

# SINGLETON BIRCH Ltd - CONDITIONS OF SALE

1. **Definitions**

In these conditions of sale:

  - 1.1 "Business Day" means any day (other than a Saturday or Sunday or Bank or Public Holiday).
  - 1.2 "Company" means Singleton Birch Limited.
  - 1.3 "Purchaser" means the person, firm or company to whom the Materials are to be supplied.
  - 1.4 "Materials" means the goods and/or services to be supplied by the Company.
  - 1.5 "Conditions" means the standard conditions of sale set out in this document.
  - 1.6 "Contract" means any contract between the Purchaser and the Company for the supply of Materials.
  - 1.7 "Company Signatory" means a Director of the Company.
2. **Contract**
  - 2.1 All Materials sold by the Company shall be sold subject to these Conditions which may not be altered unless expressly agreed in writing by a Company Signatory. These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any of those of the Purchaser.
  - 2.2 Any addition or variation to these Conditions whether or not contained in any document from the Purchaser are excluded and shall not form part of the Contract unless agreed in writing by a Company Signatory.
  - 2.3 No cancellation or variation of the whole or any part of the Contract is permitted except with the written agreement of a Company Signatory.
  - 2.4 Each order or acceptance of a quotation for Materials shall be deemed to be an offer by the Purchaser to purchase Materials on these Conditions.
  - 2.5 Acceptance of delivery or performance of the Materials will be deemed conclusive evidence of the Purchaser's acceptance of these Conditions
3. **Quotations**
  - 3.1 Any quotation given by the Company is valid for 60 days from its date or such longer period as may be agreed in writing provided the Company has not previously withdrawn it. The Company reserves the right to reject an order received after that period and to withdraw the quotation on written notice at any time.
  - 3.2 Quotations are made subject to the availability of Materials and the Company reserves the right to cancel in whole or in part any order to the extent that the Materials required therefor are not or cease to be available.
4. **Price**
  - 4.1 The price of Materials is that in the Company's price list ruling at the date of despatch.
  - 4.2 The price of Materials shall be subject to the addition of Value Added Tax and any other Government duty, levy or tax applicable.
  - 4.3 The Company reserves the right by giving notice to the Purchaser at any time before delivery or performance to increase the price of the Materials to reflect any increase in cost to the Company.
  - 4.4 The prices submitted in any quotation are based on costs at the time of writing and the Company reserves the right to pass on to the Purchaser any increases which might be incurred in its costs such as raw materials, labour, haulage etc. or any other items over which it has no control, between the date of the quotation and the date of delivery or performance of Materials.
5. **Payment Terms**
  - 5.1 All invoices are payable in full on or before the end of the month following the month in which Materials were supplied or performed, or before delivery or performance if required by the Company.
  - 5.2 Unless otherwise stated the credit terms in this Condition 5 are applicable only to those Purchasers having approved credit accounts with the Company. Consideration will be given to applications for credit facilities upon receipt of satisfactory trade or other references. Credit facilities shall be granted at the Company's sole discretion.
  - 5.3 The Company reserves the right to refuse to accept or execute any order if the arrangement for payment or the Purchaser's credit are not satisfactory to the Company and to suspend or discontinue delivery or performance of any Materials to any Purchaser whose account is overdue for payment.
  - 5.4 The Purchaser shall not be entitled to make any deduction or set off from any sums claimed by the Company, unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.
  - 5.5 The Company shall be entitled to set off against any monies lawfully due or becoming due to the Purchaser from the Company or from any of the Company's subsidiary or associated companies any monies which are due or become due to the Company from the Purchaser or any of the Purchaser's subsidiary or associated companies.
  - 5.6 The Company reserves the right in its absolute discretion and at any time to insist on payment by way of cleared funds for Materials before delivery or performance or to demand security for payment before continuing with or delivering or performing Materials notwithstanding any subsisting agreement to provide credit to the Purchaser.
  - 5.7 Interest on overdue invoices shall accrue from day to day from the date when payment becomes due until the date of payment at a rate of 4% above the base rate from time to time in force by HSBC Bank PLC and shall accrue at such a rate after as well as before any judgement.
6. **Risk and Title**
  - 6.1 The risk in the Materials shall pass to the Purchaser upon delivery.
  - 6.2 All Materials delivered shall remain the property of the Company until payment in full has been received.
  - 6.3 The Company reserves the right to enter the Purchaser's property to retrieve the Materials if necessary.
7. **Termination**

