



## **Terms and Conditions 1<sup>st</sup> August 2015**

We put forward all quotations and accept orders subject only to our terms and conditions of sale, a summary of which follows:

### **1. General**

These Conditions alone shall apply to all contracts for the sale of goods by HK Designs Ltd (the Seller) and shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Seller with any customer ("the Buyer"). They shall apply to the exclusion of all other terms or conditions, (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any purchase order documentation submitted by the Buyer or similar document or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished.

### **2. Prices**

The prices payable for the goods shall be those shown on the Seller's Final quotation and Deposit Invoice. Any estimate given by the Seller is for the sake of indication only and the Seller is in no way bound or limited by the given estimate. The Seller shall have the right at any time to revise prices to take into account any increase in the cost to the Seller which is due to factors occurring after the acceptance of the Seller's Final quotation which are beyond the reasonable control of the Seller, including, without limitation, inflation and/or increases in costs of any goods, materials, carriage, labour, overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rates. Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price.

### **3. Placement of Order**

Acceptance of any order by the Buyer must be in writing. Written confirmation of an order implies acceptance of any relevant product schedule, price and/or delivery program provided by the Seller as appropriate to each individual order.

If it is agreed in advance that the Buyer must place the order orally with the Seller, either over the telephone or personally, any inaccuracies or disputes shall be solely the responsibility of the Buyer. If the order is oral and the Seller in turn confirms it in writing, if the Buyer does not object to the Seller's confirmation within 3 business days, the Seller's written confirmation shall be deemed correct and substance of the Contract. This Clause 3 relates both to substance quality and quantity. Buyers' order forms containing special printed conditions will be understood to be binding only when they are not in variance with the Seller's terms and conditions.

In the event of any conflict between the Conditions of Sale of the Buyer and that of the Seller, the Conditions of Sale of the Seller shall take priority.



#### **4. Terms of Payment**

Payment of invoices shall be made in full without any deduction or set-off in accordance with the terms stated on the Final quotation and invoice. Time shall be of the essence in respect of or all invoices between the Buyer and the Seller. Without prejudice to the foregoing generality, the Seller shall not be bound to deliver the goods until the Buyer has paid for them, and payment shall be due before the date of delivery specified in the Seller's deposit invoice. The Seller reserves the right to suspend the provision of goods to the Buyer where any amounts are overdue under any contract with the Buyer until all such amounts have been paid.

If the Buyer fails to make any payment on the due date, then without prejudice to any of the Seller's other rights, the Seller may (i) suspend or cancel delivery of any goods or articles due to the Buyer, and/or (ii) appropriate any payment made by the Buyer to such of the goods (or goods supplied under any contract with the Buyer) as the Seller may in its sole discretion think fit and/or (iii) charge interest at the rate of 4% over Barclays Bank PLC base rate from time to time to run from the due date for payment until receipt by the Seller of the full amount.

#### **5. Delivery**

Delivery of the goods shall be made to the Buyer's address, which is specified in the Seller's Deposit Invoice. Delivery or despatch dates mentioned in any quotation, order acknowledgement form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by service of any notice.

Postponement of the delivery by the Buyer may be subject to any reasonable storage charges incurred by the Seller to comply with statutory obligations irrespective of whether the delivery goes ahead or not.

If the Buyer postpones the delivery by over two weeks the Seller may invoice the Buyer for the total value of the order together with any interest accruable at a rate not more than 8% above the Bank of England's standard rate as applicable.

#### **6. Installation**

Where installation of goods will take place, the Seller will generally be responsible for fitting goods on site and placing where necessary. The Buyer warrants that the delivery address is in all respects suitable for safe and lawful delivery of the goods and the Buyer shall obtain any certificates or other approvals required in good time before delivery of the goods and, in particular the following must be complied with:

- a) Access to site must be within 10 metres.
- b) Where installation areas are part of a building comprising of different levels, then a lift and access to that level must be made available.
- c) The area designated for installation must be cleared of all contractors' materials and debris.



- d) The Seller cannot be made responsible for damages incurred to their products, once installed, that may be the responsibility of other contractors or any other person.
- e) Normal working hours is between 8.30am and 5.00pm on Monday-Friday, and installations outside these hours are charged at overtime rates prevailing at that time, as agreed with our client.
- f) Any instructions or advice given by the Seller in respect of the fitting, placing or installation of the goods including but not limited to ongoing maintenance requirements, internal structural recommendations (this particularly applies to wall fixed workstations) or ancillary installation advice. The Seller accepts no liability for failure to comply with its reasonable instructions.

