



HFM Gatenby Ltd, Old Hall Farm, Gatenby, Northallerton, N Yorks, DL7 9PG

HERM(GATENBY)LIMITED TERMS AND CONDITIONS OF SALE

9. BASIS OF SALE

- 1.1 We, HFM (Gatenby) Limited shall sell and you, the Customer named overleaf, shall buy the Goods and/or Services subject to these Conditions which govern the contract between us to the exclusion of any other terms which you may ask us to sign or which you may supply.
- 1.2 Any variation to these Conditions is of no effect unless agreed in writing by our authorised representative.
- 1.3 "Goods" means the goods (including any instalments or parts), which we supply in accordance with these Conditions and "Services," means the services (including any repair work or instalments) which we perform in accordance with these Conditions.

10. QUOTATIONS AND ORDERS

- 2.1 Our quotation is not an offer. Quotations are subject to withdrawal or revision at any time before acceptance of orders by us.
- 2.2 You are responsible for ensuring that your order is accurate and for giving us all the information we need to complete the order.
- 2.3 Your order is not accepted until we confirm in writing or (if earlier) we deliver the Goods or supply the Services to you.

11. DESCRIPTION

3. All our descriptions and illustrations are intended to present a general idea of the Goods and Services described and do not form part of the contract between us. Whilst every effort will be made to supply the Goods in accordance with the quality of samples submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied.

12. CANCELLATION AND DELAY

- 4.1 Once accepted, an order may not be cancelled without our written agreement and on terms that you indemnify us against all loss (including loss of profit) and expenses incurred as a result of cancellation.
- 4.2 We will not be liable to you or be in breach of contract by reason of delay or failure to perform any of our obligations if the delay or failure was due to any cause beyond our reasonable control.
- 4.3 Should the conduct of your account with us or your business dealings with others cause us to have serious doubts (whether reasonable or not) regarding your solvency then we may suspend all future deliveries of Goods and supplies of Services to you and/or terminate the contract without liability on our part and we may further exercise any of our rights pursuant to Condition 9.3.
- 4.4 Should you commit any act of bankruptcy or insolvency or have an administrator or receiver appointed or come to an arrangement with your creditors all sums outstanding in respect of Goods and/or Services shall become immediately payable without prejudice to us being able to exercise our rights under Condition 9.3 below.
- 4.5 We may cancel this contract at any time before the Goods are delivered and/or Services supplied by giving written notice. On giving such notice we shall promptly repay to you any funds paid in respect of the price of the Goods and/or services. We shall not be liable for any loss or damage including loss of profit, loss of production, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever arising from such cancellation.

13. PRICE

- 5.1 We reserve the right by giving notice before delivery or supply to increase the price of the Goods to reflect any increase in cost to us.
- 5.2 Prices quoted by us are exclusive of costs of delivery and any applicable VAT, unless otherwise stated.

14. PAYMENT

- 6.1 Payment for the Goods and/or Services is due and payable at the date specified on the invoice. Any invoice issued without specifying a payment date will be due for payment 28 days after date of invoice. However, payment is due and payable immediately upon cancellation or termination of the contract between us.
- 6.2 If you fail to make payment on the due date the total price of the Goods and/or Services becomes due and payable without demand and we may:-
 - 6.2.1 Cancel the contract between us; and/or
 - 6.2.2 Suspend further deliveries/supplies and/or
 - 6.2.3 Claim interest and debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.3 You may not withhold payment of any invoice or other amount due to us by reason of any right of set-off or counterclaim which you may have or allege to have or for any reason whatsoever.

15. PALLETS

7. You will pay us on demand for all returnable pallets on which you have received Goods from us unless they are returned to us or our nominated agents within a reasonable time of delivery.

