

These Terms and Conditions ('the Terms') govern your relationship with Misco, a division of Systemax Europe Limited (Misco, we or us). These Terms apply only to Business Customers who are not consumers. If you are not a Business Customer, then please see our [Terms and Conditions for Consumers](#).

All Orders for Goods or Services accepted by us will be subject to the following Terms which will form part of and will govern the Contract of sale. No variation of these Terms will be accepted unless agreed in writing by an authorised person of Misco. We will not accept the inclusion of any alternative terms by a Business Customer which conflict with, alter or add to these Terms.

## 1. DEFINITIONS

- 'Business Customer' means a legal entity (otherwise referred to as 'you') who enters into a Contract with us to buy Goods or Services other than for private use.
- 'Contract' means any contract between you and us for the sale and purchase of Goods or Services, incorporating these Terms.
- 'Goods' means any goods agreed in the Contract to be supplied to you by us (including any part or parts of them).
- 'Normal Working Hours' means 9am to 5pm on a Working Day.
- 'Order' means an order for Goods or Services made by you in accordance with these Terms.
- 'Order Confirmation' means our written acceptance of your Order.
- 'Services' means services and support provided by us to you.
- 'Software' means computer program(s) and associated documentation.
- 'Working Day' means Monday to Friday, excluding Bank or other Public holidays.

## 2. ORDERS

- When you place an Order for Goods or Services, this will be regarded as an offer by you to purchase the Goods or Services subject to these Terms and we shall not be obliged to accept your offer at our discretion.
- We will send you an Order Acknowledgement on receipt of your Order. This is not an order confirmation or order acceptance by us.
- We will accept your offer and create a Contract with you by sending to you an Order Confirmation once we have confirmed availability of the Goods or Services, verified your credit or debit card or payment details as necessary and prepared the Goods for dispatch. We reserve the right to obtain validation of your payment details before providing you with any Goods or Services.
- The Order Confirmation will be binding on you unless there is an unacceptable discrepancy between the Goods or Services that you ordered and those detailed in the Order Confirmation. You should notify us as soon as you become aware of any such discrepancy and in any event prior to the dispatch of the Goods.
- If we cannot supply the Goods ordered by you, we reserve the right to offer alternative Goods of equal or superior quality. Any such changes will be detailed in the Order Confirmation. In such cases, if you do not wish to accept the alternative Goods offered, you may cancel the Order and require the refund of any money paid to us in respect of that Order, including carriage charges. This shall be your sole remedy.
- We make every effort to supply the Goods as advertised but reserve the right to supply the Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer. Any such minor variation will not give you the right to cancel or rescind any Order or Contract made with us. Images of Goods are provided for illustrative purposes only and the actual Goods you receive may differ from the image displayed in the catalogue or on our website, especially with generic products.
- When you place an Order, you are undertaking to us that:
  - all details you provide to us for the purpose of purchasing Goods or Services are correct, and
  - the credit or debit card you use to make a purchase from us is your own card, that you are authorised to use it, and that there are sufficient funds or credit facilities to cover the cost of any Goods or Services you order from us.
- We reserve the right to refuse to pay commission to our affiliate partners for Orders that have not been placed directly with us as a Business Customer's account manager. If you require clarification regarding any entitlement to commission, you should contact your own account manager.
- Cancellation of Orders. Other than in accordance with clause 2.4, we do not accept cancellation of orders by Business Customers once an Order Confirmation has been sent as many Orders are dispatched on the same day the Order is placed. We cannot accept cancellation of an Order for bespoke Goods which have been produced to your specific requirements.
- Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing.

## 3. PRICES AND PAYMENT

- Goods and Services, together with VAT, are invoiced at the price prevailing at the time of your Order.
- We reserve the right to vary our prices from time to time.
- When you submit an Order, you will be notified of any additional costs including shipping and handling costs or insurance.
- Payment is due prior to shipment unless you have been approved for credit. Our standard credit terms require payment within 30 days from the date of the invoice, except in the case of transactions where different terms are agreed by us in writing beforehand.
- If you fail to make any payment due to us by the due date for payment ('the due date'), then we may charge you interest on the overdue amount at the rate of 3% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.
- Payment in advance for Orders to be delivered in the UK mainland may be made by cash, cheque, Visa, MasterCard, Maestro, American Express or PayPal (PayPal payment will be taken upfront). All Orders for Goods to be delivered to the Republic of Ireland must be paid in advance by Mastercard or Visa only.

