

**Guardians of The Birmingham Proof House
Terms and Conditions**

THESE TERMS AND CONDITIONS CONTAIN LIMITATIONS AND EXCLUSIONS OF THE COMPANY'S LIABILITY IN CONDITION 8. THE CUSTOMER REMAINS RESPONSIBLE FOR THE GOODS WHILST IN OUR POSSESSION AND SHOULD ENSURE THEIR INSURANCE COVER IS ADEQUATE

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Business Day”	Any day other than a Saturday or Sunday or a public or bank holiday in England.
“Company”	The Guardians of the Birmingham Proof House also known as Birmingham Gun Barrel Proof House and whose office is Banbury Street, Birmingham, B5 5RH.
“Customer”	The person(s) or business whose order for the Services is accepted by the Company.
“Declaration”	A written submission by a Customer defining the services requested with the related items to be examined.
“Goods”	Any small arms or any part thereof (including, but not limited to, sound moderators, ammunition or any other goods submitted for the Company Services, including packaging, slips and cases) which the Customer supplies to the Company for the purposes of the Services (including any of them or any part of them) under the Contract.
“Service Point”	The place at which the Services are to be performed.
“Services”	Any services which the Company provides to the Customer any services (including any part of them) under the current proof and firearms legislation (including, without limitation, Section 107 of the Gun Barrel Proof Act 1868) and any rules (including, without limitation the “Rules of Proof”) promulgated thereunder or otherwise as agreed in writing between the Company and the Customer which may include proving, the provision of forensic services, the inspection and marking of deactivated small arms, the certification of the restriction of magazine capacity or any other service that the Company may undertake on the instructions of the Customer in connection with the Goods and which is agreed to be undertaken by the Company.
“Terms and Conditions”	The terms and conditions set out in this document together with any special terms agreed in writing between the Customer and the Company prior to the provision of any Services.

- 1.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation

2 FORMATION

- 2.1 Subject to any variation under **Condition 2.5**, the Contract will be upon these Terms and Conditions to the exclusion of and which shall supersede all other terms and conditions and all previous oral or written representations or agreements, including any terms or conditions which the Customer purports to apply from time to time under any purchase order, confirmation of order or declaration or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Services will be deemed to be an offer by the Customer to purchase Services upon these Terms and Conditions. The Contract is formed when the Goods are either accepted by the Company at the premises of the Company or, at the sole discretion of the Company, when passed to a duly authorised representative of the Company at an establishment suitable for: -
- 2.2.1 proving small arms; or
 - 2.2.2 for the provision of other Services (including, without limitation, the inspection and marking of deactivated small arms).
- 2.3 The Customer must ensure that the terms of its order and any applicable specification relating thereto are complete and accurate and are accompanied by all declarations under the relevant legislation, regulations or rules (including, without limitation, the Rules of Proof (including any memoranda issued in connection therewith) issued from time to time by the British Proof Authority) stating all relevant information including, inter alia, where chamber and barrel dimensions do not comply with all applicable domestic and/or international dimensions and other specification used by the Company in providing the Services. **The Customer acknowledges that the Company relies on the information supplied by the Customer to provide the Services and that the Company is not required to check the accuracy of such information.**
- 2.4 Acceptance of commencement of the performance of the Services will be deemed conclusive evidence of the Customer's acceptance of these Terms and Conditions.
- 2.5 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by the Proof Master or by any person duly authorised by the Company to do so.

3 THE SERVICES

- 3.1 The description of the Services will be as set out in the Company's acknowledgment of the Customer's Proof Declaration, pursuant to which the Customer places its order for Services.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company are issued or published for the sole purpose of giving an indication of the Services represented by or described in them will not form part of the Contract.

3.3 The Company may upon notice make any changes from time to time to the specification of the Services which:

3.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or

3.3.2 do not materially affect their quality or performance.

4 **PRICE**

4.1 The price for the Services will be the price specified by the Company in its price list current at the time the Goods are accepted pursuant to **Condition 2.2**, exclusive of:

4.1.1 any costs of extra services, packaging and carriage of the Goods, subject always to **Condition 6.2** below; and

4.1.2 any value added tax or other applicable sales tax or duty,

either or both of which, if applicable, will be added to the sum in question.

