

William Garvey LTD Terms and Conditions of Sale

1 Interpretation

1.1 Where the following words are used in these terms and conditions they have the meanings set out below.

Bespoke Products	Goods that are built to the particular requirements or specification of the Buyer;
Buyer	the person(s), firm or company who purchases the Goods from WGL
Conditions	the terms and conditions set out in this document;
Contract	the agreement between WGL and the Buyer for the sale and purchase of the Goods,
Goods	any goods agreed in the Contract to be supplied and or supplied and fitted to the Buyer by WGL (including any part or parts of those goods) including Standard Items and Bespoke Products;

2 Application of the Conditions

2.1 These terms and conditions form the Contract. In the event of any conflict, the Conditions will apply. For the avoidance of doubt this means that the Buyer's terms and conditions of purchase shall not apply to this Contract. No other communications between the Buyer and WGL shall form part of the Contract. The Conditions may not be varied unless agreed in writing.

2.2 The Buyer acknowledges that it has not relied on any statement made by or on behalf of WGL which is not set out in the Contract. Nothing in this condition shall exclude or limit WGL's liability for fraudulent misrepresentation.

2.3 Each separate order or acceptance of a quotation for Goods by the Buyer from WGL shall be deemed to be an offer by the Buyer to buy Goods on the Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by WGL until it is acknowledged by WGL or (if earlier) WGL delivers the Goods to the Buyer.

3 Quotations

3.1 Any quotation is given on the basis that no Contract shall come into existence until WGL acknowledges an order made by the Buyer. Any quotation is valid for a period of 30 days. However WGL may withdraw a quote earlier than this if it chooses.

3.2 Contract for special or bespoke products cannot be cancelled. In the event that a cancellation can be negotiated it will be the percentage of the price to which work has been undertaken; a minimum cancellation charge of 20% will apply.

4 Description

4.1 The quantity and description of the Goods shall be as set out in WGL's quotation or acknowledgement of order. The Buyer takes all responsibility for ensuring the specifications contained in such quotation or acknowledgement of order are correct.

4.2 All samples, drawings, specifications and advertising issued by WGL and any descriptions or images contained in WGL's website, catalogues, brochures, mailings and emails are for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract and this is not a sale by sample. The Buyer accepts that the Goods may vary from such descriptions or images.

4.3 Where Goods are made to or described by measurements or drawings the Buyer accepts that the Goods may vary by reasonable tolerance from such measurements or drawings.

4.4 WGL accepts no liability for any misinterpretation of any such descriptions by the Buyer.

4.5 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify WGL 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 WGL in connection with any claim made against it for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with WGL's use of the Buyer's specification. This clause 4.5 shall survive termination of the Contract.

5 Delivery

5.1 Unless otherwise agreed by WGL, delivery of the Goods shall take place at WGL's place of business. If the Buyer requires carriage of the Goods to another site WGL shall be entitled to charge its standard carriage rates to that location in addition to the price of the Goods.

5.2 Any dates specified by WGL for delivery of the Goods are intended to be an estimate. Time for delivery shall not be of the essence to the Contract. Penalty charges or similar are expressly excluded from this contract.

5.3 Subject to the other provisions of the Conditions WGL shall not be liable for any loss caused to the Buyer due to delay in delivery or carriage. This includes direct, indirect or consequential loss however incurred, costs, damages, charges or expenses caused directly or indirectly, nor shall any delay entitle the Buyer to terminate the Contract unless such delay exceeds 180 days.

5.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or WGL is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions or authorisations:

- 5.4.1 risk in the Goods shall pass to the Buyer;
- 5.4.2 the Goods shall be deemed to have been delivered; and
- 5.4.3 WGL may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses.

5.5 When the goods are supply only the Buyer shall provide at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.

5.6 WGL may deliver the Goods by separate installments.

5.7 The Buyer shall inspect the Goods and inform WGL of any shortages, damages or problems within 5 days of delivery.

5.8 The Buyer shall take delivery of the Goods within 3 days of WGL giving notice that the Goods are ready for delivery.

5.9 Some Goods will require assembly by the Buyer. If the Buyer is unsure whether a certain item will require assembly, the Buyer should ask WGL prior to purchase.

