

Endura Limited ("the Company") Terms and Conditions of Sale

GB

Updated 20/05/19

Company Details

Company Name:	Business type:
Trading As:	Years Trading:
Registered:	Fiscal/VAT Number:
Address:	Company
	Registration:
Post Code:	www
Country:	
Active Re-Selling Territory: United Kingdom only	

Contact Details

Accounts	Sales
Contact:	Contact:
Accounts	Sales
Tel:	Tel:
Accounts	Sales
Email:	Email:

Invoice/ Delivery Address

SOLD TO	SHIP TO
Invoice:	Shipping:
Address:	Address
Post Code:	Post Code:
Country:	Country:

Signed: Date:
 To Be Signed By A Director/Sole Trader Or Partner:
 Print: Job Title:

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Credit Checking Info

These details to be used for credit checking for the above business

Directors Name:

Date of Birth:

Home:

Address:

.....

Post Code:

Country:

Signed: Date:
To Be Signed By A Director/Sole Trader Or Partner:

Print: Job Title:

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All business is carried on subject to the following terms and conditions ("Terms"), except as varied by specific written agreement of the Company.

By placing any order with the Company, the customer shall be deemed to have agreed to and accepted these Terms.

In these Terms "Contract" means the contract for the supply of Goods formed by the Company's acceptance of the customer's order.

1. The allocated country(ies) for active re-selling is the country specified in the form above.
2. No order will be binding upon the Company unless and until accepted by the Company in writing or by delivery of any goods the subject of the order ("Goods").
3. Orders are accepted only on the basis that these Terms (or varied as aforesaid) apply to the order. Accordingly any terms endorsed on or contained or referred to in any customer's order or confirmation or otherwise communicated to the Company which are inconsistent with these Terms and are not specifically agreed to in writing by the Company, shall be deemed to be superseded and nullified by these Terms.
4. The Company reserves the right to amend any accidental error or omission on quotations, price lists, order forms, order acknowledgements, invoices or credit notes or other related documentation and compensate the amount of defective goods, shortages and any other costs which were incurred during delivery by issuing and sending credit notes to the customer. The customer can use the credit notes for any payments to the Company by reducing the principal amount of the payment against the amount of credit notes.
5. Although all delivery dates stated by the Company are given in good faith and all reasonable efforts will be made to adhere to them, the Company accepts no liability for any failure to comply with such dates by reason of any cause beyond the Company's reasonable control. Time of delivery shall not be of the essence.
6. The Company shall be entitled to make partial deliveries and failure to deliver part only of any order shall not entitle the customer to reject the Goods.
7. If the customer fails to take delivery of the Goods on the date of delivery, the Company shall, without prejudice to its other rights, be entitled to store the Goods at the customer's risk and the customer shall pay all storage and additional carriage costs incurred.
8. Whilst every effort will be made to supply Goods in accordance with samples and/or agreed specifications the Company reserves the right to modify specifications, designs and materials where such modifications do not materially affect the quality or fitness for purpose of the Goods or to comply with any applicable standards or legal requirements.
9. Unless otherwise notified to the customer, Goods will be invoiced at the price stipulated in the Company's published price list current at the date of the acceptance of the order. In the case of an order for delivery by instalments, each instalment shall be invoiced at the price stipulated in the Company's published price list at the date of despatch of such instalment. Such prices are exclusive of VAT.
10. Prices include delivery to the customer's single address, except that an additional charge for carriage of £5 will be charged on all orders of invoice value less than £200 (excluding VAT).
11. Unless otherwise agreed, the Company shall invoice the customer on or after despatch of the Goods. The Company shall be entitled to invoice each instalment as and when each instalment is despatched. Unless otherwise agreed, payment of all sums shall be made in the currency stated on the invoice issued by the Company and is due 30 days from the date of the relevant invoice. The Company may sue for any monies outstanding beyond this date even if property in any relevant Goods has not passed to the customer.
