

HSS STANDARD TERMS & CONDITIONS SALE OF GOODS

Version: 22 March 2021

PLEASE NOTE THAT THESE TERMS ARE USED WITH TRADERS AND WITH CONSUMERS AND IN CERTAIN AREAS DIFFERENT PROVISIONS APPLY TO EACH AS FOLLOWS:

- **Part A:** General Terms applying to Traders and Consumers;
- **Part B:** Terms applying only to Consumers; and
- **Part C:** Terms applying only to Traders

A **"Trader"** means a person who is acting for purposes related to that person's trade, business or profession, or a person acting on behalf of such a person.

A **"Consumer"** means a natural person who is acting wholly or mainly for purposes which are unrelated to the person's trade, business or profession.

Before placing an order, the Purchaser should read these Terms carefully as they contain important information about HSS and the Contract.

WHERE THE PURCHASER IS A CONSUMER, THE PURCHASER'S ATTENTION IS DRAWN IN PARTICULAR TO THE SECTIONS CONCERNING HSS' LIABILITY TO THE PURCHASER SET OUT IN PART B.

PART A: GENERAL TERMS APPLYING TO TRADERS AND CONSUMERS

1. DEFINITIONS

In these Terms, the following words and expressions shall, unless the context or circumstances require otherwise, have the meanings assigned to them below:

"Additional Charges" means charges applicable to the purchase of the Goods which are charged in addition to the Charges;

"Charges" means the charges set out in the Contract or if no charges are detailed in the Contract, HSS standard charges for the relevant Goods in force on the date HSS issues a written acceptance of the Order to the Purchaser;

"Contract" means the contract between HSS and the Purchaser formed in accordance with clause 3;

"Delivery Location" means the Purchaser's premises or delivery address as provided in the Order;

"Goods" means the goods or products to be purchased from HSS by the Consumer or Trader as listed in the Order, all substitutions, replacements or renewals of such goods and all related accessories, manuals and instructions provided for the goods;

"HSS" means the relevant HSS company set out in the Contract;

"Order" means the individual orders for the purchase of Goods placed by the Purchaser from time to time in accordance with these Terms;

"Purchaser" means the Consumer or Trader who purchases Goods from HSS pursuant to an Order.

2. **INFORMATION ABOUT HSS AND CONTACTING HSS**

2.1 **Who is HSS.** The name, company registration number, registered office address and VAT number of the relevant HSS company from which the Goods will be purchased is set out in the Contract.

2.2 **How to contact HSS.** If the Purchaser has any questions or if the Purchaser has any complaints, the Purchaser should contact HSS. HSS can be contacted by email at onlinesupport@hss.com, by calling 0345 6043312, or by post at HSS, Building 2, Think Park, Mosley Road, Manchester, England, M17 1FQ.

2.3 **How HSS may contact the Purchaser.** If HSS has to contact the Purchaser, HSS will do so by telephone or by writing to the Purchaser at the email address or postal address the Purchaser provides to HSS in the Order.

3. **FORMATION OF CONTRACT AND ORDERS**

3.1 **The Purchaser's Order is an offer to purchase from HSS.** Each Order placed by the Purchaser will be an offer by the Purchaser to purchase the Goods on these Terms. The Purchaser will ensure that each Order is accurate and complete and that the Goods are suitable for the Purchaser's requirements.

3.2 **How we, HSS, accept the Order.** A Contract will be formed between HSS and the Purchaser for the provision of the Goods set out in the Order, when HSS issues a written acceptance of the Order to the Purchaser. The Purchaser acknowledges and agrees that HSS is not a manufacturer of any of the Goods and may subcontract the fulfilment of the Order to its supplier.

3.3 **HSS may not accept your Order.** If HSS is unable to accept an Order for any reason, HSS will inform the Purchaser of this and will not charge for the Goods.

3.4 **When will the Contract commence.** The Contract shall commence on the date on which the relevant Contract is formed in accordance with clause 3.2.

