

TERMS AND CONDITIONS OF SALE

1. GENERAL
- 1.1 In these conditions the following words have the meanings shown:
 - "Buyer" means the person, firm or company purchasing Goods
 - "Company" means Hilli (Fastening Systems) Limited or one of its associated or subsidiary companies as the case may be
 - "Contract" means the agreement between the Company and the Buyer for the purchase from the Company by the Buyer of Goods
 - "Contracts", "CPI" includes all agreements between the Company and the Buyer for the purchase of Goods from the Buyer by the Buyer means the Consumer Price Index published by the Central Statistics Office in Ireland at least annually but also at shorter intervals
 - "Goods" means the goods manufactured by the Company and purchased by the Buyer on the terms of this Contract
- 1.2 Unless agreed otherwise, these conditions shall be incorporated in all Contracts of the Company to sell Goods and shall be the sole conditions under which the sale takes place. All other terms, conditions or other representations are excluded from the Contracts between the Buyer and the Company including any terms and conditions which the Buyer may purport to apply under any order for Goods.
- 1.3 These conditions shall prevail unless expressly varied in writing and signed by a Director on behalf of the Company.
- 1.4 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to vary in any way any of the conditions under this Contract unless otherwise agreed in accordance with Clause 1.3 above.
- 1.5 Any written quotation, estimate or advertised price for the Goods shall be an invitation to treat and no binding contract shall be created by placing an order on the Company's website or otherwise until the Company has acknowledged the order to the Buyer either verbally or in writing as appropriate.
2. PRICE
- 2.1 Subject to Clause 2.2 below, the price payable for Goods shall, unless otherwise stated by the Company in writing and agreed on its behalf, be the price list of the Company current at the date of despatch and in the case of an order for delivery by instalments the price payable for each instalment shall be the Company's current price list at the date of the despatch of each instalment.
- 2.2 Unless otherwise agreed, the Company's prices may be subject to variation to take account of variations in wages, materials or other costs since the date of the Company's quotation (or if no quotation is issued) the Buyer's order. The Company accordingly reserves the right to adjust its invoice price payable by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original Contract price. The Company is also entitled to automatically increase the invoice price and the price of Goods payable in the event that the CPI increases in any given year by 4% or more.
- 2.3 All prices are exclusive of Value Added Tax, taxes and all other applicable duties. The Buyer shall be liable for all and any local taxes or charges as appropriate.
- 2.4 The Buyer agrees that section 32(3) of the Sale of Goods and Supply of Services Acts 1893 to 1980 shall not apply to Goods sent by the Company.
- 2.5 The Company shall be entitled to invoice the Buyer by post or email for the price of the Goods in pounds sterling or in Euro.
- 2.6 The Company has the right to invoice the Buyer for the costs of any packaging, transportation of the Goods or any additional costs resulting from any other alteration made by the Buyer on or at the time of delivery or upon notification by the Company that the Goods are awaiting collection. Any such additional costs may be invoiced by the Company in pounds sterling or in Euro.
3. CARRIAGE AND INSURANCE
- 3.1 The cost of carriage and insurance of the Goods to the Buyer's premises on the mainland of Ireland shall be in accordance with the charges laid out in the Company's current price list.
- 3.2 In all other cases, the price of the Goods shall be exclusive of carriage and insurance to the Buyer's premises.
- 3.3 Export orders shall be charged FOB (Free on Board - Ireland Port) in accordance with Incoterms 2000.
4. ADDITIONAL COSTS
- 4.1 The Buyer agrees to pay for any loss or extra costs above the quoted price for the Goods which are directly or indirectly incurred by the Company through the Buyer's instructions or lack of instruction or through failure or delay in taking delivery or through any act or default on the part of the Buyer, its servants or agents.
5. TERMS OF PAYMENT
- 5.1 All payments due under any Contract must be made by the Buyer at the end of the calendar month following the date of the invoice sent by the Company to the address provided by the Buyer. The Buyer shall not be entitled to exercise any set off, lien or any other similar right or claim.
- 5.2 If the Goods are delivered in instalments, the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in accordance with Clause 5.1 above in respect of each invoice.
- 5.3 Any failure by the Buyer to either pay any due instalment in accordance with this Contract or failure to give delivery instructions in respect of any Goods shall cause the whole of the price for Goods already manufactured at the time of such a default, to become due forthwith without any notice.
- 5.4 Prompt payment shall be a condition precedent to future deliveries of the Goods due under any Contract.
- 5.5 The Company is entitled to charge and to be paid interest at 2% above the current base rate of Ulster Bank on any unpaid invoices and/or any other overdue payments due from the Buyer.