5 **PAYMENT**

5.1 The Company may invoice the Customer for the Services on or at any time after performance of the Services commences and, subject to **Condition 5.4**, payment is due in pounds sterling upon service of such invoice or, for account customers, 30 days after service of such invoice

5.2 Time for payment will be of the essence.

5.3 No payment will be deemed to have been received until the Company has received cleared funds.

5.4 Any sums payable to the Company under the Contract will become due immediately upon termination of the Contract pursuant to **Condition 9**.

5.5 All payments to be made by the Customer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

5.6 The Company may appropriate any payment made by the Customer to the Company to such of the invoices for the Services as the Company thinks fit, despite any purported appropriation by the Customer.

5.7 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over Bank of England base rate from time to time and the Company will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by the Company from the Customer.

6. **DELIVERY**

6.1 Upon completion of the Services, the Company will return the Goods to the address provided by the Customer or make the Goods available for collection by the Customer at the Service Point, in the latter case by prior agreement

with the Customer. Delivery of the Goods will be carried out by the Company's Government approved carrier.

- 6.2 The Goods will be delivered to the Customer using the same packaging in which the Goods were received by the Company. **The Company accepts no liability for any damage to the Goods during delivery if such packaging is inadequate.** In the event that the Company determines in its discretion that the packaging is manifestly inadequate, or if the Goods require to be returned in more than one delivery, the Company reserves the right to supply additional packaging at the cost of the Customer.
- 6.3 The Company will where relevant notify the Customer when the Services have been completed and the Goods are available for collection.
- 6.4 The Company will use reasonable endeavours to perform each of the Customer's orders for the Services within a reasonable time, but the time of performance of the Services will not be of the essence.
- 6.5 If the Customer fails to take delivery of any of the Goods when they are ready for delivery/collection or to provide any instructions, documents, licences or authorisations required by the Company to enable the Goods to be delivered (except solely on account of the Company's default), the Goods will be deemed to have been delivered on the date notified by the Company to the Customer and (without prejudice to its other rights) the Company may:
- 6.5.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with **Condition 6.5.2** and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 6.5.2 following written notice to the Customer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract or account to the Customer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

7. RISK / OWNERSHIP

- 7.1 **Risk of damage to or loss of the Goods will remain at all times with the Customer notwithstanding delivery to the Company.** The Customer is advised that suitable insurance should be purchased to provide cover in the event of damage to or loss of the Goods, including without limitation, when the Goods are in transit to and from the Company and whilst the Goods are in the possession of the Company. For the avoidance of doubt, the Company will have no liability whatsoever for any damage to the Goods prior to delivery to the Company. The Company shall have no obligation to inspect Goods when delivered and in its possession and shall have no obligation to report to the Customer the condition of Goods received by the Company. The Company will record for its own benefit any visible damage to the Goods on delivery to the Company.
- 7.2 Subject to **Condition 7.3**, title in the Goods shall remain at all times with the Customer.
- 7.3 The Customer grants the Company a lien over the Goods to secure all sums due, owing or incurred to the Company under this Contract and any other contract and such lien shall continue and the Company shall be entitled to retain possession of the Goods until the Company has received payment in full in cleared funds.

- 7.4 Without prejudice to **Condition 7.3** the Company shall also be entitled to retain possession of the Goods where there has been a proof failure until such time as the Company agrees to release the same to the Customer, within a reasonable time.

8. EXCLUSION OF LIABILITY AND INDEMNITY

- 8.1 The Company will provide the Services with reasonable skill and care.
- 8.2 The Company does not exclude its liability (if any) to the Customer:
- 8.2.1 for personal injury or death resulting from the Company's negligence;
 - 8.2.2 under section 2(3) Consumer Protection Act 1987 or any subsequent or replacement legislation;
 - 8.2.3 for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
 - 8.2.4 for fraud.
- 8.3 Except as provided in **Conditions 6.4, 8.1 and 8.2**, the Company will be under no liability to the Customer whatsoever (whether in contract, tort [including negligence], breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) however caused arising out of or in connection with:
- 8.3.1 any use made or resale by the Customer of any of the Goods; or
 - 8.3.2 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise outside the Contract.
- 8.4 Except as set out in **Condition 6.4 and 8.1**, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulation, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 8.5 Without limitation to the foregoing, the Company specifically excludes liability for any damage to the Goods incurred during the proving process, whether arising from the structural failure of the Goods due to the process itself or mechanical failure or howsoever arising (including without limitation when the Goods are damaged due to the proving process and/or where they do not comply with all applicable generally accepted domestic and/or international chamber and barrel dimensions and other specifications used by the Company to provide the Services, respectively) save where such damage arises as a direct result of the Company's negligence in providing the Services.
- 8.6 **The Customer shall be responsible for and liable in all respects for complying with all legislation applicable to the Goods, including without limitation the Gun Barrel Proof Act 1868, the Gun Barrel Proof Act 1978 and the Rules of Proof, and for ensuring that the Goods submitted for proof meet all applicable generally accepted domestic and/or international chamber and barrel dimensions or other specifications used by the Company to provide the Services or, when**