3.5 **Substitution of Goods.** HSS may provide substitute Goods where requested by the Purchaser, or where the relevant Goods have been superseded by the latest version. To the extent that an Order cannot be fulfilled completely from stock, the unfulfilled balance will (at the Purchaser's option) either be put on back order to be fulfilled when HSS or its supplier next has available stock or be cancelled and refunded to the Purchaser.

4. **CHARGES AND PAYMENT**

4.1 **Where to find the Charges.** The Charges will be the price indicated on the order pages (or otherwise notified to the Purchaser) when the Purchaser places the Order. All prices exclude VAT, which HSS will add at the rate applicable at the date of order acceptance.

4.2 **When the Purchaser must pay and how.** HSS must receive payment of the whole of the Charges, and any Additional Charges including but not limited to delivery, before the Order can be processed unless we have agreed otherwise in advance in writing.

4.3 If the Purchaser fails to make any payment due to HSS under these Terms by the due date for payment, then, without limiting HSS's remedies, the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate from time to time of Barclays Bank plc. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

4.4 If the Purchaser disputes any invoice, the Purchaser shall immediately notify HSS in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. HSS shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment.

5. **QUALITY**

5.1 The Goods supplied to the Purchaser by HSS or its supplier shall be free from material defects and comply with all applicable statutory and regulatory requirements.

5.2 In the event of any Goods being materially defective, and subject to the provisions of clause 7 surrounding defects apparent on delivery, HSS will (at its discretion) arrange for the replacement or repair of the Goods through its supplier, or refund the purchase price to the Purchaser.

5.3 These warranties shall not apply to any defect which arises from improper use, failure to follow the product instructions, or any repair or modification made without the written consent of HSS.

5.4 The remedies set out in this clause 5 shall be the Purchaser's sole remedies for any breach of warranty and in respect of the supply or non-supply of goods.

5.5 The availability of the remedies set out in this clause 5 is subject to:

5.5.1 a claim being made in writing to HSS, prior to the return of any defective Goods, and within 12 months of the original date of despatch or date of service, or such other periods as may be indicated by HSS for specific goods from time to time in writing; and

5.5.2 the Purchaser returning the relevant Goods, or making them available for collection by HSS or its supplier, in accordance with HSS's instructions and suitably packaged. In particular, for any returns, the Purchaser must obtain a returns number from HSS or its supplier and quote this on all paperwork, and state the original invoice number in respect of the Goods and the nature of any claimed defect.

5.6 Where the Purchaser returns defective Goods otherwise than in accordance with these provisions, HSS or its supplier may refuse such Goods and return them to the Purchaser at the cost of the Purchaser.

5.7 The Purchaser shall have no remedy in respect of any untrue statement made to it upon which it relied in ordering the Goods (unless such untrue statement was made fraudulently) other than any remedy it may have set out expressly in these Terms.

5.8 Save as expressly provided in these Terms, all implied warranties, terms and conditions (whether statutory or otherwise) concerning the supply or non-supply of the Goods are excluded to the fullest extent permitted by law (including, without limitation, the implied terms of satisfactory quality, fitness for purpose and provision of services with reasonable care and skill). The Purchaser acknowledges that it is responsible for ensuring that the Goods it orders are fit for the purposes for which it intends to use them.

6. **DELIVERY**

6.1 HSS will deliver the Goods to the Delivery Location. HSS may use third party agents to deliver the Goods to the Purchaser and reserves the right to deliver an Order in instalments by separate delivery shipments.

- 6.2 HSS or its agent will aim to deliver the Goods in accordance with the times and dates for delivery quoted on the HSS website during the order process, but any quoted delivery dates and/or times are approximate only and HSS shall not be liable for the consequences of any delay in delivery. Time for delivery shall not be of the essence. Delivery of any Goods that require special handling may take longer to be delivered.
- 6.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 6.4 The Purchaser shall do all that it reasonably can to enable delivery to take place at the given time and place. If the Purchaser delays delivery, or delivery fails because the Purchaser has not taken appropriate steps, HSS will try to arrange for an alternative delivery date. If delivery fails as a result of circumstances within the Purchaser's reasonable control, the cost of any re-delivery shall be borne by the Purchaser. If HSS is unable to arrange a date for re-delivery it may cancel the Order and refund the price paid for the Goods.
- 6.5 If any delivery has not been made by a quoted delivery date and/or time, then subject to the Purchaser notifying HSS of such delay, HSS will endeavour to ascertain if the Goods have been delivered and will inform the Purchaser of the status of the delivery or the new expected delivery time. HSS may also, at its discretion, refund the total delivery charge to the Purchaser. If a revised delivery time is not acceptable to the Purchaser, HSS may also, at its discretion, offer an alternative delivery option. These are the Purchaser's exclusive remedies for late delivery.

