

APPLICATION TO OPEN A TRADE ACCOUNT

I wish to open a trade account with Midway UK in the name of:

.....

I confirm that I intend to stock Midway UK products, and trade from established retail premises at: Yes No

Address Tel

..... Fax

..... Email

..... Post Code..... Company No

I enclose a copy of my current RFD No Yes RFD NumberIssuing Authority

Type of Business: Ltd Company Partnership Other (Please specify)

Opening Hours

The following are my bankers and two trade references to whom you may apply:

1 2..... 3

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I confirm that I intend to trade realistically in your products and to the standards associated with Midway UK and their customers. I understand that Midway UK do not offer credit terms. I will inform Midway UK in writing if either our trading circumstances, or any of the information given here, changes. I accept the terms and conditions noted overleaf.

Authorised Signatory Name Date

Position: Director Partner Proprietor Other (Please specify)

Do you object to your company being included on our mailing list Yes No

Do you object to your company being included on our web site Yes No

For Office Use Only

Date references taken up Both references returned Yes No Add to mailing list Yes No

Date salesmen advised to visit..... Salesmen completed visit Yes No Add to mailing list Yes No

TERMS OF BUSINESS - TRADE ONLY

Standard terms and conditions of sale ('The Terms')

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1. Interpretation

1.1 In these Conditions:

- 'BUYER' means the person whose order for Goods is accepted by the Seller
'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions
'SELLER' means Midway UK (Warwick) Limited ('Midway UK') (registered in England under number 5587870)
'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller
'CONTRACT' means any contract between the Seller and the Buyer for the purchase and sale of the Goods incorporating these Conditions
'WRITING' includes telex, cable, facsimile & email transmission and comparable means of communication
'On-Line' means on the Midway UK website www.midwayuk.com

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time
1.3 Words in the singular include the plural and in the plural include the singular
1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller, and no order shall be deemed to be accepted until a written acknowledgement of order is issued by the Seller, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made, by the Buyer.
2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, the website or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the acknowledgement of Buyer's order
3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance. This is not a sale by sample
3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation and in addition the Seller shall be entitled to make a handling and resale charge.

4. Price of the goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is notified to the Buyer as being no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are subject to change without notice until acceptance by the Seller.
4.2 The seller reserves the right, at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the seller adequate information or instructions.
4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to immediate payment from the Buyer for the price of the Goods on production of the invoice On-line. No credit terms are offered by Midway UK.
5.2 The Buyer shall pay the price of the Goods immediately upon the production of the invoice On-line and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
5.3 The Buyer shall pay the Seller in full without any deduction or set-off

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:
store the Goods until actual delivery and charge the Buyer for the reasonable cost (including insurance) of storage; or
sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses and recover any shortfall from the Buyer as debt due immediately.

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

- 7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller attempted delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business at full market value, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled to enter the premises of the Buyer to ensure compliance with clause 7.3 and shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and liability

- 8.1 Subject to the conditions set out below and to the conditions of any specific guarantee in relation to the Goods the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for the duration of any guarantee offered by the Seller and properly accepted by the Buyer.

- 8.2 The above warranty is given by the Seller subject to the following conditions:

- 8.2.1 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

- 8.2.2 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

- 8.2.3 For the avoidance of doubt the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller provided that such warranty or guarantee is capable of benefiting the Buyer.

- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1994), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

- 8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential or indirect loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which directly or indirectly arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

- 8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- Act of God, explosion, flood, tempest, fire or accident;
war or threat of war, sabotage, insurrection, civil disturbance or requisition;
acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
import or export regulations or embargoes;
strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
difficulties in obtaining raw materials, labour, fuel, parts or machinery;
power failure or breakdown in machinery.

9. Insolvency of Buyer

- 9.1 This clause applies if:
the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
the Buyer ceases, or threatens to cease, to carry on business; or
the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. General

- 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address which may at the relevant time have been notified pursuant to this provision to the party giving the notice.
10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
10.4 The Seller may assign the Contract or any part of it to any person firm or company, but the Buyer shall not be entitled to do so.
10.5 The Contract shall be governed by the laws of England.