

Danfast Limited Terms of Trading

Business customers and consumers

- 1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.
1.2 All other terms apply to all customers.
1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
1.4 If you are not a business customer, you are a consumer. Nothing in these terms affects your statutory rights as a consumer.

2 Price

- 2.1 **Consumers:** the quoted price includes VAT (unless otherwise stated). Business customers: the price quoted excludes VAT (unless otherwise stated). Rates of tax and duties on the goods will be those applying at the time of delivery.
2.2 Our quotations lapse after 30 days (unless otherwise agreed in writing).
2.3 The price quoted excludes delivery (unless otherwise stated).

2.4 Business customers:

- 2.4.1 Unless otherwise stated, the price quoted is an illustrative estimate only and the price charged will be our price current at the time of delivery.
2.4.2 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.
2.4.3 **Currency Fluctuations:** In the event of the Company being required due to currency exchange rate fluctuations, or to any other circumstances beyond the Company's control, occurring prior to the delivery of the goods or rendering of the services to pay an increased or decreased amount in order to obtain the goods or services, the amount of such increase shall be passed on to the intending purchaser.

2.5 A minimum invoice value of ten pounds (excluding VAT) applies to all credit account transactions.

3 Orders and Delivery

- 3.1 We may charge you for some or all of the cost of any duplicated orders if your written confirmations of telephone orders do not clearly state they are confirmations.
3.2 All delivery times quoted are estimates only.
3.3 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
3.3.1 you may not cancel if we receive your notice after the goods have been dispatched; and
3.3.2 if you cancel the contract, you can have no further claim against us under that contract.
3.4 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
3.5 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
3.6 **Business customers:** if delivery does not take place through no fault of ours, we may charge you for that failed delivery. We reserve the right to store the goods at your expense and sell them after a period of one month's storage to recover our storage costs and the costs of failed delivery. We may charge you for any shortfall in the sale proceeds.

4 Delivery and safety

- 4.1 We may decline to deliver if:
4.1.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
4.1.2 the premises (or the access to them) are unsuitable for our vehicle.

5 Payment terms

- 5.1 Unless you have an approved credit account you must pay us in cash (or otherwise in cleared funds) as stated in our pro-forma invoice or on delivery if we do not issue a pro-forma invoice.
5.2 **Business customers:** if you have an approved credit account, payment is due no later than the last day of the month following the month date of our invoice unless otherwise agreed in writing.
5.3 If you fail to pay us in full on the due date:
5.3.1 we may suspend or cancel future deliveries;
5.3.2 we may cancel any discount offered to you;
5.3.3 we reserve the right to charge you interest at the rate equivalent to that set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998:
a. calculated (on a daily basis) from the date of our invoice until payment;
b. compounded on the first day of each calendar month; and
c. before and after any judgement (unless the court orders otherwise).

5.4 If you have an approved **business** credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.

5.5 You do not have the right to set off any money you may claim from us against anything you may owe us.

5.6 While you owe money to us, we have a lien on any of your property in our possession.

5.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.

6 Title

- 6.1 **Consumers:** s18 Sale of Goods Act 1979 applies
6.2 **Business customers:** until you pay all debts you may owe us:
6.2.1 all goods supplied by us remain our property;
6.2.2 you must store them so that they are clearly identifiable as our property;
6.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
6.2.4 you may use those goods and sell them in the ordinary course of your business, but not if:
a. we revoke that right (by informing you in writing); or
b. you become insolvent.

6.3 **Business customers:** you must inform us (in writing) immediately if you become insolvent.

6.4 **Business customers:** if your right to use and sell the goods ends you must allow us to remove the goods.

6.5 **Business customers:** we have your permission to enter any premises where the goods may be stored:

- 6.5.1 at any time, to inspect them; and
6.5.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.

6.6 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.

6.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.

7 Risk

- 7.1 The goods are at your risk from the time of delivery.
7.2 Delivery takes place either:
7.2.1 at our premises (if you are collecting them or arranging carriage); or
7.2.2 at your premises (if we are arranging carriage).

