



# Town & Country Memorials

## Terms & Conditions of Sale

### **Standard Terms And Conditions For Sale Of Goods Of Town and Country Memorials Ltd To Trade Customers.**

#### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1** "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.2** "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.3** "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4** "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.5** "Seller" means Town and Country Memorials Ltd, Unit C, Blackbrook Business Park, Blackbrook Road, Fareham. Hants PO15 5DR.

#### **2 GENERAL**

- 2.1** These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2** These Terms and Conditions are available on request by email from the Seller or can be viewed online at [www.townandcountrymemorials.co.uk](http://www.townandcountrymemorials.co.uk). The Seller reserves the right to amend the Terms and Conditions from time to time without directly notifying previous Buyers.
- 2.3** Acceptance of sales order confirmation or pro forma invoice of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Condition

#### **3 PRODUCT INFORMATION**

- 3.1** Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.
- 3.2** The terms of product finish when applied to any memorials supplied by the Seller may denote colour, finish only and shall not be interpreted to mean that, the final finish of the memorial will be exactly the same as any literature provided as stone is a natural material with colour and marking variations.
- 3.3** The Seller reserves the right to alter prices or withdraw and modify products from time to time without directly notifying previous Buyers. Products illustrated in all of the Seller's literature and websites are done so as accurately as modern reproduction methods will allow. It is the responsibility of the buyer to check the desired colour match before purchasing, using colour samples which can be requested. It is also the responsibility of the buyer to check the suitability of the product size before purchasing.

## 4 PRICE AND PAYMENT

- **4.1** The price shall be that in the Seller's current Trade List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. All goods are sold ex-works and carriage shall be paid for by the Buyer.
- **4.2** For account customers, payment of the price and VAT and any other applicable costs shall be done 30 days from the point of the date of the Seller invoice subject to approved credit terms. Credit terms can be removed by the Seller without explanation.
- **4.3** The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2.50% per annum above the base rate of the Bank of England.
- **4.4** If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - **4.4.1** require payment in advance of delivery in relation to any Goods not previously delivered;
  - **4.4.2** refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - **4.4.3** terminate the contract.

## 5 DELIVERY SERVICE

**5.1** Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer within the timescale specified by the Seller.

**5.2** Standard delivery is conducted using a third party courier, third party pallet carrier, or Seller's own van. Delivery times vary according to each mode of transportation as detailed below:

- Parcel (third party courier) up to 3 working days
- Truck (third party pallet carrier or Seller's own van) up to 5 days. The mode of transportation is determined by the size of the Goods, and is confirmed on order.

**5.3** The delivery address specified by the Buyer must be safely accessible by truck between the hours of 09.00 to 17.00 Monday to Friday.

**5.4** The delivery service is completed by one person (the driver) up to the vehicle tailgate. It is the responsibility of the buyer to ensure vehicle access including suitable parking and the handling of the Goods beyond the vehicle tailgate.

## 6 RISK

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller's premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

## 7 TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods. The goods may be resold provided the proceeds of resale are paid to the Buyer to the extent necessary to discharge in full the amount due to the Seller

## 8 RETURNS

- **8.1** During delivery the Buyer shall **inspect the packaging** for visible signs of transit damage before signing any delivery receipt document. In the event of visible signs of transit damage the Buyer must clearly mark the goods received as 'damaged' on the delivery receipt document before signing. The Buyer shall then notify the Seller within **24 hours**.
- **8.2** To avoid ambiguous situations, the Buyer must **inspect the Goods upon receipt and shall notify the Seller within 48 hours of delivery** if the Goods are damaged or defective. Goods that are defective or do not comply with any part of the Contract, must be reported to the Seller within 48 hours of delivery with appropriate pictures of any defects. We do not accept damage claims that may have resulted from mishandling of the product, or during installation. Any damage must be reported to us before assembly and installation.
- **8.3** Where a claim of defect or damage is made then it shall be the responsibility of the Seller to collect the faulty Goods and give the Buyer replacement Goods. If the above is possible, the damaged/defective Goods will be collected and a full refund for the damaged Goods only (including delivery costs, if applicable) will be made. The Seller will not be held responsible for any loss or costs caused to the customer. Should the reported fault on a returned item be related to incorrect installation of an item, or failure to adhere to assembly instructions.
- **8.4** Goods to be returned must be fully re-packaged and sealed in the original packaging format clearly showing the 'CC' number obtained from the Seller. Please ensure that the persons unwrapping the goods are very careful and keep the inner and outer wrapping of the original packaging intact.
- **8.5** Goods that are being returned for additional inscriptions using the company's packing boxes must be adequately packed.
- **8.6** Where returned Goods are found to be damaged due to the Buyer's fault the Buyer will be liable for the cost of remedying such damage.

## 9 WARRANTY

- **9.1** Where the Goods have been manufactured by the Seller and are found to be defective, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge within 5 years from the date of delivery, subject to the following conditions:
  - **9.1.1** the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;
  - **9.1.2** the defect being due to the faulty design, materials or workmanship of the Seller.
- **9.2** Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.
- **9.3** Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.
- **9.4** The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.
- **9.5** The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 8 and 9.

## 10 LIABILITY

- **10.1** No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:
  - **10.1.1** the correspondence of the Goods with any description;
  - **10.1.2** the quality of the Goods; or
  - **10.1.3** the fitness of the Goods for any purpose whatsoever.
- **10.2** No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:
  - **10.2.1** the correspondence of the Goods with any description;
  - **10.2.2** the quality of the Goods; or
  - **10.2.3** the fitness of the Goods for any purpose whatsoever.
- **10.3** All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Seller or not) are hereby excluded from the contract.

## 11 LIMITATION OF LIABILITY

- **11.1** Where any court or arbitrator determines that any part of Clause 10 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.
- **11.2** Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

## 12 FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

## 13 RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

## 14 ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

## **15 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## **16 SEVERABILITY**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **17 INTELLECTUAL PROPERTY AND RIGHT TO USE IT**

The Buyer acknowledges and agrees that all copyright, trademarks and all other intellectual property rights in all the Seller's literature and websites shall remain at all times vested in the Seller. The Buyer is permitted to use this material only as expressly authorised by the Seller. The Buyer acknowledges and agrees that the material and content contained within the website is made available for personal non-commercial use only and the Buyer may (if necessary to make a purchase on the website) download such material and content. Any other use of the material and content of the website is strictly prohibited. The Buyer agrees not to (and agree not to assist or facilitate any third party to) copy, reproduce, transmit, publish, display, distribute, commercially exploit or create derivative works of such material and content.

## **18 WEBSITE USE AND LINKS**

- **20.1** Access to and use of the Sellers websites are subject to these Terms and Conditions. The Buyer agrees that use of these website services is entirely at the risk of the Buyer.
- **20.2** By using the Sellers websites the Buyer agrees not to attempt to undermine the web site's functionality and integrity
- **20.3** The Sellers websites may include links to third party websites that are controlled and maintained by others. Any link to other websites is not an endorsement of such websites and you acknowledge and agree that we are not responsible for the content or availability of any such sites.

## **19 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.