

# *F.J.Byrne & Co Limited*

## **Terms & conditions of Sale**

### **1.1 Definitions.**

These terms and conditions (the 'agreement') relate to and govern the sale and supply of all goods by F.J.Byrne & Co Ltd., ('We', 'Us' or 'F.J.Byrne & Co Ltd.') to the person who signs below and is accepted as qualifying for our service (the 'customer').

### **1.2 Variation of terms.**

No Individual agent, servant or employee of F.J.Byrne & Co Ltd., can vary, all or any part of, or add to this agreement, even In writing. Oral representations, published sales material, or material on the website do not vary this agreement in any way. Variations to this agreement may only be made by F.J.Byrne & Co Ltd., (at Its sole discretion). All dealings within 5 working days of the notification being sent will be subject to these modifications.

### **Ordering**

#### **2.1 Placement and Acceptance of the order.**

The placing of an order on the F.J.Byrne & Co Ltd., website, email, telesales or fax under the customer's code, account number (or password where applicable) is taken as the customer having agreed to the price. The placing of the order means the customer warrants not to change or withdrawal all, or any part, of the order. The price list Is an invitation or a treat. No order by the customer will be deemed to have been accepted by F.J.Byrne & Co Ltd., until F.J.Byrne & Co Ltd., expressly accepts the order, or the goods are delivered. Sending the customer an acknowledgement confirming the receipt of the order, or notification of direct debit is neither expressed or implied acceptance of the order by F.J.Byrne & Co Ltd.. F.J.Byrne & Co Ltd., reserves the right to be free to accept or reject each order, or part of any order, by the customer as F.J.Byrne & Co Ltd., sees fit.

#### **2.2 Sale by Description**

Unless expressly stated otherwise In the order, all goods are sold by description and not by sample, even if samples are provided.

#### **2.3 Minimum Order Quantity**

There is a minimum order of C 300 excl VAT (not including cigarettes, tobacco or related products) on all deliveries.

### **Delivery**

#### **3.1 Delivery.**

F.J.Byrne & Co Ltd. will take all responsible measure to the deliver the goods, agreed delivery times cannot be guaranteed. F.J.Byrne & Co Ltd., accepts no responsibility or liability for loss, however arising, that the customer or third party may suffer due to late delivery, whatever the nature of that loss might be Incurred.

#### **3.2 Redelivery.**

If the customer appears to F.J.Byrne & Co Ltd., or its agents

to be unable to accept a delivery at an agreed time, or refuses to take a delivery for a reason that F.J.Byrne & Co Ltd., deems unacceptable, F.J.Byrne & Co Ltd., may attempt redelivery of the goods at a later date, and reserves the right to charge the customer for the cost of the delivery.

#### **3.3 Evidence of Delivery.**

A delivery note/Invoice is to be signed either by the customer or another person appearing to have the authority to sign on behalf of the customer, at time of delivery. This is irrefutable evidence that the customer or the person appearing to have the customer's authority has had satisfactory opportunity to examine the goods and has acknowledged that the goods are of a satisfactory quality. The delivery note/Invoice Is irrefutable evidence of the quantity of goods delivered, whether the quantity of goods is measured in cages, pallets, trolleys, outers or cartons. By signing the delivery note the customer accepts full responsibility for the cages/pallets etc, while they are on their premises. F.J.Byrne & Co Ltd., reserves the right to charge the customer for any cage, pallet etc that Is retained, lost, damaged or stolen whilst in the customers possession.

#### **3.4 Remedies for any Defects etc.**

a) If by reason of any defect In the goods there shall be a breach of any Implied condition or warranty applicable thereto, then F.J.Byrne & Co Ltd., shall at its option either repair or replace the goods or issue credit to the customer, provided that:

I) F.J.Byrne & Co Ltd., is notified In writing within 7 days of the delivery of any such defects by the Buyer and in any event no later than 14 days after the purchase

!I) the relevant goods are returned to F.J.Byrne & Co Ltd., at the cost price of the customer

III) examination of such goods by F.J.Byrne & Co Ltd., shall disclose to its satisfaction that a breach of any Implied condition or warranty shall have occurred as aforesaid, and In particular that the goods shall not have been affected by misuse, neglect, accident, Improper storage, Installation or handling or by repair, or alteration not affected by the F.J.Byrne & Co Ltd., and

IV) the customer shall pay to F.J.Byrne & Co Ltd., the cost (as stated by F.J.Byrne & Co Ltd.,) of any examination of the goods as a result of which F.J.Byrne & Co Ltd., does not admit liability.