## 4. DELIVERY, TITLE AND RISK

- We shall use reasonable endeavours to despatch Goods to you by the estimated delivery date, but time shall not be of the essence for delivery and we shall not accept liability for failure to deliver within the stated time or on a stated day where this is caused by circumstances beyond our reasonable control, such as delays caused by delivery companies or manufacturer lead times.
- If a delay is likely, we shall contact you and advise of the delay. You will not be entitled to damages or compensation if delivery of Goods does not occur on the estimated delivery date.
- If we are unable to deliver the Goods within 30 days of the estimated delivery date, you will, as your sole remedy, be entitled to cancel the Order and require any monies paid to us in respect of that Order to be refunded. In order to cancel, you must send written notice of cancellation to us after the estimated delivery date but before actual delivery of the Goods or notification from us that the Goods are ready for delivery.
- Delivery is deemed to take place when the Goods are delivered to your nominated address, whereupon the risks of loss, breakage and all damage and all other risks shall pass to you.
- You are required to be able to accept the Goods when they are ready for delivery within Normal Working Hours.
- Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared

funds) all sums due to us in respect of:

- the Goods; and
  - all other sums which are or which become due to us from you on any account.
- Until ownership of the Goods has passed to you, you must:
    - hold the Goods on a fiduciary basis as our bailee;
    - store the Goods (at no cost to us) separately from all other goods of yours or any third party in such a way that they remain readily identifiable as our property;
    - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
    - maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us.
  - You may resell the Goods before ownership has passed to you solely on the following conditions:
    - any sale shall be effected in the ordinary course of your business at full market value; and
    - any such sale shall be a sale of our property on your own behalf and you shall deal as principal when making such a sale.
  - Your right to possession of the Goods shall terminate immediately if you have a bankruptcy order made against you or if you make or know of any arrangements in respect of your actual or possible insolvency, liquidation, winding up or other arrangements with your creditors.
  - In the event that you have failed to make full payment for Goods by the due date, then as long as monies remain outstanding, we reserve the right to enter your premises at your expense and recover from there all Goods which remain our property.
  - If you cannot accept delivery, we may re-arrange delivery provided that we reserve the right to charge you for any delivery costs incurred.
  - Upon delivery of the Goods, you will be asked to sign a Proof of Delivery to acknowledge safe receipt. It is your responsibility to ensure that the number of packages delivered corresponds with the number stated on the delivery note. Where a discrepancy occurs or where there is evident damage to the packaging, you should either note this on the Proof of Delivery or refuse delivery of the Goods.
  - We shall not be liable for discrepancies or damage evident on delivery where you accept delivery and sign the Proof of Delivery without amendment.
  - You may request a Proof of Delivery, provided that this request is made within 30 days of the dispatch confirmation and we shall use reasonable endeavours to provide such proof. Thereafter, delivery shall be deemed to have been successfully completed.
  - You should notify us immediately and in any event no longer than 48 hours after delivery in the event that Goods are found to be damaged on delivery, items are missing or the Goods are not as specified in the Order Confirmation. If you need to return any Goods, then please see our Returns policy below.

## 5. RETURNS AND WARRANTIES

- Other than the express provisions set out in these Terms, all other terms and the implied terms or warranties relating to the supply of goods or services are excluded to the fullest extent permitted by law.
- In the event that you need to return Goods, then a Goods Returns Authorisation Number (RAN) must be obtained from us for each and every return so that we are able to administratively process your return, otherwise we have no means of identifying the Goods being returned and this may result in difficulties in returning monies. You will be sent a RAN acknowledgement by email which will also include a downloadable returns label that should be printed off and secured onto the exterior of the package. The RAN must be clearly shown on each parcel returned, and must be in the original manufacturer's packaging (which shall not be defaced) complete with accessories, manuals and documentation. Software packages must be returned unopened with the Software seals intact. Except in the case of faulty Goods, returned items not complying with these requirements will be rejected.
- In the event that any Goods Delivered to you do not correspond with the Goods in the Order Confirmation, or have been Delivered to you by mistake, then you will be under a duty to take reasonable care of such Goods and to contact our Customer Services team immediately no later than 14 days. We will then arrange for a courier to collect the Goods and replacements to be supplied on a credit and recharge basis.