6. DELIVERY
- 6.1 The period for delivery shall be the period within which the Goods are intended to be despatched from the Company's premises and shall be calculated from the date of the receipt by the Company of the Buyer's order or the date of receipt of all necessary information to enable the Company to manufacture or procure the manufacture of the Goods whichever shall be the later and the Buyer shall take delivery of the Goods within such period. If no period is stipulated by the Company, then delivery will be such time after receipt of instructions as the Company thinks reasonable.
- 6.2 All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of any Contract nor shall the Company be under any liability for any delay beyond the Company's control.
- 6.3 Where the Goods are handed to a carrier for carriage to the Buyer or the Ireland port for export, any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purpose of sections 44, 45 and 46 of the Sale of Goods and Supply of Services Acts 1893 to 1980.
- 6.4 No liability for non-delivery, loss or damage to the Goods occurring post delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company, unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery, loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
 - 6.4.1 within 7 days of delivery in the case of partial loss or damage of Goods in transit or delivery;
 - 6.4.2 within 28 days of delivery of the Goods in the case of defective Goods; or
 - 6.4.3 within 7 days of delivery for any other non-compliance with the Contract.
- 6.5 If the Buyer fails to give notice in accordance with Clause 6.4 above, the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods and shall be bound to pay for the same accordingly.
- 6.6 All requests for proof of delivery must be made within a period of 21 days following the date of the invoice.
- 6.7 The Buyer agrees that in the event of a valid claim for non-delivery, loss or damage to the Goods and/or non-compliance with the Contract, the Company may at its sole discretion either reprocess or replace the Goods at its own expense but shall then be under no further liability in connection with such non-delivery, loss, damage or non-compliance.
- 6.8 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods have been notified as ready for delivery, the Company may at its sole discretion store the Goods at the risk of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer, provided that the Buyer shall be immediately informed thereof.
- 6.9 The Company shall have the right to make delivery by instalments of such quantities of the Goods and at such intervals as it may decide. Any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept further deliveries thereof.
7. RETURNS AND CANCELLATIONS
- 7.1 Subject to Clause 6.4 above, Goods supplied pursuant to the Contract cannot be returned without the Company's prior written authorisation. Fully authorised returns:
 - 7.1.1 shall be sent to the Company's premises at the Buyer's expense and must be in the same condition as sold, packaging, unused etc.
 - 7.1.2 Products returned within 30 calendar days and fulfilling Clause 7.1.1 will be fully reimbursed. Products returned within 90 calendar days but after 30 calendar days and fulfilling Clause 7.1.1 will be reimbursed with a handling fee deduction of 20%. Products can not be returned after 90 calendar days.
 - 7.1.3 Products with a chemical ingredient are accepted as a return and fully reimbursed if returned within 14 calendar days and fulfilling Clause 7.1.1.
 - 7.1.4 Products with a chemical ingredient will not be returned after 14 calendar days. Some product may have a non-return policy which will be communicated at the point of sale.
 - 7.1.5 All returns should be arranged directly with customer services or one of our Hilli Centers. All time frames are starting on the day the customer receives the product.
 - 7.1.6 For all tools owned by the customer, handed over to Hilli for a repair, repair query or any other repair matter, Hilli will keep these tools for a maximum of 180 calendar days. If the tool is not collected, paid for or any other reason not taken back by the customer, Hilli reserve the right to scrap the tool after 180 calendar days.
- 7.2 The Buyer may not cancel an order of the Goods including but without limitation, any Goods that involve special requirements of the Buyer once the order has been inputted onto the Company's ordering system, without the prior written consent of the Company.
8. PASSING OF TITLE AND RISK
- 8.1 Risk in the Goods shall remain with the Company until delivery by the Company, collection of the Goods by the Buyer or receipt by the Company of all payments due for the Goods by the Buyer, whichever is the earlier at which time the risk in the Goods shall be transferred to the Buyer.
- 8.2 Title to the Goods shall only pass to the Buyer upon the happening of any one of the following events:
 - 8.2.1 the Buyer having paid (in full and cleared funds) to the Company all sums due from it to the Company under this Contract or under all other contracts between the Company and the Buyer including any sums due under Contracts made after this Contract whether or not the same are immediately payable; or
 - 8.2.2 the Company serving on the Buyer notice in writing specifying that title in the Goods has passed.
- 8.3 Until all payments due under this Contract and any other Contracts between the parties have been paid in full and cleared funds by the Buyer, the Buyer shall not dispose of any Goods which are delivered to the Buyer unless in accordance with Clause 8.4 below.
- 8.4 The Buyer may only sell the Goods on the Company's agent and bailee of the Goods which belong to the Company. All proceeds received from any such sale shall be held on trust to settle any sums due in respect thereof to the Company and pay any balance to the Buyer. Such proceeds shall be placed in a separate identified bank account which shall not be permitted to become overdrawn and such proceedings shall not be mingled in other monies and shall at all times be identifiable as the Company's money.
