

B&E Erection Services Ltd Terms of Trading

- 1 Business customers and consumers
- 1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers.
- 1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
- 1.4 If you are not a business customer, you are a consumer. You have certain statutory rights as a consumer which are not affected by these terms. Contact your local trading standards office for more information. Words in italic type are legal words which clarify, rather than alter, the meaning of the relevant clause.
- 2 Price
- 2.1 The price quoted excludes VAT and delivery (unless otherwise stated). Rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.2 No quotation by us will constitute an offer and all quotations are subject to withdrawal without notice.
- 2.3 Subject to clause 2.2, quotations lapse 28 days after the date of quotation.
- 2.4 Business customers: at any time before delivery or installation we may adjust the price to reflect any increase in our costs of supplying the goods or services (including, without limitation, increase in the cost of materials, labour, carriage or a requested variation to your order).
- 3 Delivery
- 3.1 All times quoted by us for delivery of goods, installation or performance of any of our obligations are given in good faith, but are to be treated as estimates only and time shall not be of the essence.
- 3.2 If we fail to perform any of our obligations within a reasonable time, you may (by informing us in writing) cancel the contract, however:
- 3.2.1 you may not cancel if we receive your notice after the goods have been dispatched or installation has commenced; and
- 3.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 3.3 If you allow us to perform any of our obligations after the estimated time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 3.4 If for any reason you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver or install the goods because you have not provided adequate instructions or if you do not collect the goods by the date we give for collection, we may:
- 3.4.1 treat the goods as having been delivered on that day (for the purposes of risk, inspection and payment); and
- 3.4.2 charge you for the storage or redelivery of those goods.
- 3.5 We may decline to deliver or install goods if:
- 3.5.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
- 3.5.2 the premises (or the access to them) are unsuitable for our vehicle.
- 3.6 Business customers: You must provide appropriate equipment and manual labour for unloading the goods at the delivery point. If our delivery vehicle is kept waiting for an unreasonable amount of time, is obliged to return without completing delivery or if we provide additional staff to unload goods an additional charge will be made.
- 3.7 If you are collecting goods from us you are responsible for the size, weight and positioning of any load on your vehicle and must ensure that your vehicle is sufficiently equipped to enable safe loading.
- 3.8 We may perform our obligations in instalments. Each instalment is treated as a separate contract.
- 3.9 We may supply the goods in quantities (by count or volume) of up to 10% more or less than the quantity ordered and charge you for the quantity actually delivered.
- 4 Risk
- 4.1 The goods are at your risk from the time of delivery.
- 4.2 Delivery takes place either:
- 4.2.1 when the goods are loaded at our premises (if you are collecting them or arranging carriage); or
- 4.2.2 when the goods are unloaded at your premises or address specified by you (if we are arranging carriage).
- 4.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within 7 days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods. If you fail to notify us in accordance with these requirements, you will not be entitled to reject the goods and will be deemed to have accepted the goods in accordance with the contract.
- 5 Installation
- 5.1 The price for installation is based on work carried out between 8am and 5pm, Monday to Friday. We may charge premium rates for out of hours work.
- 5.2 Unless otherwise stated, the price quoted for installation does not include the following:
- 5.2.1 charges for time spent travelling, staying overnight or waiting on site, or expenses such as travel and subsistence;
- 5.2.2 any building work, foundation or structural alterations, plumbing work, electrical work or connection to services;
- 5.2.3 any insurance premiums payable (except for Public and Product Liability Insurance);
- 5.2.4 the cost of clearance of any site where the goods are to be installed. If a site requires clearance to enable installation, an extra charge will be made.
- 5.3 If we are to carry out work at your premises you must ensure that the workplace is safe for our workforce, there is suitable access and lighting to the area to be worked upon and safe and suitable storage on site for the goods. You must provide running water, electricity and toilet facilities free of charge to us.
- 5.4 Business customers: Where we carry out work at your premises you must comply with any applicable laws and regulations.
- 5.5 You must inspect installation on completion. If any work is defective or not completed, you must notify us within 24 hours of the work being carried out and write to confirm your claim within 3 days of your notification. You must allow us to inspect the work site.
- 6 Payment terms
- 6.1 You are to pay us in cash or in cleared funds prior to delivery and installation, unless you have an approved credit account.
- 6.2 Business customers: If you have an approved credit account, payment is due no later than 28 days after the date of our invoice unless otherwise agreed in writing.
- 6.3 If you fail to pay us in full on the due date we may:
- 6.3.1 suspend or cancel future deliveries or installation;
- 6.3.2 cancel any discount offered to you;
- 6.3.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998; a. calculated (on a daily basis) from the date of our invoice until payment; b. compounded on the first day of each month; and c. before and after any judgment (unless a court orders otherwise);
- 6.3.4 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and
- 6.3.5 recover (under clause 6.8) the cost of taking legal action to make you pay.
