

# TERMS AND CONDITIONS OF BUSINESS



- 1 Interpretation**
  - 1.1 In these Conditions :  
Buyer<sup>™</sup> means the party with whom the Seller Contracts for the sale of the Goods.<sup>™</sup>  
Seller<sup>™</sup> means Bright Nails Ltd.  
Goods<sup>™</sup> means the Goods, including any instalment of them/parts for them - which the Seller is to sell in accordance with these Conditions.  
Conditions<sup>™</sup> means the standard terms and Conditions of business set out in this document and - unless the context otherwise requires - includes any special terms and Conditions agreed between the Buyer and the Seller.  
Contract<sup>™</sup> means the Contract for the purchase and sale of the Goods.  
Writing<sup>™</sup> includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.  
Delivery basis<sup>™</sup> means the basis that the Goods will be delivered by the Seller to the Buyer's premises, the Seller being responsible for transport packing and insurance.  
Buyer's premises<sup>™</sup> means the Buyer's address specified in its Trade Account Application to the Seller.<sup>™</sup>
  - 1.2 "Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted and extended at the relevant time."
  - 1.3 The headings in these Conditions are for convenience only and shall not affect interpretation.
- 2 Basis of the Sale**
  - 2.1 "The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, and in either case these Conditions shall govern the Contract to the exclusion of any other terms and Conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer."
  - 2.2 No variation to these Conditions shall be binding unless agreed in Writing between an authorised representative of the Buyer and a director of the Seller.
  - 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. On entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 3 Orders and specifications**
  - 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order - including any applicable specification - submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
  - 3.2 "The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation - if accepted by the Buyer - or the Buyer's order - if accepted by the Seller."
  - 3.3 The Seller reserves the right to make any changes in the specification for the Goods which are required to comply with any applicable statutory or EC requirements or - where the Goods are to be supplied to the Seller's specification - which do not materially affect their quality or performance.
  - 3.4 "No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss - including loss of profit - costs - including the cost of all labour and materials used - damages, charges and expenses incurred by the Seller as a result of cancellation."
- 4 Price of the Goods**
  - 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted - or a quoted price is no longer valid - the price listed in the Seller's price list current at the date of the acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which they may be altered by the Seller without giving notice to the Buyer.
  - 4.2 "Except where otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on a delivery basis. Where the Seller agrees to deliver the Goods otherwise than at the Buyer's premises, the Buyer shall be liable to pay the Seller's charges for transport packages and insurance."
  - 4.3 The price is exclusive of any applicable value added tax which the Buyer shall be liable to pay to the Seller in addition.
  - 4.4 The cost of pallets and/or stillages and any other returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.
- 5 Terms of Payment**
  - 5.1 "Subject to any special terms in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or any time after the despatch of the Goods."
  - 5.2 The Buyer shall pay the price of the Goods - without any deduction except any earlier settlement discount agreed in Writing - within 30 days net of end of the month and the Seller shall be entitled to recover the price notwithstanding the delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
  - 5.3 "If the Buyer fails to make any payment on the due date then without prejudice to any right or remedy available to the Seller, the Seller shall be entitled to :"
    - 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer
    - 5.3.2 appropriate any payment made by the Buyer to such of the Goods - or the Goods supplied under any other Contracts between the Buyer and the Seller - as the Seller may think fit - notwithstanding any purported appropriation by the Buyer - and ,
    - 5.3.3 charge the Buyer interest - both before and after any judgement - on the amount unpaid at the rate of 4 per cent per annum above the base lending rate of Barclays bank plc from time to time until payment in full is made - a part of a month being treated as a month for the purpose of calculating interest.
- 6 Delivery**
  - 6.1 "Delivery of the Goods shall be made by the Seller delivering the Goods at the Buyer's premises at any time after the Seller has notified the Buyer that the Goods are ready for delivery or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place."
  - 6.2 Any dates quoted and/or agreed for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
  - 6.3 "Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated."
  - 6.4 "If the Seller fails to deliver the Goods - or any instalment - for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess - if any - of the cost to the Buyer - in the cheapest market - of similar Goods to replace these not delivered over the price of the Goods."
  - 6.5 "If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery - otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault - then, without prejudice to any other right or remedy available to the Seller, the Seller may:"
    - 6.5.1 "store the Goods until actual delivery and charge the Buyer for the reasonable costs - including insurance - or storage, or"