- 8.5 In the event of failure to pay the price in accordance with the Contract, the Company, its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer for removing all Goods in relation to which title remains with the Company. The Company may exercise any right of re-sale in respect of such Goods which shall operate in addition to any other legal rights which may accrue to the Company.
- 8.6 Pending payment of the full purchase price of the Goods, the Buyer shall at all times keep the Goods comprehensively insured against loss or Or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods are for the time being used, in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's title and interest and shall be produced to the Company on request.
9. WARRANTIES
- 9.1 All Goods are sold with the benefit of and subject to the conditions of the warranty supplied with them, which is available for inspection on request.
- 9.2 Nothing herein or in any warranty given by the Company shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants and agents including without limitation any failure by the Buyer to comply with any recommendations of the Company as to storage and handling or use or servicing of the Goods, use of the Goods with other goods or other misuse of the Goods or accident or fair wear and tear of the Goods.
- 9.3 Except as provided for in these conditions, any warranties, (whether express or implied by statute or common law or howsoever) including without limitation those of satisfactory or merchantable quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication of the Company) are hereby excluded.
10. LIENS
- 10.1 The Company shall be entitled to exercise a lien over or otherwise retain possession of all Goods provided to the Buyer under any Contract in the event that any monies are outstanding to the Company under any other Contracts, agreements or arrangements between the Company and the Buyer. In particular, but without limitation to the generality of the foregoing, the Company shall be entitled to exercise a lien over or otherwise retain possession of any Goods provided to it by the Buyer for repair in circumstances where any monies are owed to the Company under any other contracts between the Company and the Buyer.
- 10.2 If in the circumstances described at clause 10.1, the Buyer does not discharge all sums due and owing by it to the Company within one month of the said lien being exercised by the Company or the Company retaining possession of the Goods, the Company may, upon giving the Buyer fourteen (14) days notice in writing, sell the Goods in the ordinary course of business and in such circumstances, the Buyer hereby appoints and authorises the Company, as its agent and attorney, to effect such sale and execute all necessary documents in the name of and on behalf of the Purchaser. All proceeds of any such sale shall be discharged in the first instance towards the payment of all monies outstanding to the Company and any remainder amounts shall then be paid to the Buyer.
- 10.3 The provisions of this clause 10 (and any part thereof) are each severable from each other. If any provision of this clause 10 (or part thereof) is found by a Court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such provision (or part thereof) will be severed from the remainder of these conditions which will continue to be valid and enforceable to the fullest extent permitted by applicable law.
11. BUYER'S RESPONSIBILITY
- 11.1 The selection of the Goods suitable for the Buyer's purposes depends on a range of factors. These factors include, but are not limited to, on-site conditions or other circumstances of the proposed application of the Goods known only to the Buyer. The Buyer is solely responsible for satisfying itself that the data supplied to the Company on which information or recommendations made by the Company are based is correct and that any assumptions made by the Company to supplement that data are suitable for the Buyer's purposes.
- 11.2 The Company accepts no responsibility of any nature whatsoever for information or advice it supplies, where any data supplied by the Buyer is incorrect or where an assumption which the Company has made is unsuitable for the Buyer's purposes. The Buyer is encouraged to raise with the Company any questions it may have.
- 11.3 Each product is sold subject to its individual product description which may set out additional specific terms and conditions related to that product including but without limitation terms and conditions concerning estimated delivery times. Hilli does not accept responsibility for inaccurate content and/or safety instructions which are included on any products supplied.
12. LIABILITY
- 12.1 Notwithstanding anything contrary, the Company's liability to any user for personal injury or death caused by its negligence or fraud is not limited.
- 12.2 The Company shall not be liable (whether or not the Company has been advised of the possibility of such loss) in contract, tort, negligence or otherwise howsoever arising for any claim, damage, loss or costs in respect of:
 - 12.2.1 any losses special to the Buyer, any direct loss of profits, any direct loss of turnover and/or any direct loss of revenue; and
 - 12.2.2 any indirect or consequential loss or damage howsoever caused including without limitation any losses special to the Buyer, any loss of profit, loss of turnover, loss of revenue, loss of business and/or loss of data and for the avoidance of doubt, the sub-clauses in this Clause 12.2 are intended and agreed by the Buyer to be severable.
- 12.3 Subject to Clause 12.1, the aggregate liability of the Company (whether in contract, tort, negligence or breach of statutory duty or otherwise) to the Buyer for any loss or damage shall be limited to the price of the Goods.
- 12.4 The Buyer shall be liable for and shall indemnify the Company against any and all expenses, loss, liability or proceedings suffered by a third party arising as a result of or in connection with any act, omission, negligence, and/or breach of the terms of this Contract or otherwise through the default of the Buyer.