This clause applies if:

  - a) The Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
  - b) An encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Purchaser;
  - c) The Purchaser ceases or threatens to cease to carry on business;
  - d) If any distraint or execution or other process is levied or enforced on any property of the Purchaser and is not paid out, withdrawn or discharged within 21 days; or
  - e) The Purchaser is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
  - f) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

If this clause applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Purchaser and if the Materials have been delivered or performed but not paid for the price shall become immediately due and payable despite any previous agreement or arrangement to the contrary.

  - 7.1 The Contract will terminate immediately upon service of written notice of termination by the Company on the Purchaser if the Purchaser fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Purchaser.
8. **Samples**
  - 8.1 Samples of Materials for which the Company has quoted and is satisfied would fairly represent the class of material which would be supplied will be submitted upon request, but it is the responsibility of the Purchaser to satisfy themselves as to the suitability for the purpose for which the Materials are required.
  - 8.2 Any Contract between the Company and the Purchaser shall not be a sale by sample.
9. **Variation of Specification**
  - 9.1 The Company reserves the right to make changes in the specification of the Materials which are required to conform with any applicable statutory or EC requirements.
  - 9.2 Where the Company complies with a request from the Purchaser or from a person reasonably believed by the Company to be acting on the Purchaser's behalf for a variation in the specification of Materials, the Purchaser will accept any consequential variation in the properties and/or the constituents of that delivery of or performance of Materials.
10. **Delivery**

Any delivery or performance times and/or dates quoted by the Company or specified in the Purchaser's order are estimates only and may not be made of the essence by notice. The Company shall not be liable for delay in delivery or performance nor shall the Purchaser be entitled to refuse to accept delivery or performance or terminate the Contract unless the delay:

  - a) is of an unreasonable length of time; and
  - b) is not due to any cause mentioned in Condition 14.
  - c) The Company does not undertake to deliver any Materials over roads or ground which it considers to be unsuitable. If a vehicle used for performing the Contract is required to deliver Materials to a place situated off a public road the Purchaser shall be responsible for providing safe and suitable road access to facilitate such delivery of Material.
- d) The Purchaser must provide safe and suitable storage facilities. The Company shall be entitled to refuse to perform at or deliver to any Purchaser's plant which it considers unsuitable. The Purchaser shall be liable for and indemnify the Company against any accident or damage (with the exception of death and personal injury caused by the negligence of the Company or its nominated haulier, employees or agents) occurring due to unsuitable access or plant.

Without prejudice to any rights or remedy available to the Company an additional charge may be made for:

  - e) Deliveries of less than the quoted minimum loads.
  - f) Delivery or performance out of normal Business Day hours.
  - g) Re-direction of deliveries.
  - h) Delays in unloading delivery vehicles.
  - i) Deliveries which cannot be effected due to unsuitable access or storage facilities.
  - j) If the Purchaser fails to take delivery of any of the Materials when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Materials to be delivered or performed on time (except because of the Company's fault) risk in the Materials will pass to the Purchaser (including, without limitation, for loss or damage caused by the Company's negligence); the Materials will be deemed to have been delivered or performed and (without prejudice to its other rights) the Company may:
    - (i) store or arrange for the storage of the Materials until actual delivery or sale and charge the Purchaser for all related costs and expenses (including, without limitation, storage and insurance); and/or
    - (ii) following written notice to the Purchaser, sell any of the Materials at the best price reasonably obtainable in the circumstances and charge the Purchaser for any shortfall below the price under the Contract.
  - k) The quantity of any consignment of Materials as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.
  - l) The Company shall not be liable for any non-delivery of Materials (even if caused by the Company's negligence) unless written notice is given to the Company within 2 Business Days of the date when the Materials would in the ordinary course of events have been received.
11. **Acceptance**

