

Hoffman Thornwood Limited

Terms and conditions for the supply of goods

The customer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) that are the subject of the Contract.

Supplier: Hoffman Thornwood Limited (registered in England and Wales with company number 01451361).

1.2 **Construction.** In these Conditions, the following rules apply:

(a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) a reference to a party includes its personal representatives, successors or permitted assigns.

(c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) a reference to writing or written includes faxes and e-mails.

2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 An order by the Customer constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of any order are complete and accurate.

2.3 An order shall only be deemed to be accepted when the Supplier issues a written acceptance, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, oral warranty, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

3. Delivery

3.1 Delivery will be deemed to have been effected when the Goods are delivered to the Customer's premises or such other location as is set out in the order or as agreed with the Customer before delivery or, if the Customer is due to collect the Goods, then when the Goods are collected from the Supplier's premises or other agreed collection point.

3.2 Delivery dates are given in good faith but are not guaranteed and no liability will be accepted for any loss whatsoever suffered or caused through late delivery or non-delivery and time of delivery shall not be of the essence.

3.3 The Supplier reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim the Customer may have in respect of one instalment will not affect the Customer's liability in respect of any other instalment.

3.4 Unless otherwise expressly agreed in writing, the order price includes the cost of delivery by the Supplier to the Customer's premises as specified on the Supplier's written acceptance of order in one delivery, on week days during normal working hours. Any deliveries made at the Customer's request outside normal working hours, in instalments, on Saturdays, Sundays and/or Bank Holidays, will be subject to additional charges.

3.5 In the event that the Customer requests that any Goods be deposited other than on private premises owned by the Customer, the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Supplier in respect of all costs claims losses or expenses which the Supplier may incur as a result of such delivery whether on the public highway or elsewhere.

3.6 The Supplier will deliver the Goods as near as possible to the delivery address as a safe hard road permits. The Supplier reserves the right to refuse to deliver Goods to premises considered at the discretion of the Supplier to be unsuitable.

3.7 The Customer shall provide, at its own expense, the labour necessary for unloading the Goods, such labour to be available during normal working hours on the day notified by the Supplier for delivery. The Supplier shall not be liable for any damage that occurs in the course of unloading. The Customer shall unload the Goods with reasonable speed. If the Supplier's delivery vehicle is kept waiting for an unreasonable time or is obliged to return to the Supplier without completing delivery through lack of assistance or if additional staff have to accompany the Supplier's driver to unload the Goods, an appropriate additional charge will be made.

3.8 Where the Supplier in its absolute discretion determines that mechanical handling or craning is appropriate for delivery, such facilities must be provided by the Customer on site to facilitate the unloading of components from delivery vehicles.

3.9 If the Customer fails to take delivery of the Goods when the Goods are ready for delivery for any reason, the Supplier shall be entitled to charge the Customer a reasonable additional charge, including for storage, insurance and

redelivery. If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may (without prejudice to its rights against the Customer) resell or otherwise dispose of part or all of the Goods.

3.10 The Customer shall procure the signature of the Supplier's delivery note as acknowledgement of delivery of the Goods specified on the delivery note.

3.11 For export sales only, the Customer shall be responsible for all costs, fines or other expenses whatsoever and howsoever arising from any delay or other deviation in transit caused by or arising from the actions or omissions of the Customer or its employees and agents.

3.12 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered, but a *pro rata* adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4. Inspection and acceptance

4.1 Where it has been agreed that the Customer may inspect or test the Goods before delivery then if the Customer fails to do so within 3 Business Days of being notified that the Goods are available for this purpose or, having inspected the Goods, fails to notify the result of such inspection or test within 3 Business Days thereafter, the Customer shall be conclusively deemed to have accepted the Goods as being in accordance with the Contract.

4.2 If the Customer wishes to claim that there is any shortage on the delivery of any Goods or that any of the Goods are delivered damaged, the Customer shall give notice in writing to the Supplier within 3 Business Days after the date of delivery, or within three Business Days of non-delivery if the Goods are not delivered on the anticipated delivery date, failing which the Goods shall be deemed to have been delivered undamaged and in accordance with the delivery documents.

4.3 If short delivery does take place, the Customer shall not reject the Goods but shall accept the Goods delivered as a part performance of the order.

4.4 If short delivery or damaged Goods are complained of, the Supplier shall be under no liability in respect of the claim unless a reasonable opportunity to inspect the Goods is provided to the Supplier before any use is made of the Goods by the Customer.

4.5 The liability of the Supplier for short delivery or damaged Goods shall be strictly limited to the provision of any Goods not delivered or the replacement or, at the Supplier's option, repair of any damaged Goods.

