

ClimbHigh UK TRADING TERMS

1. Interpretation

1.1 Contracts under these terms shall be governed by English Law and is subject to the jurisdiction of the English Courts.

1.2 DAW Brands Limited registered in England and Wales number 7777615 trading as ClimbHigh UK will in these terms hereon in be referred to as ClimbHigh.

1.3 Any reference in these Terms to any provision of a statute will be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.4 Buyer means the person who accepts ClimbHigh's quotation for the sale of the Goods or whose order for the Goods is accepted by the Seller

2. Basis of the sale

2.1 The placement of an order constitutes acceptance of these terms. Goods are supplied subject to these terms and conditions, which override any conditions stipulated by the purchaser, unless specifically agreed in writing by ClimbHigh.

2.2 Once accepted by ClimbHigh, a special order for any non-standard/stocked goods (meaning goods which have been ordered to the purchaser's own instructions and which would not otherwise be held on stock by or on behalf of ClimbHigh) is binding and cannot be cancelled.

3. Orders and specifications

3.1 Whereas an order is binding at the time of acceptance by ClimbHigh cancellations can only be accepted with prior written agreement from ClimbHigh. Cancellations received after despatch will incur a handling and restocking charge of at least 15 % of the value of the goods.

3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by ClimbHigh will be subject to correction without any liability on ClimbHigh's part.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by or on behalf of ClimbHigh in accordance with a specification submitted by the Buyer, the Buyer must indemnify ClimbHigh against all loss, damages, costs and expenses (including professional costs on a full indemnity basis) awarded against or incurred by or on behalf of ClimbHigh in connection with or paid or agreed to be paid by or on behalf of ClimbHigh in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from ClimbHigh's use of the Buyer's specification.

3.4 The quantity, quality and description of and any specification for the Goods will be those set out in ClimbHigh's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by ClimbHigh).

4. Price of the goods

4.1 where no price has been quoted (or a quoted price is no longer valid), the price will be as listed in ClimbHigh's published price list current at the date of despatch of the Goods.

4.2 All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer.

4.3 Trade prices in ClimbHigh price lists are exclusive of VAT. Retail prices include VAT where applicable.

4.4 Prices quoted by ClimbHigh are based on known costs at time of order. If prior to dispatch costs have increased due to circumstances beyond our control, ClimbHigh reserves the right to amend specifications and/or prices as necessary and to decline to supply at its absolute discretion. Goods will be invoiced at the revised price.

5. Terms of Payment

5.1 Any settlement discounts must be paid within 30 days or by the time stated on the invoice. ClimbHigh reserve the right to charge interest at 2% above base rate per month on any monies outstanding over 30 days.

5.2 If the price for the goods is not paid by the due date ClimbHigh shall at its absolute discretion be at liberty either to recover the goods or maintain an action for the price of goods.

5.3 Where goods are supplied on a pro-forma basis those goods will be dispatched only upon receipt of cleared funds. When paying by cheque please allow 5 working days for clearance.

6. Delivery

6.1 The Buyer will accept the goods even if delivered late and late delivery does not entitle the buyer to terminate the contract.

6.2 If the contract is for goods to be delivered in installments, the failure to deliver one installment does not entitle the buyer to terminate the contract.

6.3 If the Buyer fails to take delivery of the goods in accordance with the terms of this contract or fails to give adequate instructions for the delivery of the Goods, ClimbHigh shall be entitled to terminate the contract with immediate effect. On termination, ClimbHigh may at its discretion exercise any of the following rights, either at one or in combination:

- store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage
- Dispose of the goods as it thinks fit
- Retain any deposit or part-payment made by the buyer
- Recover damages from the Buyer in respect of any losses it suffers as a result of the Buyer's failure to take delivery, including, but not limited to the profit it would have made had the buyer performed its obligations, the costs of storage and disposal of the goods.

6.4 Delivery dates given by ClimbHigh are a genuine forecast in the light of current conditions but are given without legal commitment and ClimbHigh accepts no liability in the event that it is unable to meet those dates.

6.5 If events beyond ClimbHigh's reasonable control prevent it from delivering any goods by the appropriate delivery date such date shall be postponed for a reasonable period. Beyond such period ClimbHigh may without liability cancel this contract as regards such goods.

6.6 ClimbHigh will endeavour to supply the exact quantities of goods ordered in the specified number of consignments. In the event of incomplete dispatches subsequent deliveries will be carriage paid by ClimbHigh.

6.7 ClimbHigh reserves the right to cancel balances of orders. The purchaser will pay for the actual quantities of goods delivered even though part of the consignment may still be outstanding.

6.8 Goods will be carriage paid by ClimbHigh to most mainland destinations in the UK on orders over the value of £300 excluding VAT, below that figure ClimbHigh reserves the right to charge carriage and handling of £10 + vat to commercial addresses and £15 + vat to residential addresses.

6.9 By prior arrangement only, drop-ship consignments shall attract a small order admin fee of £2.00+vat per item plus the mail or courier delivery charge at cost.

7. Risk and title

7.1 All risk in the goods passes to the purchaser upon delivery.

7.2 ClimbHigh cannot be held liable for goods in transit which have been damaged or lost unless written notice is given to the carrier and to ClimbHigh within working 7 days.