### **7. Risk & Insurance**

Subject (where appropriate) to Conditions risk shall pass on delivery. Any property of the Buyer in or under the Seller's possession or control and all property supplied to the Seller on behalf of the Buyer shall be held by the Seller at the Buyer's risk.

### **8. Title**

Notwithstanding delivery and passing of risk, property and title to the goods shall not pass from the Seller to the Buyer until such time as the Buyer shall have paid to the Seller the agreed price (together with any accrued interest and VAT) and all other sums owed by the Buyer to the Seller.

Until property in the goods has passed in accordance with the above, the Buyer shall hold the goods and each of them on a fiduciary basis for the Seller and shall

- a) Not part with possession of the goods otherwise than in accordance with Condition 6;
- b) Take proper care of the goods and take all reasonable steps to prevent any damage to or deterioration of them;
- c) Keep the goods free from any security charge, lien pledge or other encumbrance and store the goods properly and separately (at no cost to the Seller) from all other goods in its possession and in such a way as to show clearly that they are the Seller's property, and
- d) Notify the Seller forthwith upon the happening of any events such as the entering into of a voluntary arrangement by the Buyer, the sequestration, appointment of a Liquidator or Receiver or the apparent insolvency of the Buyer.

If the Buyer fails to observe or perform (a) (b) (c) and (d) of this Condition 8, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable. The Seller reserves the right to repossess and resell any goods to which it has retained title and any right the Buyer may have to possession of the goods shall in any event cease:

- a) If any sum owed by the Buyer to the Seller (whether in respect of the goods or otherwise) is not paid to the Seller by the due date for payment, or
- b) Upon the happening of any events such as the entering into a voluntary arrangement by the Buyer, the sequestration, appointment of a Liquidator or Receiver or the apparent insolvency of the Buyer.



The Buyer hereby grants an irrevocable right and licence to the Seller and its servants and agents to enter all or any of the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing the goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of any contract which is subject to these Conditions and is without prejudice to any accrued rights of the Seller under such contracts or otherwise. The Buyer is licensed by the Seller to process goods to which the Seller has retained title in such fashion as it may wish and/or to incorporate them in or with any other products subject to the express condition that the new product or products or any other items of moveable property whatsoever containing any part of the said goods shall become the property of the Seller and shall be separately stored and marked by the Buyer to show clearly that they belong to the Seller.

Notwithstanding that the goods (or any of them) remain the property of the Seller, the Buyer may in the ordinary course of its business sell the goods at full market value or any new product or products produced with the Seller's goods provided that:

- a) As between the Buyer and its sub-buyer or customer the Buyer shall sell the goods as principal and the Buyer shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person.
- b) As between the Seller and the Buyer the Buyer shall sell the goods in a fiduciary capacity as agent for the Seller, and
- c) Notwithstanding any agreed period of credit for payment of the price of the goods either the  
(i) entire proceeds of sale or otherwise of the goods shall be held in trust by the Buyer for the Seller and the Seller shall open a new and separate bank account to hold the proceeds of sale in trust for the Seller and the proceeds of sale shall not be mixed with any other money or monies of the Buyer or otherwise or paid into any overdrawn bank account of the Buyer or otherwise and shall be at all material times identified as money or monies held in trust for the Seller or  
(ii) the Buyer shall pay the proceeds of such sales to the Seller forthwith upon receipt.

The Buyer acknowledges that as a consequence of its fiduciary relationship with the Seller it is under a common law duty to hold the proceeds of any such sales or hiring on trust for the Seller and to open a new and separate bank account to hold the proceeds of sale and not to mingle such proceeds with any other money or monies of the Buyer or otherwise or pay them into an overdrawn bank account of the Buyer or otherwise, such common law duty being unaffected by and wholly independent of the terms of these Conditions.

Notwithstanding the provisions of this Condition 8 the Seller shall be entitled to bring an action against the Buyer for the price of the goods in the event of non-payment by the Buyer by the due date even though property in the goods has not passed to the Buyer and/or shall have the right by notice to the Buyer at any time after delivery to pass property in the goods to the Buyer as from the date of such notice.

