

## Birchington Fabrics – Terms of sale

### 1. These terms

- 1.1 **What these terms cover.** These are the terms and conditions on which we supply our products and services to you.
- 1.2 **Why you should read them.** Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide products and services to you, how you and we may change or end the contract, what to do if there is a problem and other important information. These terms may have changed since you last reviewed them. If you think that there is a mistake in these terms or require any changes, please contact us on 01843 847171 to discuss.
- 1.3 **We don't give business customers all the same rights as consumers.** For example, business customers have different rights where there is a problem with a product and we don't compensate them in the same way for losses caused by us or our products. Where a term applies just to businesses or just to consumers, this is clearly stated. You are a business customer if you are buying products wholly or mainly for use in connection with your trade, business, craft or profession, even if you are an individual.
- 1.4 **If you are a business customer this is our entire agreement with you.** If you are a business customer these terms constitute the entire agreement between us in relation to your purchase. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by us or on our behalf which is not set out in these terms and that you have no claim for innocent or negligent misrepresentation based on any statement in these terms.

### 2. Information about us and how to contact us

- 2.1 **Who we are.** We are David Burling and Patricia Pedrick, operating in partnership and trading as "Birchington Fabrics". Our business address is 56a Station Road, Birchington, Kent, CT7 9RA. Our registered VAT number is 703 2411 89.
- 2.2 **How to contact us.** You can contact us by telephoning on 01843 847171 or by writing to us at birchingtonfabrics@googlemail.com or Birchington Fabrics, 56a Station Road, Birchington, Kent, CT7 9RA.
- 2.3 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.
- 2.4 **"Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.

### 3. Our contract with you

- 3.1 **Our quotations do not constitute a binding contract.** Any quotation we provide shall be valid for 60 days but shall not constitute a binding contract.
- 3.2 **How we will accept your order.** Our acceptance of your order will take place when we email you or write to you by post to accept it, at which point a contract will come into existence between you and us.

3.3 **If we cannot accept your order.** If we are unable to accept your order, we will inform you of this in writing and will not charge you for your order and refund any sums you have paid. This might be because the product is out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the product or because we are unable to meet a delivery deadline you have specified.

#### 4. **Our products**

4.1 **Products may vary slightly from their pictures.** The images of the products in our brochure or on our website are for illustrative purposes only. Your product may vary slightly from those images. In addition, if the width of your curtains or blinds is wider than the width of the fabric requested, we will need to join the fabric together to provide the required measurements which will result in a visible seam.

4.2 **Making sure your measurements are accurate.** If we are making the product to measurements you have given us you are responsible for ensuring that these measurements are correct. You can obtain information on how to measure by contacting us. If the product cannot be installed because the measurements you provided were incorrect, we will discuss any possible changes to enable installation but will still need to charge for the installation and further costs if the products need to be adjusted and installed on a later date.

#### 5. **Price and payment**

5.1 **Where to find the price for the product.** The price of the product (which includes VAT) and any additional installation charges will be the price and charges indicated in our written confirmation of your order (**Order Confirmation**).

5.2 **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your order date and the date we deliver a product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.

5.3 **When you must pay and how you must pay.** A deposit (as set out in the Order Confirmation) shall be payable by you upon us accepting your order and issuing the Order Confirmation. The final balance shall be payable on completion of the delivery of the products (including installation if we are installing the products on your behalf). We accept payments with all major credit and debit cards.

5.4 **We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the Bank of England base rate from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount as well as any costs we have incurred in collecting the monies due from you.

5.5 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the matter is resolved. Once the matter is resolved we will charge you interest on correctly invoiced sums from the original due date.

## 6. Your rights to make changes

If you wish to make a change to your order please contact us. We will let you know if the change is possible though, normally, because the product is made to measure it is not possible to make changes after the Order Confirmation. If it is possible we will let you know about any changes to the price of your order, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

## 7. Our rights to make changes

### 7.1 Minor changes to our products. We may change a product:

7.1.1 to reflect changes in relevant laws and regulatory requirements in relation to the manufacture, advertisement or supply of a product; and

7.1.2 to make minor technical adjustments and improvements to a product, but such changes will not affect your use of the product.

### 7.2 More significant changes to the products and these terms. In addition, we may make more significant changes to these terms or a product, but if we do so and you are likely to be affected we will notify you and you may then contact us to end the contract before the changes take effect and receive a refund for any products paid for but not received.

## 8. Providing the products

### 8.1 Delivery and installation costs. The costs of delivery and installation will be as set out in the Order Confirmation.

### 8.2 When we will deliver your order. During the order process we will let you know when we will provide the products to you. We will aim to deliver them to you as soon as reasonably possible and within the estimated delivery period discussed during the order process. However, our products are made to measure and delays may sometimes occur.

