carried out an inspection.
- 4.13 You bear the risk and cost of returning the Goods.
- 4.14 Acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within 7 days after delivery.
- 4.15 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 4.16 If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 5. Quality**
- 5.1 We warrant that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods (except in the case of used or second hand Goods) shall:
- (a) conform to the specification quoted at the current time of manufacture, we reserve the right to change the specification, design or the Specification in accordance to the latest health and safety directives; and
  - (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- (a) you give notice in writing to us during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) we are given a reasonable opportunity of examining such Goods; and
  - (c) you (if asked to do so by us) return such Goods to our place of business at the your cost, we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- (a) you make any further use of such Goods after giving notice in accordance with clause 5.2;



- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of us following any drawing, design or Specification supplied by you;
  - (d) you alter or repair such Goods without the written consent of us;
  - (e) you fail to use original equipment manufactured parts and consumables manufactured by us;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (g) the Goods differ from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by us.
- 5.7 Any Goods which are supplied by us as used or second-hand Goods (unless otherwise stated) are not warranted in any way and labour and call-out charges will be levied to any repairs requested by you to the Goods.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to you on completion of delivery.
- 6.2 Title to the Goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to you, you shall:
- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
  - (d) notify us immediately if you become subject to any of the events listed in clause 9.1(b) to clause 9.1(d).
- 6.4 At any time before title to the Goods passes to you, we may:
- (a) by notice in writing, terminate your right under **Error! Bookmark not defined.Error! Reference source not found.** to resell the Goods or use them in the ordinary course of its business; and
  - (b) require you to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in our quotation current at the date of your order or such other price as we may agree in writing.
- 7.2 We may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:



- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of you or failure of you to give us adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which you shall additionally be liable to pay to us at the prevailing rate, subject to the receipt of a valid VAT invoice;
  - (b) must be made in UK Sterling unless otherwise agreed in writing between us; and
  - (c) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to you.
- 7.4 You may be entitled to discounts. Any and all discounts will be at our discretion.
- 7.5 We may invoice you for the Goods on or at any time after the Order has been placed.
- 7.6 You shall pay each invoice submitted by us:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by us and confirmed in writing to you; and
  - (b) in full and in cleared funds to a bank account nominated in writing by us, and time for payment shall be of the essence of the Contract.
- 7.7 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 9, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Limitation of liability**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, our total liability to you shall not exceed the total amount of the price payable by you.
- 8.4 If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 8.5 Subject to clause 8.2, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;



- (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 8.6 This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1 Without limiting its other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 (seven) days of that party being notified in writing to do so;
  - (b) you take any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtain a moratorium, are wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), have a receiver appointed to any of your assets or cease to carry on business;
  - (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
  - (d) your financial position deteriorates so far as to reasonably justify the opinion that your ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 (four) weeks, the party not affected may terminate the Contract by giving 7 (seven) days' written notice to the affected party.
- 11. General**
- 11.1 **Assignment and other dealings.**
- (a) We may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of our rights or obligations under the Contract.



- (b) You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without the prior written consent of us.
- 11.2 Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
  - (b) Each party may disclose the other party's confidential information:
    - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
    - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.3 Entire agreement.**
- (a) The Contract constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 11.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 Notices.**
- (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - (b) when sent, if transmitted by email and a successful transmission report or return receipt is generated;
  - (c) on the fifth business day following mailing, if mailed by national ordinary mail; or
  - (d) on the tenth business day following mailing, if mailed by airmail;
  - (e) all notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party;



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.

- 11.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.