

Start-rite Terms & Conditions of Sale for Business Customers

1. INTERPRETATION

1.1 Definitions.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.3.
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from the Supplier.
Force Majeure Event: an event or circumstance beyond a party's reasonable control.
Goods: the goods (or any part of them) set out in the Order.
Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
Supplier: Start-rite Shoes Limited (registered in England and Wales with company number 00140697).

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or confirms the Order over the telephone, at which point the Contract shall come into existence.
2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
2.7 Our International terms and conditions may vary from these Conditions. International terms and conditions are available on request.

3. GOODS

3.1 The Goods are described in accordance with the Supplier's marketing material.

4. DELIVERY

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
4.5 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
4.7 The Supplier may deliver the Goods by instalments and each instalment shall be deemed to be the subject of a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
4.8 If Goods are not delivered within 5 Business Days from the dispatch date shown on the invoice, the Customer must immediately notify the Supplier of non-delivery. Failure to do so may cause claims by the Supplier to be rejected by the courier, in which case the Customer may lose his right to claim.
4.9 If delivery of any item comprised in the Goods is not delivered within 45 days of the estimated delivery date the Customer may cancel its order in respect of that item only by giving effective notice of cancellation in writing to the Supplier.
4.10 If delivery of any item comprised in the Goods is greater than 45 days after the estimated delivery date the Customer may return its order in respect of that item only by giving effective notice of return in writing to the Supplier.

5. CANCELLATION
 5.1 Except as provided for in clause 4.9, the Customer may not cancel Orders without the prior written consent of the Supplier, which if given shall be deemed to be given on the express condition that the Customer shall fully indemnify the Supplier against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing by the Supplier.

6. QUALITY
 6.1 The Supplier warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

 6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, the Supplier shall, at its option replace the defective Goods, or refund the price of the defective Goods in full.

 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
- (b) the defect arises as a result of the Supplier following any drawing or design supplied by the Customer;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
 6.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

7. DELIVERY SHORTAGES, DAMAGE TO GOODS IN TRANSIT & RETURNS
 7.1 The Customer shall note any claim for short delivery and/or damage to goods in transit on the delivery note at the time of delivery and shall additionally confirm such claim in writing to the Supplier within three Business Days of the date of delivery. Strict compliance with these requirements shall be a condition precedent to any claim by the Customer for short delivery/damaged goods. If short delivery does take place the Customer may not reject the Goods but will accept the Goods delivered as part performance of the Contract.

7.2 We do not accept returns of Goods except for in accordance with clause 6.2.

8. RETENTION OF TITLE
 8.1 The risk in the Goods shall pass to the Customer on completion of delivery at the Delivery Location.
 8.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.

 8.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and readily identifiable as the Goods of the Supplier;
- (b) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.2; and
- (c) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

 8.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

 8.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them; and
 - (iii) In the event of stock being recovered by Start-rite under terms 8i) or 8ii) (above) we reserve the right to impose an administrative charge of £1.50 per pair on all goods collected

8.6 The Supplier may at any time on giving reasonable notice to the Customer, enter any premises of the Customer to inspect the Goods.

9. PRICE AND PAYMENT

9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. Recommended retail prices are shown against each product in the published price list.

9.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

9.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of transport of the Goods, which shall be invoiced to the Customer.

9.4 Delivery will be paid on all valid orders over £200 at trade value. Orders of under £200 at trade value will incur a carriage and handling charge of £7.50 plus VAT.

9.5 The Supplier will invoice the Customer for the Goods on the date of dispatch.

9.6 The Customer shall pay the invoice in full and in cleared funds net monthly (i.e. the end of the month following the month the invoice is dated). Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

9.7 If the Customer pays the invoice in full and in cleared funds within seven Business Days of the date of the invoice the Customer shall receive a settlement discount of 2.5% of the value of such invoice. If the Customer pays the invoice in full and in cleared funds within 30 Business Days the Customer shall receive a settlement discount of 1% of the value of such invoice.

9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. TERMINATION

10.1 The Supplier may immediately terminate the Contract in the event that the Customer fails to pay any sum due in accordance with the Contract or these Conditions.

10.2 If the Customer becomes subject to any of the following events listed, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (f) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (h) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (i) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(b) to 10.2(g) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (l) (being a company) there is a change of control of the Customer;

- (m) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (n) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.2(a) to clause 10.2(n), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business; or
- (d) loss of anticipated savings;

in each case whether direct or indirect or for any indirect, special or consequential loss or damage arising under or in connection with the Contract.

11.3 Subject to clause 11.1, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. FORCE MAJEURE

Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

13. GENERAL

13.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.4 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; nor
- (b) prevent or restrict the further exercise of that or any other right or remedy.

13.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.7 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

13.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.