### 8.3 You are responsible for providing us with access. You shall provide us with suitable access and such information as we reasonably require to install the products and to enable us to check the products and their installation where you notify us about a problem.

### 8.4 We are not responsible for delays outside our control. If our supply of your product is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.

### 8.5 If you are not at home when the product is delivered or scheduled for installation or have not provided suitable access. If no one is available at your address to take delivery of the products, we will contact you to rearrange delivery or installation. We may need to charge you additional sums if we have to rearrange delivery or installation because no one is available at your address or you have not provided suitable and safe access to enable us to carry out the installation.

- 8.6 **If you do not re-arrange delivery.** If after a failed delivery you do not re-arrange delivery we will contact you for further instructions and may charge you for storage costs and any further delivery and installation costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and clause 12.3 will apply.
- 8.7 **Your legal rights if we deliver products late.** You have legal rights if we deliver any products late. If we miss the delivery deadline for any products then you may cancel the contract straight away if any of the following apply:
- 8.7.1 we have refused to deliver the products;
- 8.7.2 delivery within the delivery deadline was essential (taking into account all the relevant circumstances); or
- 8.7.3 you told us before we accepted your order that delivery within the delivery deadline was essential.
- 8.8 **Setting a new deadline for delivery.** If you do not wish to cancel the contract, or do not have the right to do so under clause 8.7, we can agree a new deadline for delivery with you and you can treat the contract as at an end if we do not meet the new deadline.
- 8.9 **Ending the contract for late delivery.** If you do choose to cancel the contract due to late delivery under clause 8.7 or clause 8.8, you can cancel your order for any of the products or reject products that have been delivered. If you wish, you can reject or cancel the order for some of those products (not all of them), unless splitting them up would significantly reduce their value. After that we will refund any sums you have paid to us for the cancelled products and their delivery. If the products have been delivered to you, you must allow us to collect them from you. We will pay the costs of collection. Please us on 01843 847171 or email us at birchingtonfabrics@googlemail.com to arrange collection and refund of the sums you have paid.
- 8.10 **When you become responsible for the products.** The products will be your responsibility from the time we deliver the products to the address you gave us.
- 8.11 **When you own products.** You own the products once we have received payment in full and we have delivered the products to you.
- 8.12 **You are responsible for disposing of any curtains, blinds or similar that are replaced by our products.** Our installer is not able to take away any blinds or curtains that are replaced by the products and you will be responsible for disposing of such items.
- 8.13 **What will happen if you do not give required information to us.** We may need certain information from you so that we can supply the products to you, for example, additional delivery information if you live in a location with restricted access. We will contact you to ask for this information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and clause 12.3 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the products late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

- 8.14 **We can suspend supply of a product.** We may have to suspend the supply of a product to:
- 8.14.1 deal with technical problems or make minor technical changes;
  - 8.14.2 update the product to reflect changes in relevant laws and regulatory requirements;
  - 8.14.3 make changes to the product as requested by you or notified by us to you (see clause 6 and clause 7).
- 8.15 **Your rights if we suspend the supply of products.** We will contact you in advance to tell you we will be suspending supply of the product, unless the problem is urgent or an emergency. You may contact us to end the contract for a product if we suspend it, or tell you we are going to suspend it, in each case for a period of more than 60 days, and we will refund any sums you have paid in advance for the relevant product.

## 9. **Safety regulations**

**We will comply with all applicable safety regulations.** We install our products in accordance with all applicable laws and regulations. In particular, regulations are in force to improve child safety by requiring chains or string for blinds to be a certain height above floor level and for products to be fitted with appropriate safety devices. Compliance with these regulations is mandatory and we reserve the right to refuse to carry out an installation if you do not agree to us installing the products in accordance with all safety regulation requirements. In such circumstances, you will remain liable for the full cost of the products ordered and our installation costs and our refusal to install the products in these circumstances shall not constitute a breach of our contract with you and you remain bound to take delivery of the products.

## 10. **Your rights to end the contract**

- 10.1 **You can always end your contract with us.** Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing and when you decide to end the contract:
- 10.1.1 **If what you have bought is faulty or misdescribed you may have a legal right to end the contract** (or to get the product repaired or replaced, or to get some or all of your money back), see clause 13; or
  - 10.1.2 **If you want to end the contract because of something we have done or have told you we are going to do**, see clause 10.2.
- 10.2 **Ending the contract because of something we have done or are going to do.** If you are ending a contract for a reason set out below the contract will end immediately and we will refund you in full for any products which have not been provided and you may also be entitled to compensation. The reasons are:
- 10.2.1 we have told you about an upcoming change to a product or these terms which you do not agree to (see clause 7.2);
  - 10.2.2 we have told you about an error in the price or description of a product you have ordered and you do not wish to proceed;

- 10.2.3 there is a risk that supply of the products may be significantly delayed because of events outside our control;
  - 10.2.4 we have suspended supply of the products for technical reasons, or notified you that we are going to suspend them for technical reasons, in each case for a period of more than 30 days; or
  - 10.2.5 you have a legal right to end the contract because of something we have done wrong.
- 10.3 **Our products are made to order and fall outside of the Consumer Contracts Regulations 2013.** You do not have a right to a “cooling-off period” in which you are able to change your mind in respect of our products under the Consumer Contracts Regulations 2013 as our products are bespoke and made to your specific measurements. It is very important that you are sure about the sizing, colouring and styling before you place your order.

