

# Just Contract Furniture – Standard Terms and Conditions

## **1 Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

### **1.1 Definitions:**

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“**Conditions**” means these terms and conditions as amended from time to time in accordance with clause 14.7.

“**Contract**” means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

“**Customer**” means the person or firm who purchases the Goods and/or Services from the Supplier.

“**Goods**” means the goods (or any part of them) set out in the Order.

“**Goods and Services Specification**” means any specification for the Goods and/or Services provided by the Customer or the Supplier, including any relevant plans, drawings or visuals, that is agreed by the Customer and the Supplier.

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Order**” means the Customer’s order for the supply of Goods and/or Services, as set out in the Customer’s written acceptance of the Supplier’s quotation or in the Customer’s purchase order form, as the case may be. Unless agreed otherwise by both parties, this includes any pre-liminary work, whether experimental or otherwise.

“**Services**” means the services supplied by the Supplier to the Customer as set out in the Goods and Services Specification.

“**Supplier**” means Creative Coatings Limited T/A Just Contract Furniture registered in England and Wales with company number 07505357.

### **1.2 Interpretation:**

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

1.4 A reference to a party includes its personal representatives, successors and permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.7 A reference to **writing** or **written** includes email.

## **2 Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier’s brochures or on the Supplier’s website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

- 2.4 The Supplier shall use all reasonable endeavours to ensure compliance with the Goods and Services Specification but cannot guarantee colours, contrasts, balances and hues will match accurately to the Goods and Services Specification.
- 2.5 The Customer shall ensure that the terms of the Order and any information it provides in the Goods and Services Specification is complete and accurate and shall co-operate with the Supplier in all matters relating to the Order.
- 2.6 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 law, trade custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3 Goods and/or Services**

- 3.1 The Goods and/or Services shall be provided as described in the Goods and Services Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods and Services 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or 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 Goods and Services Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods and Services Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### **4 Delivery of Goods**

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order (or such other location as the parties may agree) or shall collect the Goods from the Supplier's premises, as agreed between the parties, ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the completion of unloading or loading of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that 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,
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. 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 for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the parties have agreed that the Customer will collect the Goods from the Supplier's premises, and Customer fails to collect the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.5.2 the Supplier shall store the Goods until actual delivery takes place, and may charge the Customer for all related costs and expenses (including insurance and storage costs).
- 4.5.3 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 collected them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for all reasonable storage and selling costs.
- 4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5 Quality of Goods and/or Services**

- 5.1 The Supplier warrants that on delivery, the Goods shall:
- 5.1.1 conform with the Goods and Services Specification; and
  - 5.1.2 be free from material defects in design, material and workmanship; and
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 5.3 Subject to clause 5.4, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- 5.3.1 the Customer gives notice in writing within 10 Business Days of delivery of the Goods that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - 5.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
  - 5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost. The Supplier shall reimburse the return costs to the Customer if, at its discretion, it agrees to repair, replace or refund the defective Goods.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
  - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 5.4.3 the defect arises as a result of the Supplier following any drawing, design or Goods and Services Specification supplied by the Customer;
  - 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.4.6 the Goods differ from the Goods and Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 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.
- 5.6 The terms of 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 receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.2.2 to clause 11.2.4; and

6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to the Goods and the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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.

## **7 Charges and payment**

7.1 The price for Goods and/or Services:

7.1.1 shall be the price set out in the quotation provided in the Order as agreed between the parties; and

7.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

7.2 The Supplier reserves the right to increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

7.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods and Services Specification; or

7.2.3 any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Services.

7.3 If the Customer has been granted a credit facility with the Supplier:

7.3.1 the Customer shall be required to provide a deposit, as specified by the Supplier and as out in the Order for the Goods and/or Services before the work has commenced and the Supplier shall then invoice the Customer on or at any time after completion of delivery for the remaining balance; and

7.3.2 the Customer shall pay each invoice submitted by the Supplier within 30 days of the month end in which the invoice is dated in full and in cleared funds to a bank account nominated in writing by the Supplier.

7.4 If the Customer has not been granted a credit facility by the Supplier, the Customer shall pay each Supplier invoice immediately in full and in cleared funds to a bank account nominated in writing by the Supplier. The Goods will not be delivered or available for collection (as applicable) until such invoice has been paid in full..

7.5 Time for payment shall be of the essence of the Contract.

7.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.

7.7 If the Customer fails to make a payment due to the Supplier under clause 7.3 of this Contract by the due date, then, without limiting the Supplier's remedies under clause 11 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8 Intellectual property rights**

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

8.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

8.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **9 Confidentiality**

9.1 Neither party shall, without prior written consent of the other, disclose to any third party or otherwise make use of any confidential information which has come into its possession or which may in the course of the Contract come into its possession relating to the other party.

## **10 Limitation of liability**

10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

10.2.1 death or personal injury caused by negligence;

10.2.2 fraud or fraudulent misrepresentation;

10.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

10.2.4 defective products under the Consumer Protection Act 1987.

10.3 Subject to clause 10.2, the Supplier's total liability to the Customer shall not exceed the amount payable under the Contract for the Goods and/or Services.

10.4 The Supplier shall not be liable to the Customer for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and indirect or consequential loss.

10.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5. In view of these commitments, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Contract or any collateral contract, whether by statute, common law or otherwise, shall be, to the fullest extent permitted by law, excluded from the Contract.

10.6 This clause 10 shall survive termination of the Contract.

## **11 Termination**

11.1 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation under this Contract ("**Customer Default**"):

11.1.1 the Supplier shall have the right to suspend performance of the Services and delivery of the Goods until the Customer remedies the Customer Default;

11.1.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 11.1; and

11.1.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

11.2 Without affecting any other right or remedy available to it under the Contract, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

11.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

11.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer or suspend the supply of all further deliveries of Goods under the Contract, or any other contract between the parties if the Customer fails to pay any amount due under the Contract on the due date for payment.

## **12 Consequences of termination**

12.1 On termination of the Contract:

12.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

12.1.2 the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## **13 Force majeure**

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a "**Force Majeure Event**"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

## **14 General**

14.1 **Assignment.** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

14.2 **Notices.**

14.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

14.2.2 Any notice shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt; and
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

14.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

14.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Entire agreement.**

14.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

- 14.6 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.8 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.