The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar of



Companies in accordance with the Companies Act 2006 as amended. Without prejudice to the other rights of the Seller, if the Buyer or their agents or professional advisers fail to do so, all sums whether owing by the Buyer to the Seller shall become due and payable forthwith.

### **9. Third Party Rights**

The Buyer shall indemnify the seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party (including without limitation the printing of any libellous or illegal matter on the goods).

### **10. Acceptance of Delivered Goods and Exclusion of Liability**

- a) The Buyer shall inspect the goods immediately upon delivery. The Seller shall not be liable to the buyer:
- i. For non-delivery unless a written claim is received by the Seller from the Buyer within 7 days from the date of the Seller's invoice (or 28 days from such date in respect of export sales)
  - ii. For shortages in quantity delivered but in excess of those permitted by conditions or law unless the Buyer notifies the Seller of any claim for short delivery within 3 days of receipt of the goods (or 7 days from such date in respect of export sales).
  - iii. For damage to or loss of the goods or any part of them in transit (where the goods are carried by the Seller's own transport or by a carrier on behalf of the seller) unless the Buyer shall notify the Seller of any such claim within 3 days of receipt of the goods or the scheduled date of delivery whichever shall be the earlier (or 7 days from such date in respect of export sales).
  - iv. For defects in the goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act of neglect or default of the Buyer or of any third party.
  - v. For other defects in the goods unless notified to the Seller within 7 days of receipt of the goods by the Buyer or where the defect would not be apparent on reasonable inspection within 1 month of delivery.

### **11. Limitation of Liability**

The Seller shall have no obligation in respect of the goods except in accordance with this clause and as expressly stated in writing by the Seller.

Nothing in these terms shall limit or exclude the Seller's liability for (i) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors (as applicable), (ii) fraud or fraudulent misrepresentation or (iii) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

Neither the Seller nor the Buyer shall be liable for (i) loss of data or use, (ii) any form of indirect, consequential or special loss or (iii) any loss or failure to realise expected profit, revenue or savings or any form of pure economic loss, whether any such loss is direct or indirect and, in each case, however arising.



Subject to this clause, the Seller limits its aggregate liability (however rising) in respect of or in connection with the goods and otherwise in connection with the contract to the total price of the goods under the contract.

#### **12. Samples and Equipment**

- a) Any samples or trade cards supplied to the Buyer are supplied solely for information and in no way, importantly, express or imply conditions or warranties to quality, description, use, fitness for purpose or merchantable quality. The Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the goods.
- b) Any equipment supplied to the Buyer by the Seller in connection with the delivery of the goods shall remain the Seller's property notwithstanding any contribution made towards its cost by the Buyer.

#### **13. Lien/set-off**

The Seller shall be entitled to a general lien on all goods and property owned by the Buyer which are in the Seller's possession (although the Buyer may have paid for the same in full) (and including goods of the Buyer which have been paid for) in satisfaction of the whole or part as the case may be of the unpaid price of any goods sold and delivered to the Buyer by the Seller under this or any contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sums owed to the Buyer by the Seller.

#### **14. Cancellation**

The Seller may cancel this contract or these Conditions of Sale at any time before the goods are delivered by giving written notice to that effect. On giving such notice, the Seller shall promptly repay to the Buyer any sums paid in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

The Buyer may cancel this contract within 10 days of the placement of order and the Seller will be authorised to invoice the Buyer for an amount not exceeding 25% of the total value of the contract to cover the Seller's reasonable administrative disbursements and fees for work already undertaken. If the Buyer wishes to cancel this contract at any point after this 10 day deadline the Seller will be authorised to invoice the Buyer for an amount not exceeding 90% of the total value of the contract.

#### **15. Entire Agreement**

These Conditions of Sale reflect the entire contractual agreement between the Buyer and the Seller and the Buyer confirms that any pre-contractual agreements or discussions between the Parties have been superseded by these Conditions of Sale.

#### **16. Jurisdiction**

This contract shall be governed by the law of England and Wales.



### **17. Questions**

If you have any questions regarding these Terms and Conditions or about the way HK Designs Ltd conducts business please refer them to:

**Chris Arnold**  
**HK Designs Ltd**  
**Elmbank**  
**Portsmouth Road**  
**Ripley**  
**Surrey**  
**GU 23 6EW**

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