7.3 Ownership in the contract goods remains with ClimbHigh until the purchaser has paid in full all that is owed to ClimbHigh for all goods supplied at any time by ClimbHigh as well as any other payment due under any other subsisting contract between ClimbHigh and the purchaser.

7.4 The buyer grants ClimbHigh, for all purposes an irrevocable lien on the goods until the price is paid and permits ClimbHigh access to recover the goods wheresoever they are situated.

7.5 Without prejudice to the foregoing ClimbHigh may maintain an action against the buyer for any loss or damage suffered in consequence of the buyers failure to pay the price of the goods.

7.6 All property rights in the Goods and all information which ClimbHigh may provide to the Buyer or its agent shall (as between the parties) at all times remain vested in ClimbHigh and the Buyer does not acquire any intellectual property rights or licence relating to the Goods and may not copy or imitate the Goods.

8. Health and safety

8.1 The buyer will indemnify ClimbHigh, its employees and agents in respect of any liability monetary penalty or fine in respect of or in connection with the Goods incurred by ClimbHigh under the Health and Safety at Work act 1974, Working at Height regulations or any other statutory modification of enactment thereof and any regulation orders or direction made thereunder.

9. Warranties and liability

9.1 Subject to the Conditions set out below ClimbHigh warrants that

(a) the Goods will correspond with their specification at the time of delivery and (b) will be free from defects in material and workmanship for a period of 12 months from delivery or, if the Buyer has wrongfully failed to take delivery, the time when ClimbHigh tendered delivery.

9.2 The above warranty is given by ClimbHigh subject to the following conditions;

(a) ClimbHigh will be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

(b) ClimbHigh will be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow ClimbHigh's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without ClimbHigh's approval;

(c) ClimbHigh will 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;

(d) ClimbHigh must be allowed a reasonable opportunity to inspect the Goods on site or, if requested by ClimbHigh the buyer at its expense must return the allegedly defective Goods (or a sample) to ClimbHigh's premises for inspection;

(e) the above warranty does not extend to parts, materials or equipment not manufactured by ClimbHigh, in respect of which the Buyer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to ClimbHigh.

9.3 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 ClimbHigh in accordance with these Conditions, ClimbHigh will be entitled to replace the Goods (or the part in question) free of charge or, at ClimbHigh's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but ClimbHigh will have no further liability to the Buyer. The Buyer's reasonable costs (if any) in returning the defective Goods to ClimbHigh will be reimbursed in the case of a valid claim; where a claim is not valid ClimbHigh may charge a reasonable handling and administration charge being 15% of the price for such Goods.

9.4 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.

9.5 Except in respect of death or personal injury caused by ClimbHigh's negligence, ClimbHigh will not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law or under statute or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of ClimbHigh, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the parties agree that the entire liability of ClimbHigh under or in connection with the Contract will not exceed the price of the Goods, except as expressly provided in these Conditions.

10. Returns

10.1 Standard goods returned for attention must be accompanied with necessary paperwork for prompt action. Returned goods must be current model and packaged in re-saleable condition without retail labels, price labels or security tags. Please note that any goods returned without prior agreement may be subject to a 15% re-stocking charge.

10.2 Goods are to be returned at the purchaser's expense and risk.

11. Insolvency of buyer

11.1 In addition to any other right of termination, ClimbHigh may terminate the Contract if the Buyer defaults in the payments on its due date of any sum under this Contract or commits any continuing or serious breach of this Contract and fails to remedy that breach (if capable of remedy) within 10 working days of ClimbHigh's notice to do so or any of the following events occurs:

(a) Distress or execution is levied against any of the Buyer's assets or a receiver is appointed with respect to any of the Buyer's assets.

(b) A petition is presented for the winding up of or for an administration order to be made in relation to the Buyer or a resolution passed for the Buyer's winding up.

(c) The Buyer suspends or threatens to suspend payment of its debts or is deemed unable to pay its debts.

(d) ClimbHigh reasonably believes that any of the events mentioned is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12. General

12.1 No waiver or variation by ClimbHigh of any terms or any breach of contract committed by the purchaser shall be considered as a waiver or variation of any subsequent contract terms or any subsequent breach.

12.2 ClimbHigh reserves the right to obtain at regular intervals verbal or written information from third parties verifying customers current trade credit rating.

12.3 In the event of legal action ClimbHigh reserves the right to recover unpaid monies, all lawyers, court, debt recovery agents, bailiffs, bank, finance, debt recovery management fees and such charges will be forwarded to the customer for payment by him together with all unpaid monies.

12.4 ClimbHigh will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of ClimbHigh's obligations in relation to the Goods, if the delay or failure was due to any cause beyond ClimbHigh's reasonable control including (but without limitation): Act of God, explosion, flood, tempest, fire or accident war or threat of war, sabotage, insurrection, civil disturbance or requisition, or acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or import or export regulations or embargoes strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of ClimbHigh or of a third party), or difficulties in obtaining stock, labour, fuel, parts of machinery, or power failure or breakdown in machinery.