

TERMS OF SALE OF GOODS AND SUPPLY OF SERVICES RELATING TO TRADERS (NOT CONSUMERS)

PLEASE READ THESE 'TERMS OF SALE OF GOODS AND SUPPLY OF SERVICES' CAREFULLY BEFORE PLACING YOUR ORDER AND RETAIN A COPY OF THESE TERMS AND YOUR ORDER FOR FUTURE REFERENCE

1. Interpretation

1.1 In these conditions the following words have the following meanings:

"Buyer" means the person(s), firm or company who purchases the Goods and/or requires the Services from the Company; "Company" means The Loft Shop Limited (Company Registration Number 00797762) whose registered office is at Eldon Way, Littlehampton, West Sussex BN17 7HE;

"Contract" means any agreement or contract between the Company and the Buyer for the sale and purchase of the Goods or the supply of the Services, incorporating these Conditions;

"Delivery Point" means the place where delivery of the Goods is to take place under condition 4;

"Goods" means any goods agreed in a Contract to be supplied to the Buyer by the Company (including any part or parts of them);

"Quotation" means the price of the Goods or Special Goods as agreed in writing between the Buyer and the Company;

"Services" means any services agreed in a Contract to be supplied to the Buyer by the Company;

"Special Goods" means Goods which are made or purchased to the Buyer's specification;

"Working Day" means any day other than weekends and bank or other public holidays.

1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these conditions headings will not affect the construction of these conditions.

1.5 In these conditions including shall mean including but not limited to.

2. Application of Terms

2.1 Subject to any variation under condition 2.3 any Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of any Contract simply as a result of such document being referred to in the relevant Contract.

2.3 These conditions apply to all the Company's sales and all of the Services provided and any variation to these conditions and any representations about the Goods and/or the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.4 Each order for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order, which may take the form of a receipt, is issued by the Company or (if earlier) the Company delivers the Goods and/or provides the Services to the Buyer.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 If the Buyer requires the Company to supply Special Goods the Company will require a deposit of 50% of the price of the Goods but such deposit shall not be refundable unless the Company fails to supply the Special Goods.

2.8 Any Quotation is given on the basis that no contract will come into existence until the Company has accepted the Buyer's order based on the Quotation. Any Quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it by giving written notice to the Buyer.

2.9 Once the Company has accepted the Buyer's order a binding legal contract will exist.

3. Description

3.1 The description of the Goods and/or Services shall be as set out in the Company's catalogue and brochures.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of this Contract.

4. Delivery and/or Collection and Performance

4.1 Unless otherwise agreed in writing by the Company delivery and/or collection of the Goods and/or the Performance of the Services shall take place at the address given by the Buyer when placing the order, (for the avoidance of doubt the Buyer acknowledges that deliveries are not made outside the mainland of the United Kingdom, and that some parts of the United Kingdom are not covered.) The Buyer should check at the time of placing the order whether delivery to a particular address is available.

4.2 If delivery cannot be made to the address the Buyer has requested in its order, the Company will inform the Buyer as soon as possible, in which circumstances the Company may either make such delivery to an alternative address which the Buyer may elect or refund or recredit the Buyer for any sum that has been paid by the Buyer which has been paid for the purpose of delivery.

4.3 Where the Company is required to deliver Goods to the Buyer the Buyer will arrange and bear the responsibility for the cost of prompt unloading, stacking and storing of the Goods.

4.4 Any dates specified by the Company for delivery and/or collection of the Goods and/or the performance of the Services are intended to be an estimate and the Company shall not be liable for any delay in delivery, collection or performance however caused. Time for delivery and/or collection and/or performance shall not be of the essence unless previously agreed by the Company in writing. If no dates are so specified, delivery and/or performance will be within 30 Working Days of your order or as soon as reasonable practicable thereafter.

4.5 The Buyer is referred to its right to cancel a Contract under clause 8 of these conditions. Where the Company is to provide Services under a Contract the Company will not commence performance of the Services until 7 (seven) Working Days after the Contract was formed has elapsed unless there is a written agreement between the Company and Buyer to do so. If it is agreed between the Company and Buyer that the Company will perform the Services prior to expiry of 7 Working Days from formation of a Contract, the Buyer's right to cancel under clause 8.3 shall not apply.

4.6 Subject to the other provisions of these conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any reasonable or unavoidable delay in the delivery and/or collection of the Goods or the supply of the Services.