### **Retention of Title**

#### **4.1 Reserve of title.**

Risk in the goods passes on delivery to the customer. Property or beneficial ownership in the goods does not pass to the customer until all monies owing to F.J.Byrne & Co Ltd., Includes money owing from past direct debit calls, debit card transactions, cheque, cash payments and all other contacts between F.J.Byrne & Co Ltd., and the customer, have been paid In full.

#### **4.2 Obligations to hold of the goods.**

Up until the point that the title in the goods passes to the customer, a fiduciary relationship exists, where the customer holds the goods on behalf of F.J.Byrne & Co Ltd., The customer must store the goods so that they are identifiable as goods of F.J.Byrne & Co Ltd., and not his own. Further, the customer must take all responsible measure to ensure that the goods remain in good condition and are Insured against all usual risks.

#### **4.3 Right to request return.**

If the title has not passed to the customer, before the title to the goods has passed to the customer, then the customer holds the proceeds of the sale on trust for the benefit of F.J.Byrne & Co Ltd.

#### **4.4 Right to reclaim goods.**

If the goods are not delivered up when requested, the customer gives Irrevocable permission for F.J.Byrne & Co Ltd., or its agents to enter, without notice, any premises or vehicles controlled by the customer, that F.J.Byrne & Co Ltd., reasonably believes that the goods to be in, and to remove any of the goods in which title has not passed from F.J.Byrne & Co Ltd., to the Customer

#### **4.5 Proceeds of sale.**

If the goods are sold by the customer, before the title of goods has passed to the customer, then the customer holds the proceeds of the sale on trust for the benefit of F.J.Byrne & Co Ltd.

#### **4.6 Inability to pay for the goods.**

If the customer thinks that he/she will have difficulty paying for the goods that he intends to order from F.J.Byrne & Co Ltd., or it is reasonable foreseeable that this Is the case, then It Is the duty of the customer not to place that order. When a customer places an order, F.J.Byrne & Co Ltd., will assume that the customer has sufficient cleared funds to pay for the goods, and will ensure that any monies owing are paid.

#### **4.7 Notice of Bankruptcy.**

If at any time a bankruptcy order or administration order is made against the customer, or the customer goes Into liquidation, or it becomes reasonably foreseeable that one of these events might occur, the customer or his representatives must immediately inform F.J.Byrne & Co Ltd.

#### **4.8 Force Majeure:**

In no circumstances will F.J.Byrne & Co Ltd., be liable for any breach of contract due to lockouts, strikes, Industrial disputes, shortage of materials, delay In transit, accidents, unforeseen hindrances or any other cause outside the F.J.Byrne & Co Ltd., control.

# *F.J.Byrne & Co Limited.*

## **Terms & conditions**

### **Payment**

#### **5.1 Payment of direct debit.**

A payment for goods that is to be made by direct debit, the customer must provide a duly signed direct debit mandate drawn on a valid Irish bank account. Payment by alternative methods will be accepted by F.J.Byrne & Co Ltd., only where agreed by F.J.Byrne & Co Ltd., and may or may not be acceptable on a regular ongoing basis.

#### **5.2 Collection of payment due.**

The customer must ensure that there are sufficient funds in his bank account to cover payments that we reasonably believe to be due. Notification of the amount due shall be delivered to the customer by emails, fax, phone, statements etc. and collection shall place on or immediately after the date stated in the notification. While all reasonable steps will be taken to ensure that the information is successful, receipt of notification cannot be guaranteed. If payment request is not honoured by the customers bank then an administration fee of € 50 shall become payable to F.J.Byrne & Co Ltd., by the customer. If the request is represented and still fails to be honoured a further administration fee shall become payable. F.J.Byrne & Co Ltd., reserves the right temporarily or permanently suspend or terminate delivery of goods to the customer if the payment terms as set out herein are not honoured.

#### **5.3 Date of payment.**

Payment will normally be collected in accordance to agreed terms of payment when opening an account. Direct Debits are removed from accounts 2 weeks after invoice date without exception. F.J.Byrne & Co Ltd., reserves the right to make collection on any date subsequent to this, subject to due advance notification being transmitted to the customer, by either by phone, fax, email etc. When extended payments terms are offered to the customer, collection will be made in accordance with such terms. These terms will be given in writing to the customer by F.J.Byrne & Co Ltd. Extended terms may be withdrawn if the customer fails to meet the conditions set out in terms 5.1 and 5.2 above.

#### **5.4 Costs to F.J.Byrne & Co Ltd.,**

The customer irrevocable promises to remunerate F.J.Byrne & Co Ltd., for all cost reasonably incurred by F.J.Byrne & Co Ltd., or its agents, whether arising from legal action, recovery of goods or otherwise (as set out in 4.1 or 5.3), due to the customer failing to pay for the goods in full or part, when called upon to do so by the agreed method.