## 11. How to end the contract with us

- 11.1 **Tell us you want to end the contract.** To end the contract with us, please let us know by doing one of the following:
- 11.1.1 **Phone or email.** Please call us on 01843 847171 or email us at [birchingtonfabrics@googlemail.com](mailto:birchingtonfabrics@googlemail.com). Please provide your name, address, phone number, email address and details of the order.
  - 11.1.2 **By post.** Write to us at Birchington Fabrics, 56a Station Road, Birchington, Kent, CT7 9RA including details of what you bought, when you ordered or received it and your name and address and phone number.
- 11.2 **Returning products after ending the contract.** If you end the contract for any reason after products have been dispatched to you or you have received them, you must return them to us. You must either return the products in person to where you bought them or allow us to collect them from you. Please call us on 01843 847171 or email us at [birchingtonfabrics@googlemail.com](mailto:birchingtonfabrics@googlemail.com) to arrange return or collection.
- 11.3 **When we will pay the costs of return.** We will pay the costs of return:
- 11.3.1 if the products are faulty or misdescribed; or
  - 11.3.2 if you are ending the contract because we have told you of an upcoming change to a product or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong.

In all other circumstances, you must pay the costs of return.

- 11.4 **What we charge for collection.** If you are responsible for the costs of return and we are collecting the product from you, we will charge you the direct cost to us of collection.
- 11.5 **How and when we will refund you.** We will refund you the price you paid for the products, including delivery costs, by the method you used for payment. We will make any refunds due to you as soon as possible. Generally:

11.5.1 your refund will be made within 14 days from the day on which we receive the product back from you or, if earlier, the day on which you provide us with evidence that you have sent the product back to us. For information about how to return a product to us, see clause 11.2; or

11.5.2 if we are collecting the products, your refund will be made within 14 days from the day on which we collect them.

## **12. Our rights to end the contract**

**12.1 We may end the contract if you break it.** We may end the contract for a product at any time by writing to you if:

12.1.1 you do not make any payment to us when it is due and you still do not make payment within 7 days of us reminding you that payment is due; or

12.1.2 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the products;

12.1.3 you do not, within a reasonable time, allow us to access your property to install the products you have ordered or otherwise allow us to deliver the products to you or you do not collect them from us.

**12.2 We may end the contract if you break it.** We may end the contract for a product at any time by writing to you if:

12.2.1 you do not make any payment to us when it is due and you still do not make payment within 7 days of us reminding you that payment is due; or

12.2.2 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the products; or

12.2.3 you do not, within a reasonable time, allow us to deliver the products to you or collect them from us.

**12.3 You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 12.1, given that the products are made to your specific measurements, we will not refund any money you have paid in advance for products we have not delivered and we may also charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

**12.4 We may withdraw products.** We may write to you to let you know that we are going to stop providing the product. We will let you know at least 7 days in advance of our stopping the supply of the product and will discuss with you alternative products that we are able to supply or otherwise refund any sums you have paid in advance for products which will not be provided.

## **13. If there is a problem with the product**

**13.1 How to tell us about problems.** If you have any questions or complaints about a product, please contact us. You can telephone us on 01843 847171 or write to us at birchingtonfabrics@googlemail.com or Birchington Fabrics, 56a Station Road, Birchington, Kent, CT7 9RA.

- 13.2 **Your rights and remedies if you are a consumer.** We honour our legal duty to provide you with products that are as described to you in our brochures or on our website and that meet all the requirements imposed by law. Your legal rights are summarised below. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) or call 03454 040506. Nothing in these terms will affect your legal rights.

#### **Summary of your key legal rights**

Your products are goods. The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected lifespan of the products your legal rights entitle you to the following:

- a) up to 30 days: if your goods are faulty, then you can get an immediate refund.
- b) up to six months: if your goods can't be repaired or replaced, then you're entitled to a full refund, in most cases.
- c) up to six years: if your goods do not last a reasonable length of time you may be entitled to some money back.

- 13.3 **Your obligation to return rejected products.** If you wish to exercise your legal rights to reject products you must either return them to us in person to where you bought them or allow us to collect them from you. We will pay the costs of collection. Please call us on 01843 847171 or write to us at [birchingtonfabrics@googlemail.com](mailto:birchingtonfabrics@googlemail.com) or Birchington Fabrics, 56a Station Road, Birchington, Kent, CT7 9RA to arrange collection.