### 5.4 Care of Goods to be Returned

Whilst in possession of the Goods you will be under a duty to take reasonable care of them. We reserve the right to refuse a refund on Goods returned which have been made unfit for resale or damaged whilst in your possession.

### 5.5 Address for Returns of Goods

If you need to return Goods to us for whatever reason, then please send such items to: Misco Returns (Systemax), 2 Cartsdyke Avenue, GREENOCK, Inverclyde, Scotland PA15 1DT

### 5.6 Return of Defective Goods

- In the event that Goods are found to be defective at any time within the first 30 days from delivery then please contact our Customer Services team immediately that you become aware of the defect, ensuring that you have the item's serial number available to provide to our staff. Different manufacturers have differing policies for dealing with Goods, which are termed 'dead on arrival' meaning that the Goods are found to be defective either on delivery or very shortly afterwards. You will therefore be advised by our Customer Services team of the relevant manufacturer's returns policy. We will not charge you for the collection of the Defective Goods. It is your responsibility to package and secure the Defective Goods prior to collection to prevent damage during their return to us.
- We shall at our option repair or replace such Defective Goods (or the defective part) and only if a repair or replacement is not possible or would be disproportionate to the price of such Goods we shall at our discretion refund the price of such Defective Goods at the pro-rata contract rate provided that you return the Defective Goods to us with all internal and external parts that were delivered with the Goods.
- If we arrange for a courier collection of your Goods, this will normally take place between 9.00am and 5.30pm, and it is your responsibility to ensure that someone will be present at the collection address when the courier arrives.
- On receipt by us of the returned Defective Goods, if following the testing process the Defective Goods are found to be in good working order without defect, we will return the Goods to you, and the carriage costs of this return will be your responsibility. Please note that if you have, in the meantime, required us to provide you with replacement Goods before completion of the testing process, you will be liable to pay for these Goods. If, when we examine the Defective Goods, it is evident that the defect has arisen because you have failed to follow Misco's or the manufacturer's instructions as to the storage, installation, commissioning, use or maintenance of the Goods, or if you have altered the Goods without our consent then we reserve the right to refuse or limit any repair, replacement or refund.
- You should note that we adhere to individual manufacturers' guidelines in respect of acceptable deviation of quality of certain items. Therefore, we reserve the right not to accept Goods considered by you to be defective if the error or fault is within the manufacturer's accepted manufacturing tolerances. If you have any doubt, please contact our Customer Services. As an example, due to the current manufacturing methods of active matrix display panels, a small percentage of sub-pixel anomalies (i.e. a pixel that is stuck on or off) are

accepted by the industry as unavoidable. Accordingly, because the manufacturing yield of perfect active matrix panels is low, displays may have some sub-pixels that are either always on or off. The cost of accepting only theoretically perfect displays would almost double the price of a portable computer using an LCD screen. Please be aware of this before purchasing a TFT screen.

## 5.7 Warranty Claims

- (a) If Goods become faulty more than 30 days after delivery then you are advised to contact the manufacturer and use their warranty procedure. Unless otherwise stated in the manufacturer's documentation, all Goods carry a manufacturer's warranty.
- (b) If you wish to make a warranty claim, you must comply with the manufacturer's instructions and warranty procedure. In order to resolve your problem as quickly as possible, we will refer you to the manufacturer who will deal directly with the return. In these instances, we will provide you with the contact information for the relevant manufacturer.
- (c) All warranties provided under these Terms shall be invalidated if the Goods have been worked upon, altered or damaged in any way by you or your employees or agents, or if the Goods have not been used in accordance with the manufacturer's instructions.
- (d) You should note that certain Goods have a reduced warranty period. In particular, Goods specified as 'refurbished' are only subject to a 3-month warranty from the date of delivery. Your statutory rights are not affected when you purchase such Goods.

