

MARLBOROUGH FURNITURE SURFACES LIMITED GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

1 APPLICATION

- 1.1 These General Terms and Conditions of Business ("the Terms") shall apply exclusively to the sale of all goods ("Goods") to any person, firm or company ("the Buyer") by Marlborough Furniture Surfaces Limited ("us/ we/ our") unless otherwise agreed in writing. No other terms and conditions, including without limitation, any terms and conditions used by the Buyer, shall apply to such sale unless we have expressly agreed in writing to their application.
- 1.2 Any variation to these Terms and any representations about the Goods shall have no effect unless signed by a Director or authorized representative of us.
- 1.3 Each purchase order issued by the Buyer to us for Goods and accepted by us shall constitute a separate contract.

2 OFFER

- 2.1 No order placed by the Buyer shall be deemed to be accepted by us until a written acknowledgement of order is issued by us and we confirm to the Buyer the date of delivery of the Goods to the Buyer or (if earlier) we deliver the Goods to the Buyer. Each accepted order shall form a separate agreement between us and the Buyer ("the Contract").
- 2.2 Each order for Goods placed by the Buyer is binding on the Buyer and shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Terms.
- 2.3 The description of the Goods subject to the Contract shall be as set out in our acknowledgement of order.
- 2.4 All documents relating to offers to supply the Goods, including without limitation, illustrations, drawings, calculations, stated weights and dimensions shall be deemed approximate and not part of the Contract unless we state otherwise in writing. We reserve all rights in such documents and any other documents which we provide to the Buyer.
- 2.5 The parties acknowledge to each other that they have not relied upon any statement or representation by the other when entering into the Contract unless expressly set out in these Terms or incorporated pursuant to paragraph 1.2.

3 PRICES AND PAYMENT

- 3.1 The price for the Goods is quoted ex works and exclusive of value added tax. Value added tax shall be shown separately in the invoice at the statutory rate applying at invoice date.
- 3.2 We shall have the right at any time to withdraw any discount from our normal prices as listed or quoted and/or to revise prices to take into account increases in costs prior to delivery including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates. Proof of such changes will be given to the Buyer on request.
- 3.3 Unless agreed otherwise, the Buyer shall pay the price for the Goods within 28 days of the date of our invoice.
- 3.4 We may at our sole discretion require advance payment or collateral security. Should the Buyer fail to satisfy this request within the period we specify, we shall be entitled to cancel the Contract without any liability to the Buyer.
- 3.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by us to the Buyer.
- 3.6 Money orders, cheques and bills of exchange shall not be accepted by way of payment for the Goods without our prior written agreement.
- 3.7 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to us, we may:
 - 3.7.1 Cancel the Contract or suspend any further deliveries to the Buyer;
 - 3.7.2 Appropriate any payment made by the Buyer to such of the Goods (including goods supplied under any other contract between us and the Buyer) as we may think fit (notwithstanding any purported appropriation by the Buyer);
 - 3.7.3 Charge the Buyer interest on such sum from the due date for payment in accordance with Late Payments of Commercial Debts (Interest) Act 1998.

4 DELIVERY

- 4.1 Unless we otherwise agree in writing, delivery of the Goods shall take place at your place of business.
- 4.2 The Buyer shall not refuse to take delivery of the Goods and will take delivery of the Goods within 7 days of us giving it notice that the Goods are ready for delivery.
- 4.3 If for any reason the Buyer will not accept delivery of any of the Goods, or we are unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - 4.3.1 Risk in the Goods will pass to the Buyer (including for loss or damage caused by the our negligence);
 - 4.3.2 The Goods will be deemed to have been delivered;
 - 4.3.3 We may store the Goods until collected by the Buyer and the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.4 The Buyer will provide at its expense at our place of business adequate and appropriate equipment and manual labour for loading the Goods.

