

JAY-BE®

...Your Guest **BED** Specialists

TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms and conditions:

- 1.1 "the contract" means any contract to which these terms and conditions apply.
- 1.2 "the goods" means any goods the subject of the contract.
- 1.3 "the services" means any services supplied by the Seller the subject of this contract.
- 1.4 "the Seller" means the person named above or overleaf who sells or supplies or is to sell or supply the goods.
- 1.5 "the Buyer" means the person who buys or is to buy the goods.

2. Preliminaries

- 2.1 These terms and conditions are the only ones to which the contract for the sale or supply of the goods and/or services by the Seller to the Buyer is subject. Any other conditions proposed or stipulated by the Buyer in whatever form, written or oral, are hereby expressly waived and excluded. These terms and conditions may not be varied except by the written consent of a director of the Seller. The giving by the Buyer of any order, any delivery instructions in respect of the goods or any part thereof or any acceptance of delivery of any of the goods or part thereof shall constitute unqualified acceptance by the Buyer of these conditions.
- 2.2 A quotation by the Seller may be withdrawn without notice; an order given by the Buyer is not binding on the Seller until accepted by the Seller in writing or by making delivery of or supplying the goods or services. Quotations (unless otherwise stated) are open for acceptance for a period of 30 days from the date thereof.

3. Price and Payment

- 3.1 Unless the sale is specifically stated to be at a fixed price the Seller reserves the right by notice given at any time before delivery to vary the price if, after the date of the contract, there is an increase in the Seller's total cost of raw materials or overheads arising from any cause beyond the Seller's control. In the case of such a variation during the fulfilment of an order the undelivered portions of the order outstanding at the date of such change shall be subject to a proportionate adjustment.
- 3.2 Payment is due when the order has been placed unless credit terms have been agreed when payment will be due within 30 days after the date of the invoice and if any payment is not made on or before the date due for payment, the Seller reserves the right to charge interest at 3 per cent per annum above Barclays Bank base rate from the date due for payment until the day payment is received by the Seller. Such interest shall run from day to day and shall accrue after as well as before any judgement and shall be compounded monthly on the amounts overdue until payment thereof. The Seller shall also be entitled to charge the Buyer with the legal costs or any other costs and the debt collection costs incurred by it in the recovery of any outstanding monies from the Buyer, whether or not proceedings have been commenced.
- 3.3 The Seller shall, in respect of all unpaid debts from the Buyer, have a general lien on all goods and property of the Buyer (whether or not paid for), in the possession of the Seller and shall be entitled, upon the expiration of 14 days notice, to dispose of such goods or property as it thinks fit and to apply the proceeds towards such debts.
- 3.4 The price payable by the Buyer is exclusive of Value Added Tax and any other tax or duty relating to the manufacture, transport, export, import, sale or delivery of the goods which shall be added to the price at the rate prevailing at the invoice date.
- 3.5 Under no circumstances except with the Seller's consent shall the Buyer withhold payment of any amount due to the Seller because of a disputed claim of any nature nor shall the Buyer be entitled to claim a right of set off, claim or counterclaim in respect of any of the Seller's obligations arising in respect of matters other than the contract.

4. Delivery

- 4.1 The seller shall be deemed to have delivered the goods when the goods are ready for collection at the Seller's premises unless otherwise agreed in writing by the Seller.
- 4.2 The time for delivery shall not be of the essence of the contract. The Seller shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.
- 4.3 The Seller may employ one or more sub-contractors to fulfil some or all of its obligations under the contract.
- 4.4 Goods sold F.O.B. shall cease to be the responsibility of the Seller the moment the goods are placed on board ship and the Seller shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.
- 4.5 The Seller shall be entitled to deliver the goods by instalments and to invoice the Buyer for each such instalment. Each instalment will be considered a separate transaction and the failure of any one delivery shall not affect the due performance of the contract as a whole.
- 4.6 Where the Buyer has indicated that the goods are to be of a certain specification, the Seller reserves the right to make reasonable commercial variations thereto provided the nature of the goods supplied is not materially different from the Buyer's specification.
- 4.7 The Seller may, at its absolute discretion, make a reasonable storage charge for custody for all goods standing to the credit of the Buyer, or to the Buyer's order such charge to include an amount for insurance of the goods whilst on the Seller's premises.
- 4.8 If a delivery by the Seller, or the acceptance by the Buyer of a delivery, is delayed or prevented because the manufacture of the goods, their delivery to the Buyer's works by usual route, or the consumption or use of the goods by the Buyer in the ordinary course of its business has been or is being prevented or hindered by circumstances beyond the reasonable control of either party, including any form of Government intervention, strikes and lockouts relevant to the contract, civil disturbance, wars, acts of Queen's enemies, Act of God, fire, storm, flood, tempest, seizure, arrest or requisition of goods or raw materials, non-availability of power, breakdown of plant or any other matter outside the control of that party, such delivery shall be suspended, and if it cannot be made within a reasonable time after the due date, the contract may be cancelled by either party by letter, fax, or telex to the other. The Buyer shall pay the Seller such sum as may be equitable in respect of any work performed prior to any such cancellation. Where more than one delivery is to be made under the contract, deliveries not so cancelled will be resumed as soon as the circumstances causing the delay cease, but, except where both parties otherwise agree, the period during which deliveries are to be made will not be extended.