The Purchaser or any other person who reasonably appears to be authorised to sign the same shall acknowledge receipt of each load of Materials by countersigning a receipt (conveyance) note.
12. **Warranty and Liability**
- Warranty**
  - 12.1 Subject to the Conditions set out in this document the Company warrants that the Materials will correspond with their specification if an agreed written specification exists. If no specification exists then the Company warrants that at the time of delivery or performance the Materials shall be of satisfactory quality or performed with reasonable skill and care respectively.
  - 12.2 The Company shall not be liable for a breach of the warranty in Condition 12.1 unless:
    - 12.2.1 The Purchaser gives written notice of the defect to the Company within 2 Business Days of the date of delivery or performance of the Materials, or within 7 Business Days of the date when the Purchaser knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Purchaser upon a reasonable inspection); and
    - 12.2.2 The Company is given a reasonable opportunity after receiving the notice of examining such Materials and where the Materials constitute goods the Purchaser (if asked to do so by the Company) returns a representative sample of such Materials to the Company's place of business at the Purchaser's cost for the examination to take place there;
  - 12.3 The Company shall not be liable for a breach of the warranty in Condition 12.1 if:
    - 12.3.1 the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Materials or (if there are none) good trade practice; or
    - 12.3.2 the defect in such Materials arises from any design defect in any drawing, design or specification supplied or approved by the Purchaser.
  - 12.4 If the Purchaser makes a valid claim against the Company based on a defect in the quality of the Materials, the Company shall at its option replace or re-perform such Materials or refund the price of such Materials at the pro-rata Contract rate.
  - 12.5 If the Company complies with Condition 12.4 it shall have no further liability for a breach of the warranty in Condition 12.1 (including, but not limited to, when such breach is due to negligence).
- Liability**
  - 12.6 Except as set out in Condition 12.7, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Purchaser.
  - 12.7 The Company does not exclude its liability (if any) to the Purchaser:
    - 12.7.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
    - 12.7.2 for personal injury or death resulting from the Company's negligence;
    - 12.7.3 for any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
    - 12.7.4 for fraud.
  - 12.8 Subject to Conditions 12.7 and 12.9 the Company's aggregate liability under or in connection with the Contract whatsoever (whether in contract, tort (including but not limited to negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct loss howsoever caused (including but not limited to negligence) will be limited to the Contract value.
  - 12.9 Subject to condition 12.7 the Company shall have no liability to the Purchaser under or in connection with the Contract whatsoever (whether in contract, tort (including but not limited to negligence), breach of statutory duty, restitution or otherwise) for any loss of profit, pure economic loss, loss of business, depletion of goodwill and like loss (in each case whether direct or indirect) or any indirect loss or consequential loss even if caused by negligence
13. **Law**

These Conditions of sale and the Contract to which they apply shall be subject to and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.
14. **Force Majeure**

In the event of the Company's inability to deliver or perform Materials or perform the Contract due to any Act of God, war or threat of war, explosion, riot, sabotage, civil commotion, Government order or legislation, fire, accident, strike or industrial action short of a strike (whether involving employees of the Company or a third party), lock out, adverse weather conditions, delays to transport, power failures, breakdown of plant or machinery, non availability of or difficulty in obtaining Materials, raw materials, fuel, parts or machinery or due to any other matter outside the Company's reasonable control the Company may suspend deliveries or performance under the Contract and shall not be in breach of the Contract and shall not be liable for any loss or damage suffered as a result of any failure to deliver or perform or delay in delivery or performance of the Contract.
15. **General**
  - 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
  - 15.2 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in the part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
  - 15.3 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
  - 15.4 The Company may assign, licence or sub-contract all or any part of its rights or obligations under the Contract without the Purchaser's consent.
  - 15.5 The Contract is personal to the Purchaser who may not assign, licence or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
  - 15.6 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
  - 15.7 The Company's rights contained in Condition 6 (but not the Purchaser's rights) shall continue beyond the discharge of the Purchaser's and the Company's primary obligations under the Contract consequent upon its termination.
  - 15.8 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Purchaser or the Company accrued prior to termination.