

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions

"The Company"	means Birch Sports Surfaces Limited"
"The Buyer"	means the persons, firm or company entering into the contract with the Company
"The Conditions"	means the conditions herein contained relating to the sale of goods
"The Contract"	means the contract between the Company and the Buyer created upon acceptance of the Buyer's order
"The Goods"	means the goods supplied hereunder in accordance with the order

2. GENERAL

- (a) Acceptance of all orders are subject to these conditions and shall govern the contract to the exclusion of all other terms and conditions. The Buyer shall be deemed to have accepted these conditions on placing the order
- (b) The conditions represent the entire agreement and understanding of the parties and supersede any prior agreements, representations or undertakings

3. PRICE

- (a) The price of the goods will be as provided in the quotation, and confirmed to the buyer in the Company's invoice
- (b) The Company reserves the right to vary from the price quoted to the extent that such variation is required to cover increase in the cost of supplying the goods between quotation and delivery to the Buyer. Prices at the date of delivery shall therefore prevail

4. PAYMENT

- (a) Payment shall be made within 30 days of the invoice date, unless otherwise agreed and confirmed to the Buyer in the Company's invoice
- (b) In the event of late or part-payment, interest at a rate of up to 8% above the prevailing Bank of England Base Rate in accordance with The Late Payment of Commercial Debts (Interest) Act 1998. This shall be charged on the sum outstanding on a daily basis until full payment is received
- (c) All prices quoted are exclusive of VAT, carriage, insurance, packing and all other duties, taxes or levies required to be paid under the contract

5. DELIVERY

- (a) The appointment of carriers is at the Company's sole discretion unless the Buyer indicates a specific carrier prior to quotation
- (b) All reasonable efforts will be made by the Company to fulfil delivery dates provided that reasonable notice of such date is given by the Buyer. Time is not of the essence in the contract
- (c) The Company will consider the repair or replacement of goods damaged or lost in transit where delivery is made by the Company's carrier providing written notice of such damage or loss is provided with 3 days by the Buyer
- (d) All goods should be checked on receipt and any shortages or errors notified to the Company within 14 working days of receipt of goods

6. RISK AND PROPERTY

- (a) Risk in the goods passes on delivery
- (b) Title in the goods will not pass to the Buyer until payment in full of the invoice
- (c) If the Buyer is overdue in payment for the goods or other goods supplied by the Company, the Company may recover and sell the goods. The Company shall be entitled to take possession of the goods and is hereby granted licence to enter the Buyer's premises for such purposes. This will not effect any right the Company may have against the Buyer
- (d) Until payment for the goods and all other goods which are supplied under these conditions:
 - i. The Buyer shall hold the goods upon trust for the Company
 - ii. The Company reserves the right to trace the proceeds of sale on trust received into any bank or other account which the Buyer maintains
 - iii. If the goods are sold the Company may by written demand require an assignment of the Buyer's right to recover the price from any third party

7. WARRANTY AND LIABILITY

- (a) Subject to the conditions set out below, the Company warrants that the goods will be free from defects in material and workmanship for a period of 12 months from the date of delivery and shall replace any goods which the

Buyer proves to the satisfaction of the Company to be faulty in accordance with this condition

- (b) The warranty given in paragraph (a) is subject to the following conditions.
 - i. the Company shall be under no liability in respect of any defect in the goods arising from any changes or alterations to the supplied product or any changes in specification requested
 - ii. The Company shall be under no liability in respect of defects arising due to methods employed in application of the product by the Buyer or employees of the Buyer. Nor in respect of any surface to which the product is applied.
 - iii. The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal usage, failure to follow the Company's instructions, misuse or alteration of the goods without the Company's written approval
 - iv. The Company shall be under no liability under the above warranty in connection with any parts, materials or equipment not supplied by the Company
- (c) Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are expressly excluded to the extent permitted by law
- (d) Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are expressly excluded to the extent permitted by law. Except in respect of death or personal injury caused by the Company's negligence (or implied under the Consumer Safety Act 1987) the Company shall not be liable to the Buyer by reason of any representation, implied warranty, condition or other term or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever arising out of the supply of goods and the Company's liability for direct loss (otherwise than for death or personal injury) shall be limited to the value of the invoice for the contract

8. RETURNS/CANCELLATION

- (a) The Company will not accept the return of any goods without its prior written consent
- (b) Where such consent is provided goods shall be returned at the Buyer's expense to an address provided by the Company
- (c) Credit for goods returned will be provided by the Company at the goods resale value less a 10% handling fee, provided that the goods are returned in a condition suitable for resale
- (d) Where goods have been specially manufactured to the Buyer's specifications including (but not limited to) changes in colour, consistency, packaging, a re-stocking fee of 40% will apply

9. ALTERATIONS/MODIFICATIONS

The Company may make such alterations or modifications as it deems necessary to the goods or their manufacture without notice to the Buyer from time to time

10. NOTICES

All notices to be given under the contract shall be given by prepaid first class Recorded post to the principal place of business of the party to be notified and shall be deemed to have been delivered at the expiration of 48 hours after posting

11. TERMINATION

Without prejudice to any other remedies the Company may have against the Buyer. The Company may terminate the contract on notice to the Buyer, upon the Buyer becoming bankrupt or insolvent or upon a resolution to wind up the Buyer being passed or a receiver, administrative receiver or administrator being appointed and shall be entitled to take possession of all goods supplied and unpaid for, in accordance with paragraph 6 hereof

12. FORCE MAJEURE

The Company shall be entitled to cancel the contract or reduce the quantity of goods to be provided if it is prevented from providing the goods through any circumstances beyond its reasonable control including (but not limited to) industrial action, war, fire or prohibition or enactment of any kind, and will not be liable for any loss or damage incurred whatsoever arising therefrom

13. GOVERNING LAW

The contract shall be governed by English law and subject to the exclusive jurisdiction of the High Court in England