5 LATE AND NON DELIVERY

- 5.1 The Buyer must include any required delivery dates and delivery lead times in its offer to purchase the Goods. Any delivery lead time specified will commence upon the Contract coming into effect. However, time of delivery shall not be of the essence and any delivery date or lead time is an estimate only unless we specifically agree otherwise in writing.
- 5.2 If amendments to the Contract are subsequently agreed pursuant to paragraph 1.3, we reserve the right to vary any delivery deadline or the delivery lead time (whether approximate or not) given by us to the Buyer. The Buyer acknowledges that we cannot comply with any delivery timetables unless the Buyer complies with all of its obligations in the Contract and provides all information that we require in order to fulfill the Contract in a timely manner. 5.3
- 5.3 The Buyer shall have the right to cancel any order without liability to us if delivery is more than 4 weeks late. This paragraph 5.3 sets out the Buyer's only remedy for such delay.
- 5.4 The quantity of any consignment of Goods as recorded by us upon despatch from our place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.5 We will not be liable for any non-delivery of Goods (even if caused by our negligence) unless written notice is given to us within a week of the date when the Goods would in the ordinary course of events have been received.
- 5.6 Our liability for non-delivery of the Goods shall be limited to, at our discretion, replacing the Goods within a reasonable time, issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or a refund of the purchase price paid.
- 5.7 We may deliver the Goods in installments at our discretion.

6 PASSAGE OF RISK, PACKAGING

- 6.1 The Goods are at the Buyer's risk from delivery.
- 6.2 We shall not accept returned packaging provided for transportation purposes or any other forms of packaging unless we agree to the contrary in writing. The Buyer shall provide for the disposal of packaging material at its own expense.

7 LIABILITY FOR DEFECTS

- 7.1 We warrant that (subject to the other provisions of these Terms) upon delivery and for a period of 12 months from the date of delivery, the Goods will:
 - 7.1.1 be free from defects in materials and workmanship, and conform in all material respects to the approved samples and all other applicable specifications; and
 - 7.1.2 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).
- 7.2 We shall not be liable for a breach of any of the warranties in paragraph 7.1 unless:
 - 7.2.1 the Buyer gives written notice of the defect to us, and (if the defect is as a result of damage arising during transit at our risk) to the carrier, within 10 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - 7.2.2 we are given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by us) returns such Goods to our place of business at our cost for the examination to take place there.
- 7.3 If the Goods do not comply with the warranties set out in paragraph 7.1 ("Defective Goods") we shall at our cost and expense and discretion either: 7.3.1 repair or replace the Defective Goods; or 7.3.2 give a full credit or refund for the price paid by the Buyer for such Defective Goods.
- 7.4 We shall not be liable for a breach of any of the warranties in paragraph 7.1:
 - 7.4.1 To the extent that it is attributable to further use of such Goods after giving notice pursuant to paragraph 7.2.1; or
 - 7.4.2 If the defect arises because the Buyer failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (in the absence of such instructions) good trade practice;
 - 7.4.3 That are attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Goods were not designed or intended by us; or 7.4.4 if the Buyer alters or repairs such Goods without our prior written consent.
- 7.5 If we comply with clause 7.3, we shall have no further liability for a breach of any of the warranties in clause 7.1 in respect of such Goods.
- 7.6 Any Goods or parts replaced will belong to us and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

8 LIABILITY

- 8.1 Subject to the provisions of these Terms, the following provisions set out our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 8.1.1 any breach of these Terms; and
 - 8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in these Terms excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation.
- 8.4 Subject to paragraph 8.3, we shall not be liable to the Buyer for:
 - 8.4.1 Any indirect or consequential, special or punitive loss, damage, costs or expenses;
 - 8.4.2 Loss of profit;
 - 8.4.3 Loss of business;
 - 8.4.4 Loss of revenue; or
 - 8.4.5 Depletion of goodwill.
- 8.5 Subject to paragraph 8.3, our total liability to the Buyer under or connected with these Terms for:
 - 8.5.1 damage to any tangible property resulting directly from products manufactured or supplied by us, including the costs of dismantling faulty or deficient products and the reinstallation of products shall not exceed £1,000,000 for any one event or series of connected events; and

8.5.2 any other loss not covered by paragraphs 8.5.1 shall not exceed the price paid for the Goods in respect of any one event or series of connected events.

9 TITLE

9.1 Ownership of the Goods shall not pass to the Buyer until we have received in full (in cash or cleared funds) all sums due to us in respect of:

9.1.1 the Goods; and 9.1.2 all other sums which are or which become due to us from the Buyer on any account.