4.7 If for any reason the Buyer will not accept delivery of and/or collect any of the Goods when they are ready for delivery and/or collection, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.7.1 the Goods will be deemed to have been delivered; and

4.7.2 the Company may store the Goods until delivery and/or collection whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

4.8 The Company does not accept liability for damage, shortage or non-delivery unless notified in writing of the same at the time of delivery.

4.9 Proof of delivery confirmation, will only be provided if requested in writing within 14 days from the date of delivery.

5. Risk and Title

5.1 The Goods are at the risk of the Buyer and risk shall pass to the Buyer at the time of delivery and/or collection.

5.2 Ownership in the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of the Goods and (if applicable) the Services and all other sums due in respect thereof. The Company reserves the right to recover the Goods until ownership has passed.

6. Price

6.1 Unless otherwise agreed by the Company in writing the price for the Goods and/or the Services shall be the price set out in the Company's catalogue published on the date of collection, delivery or deemed delivery. All prices exclude VAT which is payable by the Buyer at the prevailing rate.

6.2 In addition to the price, the Buyer will be required to pay the delivery charge, if any, for the Goods, as shown in the section of the Company's catalogue regarding delivery. The price does not include any costs incurred by the Company unloading the Goods unless otherwise stated.

6.3 Every effort is made to ensure that prices shown in the Company's current catalogue are accurate at the time when the Buyer places its order. If an error is found, the Company will inform the Buyer as soon as possible and offer the Buyer the option of reconfirming the order at the correct price or cancelling the order. If the Buyer cancels, the Company will refund or recredit the Buyer for any sum that has been paid by the Buyer or debited from the Buyer's credit card for the Goods and/or Services.

7. Payment

7.1 Payment for the Goods, delivery charges and Services shall become due at the time the order is placed and shall be payable in accordance with the method specified within the catalogue.

7.2 If the Buyer fails to pay the Company any sum due pursuant to a Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Nat West Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7.3 The Company reserves the right to suspend or stop deliveries and to withdraw or restrict credit facilities if any payment becomes overdue or if the Company believes that the Buyer may be unwilling or unable to pay for the Goods and/or Services.

8. The Buyer's right of cancellation

8.1 This clause 8 applies to any Contract concluded under The Consumer Protection (Distance Selling) Regulations 2000. Further details are available on request.

8.2 The Buyer has the right to cancel a Contract in so far as it relates to Goods at any time up to the end of seven Working Days after the Buyer receives the Goods subject to clause 8.8.

8.3 The Buyer has the right to cancel a Contract insofar as it relates to the provision of Services at any time at the end of 7 Working Days after the date of the Contract, subject to clause 4.5.

8.4 To exercise the right of cancellation, the Buyer must give written notice to the Company by hand or post, fax or email, at the address, fax number or email address shown below, giving details of the Goods and/or Services (where appropriate) their delivery.

8.5 If the Buyer exercises the right of cancellation after the Goods have been delivered to the Buyer, the Buyer will be responsible for returning the Goods to the Company at the Buyer's own cost.

The Goods must be returned to the address shown below within 21 days of cancellation. The Buyer must take reasonable care to ensure the Goods are not damaged in the meantime or in transit. If the Buyer fails to take reasonable care of the Goods, the Company will be entitled to charge the Buyer for the price of the Goods.

8.6 Once the Buyer has notified the Company that it is cancelling a Contract in accordance with clause 8.2 or 8.3 above, the Company will refund or recredit the Buyer within 30 days for any sum that has been paid by the Buyer or debited from the Buyer's credit card for the Goods and/or Services.

8.7 If the Buyer does not return the Goods as required, the Company may charge the Buyer a sum not exceeding the direct costs of recovering the Goods.

8.8 The Buyer does not have the right to cancel a Contract if the order is for Special Goods or for Goods which by their nature cannot be returned or are liable to deteriorate or for Goods which have been used by the Buyer which may reasonably be regarded as adversely affecting the Company's ability to resell such Goods.

9. Compliance with Regulations

9.1 The Buyer will make all necessary arrangements to comply with and satisfy itself that the use and performance of the installation of Goods will comply with every applicable statute, bylaw or rule or decision of any competent authority or body, including the obtaining of all necessary licences, permits or other consents which are or may be required in connection with the performance of the Contract and use of the Goods including ensuring that the building structure is able to accept the weight of the equipment to be installed.

9.2 The Buyer is referred to the Building Regulations in force at the date of the Contract. The Company is not responsible for obtaining any building or planning consents or for ensuring the suitability of the Goods under any regulations.

9.3 The sole responsibility for obtaining any necessary building or planning consents rests with the Buyer and the Company shall not have any liability towards the Buyer for any failure to obtain or comply with any consent or regulation.