12. If any payment is not made in full by the due date then, without affecting any other right which it may have, the Company may deduct any outstanding amounts from any monies owed to the customer on any account whatsoever.
13. Interest may be charged on any overdue and unpaid payments which shall accrue from the payment due date until the date of payment at a rate of 3% above National Westminster Bank plc's base lending rate from time to time in force. No payment shall be deemed to have been made until the Company's account is credited with the relevant cleared funds.
14. The customer may not withhold or make any deduction from or set off against any payment due to the Company for any reason.
15. The Company will (at the Company's option) either replace or refund the price of any Goods which are shown to the Company's reasonable satisfaction to be defective in materials or workmanship at the time of delivery or to be a shortfall in quantity delivered provided that: (a) the customer inspects the Goods on delivery and notifies the Company within 3 business days of delivery of any alleged defects, shortage in quantity or damage. If the customer fails to comply with these provisions, the Goods shall be deemed conclusively to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of them; (b) when signing for deliveries the customer must state clearly on the delivery note any damage or shortages; (c) loss or non-delivery must be notified in writing to the Company and to the carrier within 14 days of the despatch date on the advice note or invoice; (d) where a defect would not have been apparent on a reasonable examination under clause 15(a), the customer notifies the Company as soon as reasonably possible when the defect becomes apparent or within 180 days of delivery whichever is earlier; and (e) the customer provides all information and assistance required by the Company to investigate any suspected defect and, if required, permits the Company to inspect the Goods concerned at any premises where the same are located.
16. Clause 15 defines the Company's full liability in respect of the Goods. All other conditions, warranties or other undertakings concerned with the Goods whether express or implied by statute, common law, custom, usage or otherwise, are excluded except that nothing in these Terms shall exclude any liability of the Company for death or injury resulting from negligence or for breach of implied terms as to title under Section 12 of the Sale of Goods Act 1979.
17. Without prejudice to the provisions of clauses 15 and 16, the Company shall not be liable for any costs, claims, damages, losses or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals.
18. Save where the law prohibits such limitation of liability and without prejudice to clauses 15, 16, and 17, the liability of the Company shall not in any circumstances exceed the invoice value of the Goods.
19. No order may be cancelled and no Goods may be returned without the Company's prior written agreement. Any returns which the Company agrees to accept must be forwarded carriage prepaid to the Company and the customer shall also comply with any other provisions of the Company's returns policy from time to time in place. On returns that require repackaging or re-boxing, an appropriate charge will be made. Company may, at its sole discretion, apply a stock rotation policy as notified to the customer in writing from time to time.
20. The passing of title and risk in the Goods supplied by the Company shall be as follows:
 - 20.1 Goods shall be at the customer's risk as soon as they are delivered to the customer's premises or other agreed destination and without limitation to the foregoing the customer shall be solely responsible for their custody and maintenance.
 - 20.2 The legal and beneficial title to the Goods shall remain the Company's property until the Company has received unconditional payment in full (in cash or cleared funds) for: (a) the Goods; and (b) all amounts due to be paid by the customer under this Agreement and under any other agreement between the Company and the customer and on any other account whatsoever.
 - 20.3 Until the legal and beneficial title to the Goods passes to the customer in accordance with these Terms, the customer shall: (a) not be entitled to re-sell the Goods except with the Company's prior written consent; (b) hold the Goods on a fiduciary basis as bailee for the Company; (c) keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession; (d) not remove, deface or obscure and identifying mark or packaging on or in relation to the Goods; (e) give the Company

