

## Conditions of Contract

### Conditions of Sale

#### 1. General

- 1.1 These conditions are the only conditions upon Dynamic Contract Furniture Ltd ("the seller") trading as Dynamic Contract Furniture Ltd is prepared to deal with its customer ("the buyer") and they shall govern the contract to the entire exclusion of any other express or implied conditions.
- 1.2 These conditions may only be modified by a variation in writing signed on behalf of the seller by a director and no other action on the part of the seller (whether delivery of the goods or otherwise) shall be construed as an acceptance of any other conditions.
- 1.3 These conditions (as modified in accordance with Clause 1.2 and together with the matters referred to on the face of the seller's quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.
- 1.4 No contract shall be concluded until the seller despatches an acknowledgement of order to the buyer. Any quotation in whatever form given to the buyer is given subject to these conditions and does not constitute an offer to sell.

#### 2. Performance

- 2.1 The seller warrants that the goods shall at the time of delivery be free from defects in workmanship and materials. For the purposes of this Agreement the goods shall not be defective unless more than 2% (two per cent) of the goods are unusable by the Buyer by virtue of any defect in workmanship and materials. If any goods do not conform to this warranty the seller will at its option:-
  - 2.1.1 replace the goods found not to conform to the warranty;
  - 2.1.2 take such steps as the seller deems necessary to bring the goods into a state where they are free from such defects; or
  - 2.1.3 take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price.Provided that the liability of the Seller shall in no event exceed the purchase price of the goods performance of any one of the above options shall constitute an entire discharge of the Seller's liability under warranty.
- 2.2 The foregoing warranty is conditional upon:-
  - 2.2.1 the buyer giving written notice to the seller of the alleged defect in the goods, such notice to be received by the Seller within seven days of the time when the Buyer discovers or ought to have discovered the defect and in any event within one month of delivery of the goods; and
  - 2.2.2 the Buyer affording the Seller a reasonable opportunity to inspect the goods and, if so requested by the Seller, returning the allegedly defective goods to the Seller's works, carriage pre-paid, for inspection to take place there.
- 2.3 Save as provided in Clause 2.1 and in section 12 of the Sale of Goods Act 1979:-
  - 2.3.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the goods are hereby expressly excluded and the Buyer hereby confirms that it is responsible for ensuring that the goods satisfy its requirements and for performing all necessary tests on the goods; and
  - 2.3.2 the Seller shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the Buyer.
- 2.4 In the event that, notwithstanding the foregoing provisions of this Clause 2, the seller is found liable for any loss or damage suffered by the Buyer, that liability shall in no event exceed the purchase price of the goods.

#### 3. Price

- 3.1 The price for each consignment of the goods will be that expressed on the face hereof.
- 3.2 The contract price is exclusive of value added tax or any similar taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.
- 3.3 Catalogues, price lists and other advertising material are indications only of the type of Goods and Services offered and the prices stated therein shall not be binding upon the Company.

#### 4. Payment

- 4.1 Unless otherwise agreed in writing, the goods must be paid for 24 hours prior to dispatch. Where a contract is designated by the Seller as a credit sale, payment shall be made by the Buyer not later than the thirtieth day from the end of the month of issue of the Seller's invoice unless some other term is expressed on the face hereof.
- 4.2 If any payment that is to be made hereunder by the Buyer to the Seller is overdue, interest will be chargeable thereon as well after as before judgment on a day to day basis at 4% (four per cent), until the sum due is paid.
- 4.3 Where any sum owed by the Buyer to the Seller under this or any other contract is overdue the Seller may withhold any deliveries of goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Seller.

#### 5. Delivery and Collection

- 5.1.1 If the goods are to be delivered then delivery of each consignment of the goods shall be made to the place, and in the manner, designated by the Buyer when placing the order provided that the Seller shall be entitled to withhold delivery of the goods as provided in Clause 4.3. The Purchaser shall in all such cases provide the labour necessary to unload the Goods free of charge to the Company and shall ensure that the delivery vehicle is unloaded immediately and shall indemnify the Company against any loss, injury or damage to any person or property (including the Goods) arising during unloading.
- 5.1.2 If the goods are to be collected then upon the Seller giving notice to the Buyer that the goods (or any part thereof) will be ready for collection on a specified day the Buyer will arrange for the same to be collected within seven days of such day. The Buyer will give the Seller at least two days' notice of the time and manner in which he proposes to collect the goods.
- 5.2 Unless otherwise agreed, the price quoted for the goods by the Seller shall be exclusive of the costs of delivering the same for which the Seller shall invoice the Buyer separately. Such charges shall include the costs of freight and insurance.
- 5.3 Unless otherwise expressly agreed in writing any delivery times specified by the Seller in its quotation or otherwise are business estimates only and the Seller will not be liable to the Buyer for any loss or damage (whether direct, indirect or consequential) sustained by the Buyer as a result of the Seller's failure to comply with such delivery times.