5. Loss or Damage in Transit

- 5.1 If the Seller delivers the goods to the Buyer the Seller shall not be responsible for damage to any of the goods or loss of the goods or part thereof in transit unless the Buyer gives notice of a claim to the Seller and to the carrier:
 - 5.1.1 in the case of damage, within 3 days after having received the goods and the Buyer must also obtain an acknowledgement number from the Seller at the time it gives such notice; and
 - 5.1.2 in the case of loss, within 14 days of the date of the invoice.
- 5.2 The Buyer will be asked to sign a copy of the Seller's delivery note as acknowledgement of receipt of goods. The Buyer should inspect the goods carefully as an unqualified signature shall be deemed to signify the Buyer's acceptance that the goods are in good condition.
- 5.3 The Seller's liability in the case of loss or damage in transit shall be limited to repairing or replacing the damaged or, as the case may be, the lost goods and the Seller shall not be under any other liability thereunder whatsoever, including indirect or consequential loss and loss of profit.

6. Seller's Liability

- 6.1 The conditions and warranties implied by the Sale of Goods Act 1979 shall apply. Subject to the provisions of sub-paragraphs 6.2 to 6.4 (inclusive) and to the extent permitted by law, all other conditions, warranties or obligations whether express or implied by statute, common law or otherwise are excluded, and the remaining provisions of this condition shall apply in lieu thereof. The Seller shall not be liable for any indirect or consequential loss or loss of profit whatever and however arising.
- 6.2 If any of the goods shall be found to be defective and such defects are reported by the Buyer in writing to the Seller within twelve months of the date of invoice the Seller may, at its option, either rectify or replace the defective part of the goods at the Seller's premises or such other place as the Seller shall stipulate and in the condition originally specified or credit the Buyer with a corresponding proportion of the original invoice price but shall not be under any other liability in respect of either the original or any replacement goods. Defective goods must be re-delivered to the Seller at the Buyer's cost.
- 6.3 In respect of goods supplied but not manufactured by the Seller, the Seller gives to the Buyer only such guarantees and warranties (if any) as the Seller enjoys and can enforce in respect of the goods.
- 6.4 The Seller's products have been designed for normal domestic use. They are not intended for heavy domestic applications or for commercial applications.

The Seller shall be under no liability in respect of alleged defective goods unless:

- 6.4.1 the Buyer gives to the Seller written notice and details of the defect within the periods mentioned in sub-paragraph 6.2;
 - 6.4.2 the Buyer gives the Seller's representative adequate opportunity to inspect the goods and remove samples for analysis;
 - 6.4.3 The goods have not been processed and the Buyer has used, kept, maintained or dealt with the goods properly;
 - 6.4.4 the goods have been used for domestic purposes only.
- 6.5 All descriptions, depictions and other particulars supplied by the Seller in catalogues, price lists or other documents issued by the Seller or statements made by word of mouth are given for general information purposes only and the Buyer acknowledges that it is not entering into the contract in reliance thereupon.

7. Designs etc.

- 7.1 Where the goods are produced by the Seller in accordance with the Buyer's instructions, specifications or drawings, the Buyer shall indemnify the Seller against all costs, claims, damages and expenses to which the Seller may become liable as a result of the infringement or the alleged infringement of any patent, registered design or any other intellectual property right. The Buyer shall not divulge to any third party any of the Seller's designs, drawings, specifications or other information which may be or come into the Buyer's possession in relation to the contract.

8. Passing of Property and Risk

- 8.1 The property in any goods delivered by the Seller to the Buyer shall remain in the Seller until such time as the Buyer had paid in full for those goods and for any other goods delivered by the Seller to the Buyer.
- 8.2 Notwithstanding this reservation of ownership, and subject to sub-clause 8.3 the Buyer has the Seller's consent to re-sell any goods which remain the property of the Seller in which event the Buyer shall remit the proceeds of such sale to the Seller up to the amount of any sums then owing under sub-clause 8.1 and until so doing shall hold such proceeds of sale on behalf of the Seller in such a way that they are kept separate and are readily identifiable.
- 8.3 If the Buyer:
 - 8.3.1 has any distress or execution levied against the goods or any of the Buyer's assets; or
 - 8.3.2 has a bankruptcy order made against the Buyer; or
 - 8.3.3 goes into liquidation whether voluntary or compulsory (except solely for the purposes of a reorganisation); or
 - 8.3.4 makes an arrangement with the Buyer's creditors; or
 - 8.3.5 has an administrator or administrative receiver appointed over any of the Buyer's assets; or
 - 8.3.6 receives a written demand from the Seller to pay overdue sums owed to the Seller; then the Buyer's consent from the Seller to do the acts referred to in sub-clause 8.2 shall determine and be deemed to have determined forthwith and the Buyer shall not thereafter sell or use goods belonging to the Seller, save with the consent in writing of the Seller, until the Seller has been paid in full in accordance with sub-clause 8.1.