    - 6.5.2 sell the Goods at the best price readily obtainable and - after deducting all reasonable storage and selling expenses - account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
  - 6.6 The Seller's standard delivery charges are applicable to orders less than £250.00 net.
- 7 Risk and Property**
  - 7.1 "Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods."
  - 7.2 "Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash - or cleared fund payment - in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due."
  - 7.3 "Until such time as the property of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and property stored, protected and insured and identified as the Seller's property , but shall be entitled to resell or use the Goods in the ordinary course of its business."
  - 7.4 "Until such time as the property in the Goods passes to the Buyer, - and provided the Goods are still in existence and have not been resold, - the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods."
  - 7.5 "The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall - without prejudice to any other right or remedy of the Seller - forthwith become due and payable."
- 8 Warranties and Liability**
  - 8.1 "The Seller warrants to the Buyer that the Goods will be of satisfactory quality - within the meaning of the sale of Goods act 1979 - as amended - and fit for any purpose made known to the Seller in Writing at the time of placing the order, will correspond with any relevant specification thereof or sample thereof, and will comply with all statutory and EC requirements and regulations relating to the sale of the Goods."
  - 8.2 The above warranty is given by the Seller subject to the following Conditions:
    - 8.2.1 "the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer"
    - 8.2.2 "the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instruction - whether oral or in writing, - misuse or alteration or repair of the Goods without the Seller's approval."
    - 8.2.3 "the Seller shall be under no liability under the above warranty - or any other warranty, condition or guarantee - if the total price for the Goods has not been paid by the due date for payment."
    - 8.2.4 "the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller."
  - 8.3 "Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer - within the meaning of the Unfair Contract Terms Act 1977, - all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law."
  - 8.4 Where the Goods are sold under a consumer transaction - as defined by the Consumer Transaction (Restrictions on Statement) Order 1976 - the statutory rights of the Buyer are not affected by these Conditions.
  - 8.5 "Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall - whether or not delivery is refused by the Buyer - be notified by the Seller within 7 days from the date of delivery or - where the defect or failure was not apparent or reasonable inspection - within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract."
  - 8.6 "Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods - or the part in question - free of charge, or, at the Seller's sole discretion, refund to the Buyer the price of the Goods - or a proportional part of the price, - but the Seller shall have no further liability to the Buyer."
  - 8.7 "Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representations - unless fraudulent, - or any implied warranty, condition of other terms, or any duty at common law, or under express terms of the Contract, for any indirect, special or consequential loss of damage - whether for loss of profit or otherwise, - costs, expenses or other claims for compensation whatsoever - whether caused by the negligence of the Seller, its employees or agents or otherwise - which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, and the entire liability of the Seller, under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided by these Conditions. "
  - 8.8 "The Seller shall not be liable to the Buyer or be deemed to be in breach of Contract by reason of any delay in performing or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control."
    - 8.8.1 "Act of God, flood, tempest, fire or accident,"
    - 8.8.2 "war or threat of war, sabotage, insurrection, evil disturbance or requisition,"
    - 8.8.3 "acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority,"
    - 8.8.4 "import or export regulations or embargoes,"
    - 8.8.5 "strikes, lockouts or other industrial actions or trade disputes - whether involving employees of the Seller or of a third party,"
    - 8.8.6 "difficulties in obtaining raw materials, labour, fuel, parts or machinery,"
    - 8.8.7 power failure or breakdown of machinery.
- 9 Insolvency of Buyer**
  - 9.1 This clause applies if:
    - 9.1.1 "the Buyer makes any voluntary arrangements with its creditors or - being an individual or firm - becomes bankrupt or - being a company - becomes subject to an administration order or goes into liquidation - otherwise than for the purpose of amalgamations or reconstruction, - or"
    - 9.1.2 "an encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Buyer, or"
    - 9.1.3 "the Buyer ceases, or threatens to cease, to carry on business, or"
    - 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
  - 9.2 "If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous arrangement to the contrary."
- 10 General**
  - 10.1 "Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing, addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice."
  - 10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - 10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
  - 10.4 The Contract shall be governed by the Laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts and in particular to any dispute being dealt with in either the High court or County Court.
  - 10.5 All Standard Company Terms & Conditions apply.

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