they do not, the declaration to that effect required pursuant to Condition 2.3, save to the extent the Company expressly accepts liability in these Terms and Conditions for the provision of the Services.

- 8.7 **The Company excludes all liability for loss or damage to any other property of the Customer provided to the Company with the Goods.** This includes, but is not limited to, gun cases, bi-pod and telescopic sights. The Customer is advised not to submit any items other than the Goods to be the subject of the Services save as otherwise agreed in advance in writing with the Company.
- 8.8 The Goods, where applicable, will be impressed or engraved or otherwise marked as evidence that they have passed the proving process or other relevant Service. **No liability is accepted by the Company for any damage to the integrity or value of the Goods as a result of this operation.**
- 8.9 **SUBJECT TO CONDITIONS 8.2 TO 8.8 (INCLUSIVE), THE COMPANY'S LIABILITY TO THE CUSTOMER, IF ANY, FOR ANY LOSSES ARISING UNDER THESE TERMS AND CONDITIONS OR IN RESPECT OF THE SERVICES OR THE GOODS SHALL BE LIMITED TO THE COST OF REPAIRING, OR REPLACING DAMAGED GOODS UP TO THE MAXIMUM AMOUNT OF £10,000.00.**
- 8.10 The Customer agrees to indemnify, keep indemnified and hold harmless the Company, its employees, agents and sub-contractors from and against any claims, actions, damage, loss, liability, cases, proceedings and expenses of any kind (including reasonable legal fees) in respect of:
- 8.10.1 personal injury or death save where arising from the negligence of the Company, its employees and agents;
 - 8.10.2 failure by the Customer to comply with any Statutory requirements applicable to the owners of small arms; and/or
 - 8.10.3 any failure to the Customer to comply with the terms of the Contract.
- 8.11 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in this **Condition 8** in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.

9. **Termination**

- 9.1 The Company may by written notice terminate the Contract immediately if the Customer is in material breach of the Contract or enters into insolvency, bankruptcy, arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with **Condition 5** is a material breach of the terms of the Contract which is not capable of remedy.
- 9.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Customer or the Company accrued prior to termination. The conditions, expressed or implied, which have effect after the termination will continue to be in force notwithstanding termination.

10. **General**

- 10.1 Time for the performance of all obligations of the Company under the Contract is not and may not be made by notice of the essence.
- 10.2 Each right or remedy of the Company under any Contract is without prejudice to any other rights or remedy of the Company under this or any other Contract.
- 10.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 10.4 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 10.5 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 10.6 The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 10.7 Save as set out in **Conditions 8.10 and 8.11**, the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 10.8 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this **Condition 10.8** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 10.9 The Customer shall keep any Contract confidential and shall not issue any announcement and/or information or statement (including, but not limited to, the media) relating to these Terms and Conditions, any Contract, any Services provided or any other information relating to the Company without the Company's prior written consent.
- 10.10
- 10.10.1 Any notice or other document required to be given under these Terms and Conditions or any communication between the parties with respect to any of the provisions of this Agreement shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorised Officer of the Company giving the notice and if left at or sent by First Class post or electronic transmission to the address of the Customer as notified between the parties for the purpose of this Clause and acknowledged by us.
- 10.10.2 Any such notice or other communication shall be deemed to be given to and received by the Customer:
- 10.10.2.1 At the time the same is left at the address of the Customer;
- 10.10.2.2 By post on the day not being a Sunday or public holiday two days following the date of posting;

10.10.2.3 In the case of electronic transmission on the next following business day.

11 Jurisdiction

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or any of the Terms of the Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or connection with the Contract. The parties agree to submit to that jurisdiction.

January 2011