- 8.4 The Seller may at any time recover and dispose of any goods in which the Seller has retained the property under sub-clause 8.1 and for this purpose has the Buyer's consent to enter any property in which the goods may be lying.
- 8.5 The Buyer agrees to store or move all goods that are the property of the Seller in such a way that they are readily identifiable as such to insure the same for their full value and to make a note in its accounting records that the goods are the property of the Seller.
- 8.6 Notwithstanding the provisions in sub-clause 8.1 the goods shall be at the risk of the Buyer from the time when they are tendered for delivery at an agreed destination or are available for collection by the Buyer or cease to be in the possession of the Seller and in particular when they are delivered into the possession or custody of a carrier, forwarding agent, warehouseman or other bailee or agent for the purpose of transmission whether or not such person contracts with or is instructed by the Seller or the Buyer.
- 8.7 Where the property in the goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing to the Seller in relation to the goods notwithstanding section 49 of the Sale of Goods Act 1979.

9. Termination

- 9.1 If the Buyer fails to take delivery of the goods or commits any breach of these terms and conditions or any of the events mentioned in clauses 8.3.1 to 8.3.6 (inclusive) shall have occurred, or if, in the opinion of the Seller, the financial standing of the Buyer becomes unsatisfactory the Seller may, without prejudice to its other rights and remedies, terminate this contract and any other contract between the Buyer and the Seller by notice in writing to the Buyer. The Seller shall also be entitled in addition to or as an alternative to termination, to require immediate payment for all goods delivered under this and any other contract subsisting between the parties or (at the Seller's option) security for payment satisfactory to the Seller. In the event of termination under the provisions of this clause the Seller shall be relieved of all liability under this contract and any other contract so determined but such termination shall be without prejudice to any claim or right the Seller might otherwise have against the Buyer.
- 9.2 Cancellation of an order by the Buyer, in whole or part, may not be effected except with the Seller's written consent, and in such event the Buyer will reimburse the Seller for any expenditure or costs incurred by the Seller in relation to the Order or such part of it so cancelled.
10. Consumer Protection Act 1987 - Information and Liability
- 10.1 All warnings, data sheets, diagrams and other information as to the use, storage, construction, assembly or disposal of the goods which are made available to the Buyer before, at the time of or after the time of supply of the goods to the Buyer ("the data") shall be complied with by the Buyer or (as the case may be) supplied by the Buyer to any person to whom the Buyer supplies the goods or any product in which the goods are incorporated, and the Buyer shall impose a similar requirement on such person. The Buyer shall indemnify the Seller in full against all liabilities, costs, claims, demands and expenses resulting from any failure by any person other than the Seller to comply with the data or to make the data available to any other person.
- 10.2 Where an indication as to time limits for the use of the goods has been supplied to the Buyer, the Buyer shall procure that all persons into whose hands the goods may come are aware of such time limits and shall not supply the goods after such time limits have been exceeded.
- 10.3 The Buyer will notify the Seller of any intended application of the goods other than that contemplated in the information referred to in sub-paragraph 10.1 above so as to enable the Seller to verify that the goods will be safe for use in such application.

11. General

- 11.1 Any notice to be given under these terms and conditions may be delivered, or be sent by prepaid post sent first class, addressed to the party to be served at its registered office for the time being or (if not a company) the address for that party last known to the party giving the notice. Notices served by post shall (except where expressly provided otherwise) be deemed served on the second business day after the date of posting; "business day" shall mean a day other than a Saturday and Sunday or an English Bank or Statutory Public holiday.
- 11.2 No failure or delay by the Seller in exercising any of its rights under the contract shall operate as a waiver thereof.
- 11.3 The Buyer may not assign any of its right or obligations under the contract.
- 11.4 In the event that any of these terms and conditions shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any of the other conditions hereof all of which shall remain in full force and effect.
- 11.5 Clause headings are for ease of reference only and do not affect construction.
- 11.6 The Seller reserves the right to sub-contract the performance of the contract or any part thereof.

12. Proper Law

- 12.1 The contract shall be deemed to have been made in England and shall be governed by and construed in accordance with English Law and both parties submit to the jurisdiction of the English Courts.

13. Arbitration

The construction, validity and performance hereof shall be governed by the Law of England and all disputes which may arise under, out of or in connection with or in relation to the contract shall be submitted to the arbitration of the London Chamber of Commerce under and in accordance with its Rules of arbitration at the date hereof.

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