4.6 In the event that the Contract provides for delivery by the Supplier, the Supplier shall be liable for loss or damage to the Goods during transit if:

(a) the Customer notifies the Supplier in writing of such loss or damage within 3 Business Days of receipt of the Goods; and

(b) where the goods are delivered by an independent carrier, the Customer complies with all requirements for notification of loss or damage contained in the contract for carriage; and

(c) the Supplier is given a reasonable opportunity to inspect such Goods before any use is made by the Customer.

5. Quality

5.1 The Supplier warrants that on delivery the Goods shall, unless otherwise notified to the Customer prior to the Contract being entered into or in the Contract, be free from significant defects in material and workmanship.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier within 3 Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity to inspect such Goods and, acting reasonably, agrees that the Goods fail to comply with the warranty set out in clause 5.1; and

(c) if asked to do so by the Supplier, the Customer, at its own cost, returns such Goods to the Supplier's place of business within 5 Business Days of the notice referred to in clause 5.2(a) or such other period as is notified by the Supplier, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods failure to comply with the warranty set out in clause 5.1 in any of the following events:

(a) the terms of clause 5.2 are not met;

(b) the defect results from actions or omissions occurring after delivery including but not limited to:

(i) the Customer making further use of the Goods after giving the notice referred to in clause 5.2(a); or

(ii) the Customer altering or repairing the Goods without the written consent of the Supplier; or

(iii) the Customer failing to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or

(c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as the Supplier's bailee;

- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.5 Without prejudice to any other right of the Supplier against the Customer, the Supplier shall, in respect of all unpaid debts of the Customer to the Supplier, have a general lien on all materials, equipment or other property of the Customer in the possession of the Supplier and shall be entitled, if any part of such debts remains unpaid 5 Business Days after the Supplier has given notice in writing to the Customer demanding payment thereof, to dispose of such materials, equipment or other property and apply the proceeds of such sale (if any) in or towards payment of such debts.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Contract, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 Unless otherwise agreed by the parties in writing, the price of the Goods is exclusive of:
- (a) the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer; and
- (b) amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.3 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.4 Unless otherwise agreed in writing, the Customer shall pay the invoice in full and in cleared funds by the last Business Day of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 3% per month above Barclays Bank Plc's base lending rate from time to time and compounded monthly. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.6 Notwithstanding clause 7.5, the Supplier may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.8 All legal costs and expenses properly incurred by the Supplier in seeking to collect overdue invoices from the Customer or otherwise to enforce its rights under this Contract will be recoverable from the Customer on an indemnity basis.
- 8. Termination for cause**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums under the Contract in respect of Goods delivered to the Customer or outstanding sums under any other contract between the Customer and the Supplier shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer fails to make any payment due to the Supplier under the Contract within 5 Business Days after the due date;
- (b) the Customer fails to perform any obligation under the Contract to provide a letter of credit, bill of exchange or other security for payment;
- (c) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (f) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
- (h) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (i) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(c) to clause 8.2(j) (inclusive);
- (l) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (m) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (n) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. Limitation of liability**
- 9.1 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or the Customer's failure to perform any of its other obligations.
- 9.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.3 Subject to clause 9.2:
- (a) the Supplier shall not 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
- (b) the Supplier'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 not exceed 100% of the price of the Goods.
- 9.4 If the Goods are manufactured to the design or specification of the Customer or the Customer's agent, the Goods carry no undertaking or warranty of any kind save that they will comply with the design or specification in all material respects. The Customer shall be solely responsible for taking all necessary measurements and dimensions and shall notify all measurements and dimensions to the Supplier in writing and the Supplier shall not be liable for any loss resulting from inaccuracy in such measurements and dimensions.
- 9.5 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification. This clause 9.4 shall survive termination of the Contract.
- 10. Force majeure**
- The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 11. Services**
- Unless otherwise agreed in writing by the Supplier, these Conditions (including the limitations in clause 9) shall also apply to any Contract for the supply of services by the Supplier (Services) provided that reference to the Goods shall, where the context so permits, be read as referring to the Services (or the product of those Services) and reference to supply or delivery of the Goods shall be read as referring to provision of the Services. The warranty in clause 5.1 shall be replaced with a warranty that the Services will be provided using reasonable skill and care. The Customer shall co-operate with the Supplier in all matters relating to the Services and provide the Supplier with such accurate information and materials as the Supplier may reasonably require to provide the Services.
- 12. General**
- 12.1 **Assignment and subcontracting.**

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 12.2 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the 2nd Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.3 **Severance.**
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.6 **Cancellation and Variation.** Except as set out in these Conditions, any cancellation or variation to the order or the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.