9.4 If the Buyer has any doubts, concerns or questions regarding its compliance with this clause 9 it should consult its local Building Control.

9.5 The Buyer should ensure compliance with this clause 9 prior to entering into a Contract with the Company. The Buyer shall not be entitled to cancel any Contract, return any Goods or Special Goods or receive any refund or recredit as a result of its failure to comply with this clause 9 unless the written consent of the Company is obtained, such consent to be given at the Company's sole discretion.

10. Right to remedy

10.1 In the event that the Buyer becomes aware of any breach by the Company of the terms of a Contract the Buyer shall notify the Company as soon as reasonably practicable following it becoming aware of such breach and (if remediable) afford the Company not less than 30 days following such notification, the opportunity for the Company to remedy such breach.

11. Warranty

11.1 All Goods supplied by the Company are warranted free from defects for 12 months from the date of supply provided that where applicable the Buyer has complied with clause 4.8, the Company will replace free of charge and at its own expense any Goods found on inspection to be faulty or damaged. This warranty does not affect any statutory rights which the Buyer has as a consumer.

11.2 This warranty does not apply to any defect in the goods arising from fair wear and tear, wilful damage, accident, negligence by the Buyer or any third party, use otherwise than as recommended by the Company, failure to follow the Company's instructions, or any alteration or repair carried out without the Company's approval. If the goods supplied to the Buyer develop a defect while under warranty, or the Buyer have any other complaint about the goods, the Buyer should notify the Company in writing.

11.3 All other warranties, conditions and other terms that would otherwise be implied by statute or common law relating to the Goods and/or Services and their performance, are hereby excluded to the fullest extent permitted by law (this shall not affect a consumer's statutory rights).

12. Data protection

12.1 The Company will take all reasonable precautions to keep the details of the Buyer's order and payment secure, but unless the Company is negligent, the Company will not be liable for unauthorised access to information supplied by the Buyer.

12.2 The Company would like to notify the Buyer of products and offers that may be of interest to the Buyer from time to time. If the Buyer would not like to be notified of these then they should inform the Company in writing. The Buyer can correct any information about itself, or ask for information about it to be deleted, by giving written notice to the Company.

13. Entire Agreement

13.1 The parties acknowledge that the contents of these conditions and a relevant Contract, contains the entire understanding and agreement between the parties in relation to the matters referred to therein and supersedes any prior agreement between the parties whether oral or written.

13.2 Each of the parties acknowledges that it has not relied upon or been induced to enter into a relevant Contract by any representation other than a representation expressly set out in such Contract and neither party shall be liable to the other in equity, contract, tort, under the Misrepresentation Act 1967 or in any other way for any representation not expressly set out in such Contract, provided that nothing in these conditions shall affect a party's liability in respect of any fraudulent misrepresentation.

14. Assignment

14.1 The Buyer shall not be entitled to assign any Contract or any part of such Contract without the prior written consent of the Company.

14.2 The Company may assign the Contract or any part of it to any person, firm or company.

15. Force Majeure

15.1 The Company reserves the right to defer the date of delivery and/or collection and/or for the performance of the Services or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, terrorism, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

16. General

16.1 Each right or remedy of the Company under a Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.2 If any provision of a 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 such Contract and the remainder of such provision shall continue in full force and effect.

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

16.4 Any waiver by the Company of any breach of, or any default under, any provision of a 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 such Contract.

16.5 Either the Buyer nor the Company intend that any term of such a 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 any Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17. Communications

17.1 All communications between the parties relating to a Contract must be in writing and delivered by hand or sent by prepaid first class post or sent by facsimile transmission:

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

17.1.2 (in the case of the 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 a Contract or such other address as shall be notified to the Company by the Buyer.

17.2 Communications shall be deemed to have been received:

17.2.1 if sent by prepaid first class post, 5 Working Days after posting (exclusive of the day of posting);

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

17.2.3 if sent by facsimile transmission on a Working Day prior to 4.00 pm, at the time of transmission and otherwise on the next Working Day.

18. Limitation of Liability

18.1 Subject to clause 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

18.1.1 any breach of these conditions; and

18.1.2 any representations, statement or tortious act or omission including negligence arising under or in connection with the Contract.

18.2 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) are to the fullest extent permitted by law excluded from the Contract.

18.3 Nothing in these conditions excludes or limits the liability of the Company for the death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

18.4 Subject to conditions 18.2 and 18.3:

18.4.1 The Company's total liability in contract tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to £200,00, and

18.4.2 The Company shall not be liable to the Buyer for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

The Loft Shop Ltd.
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