7.3 **Business customers:** you must inspect the goods on delivery. If any goods are damaged (or not delivered), you must write to tell us within 48 hours of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect the damaged goods.

7.4 **Consumers:** if any goods are damaged (or not delivered), you must write to tell us within seven working days of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect the damaged goods.

8 Warranties

- 8.1 We warrant that the goods are free from material defect at the time of delivery (as long as you comply (as appropriate) with clauses 7.3 or 7.4)
8.2 **Business customers:** we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
Consumers: your statutory rights are unaffected.

8.3 If you believe that we have delivered goods, which though undamaged, are defective in materials or workmanship, you must:

- 8.3.1 inform us (in writing), with full details, as soon as possible; and
8.3.2 allow us to investigate (we may need access to your premises and product samples).

8.4 If the goods are found to be defective in material or workmanship (following our investigations, and you have complied with those conditions (in clauses 7.3 (or 7.4) and 8.3) in full, we will (at our option) replace the goods or refund the price. We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.

8.5 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to **five million pounds**.

8.6 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.

8.7 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

9 Specification

9.1 If we prepare the goods in accordance with your specifications or instructions, you must ensure that the specifications or instructions are accurate. You must ensure that goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them.

10 Return of goods

- 10.1 We will accept the return of goods from you only:
10.1.1 by prior arrangement (confirmed in writing);
10.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and
10.1.3 where the goods are as fit for sale on their return as they were on delivery.

10.2 **Consumers only:** clause 10.1 does not affect any rights you may have under the Consumer Protection (Distance Selling) Regulations 2000.

11 Export terms

11.1 Clause 11 of these terms shall apply to exports except where inconsistent with any written agreement between us.
11.2 Where the goods are supplied by us to you by way of export from the United Kingdom or from a port outside the United Kingdom, the 'Incoterms' of the International Chamber of Commerce which are in force at the time the contract is made shall apply and the goods shall be supplied ex-works unless otherwise agreed.

11.3 The Incoterms are treated as amended by these terms (read as a whole) to the extent that they are inconsistent with them.

11.4 You are responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties due.

11.5 Where the goods are to be sent by us to you by a route including sea transport we shall be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

11.6 If you require the goods to be tested or inspected at our premises before shipment, you are responsible for arranging such testing and inspection. We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

11.7 Payment of all amounts due to us shall be made as stipulated by us, unless otherwise agreed in writing.

11.8 We shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

12 Cancellation

12.1 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.

- 12.2 We may suspend or cancel the order, by written notice if:
12.2.1 you fail to pay us any money when due (under the order or otherwise);
12.2.2 you become insolvent;
12.2.3 you fail to honour your obligations under these terms.

12.3 You may not cancel the order unless we agree in writing (and clauses 3.3.2 and 12.1 then apply).

12.4 **Consumers only:** you may only cancel the contract as allowed under the Consumer Protection (Distance Selling) Regulations 2000. If you exercise that right you will receive a full refund subject to a deduction of any direct cost of returning the goods.

13 Waiver and variations

- 13.1 Any waiver or variation of these terms is binding in honour only unless:
13.1.1 made (or recorded) in writing;
13.1.2 signed on behalf of each party; and
13.1.3 expressly stating an intention to vary these terms.

13.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

- 14 **Force majeure- business customers only**
- 14.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may then cancel or suspend any of our obligations to you, without liability.
- 14.2 Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 15 **General**
- 15.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 15.2 If you are more than one person, each of you has joint and several obligations under these terms
- 15.3 If any of these terms are unenforceable as drafted:
- 15.3.1 it will not affect the enforceability of any other of these terms; and
- 15.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 15.4 We may treat you as insolvent if:
- 15.4.1 you are unable to pay your debts as they fall due; or
- 15.4.2 you (or any item of your property) become the subject of:
- a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
- b. any application or proposal for any formal insolvency procedure; or
- c. any application, procedure or proposal overseas with similar effect or purpose.
- 15.5 **Business customers**; all brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 15.6 **Business customers**; any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 15.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 15.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:
- 15.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
- 15.8.2 which expressly state that you may rely on them when entering into the contract.
- 15.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