- 12.5 The Company makes no representation or warranty that the use of the Goods does not infringe the rights of any third party and the Company accepts no liability in this respect.
13. DEFAULT OR INSOLVENCY OF BUYER
- 13.1 In the event that:
 - 13.1.1 the Buyer shall be in breach of any of its obligations under the Contract;
 - 13.1.2 any distress or execution shall be levied on the Buyer's property or assets; or
 - 13.1.3 if the Buyer (an individual or partnership) shall make or offer to make any voluntary arrangement or composition with its creditors or become bankrupt or if any bankruptcy petition be presented against him; (if the Buyer is a company) has an administrative receiver or administrator appointed or makes a voluntary arrangement with its creditors or commences to be wound up; or
 - 13.1.5 otherwise if the Buyer fails to pay its debts as and when they fall due; or
 - 13.1.6 such equivalent event in Clauses 13.1.1 to Clause 13.1.5 occurs to the Buyer in its local jurisdiction;
- 13.2 the Company at its discretion and without prejudice to any other right or claim may by notice in writing forthwith determine wholly or in part any and all of the other Contracts between the Company and the Buyer or may (without prejudice to the Company's rights subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods.
14. FORCE MAJEURE
- 14.1 The Company shall be entitled to delay or cancel delivery or to reduce the amount of the Goods delivered if it is prevented from, hindered or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including, but not limited to, strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal source of supply.
15. WAIVER
- 15.1 The waiver by the Company of any right or the failure by the Company to exercise any right or to insist on the strict performance of any provision of this Contract shall not operate as a waiver of, or preclude any further exercise or enforcement of any other right or provision of this Contract.
16. SEVERABILITY
- 16.1 Each provision of this Contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If in any particular case any of these conditions shall be held to be invalid or shall not apply to this Contract, the other conditions shall continue in full force and effect.
17. THIRD PARTY RIGHTS
- 17.1 Nothing in these terms and conditions should be interpreted as or is intended to grant any rights to any third party.
18. ASSIGNMENT
- 18.1 The Buyer may not assign, sub-contract or in any way dispose of its rights or obligations under this Contract without the prior written consent of the Company.
19. NOTICES
- 19.1 Any notice required to be served under this Contract shall be served on the Company at its registered offices in Ireland or such other address as the Company may from time to time notify to the Buyer and on the Buyer at the address notified to the Company in its registration application by first class post, registered air mail or by email or facsimile. The Buyer is responsible for notifying the Company in writing of any change of address, email address or fax number from those in the Buyer's registration application.
- 19.2 Any such notice served by post shall be deemed to have been served in the case of a destination in Ireland two days after the date of despatch and seven days after the date of despatch to any other destination. In the case of service by email, when the email is available to read in the recipient's inbox and in the case of facsimile when the addressee's machine acknowledges receipt thereof provided that a copy of the notice or communication is also put into the post in accordance with Clause 19.1 within 24 hours following despatch of the initial version.
20. FAIR COLLECTION NOTICE - DATA PROTECTION ACT 1988
- 20.1 The Company shall comply with the provisions of the Data Protection Act 1988, and the European Communities (Data Protection) Regulations 2001, as may be amended from time to time and all other applicable data protection legislation in relation to the processing of any personal data it obtains from the Buyer. The Company shall comply with its on-line Privacy Policy when the Buyer purchases the Goods from the Company through the Company's website.
- 20.2 The Company may process all the details it obtains from the Buyer to enable the Company to do business with the Buyer and for the specific purpose of selling the Goods to the Buyer. The Company may also request further information from third parties with the Buyer's consent for example, credit reference agencies. The Company shall obtain specific consent from the Buyer for the collection by the Company of sensitive data as defined by the Act such as racial origin, (trade union membership and commission of offences) physical or mental health or criminal convictions.
- 20.3 Any information gathered will only be used in the context of the business the Company conducts for the Buyer and for any other purpose required for the fair processing of the Buyer's data. The Buyer may notify the Company to cease processing the data if it is unhappy with the way the Company uses the Buyer's personal data or wishes the Company to cease using any data which the Buyer has voluntarily given to the Company.
- 20.4 The Company may disclose the Buyer's personal data as required by law, including but without limitation, to prevent a crime, discharge a statutory duty or as required by a court order in the context of legal proceedings or to any third parties who process personal data on the Company's behalf such as computer maintenance companies and any group company within the Company's organisation.
21. IRISH LAW
- 21.1 This Contract shall be construed and operated in accordance with the laws of Ireland and the parties submit to the exclusive jurisdiction of the Irish courts in respect of all matters arising out of or in connection with it.