- 6.4 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.
- 6.5 Business Customers: you do not have the right to set off any money you may claim from us against anything you may owe us.
- 6.6 Consumers: you may only set off money you claim from us against money you owe us with our written agreement and on such terms as we may state.
- 6.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (a lien).
- 6.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.
- 6.9 Consumers: clause 6.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim those losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.
- 7 Title
- 7.1 Consumers: your statutory rights are unaffected.
- 7.2 Business customers: until you pay all debts you may owe us:
- 7.2.1 all goods supplied by us remain our property;
- 7.2.2 you must store them so that they are clearly identifiable as our property;
- 7.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
- 7.2.4 you may use those goods and sell them in the ordinary course of your business, but not if: a. we revoke that right (by informing you in writing); or b. you become insolvent.
- 7.3 Business customers: you must inform us (in writing) immediately if you become insolvent.
- 7.4 Business customers: if your right to use and sell the goods ends you must allow us to remove the goods.
- 7.5 Business customers: we have your permission to enter any premises where the goods may be stored:
- 7.5.1 at any time, to inspect them; and
- 7.5.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 7.6 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 7.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.
- 8 Warranties
- 8.1 We warrant that the goods and installation:
- 8.1.1 comply with their description on our order confirmation form; and
- 8.1.2 are free from material defect at the time of delivery or installation (as long as you comply with clause 8.5).
- 8.2 Business customers: we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 8.3 Consumers: the warranty in clause 8.1 is in addition to your statutory rights.
- 8.4 The warranty in clause 8.1.2 does not apply to goods sold as 'non-prime' or 'untested' and we are not liable for any defect in those goods, except where specifically provided for by law. You are to indemnify us in respect of any claim made against us in respect of goods supplied to you as 'non-prime' or 'untested' if you believe that we are in breach of our warranty, you must:
- 8.5.1 inform us (in writing), with full details, within 7 days of the defect becoming apparent; and
- 8.5.2 allow us to investigate (we may need access to your premises and the goods).
- 8.6 If the goods or installation are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 8.5) in full, we will (at our option) repair or replace the goods or complete any remedial works.
- 8.7 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 8.8 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to two million pounds (or the appropriate amount of insurance we have in place when the contract is performed).
- 8.9 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 8.10 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.
- 9 Specification
- 9.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:
- 9.1.1 the specifications or instructions are accurate;
- 9.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
- 9.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 9.2 Business Customers: We reserve the right:
- 9.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and
- 9.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable and which do not materially alter performance of the contract.
- 9.3 Any illustrations, designs, drawings, dimensions, specifications or general description contained in our technical circulars, catalogues, and advertising material are illustrative only and will not form part of the contract between us.
- 9.4 We reserve the right to substitute the goods ordered with goods of a higher or comparable specification.
- 9.5 All weights and dimensions quoted are subject to the tolerances provided by the appropriate British Standard.
- 9.6 We are not obliged to supply test certificates unless you request them when you order the goods. We may charge you for test certificates.
- 10 Return of goods
- 10.1 We will accept the return of goods from you only:
- 10.1.1 by prior arrangement (confirmed in writing);
- 10.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered) and
- 10.1.3 where the goods are fit for sale on their return as they were on delivery.
- 11 Cancellation
- 11.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).
- 11.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order and indemnify us for all outlay and expenses incurred by ourselves, our subcontractors or suppliers in regard to your order.
- 11.3 We may suspend or cancel the order, by written notice if:
- 11.3.1 you fail to pay us any money when due (under the order or otherwise);
- 11.3.2 you become insolvent;
- 11.3.3 you fail to honour your obligations under these terms.
- 12 Waiver and variations
- 12.1 Any waiver or variation of these terms is binding in honour only unless:
- 12.1.1 made (or recorded) in writing;
- 12.1.2 signed on behalf of each party; and
- 12.1.3 expressly stating an intention to vary these terms.
- 12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.
- 13 Force majeure- business customers only
- 13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.
- 13.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 14 General
- 14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 14.2 If you are more than one person, each of you has joint and several obligations under these terms.
- 14.3 If any of these terms are unenforceable as drafted:
- 14.3.1 it will not affect the enforceability of any other of these terms; and
- 14.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 14.4 We may treat you as insolvent if:
- 14.4.1 you are unable to pay your debts as they fall due; or
- 14.4.2 you (or any item of your property) become the subject of: a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy); b. any application or proposal for any formal insolvency procedure; or c. any application, procedure or proposal overseas with similar effect or purpose.
- 14.5 Business customers: All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
- 14.6 Business customers: Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 14.7 We shall be entitled, without your prior consent, to assign or sub-contract the whole or any part of the contract or to employ an independent contractor to perform any of our obligations under the contract.
- 14.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 14.9 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:
- 14.9.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
- 14.9.2 which expressly state that you may rely on them when entering into the contract.
- 14.10 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.