6 Risk

6.1 The Goods are at the risk of the Buyer from the time of delivery.

7 Retention of Title

7.1 Ownership of the Goods shall not pass to the Buyer until WGL has received in full (in cash or cleared funds) all sums due to it in respect of:

- 7.1.1 the Goods; and
- 7.1.2 all other sums which are or which become due to the WGL from the Buyer on any account.

7.2 Until such payments are made, the Buyer will hold the Goods on WGL's behalf.

7.3 The Buyer grants WGL an irrevocable license at any time to enter any premises where the Goods are to recover them.

7.4 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer (or any of them) has a bankruptcy order made against him or enters into liquidation (or a similar event occurs).

8 Price

8.1 All prices shall be exclusive of VAT and all costs or charges in relation to packaging, loading, unloading, delivery and insurance. All prices are subject to the minimum invoicing or sales values of WGL in force from time to time and shall be invoiced and charged accordingly.

8.1.1 Standard Items:

The price for the Goods shall be the price quoted by WGL. For the avoidance of doubt WGL reserves the right to amend, alter or withdraw any such quote before it is accepted.

8.1.2 Bespoke Products:

The price shall be specified by WGL prior to delivery of the Goods. Where possible WGL will seek to ensure that the price is as quoted. However, the Buyer agrees that due to the nature of the work and availability of materials the price may be adjusted by reasonable amounts to reflect unanticipated expenses or complexity of work.

8.2 Adjustments to specifications may incur additional charges. Orders that are not completed within 6 months will be subject to a price review.

9 Payment

9.1 All payments may be made by cheque, electronic money transfer, banker's draft, debit or credit card, or in cash. Credit card surcharges will apply.

9.1.1.1 Unless stated otherwise for account customers all payments are due on the last working day of the month following the month in which the Goods are delivered.

9.1.1.3 Payments on account will be requested when the balance reaches or exceeds the agreed credit limit. If the credit limit on the Buyer's account is exceeded, WGL reserves the right to delay the dispatch of any Goods until payment is made. The balance includes Goods that have already been supplied by WGL to the Buyer and Goods that have not yet been supplied by WGL to the Buyer.

9.1.1.4 Accounts may be closed if dormant for 12 months, or longer.

9.1.2 Non-Account Customers

Payment must be made on or prior to delivery for Standard Items. Bespoke Products require a deposit of at least 50% of the quoted price with the balance becoming due on or prior to delivery.

9.2 Time for payment shall be of the essence to the Contract.

9.3 No payment shall be deemed to have been received until the WGL has received cleared funds.

9.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

9.5 If the Buyer fails to pay WGL any sum due, the Buyer shall be liable to pay interest to WGL on such sum from the due date for payment at the annual rate of 4% above the base rate of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgment.

10 Limitation of liability

10.1 The following provisions set out the entire financial liability of WGL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in the Conditions excludes or limits the liability of WGL for death or personal injury caused by WGL's negligence or for any matter which it would be illegal for the WGL to exclude or attempt to exclude its liability.

10.4 WGL's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Contract.

10.5 WGL shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business or depletion of goodwill (howsoever caused) which arise out of or in connection with the Contract.

11 Force Majeure

11.1 WGL reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of WGL.

12 General

12.1 If any provision of the Contract is found to be invalid it shall to the extent of such invalidity be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.2 Any waiver by WGL of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

12.3 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13 Adjudication

A party to this contract has the right to refer to a dispute arising under the contract for adjudication. The procedure for said adjudication shall be that as set out in the Scheme for Construction Contracts (England and Wales) Regulations 1998.

13.1 The buyer must request from WGL the name of the adjudicator or nominating body.

14 Communications

14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post. Communications to WGL should be sent to William Garvey Limited of Leyhill, Upton, Payhembury, Honiton, EX14 3JG. Communications to the Buyer shall be sent to the address provided by them or their known place of business or registered office.