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such information relating to the Goods as the Company may from time to time request; (f) immediately notify the Company if it becomes subject to any of the events listed in clause 28(c);(g) keep the Goods in satisfactory condition and comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the customer in an amount at least equal to the balance of the payments due hereunder for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest, and the customer shall promptly provide a copy of such endorsement at the Company's request.

- 20.4 If the customer does anything or fails to do anything which could cause it to become subject to any of the events listed in clause 28(c) or if the Company reasonably believes any such event is about to happen, then: (a) the customer's right to possession of the Goods shall immediately cease; (b) the customer's right to resell the Goods pursuant to clauses 20 and 25 shall immediately cease; and (c) in addition to any other right or remedy the Company may have, the Company may at any time require the customer to deliver up the Goods and, if the customer fails to do so promptly (or if the Company has any reason to believe the customer will not do so), enter any premises or land occupied or owned by the customer to remove the Goods.
- 20.5 If the customer fails to pay for any or all of the Goods in accordance with these Terms, then in addition to any other right or remedy the Company may have: (a) the Company shall have the power to resell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise; and (b) the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the customer to remove the Goods.
- 21. The customer shall not solicit orders from any person or organisation outside of its allocated territory(ies). The customer shall be entitled to make sales of the goods outside of its allocated country(ies) but within the EEA in response to unsolicited orders. For the purposes of this clause 21 and clauses 22-24, the EEA consists of all Member States of the European Union and Iceland, Liechtenstein and Norway. In the event that the EEA ceases to exist then all references in these Terms to the EEA shall be deemed to be references to the Member States of the European Union.
- 22. The customer shall refer to the Company all enquiries it receives for the Goods which relate to: (i) sales outside of its allocated country(ies); and (ii) sales outside or for export from the EEA.
- 23. The customer shall not sell or cause or permit to be sold, directly or indirectly: (a) any Goods outside of its allocated country(ies) and the EEA; or (b) any Goods outside of its allocated country(ies) but within the EEA where, to its knowledge, such Goods are intended for resale or distribution outside the EEA. In particular (but without prejudice to the generality of the foregoing) the customer shall not engage in advertising aimed at any place outside of its allocated country(ies) or the EEA or use any branch or distribution depot outside of its allocated country(ies) or the EEA for the sale or marketing of the Goods.
- 24. The customer will use its best endeavours to lawfully prevent any person from distributing or selling the Goods outside the EEA. So far as permitted by law, the customer shall include in its conditions of sale, and shall use its best endeavours to ensure that all subsequent purchasers shall include in their conditions of sale, a provision that: (a) Goods may not be sold outside of the EEA; and (b) Goods shall not be sold in the EEA where such Goods are intended for resale or distribution outside of the EEA.
- 25. The customer expressly shall not be entitled to re-sell the Goods as part of a sale of all or part of the customer's business without the prior written consent of the Company.
- 26. Subject to clauses 20.3 and 25, the customer may only re-sell the Goods to consumers in the ordinary course of its business and as a fiduciary and trustee for the Company.
- 27. Without prejudice to the equitable rules as to tracing, in the event of any resale by the customer of the Goods, the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the customer and such proceeds shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be identifiable as the Company's monies.
- 28. The Company shall have the right to cancel all or any contracts with the customer or withhold delivery of any Goods if: (a) the customer fails to pay any monies owing to the Company by the due date;(b) the customer commits any breach of any contract with the Company;(c) the customer compounds with or executes an assignment for the benefit of its creditors or commits any act of bankruptcy or goes into liquidation or has a receiver, administrative receiver or administrator appointed over all or part of its assets or has a third party levy distress on their property or propose terms for a company voluntary arrangement or enters into a company voluntary arrangement or enters into any other scheme of arrangement, whether formal or informal or information or is placed into any other formal insolvency process, or suffers any similar or analogous act. In the event of delivery being withheld the Company shall be entitled as a condition of resuming delivery to require pre-payment of or such security as it may require for the payment of the price of any further delivery.
- 29. Any suggested retail prices quoted in the Company's price lists or catalogues shall not limit the customer's right to set its own retail prices.
- 30. The Company shall not be liable in any way for loss, damage or expense arising directly or indirectly from any failure or delay in performing any obligation under any contract caused by any circumstances beyond its reasonable control, which shall, without limiting the generality of the foregoing, be deemed to include war or any other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, break-down or damage to machinery or equipment, fire flood, legislative or administrative interference, acts of God, strike, lock-out or other industrial disputes (whether or not involving employees of the Company) or shortage of materials or the Company's inability to procure materials or supplies. On the occurrence of any such event, the Company may at its discretion, perform, suspend performance of or terminate the contract.
- 31. The customer shall ensure that no trade mark or logo used on or in connection with any of the Goods or their packaging is added to, obscured, removed, defaced, altered or otherwise interfered with in any way.
- 32. Trade marks and/or logos applied to any of the Goods may be used in advertising material intended for use in retail outlets or in catalogues for the purpose only of promoting the retail sale of the Goods concerned.
- 33. Except as permitted by clause 32 above or by the applicable law the customer shall not make any use of any logo or trade mark owned or used by the Company (whether in connection with the goods or otherwise) or any part thereof for any purpose whatsoever.
- 34. Any part of these Terms which is void or unenforceable shall be deemed severable and shall not affect any other part of these Terms.
- 35. No waiver or forbearance by the Company (express or implied) in enforcing any of its rights under a Contract shall prejudice its right to do so in the future.
- 36. The Customer shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption and shall act in accordance with the Company's policy in this regard in all dealings with or on behalf of the Company.
- 37. The construction, validity and performance of all Contracts between the parties shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts although this shall not limit the right of the Company to commence proceedings in any other jurisdiction the Company deems appropriate.

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