7. **ACCEPTANCE AND DEFECTIVE PRODUCTS**

- 7.1 The Purchaser must inspect the Goods as soon as is reasonably possible after delivery. The Purchaser shall, within 30 days of the date of delivery, give notice to HSS in detail of:
- 7.1.1 any defect in the Goods that is apparent on reasonable examination. In this case HSS shall, at its discretion, arrange to replace the Goods or refund the purchase price. In any event the Purchaser must refuse parcels delivered to it in a damaged condition;
 - 7.1.2 any shortfall in the Goods delivered. In this case HSS shall, at its discretion, arrange to deliver the undelivered Goods or refund the price of the undelivered Goods;
 - 7.1.3 any delivery of Goods not in accordance with the Order. In this case HSS shall, at its discretion, arrange to replace the Goods or refund the purchase price; or
 - 7.1.4 any non-delivery of the Goods (in which case the time limit is within 10 days of the estimated despatch date). In this case HSS shall, at its discretion, arrange to deliver the undelivered Goods or refund the price of the undelivered Goods.
- 7.2 If the Purchaser fails to give any such notice in accordance with clause 7.1, the Goods shall be conclusively presumed to be, in all respects, in accordance with the Order and free from apparent defects, and the Purchaser shall be deemed to have accepted the Goods accordingly.
- 7.3 The remedies set out above are the Purchaser's exclusive remedies for non-delivery or short delivery of Goods, or for apparent defects in the Goods or delivery of Goods not in accordance with the Order.

8. **TITLE AND RISK**

- 8.1 Risk in the Goods shall pass to the Purchaser on delivery, unless the Purchaser wrongfully fails to take delivery of the Goods, in which case such risk shall pass to the Purchaser at the time when HSS or its agent has attempted to deliver the Goods.
- 8.2 Title to the Goods shall not pass from HSS or its supplier to the Purchaser until HSS has received payment in full (in cash or cleared funds) for the Goods. If the Purchaser is late in paying any sum to HSS, then HSS shall be entitled to the immediate return of all Goods where ownership has not passed to the Purchaser. The Purchaser authorises HSS and its agents to recover any such Goods in such circumstances, and to enter any premises of the Purchaser for that purpose.
- 8.3 Demand for or recovery of the Goods by HSS shall not of itself discharge either the Purchaser's liability to pay the whole of the Charges and Additional Charges and take delivery of the Goods, or HSS's right to claim for the whole of the Charges and Additional Charges.

9. **NO FAULT CANCELLATION AND RETURNS**

- 9.1 HSS may, at its discretion and in writing, allow an Order to be cancelled where there is no fault with the Goods subject to HSS recovering from the Purchaser the costs incurred by HSS, and subject to the processing charge provided for in this clause 9.
- 9.2 In the event of cancellation of part of any Order only, HSS may invoice the Purchaser any difference in selling price per unit applicable to the quantity actually despatched up to the time of cancellation compared to the quantity ordered.
- 9.3 For Purchasers other than Consumers, a processing charge may apply in respect of all Goods returned other than due to defects covered by the warranty at clause 5.
- 9.4 A Purchaser may only return Goods to HSS (or its supplier), and receive a credit or refund or replacement, subject to the following conditions:
- 9.4.1 the Purchaser must contact HSS to obtain a returns number (to be quoted on all relevant paperwork);
 - 9.4.2 the return must be made within 30 days of the date of delivery (as stated on the delivery documentation);
 - 9.4.3 the Goods must be returned to HSS (or its supplier) in their original condition and packaging and in a condition which will enable them to be immediately fit for re-sale;
 - 9.4.4 the Purchaser must follow any specific instructions which appear on the HSS website or are otherwise given to the Purchaser by HSS during the returns process;
 - 9.4.5 the Goods must be returned to HSS (or its supplier) adequately packed and clearly labelled to the address as advised by HSS or its supplier; and
 - 9.4.6 the Purchaser must quote the returns number on the parcel being

returned.