- 5.4 If the buyer being a company shall pass a resolution or suffer an order of a court to be made for its winding-up, or if a receiver shall be appointed, or if a petition for the appointment of an administrator shall be presented in respect of it, or being an individual or partnership shall suspend payment or propose to enter into any composition with creditors or become unable to pay its debts (or have no reasonable prospect of so doing) or suffer a bankruptcy order, then the Seller may without prejudice to any other right rescind the contract, or suspend or cancel delivery or recover the possession of any goods for which payment in full has not been received.

#### 6. Risk and Property

- 6.1 The risk in the goods shall pass to the Buyer upon delivery of the goods to the Buyer or any carrier acting on the Buyer's behalf.
- 6.2 The property in the goods shall not pass to the Buyer until the full price of the goods is paid.
- 6.3 Until such time as the full price of all such goods has been paid:-
  - 6.3.1 they shall be held by the Buyer in a fiduciary capacity and stored by the Buyer at its premises in such a manner that they are clearly identifiable as the goods of the Seller and shall be kept separate from any other goods whether or not supplied by the Seller;
  - 6.3.2 they shall be handed over to the Seller on demand and the Seller shall be entitled to retake possession of them without prejudice to any of its rights against the Buyer and the Seller is hereby granted a licence to enter into the Buyer's premises for the purpose of recovering the goods.
- 6.4 If the Buyer shall allow the goods to become incorporated into or be used in the manufacture of other goods before the full price of the goods is paid to the Seller the property in the whole of those new goods shall be that of the Seller who shall be entitled to take possession of the new goods and the Seller is hereby granted a licence to enter into the Buyer's premises for the purpose of recovering the new goods. The Seller shall be entitled to sell the new goods and shall retain from the proceeds of sale thereof a sum equal to the amount outstanding to it in respect of the price of the goods and shall pay the balance of the sale proceeds to the Buyer.

#### 7. Initial Defects

- 7.1 The Buyer shall have no claim in respect of any breach of the warranty in Clause 2.1 which should have been apparent on a reasonable visual examination of the goods unless the conditions in Clause 7.4 are satisfied.
- 7.2 The Buyer shall have no claim in respect of the fact that the goods delivered are of the wrong description unless the conditions in Clause 7.4 hereof are satisfied.
- 7.3 The conditions before referred to are that:-
  - 7.3.1 the receipt for the goods is qualified by a remark to that effect, and
  - 7.3.2 the claim is made upon the Seller in writing within one day of delivery in the case of damage or three days of delivery in the case of shortages.
- 7.4 In any event the Buyer shall be treated as having accepted any consignment of the goods if it retains them for longer than one month after their delivery.

#### 8. Storage

- 8.1 The Seller shall be entitled to store the goods (or any of them) at the Buyer's expense at its own premises or elsewhere if:-
  - 8.1.1 where the Buyer is required to collect the goods from the Seller's works, the Buyer fails to take delivery at the time specified therefore under Clause 5.1.2;
  - 8.1.2 where the arrangement is for the goods to be delivered by the Seller, either the Seller is unable to despatch the goods by reason of any act or omission on the part of the Buyer, or the Seller has despatched the goods but the Buyer fails to take delivery thereof;
  - 8.1.3 the Seller is withholding delivery of the goods pursuant to Clause 4.3.
- 8.2 The expenses that the Seller may reclaim from the Buyer all reasonable costs incurred by the Seller (whether by way of storage, insurance or otherwise) in respect of the goods [and it is expressly declared that it shall be reasonable for the Seller to effect insurance in respect of the goods notwithstanding that the risk therein may have passed to the Buyer].

#### 9. Cancellation

Contracts are not subject to cancellation without the Seller's written consent. Where cancellation is accepted, the Seller shall in addition to any express terms of cancellation be entitled to reimbursement of any costs incurred by the Seller in connection with the contract.

#### 10. Force Majeure

The Seller shall have the right to cancel or to reduce the volume of the goods delivered if it is prevented from or hindered in delivery of the goods through any circumstances beyond its control including (but not limited to) industrial action, war, fire or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

#### 11. Drawings and Descriptions

All drawings, photographs, illustrations, specifications, performance data, dimensions, weights, and the like, whether contained in the contract or made by way of representation, have been provided by the Seller in the belief that they are as accurate as reasonably possible, but they do not constitute a description of the goods, shall not be taken to be representations made by the Seller, and are not warranted to be accurate.

#### 12. Patents, Registered Designs, Trade Marks, Trade Names and Copyright

If any Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Purchaser's specification

#### 13. Headings

The headings to the Clauses of this Agreement shall not affect the construction of this Agreement.

Note: The Seller's prices are calculated on the basis that the above Conditions will apply. Buyers requiring prices to be quoted on a different basis should inform the Seller.