

Definitions

Conditions: the terms and conditions set out in this document, as amended from time to time.

Contract: the contract between Galebreaker and the Customer for the sale and purchase of Goods and/or Services in accordance with the Conditions.

Customer: the person or business who purchases the Goods and/or Services from Galebreaker

Goods: means the goods supplied or to be supplied by Galebreaker as set out in Galebreaker’s quotation or Price List.

Services: the services (if any) which Galebreaker agrees to provide to the Customer as set out in Galebreaker’s quotation. By way of example only, such services may include the preparation of production drawings, a site survey and installation of the Goods.

Order: the Customer’s order for the Goods as set out in the Customer’s signed purchase order form.

1 General:

- 1.1 These Conditions apply to the Contract. If there are any conflicts between the Galebreaker and Customers terms and conditions, the Galebreaker Conditions will apply unless otherwise negotiated.
- 1.2 The Contract between Galebreaker and the Customer constitutes the entire agreement between the parties.

2 Acceptance:

- 2.1 No Contract will be created between Galebreaker and the Customer until Galebreaker has dispatched written confirmation of its acceptance of the Customer’s Order. The Customer shall ensure that its Order confirms acceptance of the Galebreaker quotation and Conditions.
- 2.2 Galebreaker will not commence any work relating to an Order without a signed Order. Delays with the provision of Orders, site surveys, deposits and any other critical documentation may lead to production delays.
- 2.3 Verbal orders for Goods will only be accepted on the basis that Galebreaker’s understanding of the order is correct, and that the order is placed against an order number, and name and date.
- 2.4 Quotations issued by Galebreaker shall only remain valid for 30 days.

3 Goods:

- 3.1 The Goods are as described in Galebreaker’s quotation or the Price List.
- 3.2 Galebreaker reserves the right at any time to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.3 Galebreaker reserves the right to make modifications to the design of the Goods and method of manufacture during any project / Contract, provided that, subject to clause 3.2, any material changes will be discussed with the Customer.
- 3.4 The maximum variation in length or width of any sheet supplied will be + or – 2%.

4 Services:

- 4.1 The Services are described in Galebreaker’s quotation.
- 4.2 Galebreaker reserves the right, at any time, to amend the specification of the Services if required by any applicable statutory or regulatory requirements.
- 4.3 Galebreaker reserves the right to make modifications to the Services during any project / Contract, provided that, subject to clause 4.2, any material changes will be discussed with the Customer.

5 Payment Terms:

- 5.1 The price of the Goods and/or Services is set out in Galebreaker’s quotation, or the current published Price List valid in the Customer’s Country.
- 5.2 The price of the Goods and/or Services is exclusive of any additional costs, charges or expenses incurred by Galebreaker in respect of the supply of the Goods and/or the Services. Such costs and charges will be invoiced to the Customer separately.
- 5.3 The price of the Goods and Services is exclusive of value added tax (VAT). The Customer will be liable for any VAT and any import duty which may be applied by Customs authorities.
- 5.4 Unless otherwise agreed, Customers with existing accounts shall pay Galebreaker in full within thirty (30) days from the date of that invoice.
- 5.5 New Customers, and where the Goods are bespoke and tailor made, the following payment terms shall apply:
 - 5.5.1 The Customer shall pay a deposit of 50% of the value of the Order in full and cleared funds before manufacture commences at the Galebreaker factory.
 - 5.5.2 On receipt of the Deposit, Galebreaker shall, if necessary, conduct a site survey in accordance with clause 6 and, if relevant, provide production drawings to be approved.

5.5.3 The Customer shall make the final payment of 50% of the Order plus any additional expenses as referred to in clause 5.2 within 30 days of completion of the installation of the Goods.

5.6 If the Customer fails to make any payment due to Galebreaker under the Contract by the due date for payment, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate, amended from time to time.

6 Customer Requirements:

6.1 Following the receipt of an Order, scaled drawings (CAD) may be required from the Customer detailing the immediate area where the Goods are to be installed. Galebreaker may also request photographs to highlight any potential problems or obstacles, or request a site survey in order to produce production drawings. Site surveys will be chargeable.

6.2 If the site survey undertaken in accordance with this clause 6 highlights any issues with the supply of Goods and Services which Galebreaker were previously unaware of, Galebreaker shall notify the Customer and subject to approval, amend the price accordingly.

6.3 Unless otherwise stated, a site survey is excluded from Galebreaker's quotation and if undertaken by Galebreaker shall be included in the invoice issued by Galebreaker under clause 5.5.3.

6.4 The Customer must ensure that any work specified by Galebreaker in the Pre-Installation Instructions Documents supplied to the Customer, is completed prior to the commencement of the site survey. This is to ensure that the Project Technician engineer is able to take accurate measurements.

6.5 In the event that Galebreaker supplies production drawings to the Customer these may require the Customer's **written** approval before manufacturing can commence. Failure to promptly supply such approval will cause production delays.