- 9.5 Where the Purchaser returns Goods to HSS or its supplier not in accordance with clause 9.4 (for example, after the period for returns has expired or in an unfit state) HSS or its supplier may refuse to accept the return and return the Goods to the Purchaser at the Purchaser's expense or may apply a handling charge which relates to the actual cost of reprocessing.
- 9.6 This no fault returns policy excludes software, calibrated products, production packaging products, non-catalogue products, extended range products, specially manufactured products and any products marked as non-cancellable or non-returnable. In addition, HSS will not accept returned ESD sensitive devices where the integrity of the original ESD shielding packaging has been compromised (for example, if the bag has been opened and resealed or multiple bags have been stapled together).
- 9.7 HSS accepts no responsibility for any loss of or damage to products in transit from the Purchaser to HSS or its supplier.

10. **TERMINATION**

- 10.1 HSS may suspend further supply or delivery, stop any goods in transit or terminate the Contract by notice in writing to the Purchaser if:
- 10.1.1 the Purchaser is in breach of any obligation under the Contract; or
 - 10.1.2 the Purchaser becomes unable to pay its debts when they fall due; or
 - 10.1.3 proceedings are or are reasonably likely to be commenced against the Purchaser alleging bankruptcy or insolvency; or
 - 10.1.4 an administrator, receiver or administrative receiver is appointed or is reasonably likely to be appointed over all or part of the Purchaser's undertaking and/or assets.

Upon termination, any Charges and Additional Charges the Purchaser owes to HSS (even if they are not yet due for payment) will be immediately due and payable and HSS shall be under no further obligation to supply the Goods to the Purchaser.

11. **GENERAL**

- 11.1 **Which version of our Terms apply to your order.** HSS amends these Terms from time to time. Every time a Purchaser orders Goods from us, the terms in force at the time of the Order and available at hss.com will apply to the Contract between the Purchaser and HSS.
- 11.2 **Even if HSS delays in enforcing a Contract, HSS can still enforce it later.** If HSS fails to insist that the Purchaser performs any of its obligations under a Contract or if HSS does not enforce its rights against the Purchaser, or if HSS delays doing so, that will not mean that HSS has agreed not to enforce its rights against the Purchaser and will not mean that the Purchaser does not have to comply with those obligations. If HSS does waive a default by the Purchaser, HSS will only do so in writing, and that will not mean that HSS will automatically waive any later default by the Purchaser.

- 11.3 **If a court finds part of the Terms illegal, the rest will continue in force.** Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any term is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 11.4 **Events beyond our control.** HSS shall have no liability to the Purchaser for any failure or delay in supply or delivery or for any damage or defect to goods supplied or delivered hereunder or for any other liability, in each case that is caused by any event or circumstance beyond its reasonable control (including, without limitation, accidents, extreme weather conditions, epidemics, pandemics, fire, explosion, flood, storm, earthquake, natural disaster, failure of telecommunications networks, inability to use transport networks, mechanical failures, acts of God, terrorist attack, war, civil commotion, riots, strikes, lockouts and other industrial disputes, acts or restraints of Government, and imposition or restrictions of imports or exports).
- 11.5 **Nobody else has any rights under a Contract.** The parties do not intend that any term of a Contract shall be enforceable by any person other than the parties.
- 11.6 **The Purchaser needs the consent of HSS to transfer its rights to someone else.** The Contract is personal to the Purchaser and the Purchaser shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of HSS.
- 11.7 **Which laws apply.** These Terms and any and all Contracts and any non-contractual obligations arising out of or in connection with them will be governed by English law.
- 11.8 **Where you may bring legal proceedings.** HSS and the Purchaser both agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with these Terms and any and all Contracts (including in relation to any non-contractual obligations).