- 13.4 **Most of our products come with a warranty.** We warrant that on delivery and for the period specified on the warranty card supplied with the product which may also be stated in the specification of the product on our website (**warranty period**), the product shall:

13.4.1 conform in all material respects with its description and any relevant specification;

13.4.2 be free from material defects in design, material and workmanship;

13.4.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);  
and

13.4.4 be fit for any purpose held out by us.

Although the warranty period will be set out in the warranty card provided with your product, generally, our made to measure curtains and blinds come with a 12-month warranty and our made to measure shutters come with a five-year warranty.

- 13.5 **Your remedies during the warranty period.** Unless an exception applies (see clause 13.6 (Exceptions to our warranty)) if:

13.5.1 you give us notice in writing during the warranty period within a reasonable time of discovery that a product does not comply with the warranty (see clause 13.4);

13.5.2 we are given a reasonable opportunity of examining such product; and

13.5.3 you return such product to us at our cost,

we shall, at our option, repair or replace the defective product, or refund the price of the defective product in full. These terms shall apply to any repaired or replacement products supplied by us.

13.6 **Exceptions to our warranty.** We will not be liable for a product's failure to comply with our warranty (see clause 13.4) if:

13.6.1 you make any further use of such product after telling us it is non-compliant;

13.6.2 the defect arises because you failed to follow our oral or written instructions as to the storage, use or maintenance of the product;

13.6.3 you alter or repair the product without our written consent; or

13.6.4 the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal working conditions. This includes fading or discolouration which will inevitably occur due to sunlight and other environmental factors.

#### 14. **Our responsibility for loss or damage suffered by you**

14.1 **You are responsible for using the products safely.** Some of the products we supply can be dangerous and you are responsible for using them safely and in accordance with any safety instructions. We recommend you read all instruction booklets and safety instructions before using our products. In the absence of any negligence by us, the use of our products is entirely at your own risk and we will not be responsible for any injury or damage caused by you using our products.

14.2 **Our liability to consumers.** We're responsible for losses you suffer caused by us breaking this contract unless the loss is:

14.2.1 **Unexpected.** It was not obvious that it would happen and nothing you said to us before we accepted your order meant we should have expected it (so, in the law, the loss was unforeseeable).

14.2.2 **Caused by a delaying event outside our control.** As long as we have taken the steps set out in clause 8.4.

14.2.3 **Avoidable.** Something you could have avoided by taking reasonable action.

14.2.4 **A business loss.** Our liability for any loss you suffer in connection with your trade, business, craft or profession is limited, as described in clause 14.3 (Our liability to businesses).

14.3 **Our liability to businesses.** If you're a business, then, except in respect of the losses described in clause 14.4 (Losses we never limit or exclude):

14.3.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between us; and

14.3.2 our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence),

breach of statutory duty, or otherwise, shall be limited to the total sums paid by you for products under such contract.

14.4 **Losses we never limit or exclude.** Nothing in these terms shall limit or exclude our liability for:

14.4.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);

14.4.2 fraud or fraudulent misrepresentation;

14.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

14.4.4 defective products under the Consumer Protection Act 1987; or

14.4.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.

14.5 **We are not liable for incorrectly installed products or damages caused in the installation process.** Unless we have installed the products on your behalf, we will not be liable for any damage caused during the installation process or any personal injury resulting from incorrectly installed products.

14.6 **We are only responsible for damage we cause during the installation process.** If we are installing the products, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while carrying out the installation. In order to install products, holes may be made in the fabric of the structure of your property. Whilst every effort and care will be taken during the installation process, no liability is taken for any unforeseen damage for holes left when products are subsequently removed by you. We do not undertake structural surveys and no liability shall be accepted where damage is caused by existing structural or other defects of your property. It is your responsibility to ensure that the installation of the products does not breach any leasehold, planning regulations or warranties that you may hold.

14.7 **We are not liable for any problems with the products that arise as a result of us following any measurements or specifications provided by you.**

15. **How we may use your personal information**

**How we may use your personal information.** We will only use your personal information as set out in our privacy policy, a copy of which is provided with these terms and available upon request.

16. **Other important terms**

16.1 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and if you are a consumer we will ensure that the transfer will not affect your rights under the contract.

- 16.2 **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- 16.3 **Nobody else has any rights under this contract.** This contract is between you and us. No other person shall have any rights to enforce any of its terms and neither of us will need to ask anybody else to sign-off on ending or changing it.
- 16.4 **If a court finds part of this contract illegal, the rest will continue in force.** Each clause of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 16.5 **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the products, we can still require you to make the payment at a later date.
- 16.6 **Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English law and you can bring legal proceedings in respect of the products in the English courts.

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