6.6 Where applicable, an engineering fee is charged for engineer design, consultation and production drawings.

6.7 It is a requirement for you to sign the **Order Confirmation Document (part of your Order Confirmation Pack)** to say you have read and understood our Pre-Installation Instructions.

7 Measurements:

7.1 If a site survey is **not** undertaken for any reason, it shall be the Customer's full responsibility to provide accurate measurements prior to sending the Order. **Measurements must be based on the daylight gap**, and Galebreaker will assume that the Goods are to be fixed to a square and solid steel structure. Galebreaker accepts no liability for incorrect measurements supplied by the Customer and Goods delivered and/or Services supplied based on incorrect measurements will be charged by Galebreaker and payable in full by the Customer.

8 Electric Motors:

8.1 Where the Goods require electric motors, it shall be the Customer's responsibility to provide a lockable, isolated electric supply with socket to within 3 metre of the Goods. Details of product motor specifications shall be provided by Galebreaker to the Customer. If no isolated electric supply with socket is provided then it shall be the Customer's responsibility to organise and pay for a fully qualified electrician on site during installation of the Goods to connect the motor to the supply.

9 Manufacturing Lead Times:

9.1 Manufacturing will commence after acceptance of an Order by Galebreaker, payment of the Deposit if the Goods are bespoke, completion of a site survey and/or full receipt of approved production drawings, as appropriate.

9.2 Galebreaker endeavours to deliver and/or install the Goods within the lead time stated in the Order Acknowledgement. Lead times commence from acceptance of an Order, payment of the Deposit, completion of a site survey and/or full receipt of the production drawings and approval of the production drawings, as appropriate.

9.3 Should delays occur through unforeseen site issues or circumstances that may affect the manufacturing or installation process, Galebreaker will re-negotiate such deviations with the Customer, always remaining solution minded. Charges shall be payable at Galebreaker's discretion for additional work or delays caused by the Customer.

10 Delivery, Installation and Downtime:

10.1 If the Customer refuses to take delivery of the Goods supplied in correct execution of the Order and which are not defective Galebreaker may charge for return transport. Any failure of the Customer to take delivery of the Goods shall not relieve the Customer of his obligation to pay the contract price in respect of the Goods.

10.2 The Customer must check the condition of Goods at the point of Delivery and only sign the Proof of Delivery if they are happy that the Goods are free from damage.

10.3 Any claims for damaged items must be notified to the Galebreaker Office within 24hours of delivery. Damaged or lost items will be replaced or repaired, provided notice is provided at the point of delivery and within 24hours.

10.4 Delivery and installation dates are offered in good faith and for guidance purposes only. Whilst Galebreaker will use its reasonable endeavours to meet its deadline estimates, time shall not be of the essence.

10.5 In the event that the Customer opts for Galebreaker to supervise installation, the Customer shall be responsible for supplying the correct and necessary labour, equipment, fixings and access in order to install the Goods.

- 10.6 The site must be entirely clear during the installation period to allow uninterrupted access for the installation team on site and the Customer is responsible for ensuring that it complies with all the documents in the Order Confirmation Pack.
- 10.7 Prior to installation of the Goods and the provision of Services the Customer shall be responsible for informing Galebreaker of any health and safety arrangements that may affect the health, safety or welfare of Galebreaker's employees while working on the Customer's premises as specified in the Pre-installation Checklist.
- 10.8 Galebreaker's installation charges do not include electrical power, which it is assumed will be accessible within fifty (50) metres. Galebreaker's prices are based on the provision of Goods and Services being carried out during normal working hours Monday to Friday, excluding bank holidays, unless otherwise stated. A working day is 8hrs. It is assumed that the site will be in a condition suitable to carry out installation and provision of Goods and Services, and that a clear working area will have been provided which is already sectioned off for safety. Any downtime on site caused by circumstances and disruptions beyond Galebreaker's control will be chargeable to the Customer.
- 10.9 Galebreaker shall not be responsible for any delay in delivery, manufacture, or installation, or provision of Goods or Services, caused by an event outside of its control or inadequate, incorrect or untimely instructions or information received from the Customer.
- 10.10 Galebreaker accepts no liability for damage to brickwork or other property occasioned by the insertion of or alteration to any fixing bolts or for any other damage incurred as a result of the erection of the goods supplied. The Customer accepts responsibility for maintaining the fitness of any fixing bolts or other security method to support the Goods when erected.
- 10.11 Galebreaker is not qualified to conclude the most effective positions for erection of Goods and can only offer an informed interpretation based on experience and information supplied by the Customer.

11 Completion:

- 11.1 Once the installation is completed, Galebreaker's installers will require an authorised Customer representative to inspect and approve all work carried out, confirm that the site is clear of redundant materials and to issue a completion certificate. Only when the completion certificate has been signed will the installers leave site. Any delay in the signing of the completion certificate for which Galebreaker incurs any cost will be chargeable to the Customer.