#### **5.5 Interest.**

If F.J.Byrne & Co Ltd., does not receive payment for any reason whatsoever, interest may be charged at a rate of 7% PA over the ECB Main refinancing rate plus associate recovery rates, in accordance with EC (late payment in commercial transactions) Regulations 2002. Interest shall accrue from day to day (before and after any judgment)

or on any sum payable under these terms, which are unpaid when due until cleared funds are received in full.

### **Request for Invoices**

#### **6.1 Duplicate Invoices and Statements**

All customers are supplied with invoices and statements by F.J.Byrne & Co Ltd. If F.J.Byrne & Co Ltd., is requested by the customer for a copy of an Invoice or statement, a charge of C 10 will apply for each invoice requested. Where a Invoice/statement request is greater than 6 months, a charge of C 15 will apply for each invoice/statement. F.J.Byrne & Co Ltd., reserves the right to request payment for these invoices before delivery of the Invoices via mail, fax etc

### **Information**

#### **7.1 Accuracy of Information provided.**

The customer warrants to provide all information that is asked for and to guarantee that it is as accurate as is reasonably possible. The customer further indemnifies F.J.Byrne & Co Ltd., against any direct or indirect loss arising out of any inaccurate information that the customer supplies.

#### **7.2 Change in circumstance/status.**

The customer agrees to inform F.J.Byrne & Co Ltd., as soon as possible of any changes in circumstances or status, that is, if any of the information the customer gave on the registration sheet has changed or if the customer has become aware of the of the information's inaccuracy. Further, if the customer sells or assigns, the right to his business, or plans to do so, it is his responsibility to inform F.J.Byrne & Co Ltd., as soon as reasonably possible. The customer will then receive acknowledgement from F.J.Byrne & Co Ltd., that we know of any change. In circumstances. In default of this notice and acknowledgement, the customer remains personally liable to F.J.Byrne & Co Ltd., on all orders made to F.J.Byrne & Co Ltd., and any monies owing.

#### **7.3 Confidentiality.**

All written materials or information produced by F.J.Byrne & Co Ltd., whether written, verbal or published, on the website must be treated as strictly confidential, at all times by the customer. The customer must ensure that any of his employees or agents adheres to this confidentiality. The customer hereby agrees to indemnify F.J.Byrne & Co Ltd., against any losses, legal or otherwise, including any loss of profits, suffered by F.J.Byrne & Co Ltd., arising from any breach of this term by the customer, his employees or agents.

### **Liability**

#### **8.1 Limitation of liability.**

Except in the case of personal injury or death, and to the fullest extent of the law, F.J.Byrne & Co Ltd., aggregate liability, for breach of contract or other, shall not exceed the value of the goods directly concerned with the action.

#### **8.2 Use of Goods.**

Since F.J.Byrne & Co Ltd., does not have full control over the quality of the goods it supplies or the uses to which they may be put, F.J.Byrne & Co Ltd., cannot accept responsibility for any loss or injury suffered as a result of the use of its products, and no action of the F.J.Byrne & Co Ltd., may be construed as representing that any of its products is fit for any particular purpose. In any event, F.J.Byrne & Co Ltd., liability, if any, will be limited to either replacement of the product or the refund of the purchase price.

#### **8.2 Ineffective terms.**

Any term, or part of a term, that is found to be, or becomes, illegal, unenforceable or invalid is to be severed from the other terms or the other parts of the term, which will be construed as still applying.

#### **8.3 Waiver.**

If F.J.Byrne & Co Ltd., exercises a discretion in a particular way or fails to enforce a right under this agreement it shall not be deemed that F.J.Byrne & Co Ltd., will act in that way again, or that we are barred from enforcing that or any other right, in the future.

#### **8.4 Law.**

The terms and conditions of this agreement are governed exclusively by Irish Law. By agreeing to these conditions the customer agrees to submit any actions to the exclusive jurisdiction of Irish courts, 8.5 Declaration.

F.J.Byrne & Co Ltd., declares that the contractual rights which the customer enjoys by virtue of Sections 12, 13, 14 and 15 of the Sale of Goods Act 1893, are in no way prejudiced by these rights.

### **Data Protection**

#### **9.0 Data Protection Act.**

We may use the information you supply to us to carry out a credit check with a licensed credit reference agency of our choice and a footprint (record) of that search will be kept.

#### **9.1 Privacy and Data Protection.**

A policy of F.J.Byrne & Co Ltd., is that we will not pass you information onto 3rd parties without contacting you first. We do reserve the right to pass on the information to a 3rd party for our own use for example, we conduct a market research of our customers and we employ a Marketing Company to carry out the research for us.