16. DELIVERY AND PERFORMANCE

- 8.1 Delivery of the Goods shall be made by you collecting the Goods from us after we have notified you that the Goods are ready for collection or, if delivery is to be made by us, by us delivering the Goods.
- 8.2 Any dates for delivery and/or performance are approximate only.
- 8.3 Where Goods and/or Services are supplied by instalments, each instalment is a separate contract. Failure by us to deliver or perform any instalment will not entitle you to treat the contract as a whole as repudiated.
- 8.4 If you fail to take delivery or fail to give us adequate delivery or performance instructions then we may charge you our storage costs for the Goods.
- 8.5 All Goods should be examined on delivery and signed for.
- 8.6 Goods which show any sign of having been tampered with, damage (excluding damage resulting from your negligence) or shortage must be signed for accordingly and written notice from you of the nature of the damage or shortage must be received by us within fourteen days of delivery or of you becoming aware of the tampering, damage or shortage, whichever is the later.
- 8.7 Goods delivered which are past their "sell by", "best before", or "use by" or similar date or are within 14 days of its expiry must be signed for accordingly and written notice from you of this must be received by us within fourteen days of delivery.
- 8.8 In the event of the non-arrival of Goods or if you learn that they have been lost or destroyed in transit written notice from you of this must be received by us within fourteen days of the invoice.
- 8.9 If the appropriate notice as set out in this condition 8 is not received by us within the time set out the Goods shall be deemed to have been delivered in accordance with the contract.
- 8.10 We may deliver against any order any excess or deficiency of up to 10 per cent of weight or volume without incurring any liability to you. You shall pay for the actual quantity delivered.

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17. RISK AND PROPERTY

- 9.1 The Goods remain our property until we receive their full price together with the full price of any other goods you have contracted to buy from us.
- 9.2 Risk in the Goods passes to you on delivery.
- 9.3 We may, so as to discharge any overdue payment recover or resell the Goods and we may enter any premises where the Goods are stored for this purpose.

18. RESALE OF GOODS

10. If any item comprised in the Goods is resold, you must bring to the purchaser's attention all our instructions and/or recommendations for use which are packed with or appearing on the Goods or which have been notified to you.

19. LIMITATION OF LIABILITY

- 11.1 The following sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents or subcontractors) to you in respect of any breach of these Conditions and any representation, statement or act or omission (including negligence) arising under or in connection with the contract between us and in respect of any contemplated performance or lack of performance.
 - 11.1.1 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-
 - 11.2.1 any implied condition that we have the right to sell the Goods or when ownership is to pass; or
 - 11.2.2 where the Goods are sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.
 - 11.1.2 The statutory rights of consumers are not affected.
 - 11.1.3 Nothing in these Conditions excludes or limits our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.
 - 11.1.4 Subject to Conditions 11.2 and 11.4.-
 - 11.5.1 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the contract between us shall be limited to the contract price; and
 - 11.5.2 we shall not be liable to you for any loss of profit, loss of production, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the contract between us.
 - 11.1.5 You agree to indemnify us against any losses, claims, costs or expenses incurred by us towards a third party arising out of or in connection with Goods or Services supplied by us or their operation or use and whether arising by reason of our negligence or otherwise.
 - 11.1.6 Any claim by you which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification must be notified to us within fourteen days from date of delivery or performance, or within a fourteen days after discovery of the defect or failure, whichever is later. If no such notification is received, you are not entitled to reject the Goods and/or Services and must pay their price.
 - 11.1.7 Where any valid claim in respect of any of the Goods is notified to us in accordance with these Conditions, we shall be entitled to repair or replace the Goods or carry out the Services again (or the part in question) free of charge or refund to you the price of the Goods or Services (or a proportionate price of the Goods) or Services, but then we shall have no further liability to you.
 - 11.1.8 All the exclusions and limitations set out in this Condition 11 operate to the extent that they are permitted by the law in general and the Agriculture Act 1970 (as amended) in particular.

20. GENERAL

- 12.1 Each of our rights or remedies is without prejudice to any other right or remedy we may have.
- 12.2 If any provision of these Conditions is found by any competent authority to be invalid, unenforceable or unreasonable, the remainder shall not be affected.
- 12.3 Failure or delay by us in enforcing or partially enforcing any provision of these Conditions is not a waiver of any of our rights.
- 12.4 Any waiver by us of any breach by you is not a waiver of any subsequent breach.
- 12.5 These Conditions and the contract between us do not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 12.6 Notices in all cases must be given in writing to us at the address of the branch from which you placed the order.

21. ENGLISH LAW

13. These Conditions and the contract between us are subject to English law and the exclusive jurisdiction of the English courts. The uniform laws on international sales are excluded.

22. ARBITRATION

- 14.1 If any dispute arises between us in connection with the contract and the total amount of the claim and (if applicable) counterclaim is less than £50,000 then if you are:
 - 14.1.1 a member of the National Farmers Union (NFU) of England and Wales or Scotland the dispute shall be referred to arbitration in accordance with the rules agreed between the United Kingdom Agricultural Supply Trade Association and the relevant NFU.
 - 14.1.2 not a member of the NFU of England and Wales or Scotland the dispute shall be referred to arbitration in accordance with the rules of the United Kingdom Agricultural Supply Trade Association.