## 5.8 Return for credit

- (a) In the event that we, at our absolute discretion, agree to accept the return for credit of unwanted products, the Goods must be returned with our prior written agreement within 14 days of delivery. The Goods must be unopened, with the manufacturers' seals intact and in perfect re-saleable condition. All Goods returned in these circumstances will not be subject to a re-stocking fee. Please ensure that the Goods you have purchased are to your specification prior to breaking the manufacturers' seals. This will avoid disappointment and the Goods being rejected, should you wish to return them.
- (b) Any Goods returned unopened, with the manufacturers' seal intact and in re-saleable condition, outside of the 14 days specified in clause 5.8(a) may be returned for credit subject to our absolute discretion and shall be decided by us on a case-by-case basis. All Goods returned in these circumstances will be subject to a reasonable re-stocking fee to cover our administrative charges.
- (c) No Software on which seals have been broken can be returned for credit. If any Software discs are faulty, then you are advised to use the manufacturer's warranty procedure. Please note Software Licences are non-returnable unless the Software is materially non-compliant with its specification or the physical media on which it is supplied is defective.

## 5.9 Provision of Services

- (a) If you purchase Services from us, then we shall use our skill and expertise to carry out the Services to a standard equivalent to that of a competent computer professional, and shall warrant our work as free from defects for a period of 30 days after completion. In particular, we cannot be held responsible for any fault or damage not caused by our services engineers or their contracted agents. In the event of a claim arising relating to the level of skill and judgement applied in the course of providing Services, we reserve at our sole discretion the right to appoint an independent expert in the field to appraise the work carried out in the execution of the Service(s).
- (b) We accept no liability for equipment installed or configured by us when the equipment has subsequently been altered or configured by persons other than ourselves or our agents. Except as set out here, all other express or implied terms or warranties relating to the Services are excluded to the fullest extent permitted by law.

## 6. OUR LIABILITY

- 6.1 Subject to clauses 4 and 5, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
  - (a) any breach of these Terms;
  - (b) any use made or resale by you of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 6.2 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.
- 6.3 Nothing in these Terms excludes or limits our liability:
  - (a) for death or personal injury caused by our negligence; or
  - (b) for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
  - (c) for fraud or fraudulent misrepresentation.
- 6.4 Subject to clause 6.2 and clause 6.3:
  - (a) our 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 Contract price; and
  - (b) we shall not be liable to you for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 7. FORCE MAJEURE

- 7.1 We shall not be liable to you or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of our obligations in respect of the Goods or Services, if the delay or failure was due to any cause beyond our reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond our reasonable control: act of God, explosion, flood, pest, fire or accident; war, threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving our employees or of a third party); difficulty in obtaining materials, labour or machinery; and power failure or breakdown in machinery.
- 7.2 If we are unable to provide you with your Goods within a reasonable time due to circumstances outside our control, we shall either agree a new timescale with you for the delivery of the Goods or either of us may decide to terminate the Order in which case we will return any prepayments that you have made in full.

## 8. ERRORS & OMISSIONS

- 8.1 We make every effort to ensure that all prices and descriptions quoted in our catalogue and on our website are correct and accurate. In the case of a manifest error or omission, we will be entitled to rescind the contract, notwithstanding that we may already have accepted your Order and/or received payment from you. Our liability in that event will be limited to the return of any money that you have paid in respect of the Order.
- 8.2 In the case of a manifest error in relation to price, you will be entitled to purchase the Goods or Services by paying the difference between the quoted price and the correct price, as confirmed in writing by us after the manifest error has been discovered. A 'manifest error', as the term is

used in this clause 8, means, in relation to an incorrect price, a price quoted in error by us which is more than 10% less than the price that would have been quoted had the mistake not been made.