9.2 Until ownership of the Goods has passed to the Buyer, the Buyer must:

9.2.1 hold the Goods on a fiduciary basis as our bailee;

9.2.2 store the Goods (at no cost to us) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as our property;

9.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

9.2.4 maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request the Buyer shall produce the policy of insurance to us; and

9.2.5 hold the proceeds of the insurance referred to in paragraph 9.2.4 on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

9.2 The Buyer may resell the Goods before ownership has passed to it solely on the following Terms:

9.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

9.3.2 any such sale shall be a sale of our property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

9.3 The Buyer's right to possession of the Goods shall terminate immediately if:

9.4.1 the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer in any jurisdiction; or

9.4.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between us and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;

or

9.4.3 the Buyer encumbers or in any way charges any of the Goods; or

9.4.4 anything analogous to the foregoing occurs in any other jurisdiction.

9.4 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.

9.5 The Buyer grants us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

10 SUB-CONTRACTORS

10.1 We may sub-contract the manufacture or production of the Goods. We agree that we shall be responsible for the actions or omissions of any sub-contractor used by us in connection with any of the Goods or with satisfying any of our responsibilities under the Contract.

11 ASSIGNMENT

11.1 The Buyer shall not be entitled to assign, transfer or dispose of any right, obligation or interest in or arising out of the Contract or any part of it without our prior written consent.

11.2 We may assign the Contract or any part of it to any other person, firm or organisation. 1

12 FORCE MAJEURE

12.1 A party shall not have any liability for any loss or damage if its performance of any obligations under the Contract (other than non-payment of amounts that are due and payable) is delayed, hindered or prevented by any cause beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems. In the event of such delay, hindrance or prevention, such party shall be entitled to postpone delivery or performance by the duration of interference plus a reasonable start-up time thereafter, or to cancel the Contract in its entirety or partially, insofar as it has not been performed without incurring any liability for non-performance.

13 TERMINATION OF CONTRACT

13.1 We shall have the right to terminate the Contract at any time by giving at least 7 days' notice to the Buyer (or immediately as provided elsewhere in the Terms) in any of the following events, which termination shall be effective upon expiry of such notice (or immediately as provided elsewhere in these Terms):

13.1.1 if the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within thirty (30) days of being notified of the breach;

13.1.2 immediately upon the occurrence of the events in paragraph 9.4, or if any material or significant part of the Buyer's undertaking, property, or assets shall be intervened in, expropriated, or confiscated by action of any government.

13.2 We may terminate any Contract or suspend further deliveries (without prejudice to the foregoing right of termination) if the Buyer fails to pay any sum as it falls due, unless subject to a bona fide dispute and provided the undisputed amount has been paid.

14 CONSEQUENCES OF TERMINATION

14.1 On the termination of the Contract for any reason:

14.1.1 we shall not be obliged to supply any Goods ordered by the Buyer unless already paid for; and

14.1.2 all payments payable to us under the Contract shall become due immediately upon termination of this Contract despite any other provision.

14.2 The termination of this Contract shall not affect the respective rights and liabilities of each of the parties thereto which accrued prior to such termination nor any provisions which either expressly or impliedly are to remain in operation after termination.

15 CONFIDENTIALITY

15.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by us or our agents and any other confidential information concerning our business or products which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to us and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

16 GENERAL

16.1 Each of our rights or remedies under the Contract is without prejudice to any other right or remedy that we may have whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by us in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of our rights under the Contract.

16.4 Any waiver by us of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

16.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

17 COMMUNICATIONS

17.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post by facsimile transmission or by e-mail:

17.1.1 (in the case of communications to us) to our registered office or such changed address as shall be notified to the Buyer by us; or

17.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to us by the Buyer.

17.2 Communications shall be deemed to have been received:

17.2.1 if sent by pre-paid inland first class post, 4 days after posting (exclusive of the day of posting);

17.2.2 if sent by registered airmail, 7 days after posting (exclusive of the day of posting);

17.2.3 if delivered by hand, on the day of delivery;

17.2.4 if sent by facsimile transmission or e-mail on a working day (in England) prior to 4.00 p.m., at the time of transmission and otherwise on the next working day provided that the sender can show satisfactory transmission.