12 Quality:

- 12.1 The Goods shall be free from defects in design, material and workmanship for a period of 10 years from the original date of delivery (excluding Fans, Motors and Controllers) . Details of our 10 year guarantee and Wind Damage Policy can be found in our Price List and website. The Goods are designed and built to withstand the tolerances detailed in the specification, as amended from time to time.
- 12.2 In the event of a failure on which a potential claim may be presented, the Customer must inform Galebreaker within a reasonable time of discovery and in any event within 121 months of delivery of the Goods. In addition, the Customer must provide full details of the defective part(s), including photographic evidence.
- 12.3 If you need to order a replacement part for one that you believe is faulty, you may be charged for the warranty order, once the part has been confirmed, you may be credited under the terms of the Warranty.
- 12.4 Galebreaker may require the faulty Goods to be returned to Head Office before a replacement/credit can be issued.
- 12.5 Galebreaker shall not be liable for the Goods' failure to comply with the warranty at clause 13.1 if (i) the defect arises as a result of Galebreaker following any drawing, design, installation, or specification or other information supplied by the Customer (ii) the Customer alters or repairs such Goods without the written consent of Galebreaker (iii) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working or installation conditions, (iv) the defect arises because the Customer failed to follow instructions as to the, commissioning, use and maintenance of the Goods; or (v) the defect arises as a result of performance outside the normal tolerances and parameters detailed in the specification and (vi) cosmetic imperfections due to any industrial fabrication process that are not detrimental to the Goods Performance.
- 12.6 Subject to this clause 13, Galebreaker's obligations are limited to supplying parts to correct Goods which are proved to be defective. In circumstances where Galebreaker provided Services to install the Goods, Galebreaker shall install the replacement Goods. Galebreaker shall not be liable for the cost of any equipment required, transport charges, installation costs, loss of revenue or any direct or indirect consequential damages.
- 12.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.8 Goods must be checked upon delivery for loss or damage.

13 Title and Risk:

- 13.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 13.2 Ownership of the Goods does not transfer to the Customer until full payment of all monies due in respect thereof is received by Galebreaker.

14 Liability:

- 14.1 Galebreaker shall not be liable to the Customer for any loss or damage occasioned by the negligence of the Customer or its agents or directly attributable to any defects in the Customer's property.

- 14.2 The Customer shall indemnify Galebreaker against all actions claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with any of the matters in clause 15.1.
- 14.3 Nothing in these Conditions shall limit or exclude Galebreaker's liability for (i) death or personal injury arising from its negligence or the negligence of its employees, agents or sub-contractors; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) defective products under the Consumer Protect Act 1987.
- 14.4 Subject to clause 15.3, (i) Galebreaker shall under no circumstances whatsoever be liable to the Customer, 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 the Contract; and (ii) Galebreaker's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods in any Order. Galebreaker products are not guaranteed against acts of God, explosions, war, floods, tempest, fire or accident. This includes extreme weather conditions. Please refer to our relevant Guarantee and Wind Damage Policies in our Price List and website. You can also request copies of these policies from our offices.

15 Structural Disclaimer

- 15.1 Galebreaker are not Civil or Structural Engineers and therefore cannot provide any official structural guarantees. If structural guarantees are required we recommend that our estimates are verified and certificated by a recognised industry body.

16 Cancellation:

- 16.1 In the event that the Goods are manufactured to the Customer's specifications rather than being a so-called stock item, due to the tailor made nature of such Goods, if an Order is cancelled the Customer shall be liable to pay Galebreaker one hundred percent (100%) of the Order value.
- 16.2 Certain stocked items may be returned, but only in agreement by Galebreaker in writing. A handling charge of no less than 15% of the invoiced value will apply where the Goods have been supplied in correct execution of an order and which are not defective.

17 General:

- 17.1 **Assignment:** Galebreaker may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.3 **Third party rights:** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.4 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. The Company policy is one of continuous improvement and the right is therefore reserved to make modifications to design and method of manufacture without prior notice.
- 17.5 **Variation:** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Galebreaker.
- 17.6 **Governing law:** The contract shall be governed by English law and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with the law of England and Wales.
- 17.7 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have the exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract.
- 17.8 **Data Protection:** Customer data, including email addresses, provided during the normal course of trading will be processed, recorded and held by Galebreaker in order for us to process enquiries, orders and invoices, and for ongoing account management, including debt collection, customer satisfaction and communication of new products. It may also be used for other statutory or reporting purposes. It will not be passed to third parties for marketing purposes. Galebreaker complies with The General Data Protection Regulation 2016/679, further details can be found in our Privacy Policy.
- 17.9 **Dispute.** In the event of a dispute, Galebreaker's Complaint Policy will be followed. Details of this policy can be requested.