## 9. DATA PROTECTION

- 9.1 We have a full and detailed privacy statement available by [clicking here](#) which forms part of our Terms & Conditions.
- 9.2 **Website Security.** Misco's website employs the SSL (Secure Socket Layer) encryption standard in all secure areas, including login pages, customer information and payment details. Provided that you are using an SSL-compliant browser such as Netscape's Navigator, Microsoft's Internet Explorer, Opera or Firefox, you will be able to conduct encrypted transactions without fear of an intermediary obtaining your credit card information.
- 9.3 **Data Protection & Data Security.** Data is maintained under the provisions of the Data Protection Act (1998), Systemax's registration number is Z6290748. Systemax may contact you from time to time to verify and update the data Systemax holds on your records.
- 9.4 **Information Automatically Logged.** We may use your IP (Internet Protocol) address to help diagnose problems with our server and to administer our website. Your IP address is also used to help gather broad demographic information. A disk-based cookie (non session) is used for identification.
- 9.5 **Registration and data sharing.** Our site registration and Order form requires you to give us contact information (such as name, email and postal address), unique identifiers (such as username and password), demographic information (such as postcode), and financial information (such as account reference and transaction values). This data is securely stored for use in all our marketing communications and analysis databases.
- 9.6 Systemax Europe Ltd may share your information with any member of our group, which means our ultimate holding company and its subsidiaries, as defined in section 736 of the UK Companies Act 1985.
- 9.7 Systemax Europe Ltd may share your information with selected third parties outside Systemax's group, in order that they may contact you to let you know about goods or services which may be of interest to you. Please contact us if you wish to opt out of receiving such information.
- 9.8 You agree that we may use personal information provided by you in order to conduct appropriate anti fraud checks. Personal information that you provide may be disclosed to a credit reference or fraud prevention agency, which may keep a record of that information.
- 9.9 Please note that we may record and monitor inbound and outbound calls and electronic traffic for training purposes.

## 10. TRADE NAMES & TRADE MARKS

- 10.1 Trade names and marks (other than ours) are not always indications of the actual manufacturer of a particular product and may rather be indicative of general use systems and machines associated with such products.
- 10.2 In the case of component purchases, if you require a particular brand of product should, then before placing an order, please check with us to confirm the identity of the manufacturer of the component that you are proposing to purchase.
- 10.3 Both parties hereby acknowledge the intellectual property rights of suppliers and manufacturers of the Goods appearing in our sales literature and on our website.

## 11. GENERAL TERMS OF BUSINESS

- 11.1 You must not transfer any contract made with us under these Terms, as it is personal to you, without written authority from us. This authority will not be refused without good reason.
- 11.2 If any part of these Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed to be severable from the Terms and shall not affect the validity and enforceability of any of the remaining provisions of the Terms.
- 11.3 No waiver by us shall be construed as a waiver of any proceeding or succeeding breach of any provision.
- 11.4 **Communications.**
  - (a) All communications between the parties about the Contract shall be in writing and delivered by email or by hand or sent by pre-paid first class post or sent by fax to the registered office or such changed address as shall be notified to by the party; or (in any other case) to any address of yours set out in any document which forms part of the Contract or such other address as shall be notified to us by you.
  - (b) Communications shall be deemed to have been received:
    - (i) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
    - (ii) if delivered by hand, on the day of delivery; or
    - (iii) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
    - (iv) If by email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 11.5 No third party shall be allowed to enforce any rights under this contract. We hereby exclude the application of the Contracts (rights of Third Parties) Act 1999 to each and every contract made under these Terms.
- 11.6 You confirm that, in agreeing to accept the Terms, you have not relied on any representation save insofar as the same has expressly been made a part of these Terms and you agree that you shall have no remedy in respect of any representation. Nothing in these Terms shall limit or exclude our liability in respect of any fraudulent or negligent misrepresentation whether or not such has become a part of the Terms.
- 11.7 These Terms shall be governed by the relevant laws of the United Kingdom and construed in accordance with the relevant laws of the United Kingdom and you irrevocably submit to the exclusive jurisdiction of the relevant courts of the United Kingdom.
- 11.8 If you have any complaints with the Goods or Services provided by us please contact Customer Services by post or hand delivery addressed to Customer Services at Misco, 10-14 Darby Close, Park Farm South, Wellingborough, Northants NN8 6GS or by fax to 0844 493 5305 or by e-mail to [complaints@misco.co.uk](mailto:complaints@misco.co.uk).
- 11.9 **Contact Information for Misco.** The registered office for Misco is 10-14 Darby Close, Park Farm South, Wellingborough, Northamptonshire NN8 6GS.
- 11.10 **Contact Information for Systemax.** The registered office for Systemax Europe Limited is Caledonian Exchange, 19A Canning Street, Edinburgh EH3 8HE. Registered in Scotland with company number SC 114143.