12. **HOW HSS MAY USE A PURCHASER'S PERSONAL INFORMATION**

HSS is the data controller of any personal information a Purchaser provides to us. HSS will collect, process and pass such information to third parties in order to process and fulfil an Order.

If the Purchaser is an individual providing HSS with its own personal information, please see HSS's privacy policy which is available on our website (<https://www.hss.com/hire/privacy-policy>) for further information on how personal information is used and rights in relation to that information.

If the Purchaser is providing personal data of another individual to HSS, the Purchaser must tell that individual that the Purchaser is providing their information to HSS and show them a copy of this notice.

PART B: TERMS APPLYING ONLY TO CONSUMERS

13. LIABILITY

- 13.1 **HSS is responsible to the Purchaser for foreseeable loss and damage caused by HSS.** If HSS fails to comply with the Contract, HSS is responsible for loss or damage the Purchaser suffers that is a foreseeable result of HSS breaking the Contract or failing to use reasonable care and skill. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Purchaser and HSS knew it might happen, for example, if you specifically drew it to our attention during the sales process.
- 13.2 **HSS does not exclude or limit in any way HSS's liability where it would be unlawful to do so.** This includes liability for:
- 13.2.1 death or personal injury caused by HSS's negligence or the negligence of HSS' employees, agents or subcontractors;
 - 13.2.2 for fraud or fraudulent misrepresentation;
 - 13.2.3 for breach of the Purchaser's legal rights in relation to the Goods including the right to receive Goods; and
 - 13.2.4 for any matter for which HSS is not permitted by law to exclude or limit, or to attempt to exclude or limit, liability.
- 13.3 **HSS is not liable for business losses.** HSS only supply the Goods for domestic and private use. If the Purchaser uses the Goods for any commercial, business or re-sale purpose HSS will have no liability to the Purchaser for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 13.4 **AS A CONSUMER, THE PURCHASER HAS LEGAL RIGHTS AND REMEDIES IN RELATION TO THE PROVISION OF THE GOODS. ADVICE ABOUT THE PURCHASER'S LEGAL RIGHTS AND REMEDIES IS AVAILABLE FROM THE CITIZENS' ADVICE BUREAU. NOTHING IN THESE TERMS WILL AFFECT THE PURCHASER'S LEGAL RIGHTS AND REMEDIES.**

PART C: TERMS APPLYING ONLY TO TRADERS

14. HSS' LIABILITY

14.1 Non-excludable liability. Neither party excludes or limits its liability, if any, to the other party for:

14.1.1 death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable;

14.1.2 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or

14.1.3 any matter which it would be illegal for it to exclude or to attempt to exclude its liability.

14.2 HSS' aggregate liability. Subject to clause 14.1 and 14.3, HSS's maximum aggregate liability to the Purchaser arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of HSS's obligations under the Contract but excluding any liability which falls within clause 14.1, shall be limited in respect of each Contract, to the Charges and other sums paid or payable in respect of that Contract as specified in the Order.

14.3 Excluded types of liability. Subject to clause 14.1, neither party shall have any liability to the other party for any:

14.3.1 loss of profit (direct or indirect);

14.3.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

14.3.3 loss of goodwill, loss of reputation, loss of opportunity and/or loss of operation (in each case whether direct or indirect);

14.3.4 loss of anticipated saving or loss of margin (in each case whether direct or indirect);

14.3.5 liability of the other party to third parties (whether direct or indirect);
or

14.3.6 indirect, consequential or special loss,

arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of that party's obligations under the Contract and/or any defect in or breakdown of the Goods or the Good's unsuitability for the Purchaser's intended purpose.

14.4 HSS's entire liability. The Contract sets out the full extent of HSS's obligations and liabilities in respect of the Goods to the Purchaser. There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Purchaser except as specifically stated in the Contract. Any condition, warranty or other term concerning the Goods which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.