

**BUOYANT UPHOLSTERY LIMITED – TERM & CONDITIONS OF SALE**  
**THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 8.**

**1. Basis of Contract**

- 1.1. These Conditions apply to the Contract to the exclusion of all previous agreements and understandings between the parties and any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing and these Conditions shall, unless otherwise agreed in writing by Buoyant, apply to all future supplies of the Goods.
- 1.2. The Order constitutes an offer by the Buyer to purchase the Goods from Buoyant in accordance with these Conditions. Any quotation given by Buoyant shall not constitute an offer, and may be withdrawn at any time up to the Contract coming into existence, and in any event shall automatically expire after 30 days.
- 1.3. The Order shall only be deemed to be accepted on the earlier of:
  - 1.3.1. Buoyant issuing acknowledgement of the Order; and
  - 1.3.2. Buoyant despatching the Goods or making the Goods available for collection (as applicable), at which point the Contract shall come into existence.
- 1.4. It is the Buyer's responsibility to check that Buoyant's acknowledgement of the Order is complete and accurate. In the event that Buoyant's acknowledgement is different to the Order placed by the Buyer, Buoyant's acknowledgement shall constitute a counter-offer which is deemed accepted by the Buyer if the Buyer does not notify Buoyant to the contrary within 24 hours of receipt of the counter-offer or prior to despatch of the Goods or the Goods being made available for collection (as applicable), whichever is earlier. In the event that such a counter-offer is deemed accepted the counter-offer shall thereafter be considered the "Order" for the purposes of the Contract.
- 1.5. In the event of any inconsistency between the Order and these Conditions the Order will take priority.

**2. Delivery**

- 2.1. The Goods shall be despatched to the Delivery Location (or such other location as may be agreed in writing by Buoyant in advance) or otherwise will be made available for collection from Buoyant's premises. For the purposes of these Conditions, **delivery** of the Goods means and shall be completed upon the arrival of the Goods at the Delivery Location or the Goods being made available for collection from Buoyant's premises (as applicable). The Buyer is responsible for obtaining, at its own cost, any required export and import licences and other consents in relation to the delivery of the Goods.
- 2.2. Unless otherwise agreed in writing by Buoyant, any dates quoted for delivery are approximate only and the time of delivery is not of the essence
- 2.3. Buoyant shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide Buoyant with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.4. If Buoyant fails to deliver the Good, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Buoyant 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 Buyer's failure to provide to Buoyant with adequate delivery instructions or any other instructions that are relevant to the supply of Goods.
- 2.5. Buoyant may deliver the Goods by instalments which shall each be deemed for such purpose to be the subject of a separate contract and be invoiced and paid for separately. Any non-compliance whatsoever by Buoyant in respect of any one instalment shall not entitle the Buyer to any remedy in respect of or to cancel any other instalment.
- 2.6. The Goods shall be accompanied by a delivery note stating the date of the Order and the Order number.
- 2.7. Buoyant may, at its discretion, treat the Goods as delivered and store the Goods at the Buyer's expense until actual delivery, or resell the Goods to a third party without liability to the Buyer, where:
  - 2.7.1. delivery is to take place by collection from Buoyant's premises and the Buyer fails to take delivery of the Goods within 2 days of the date that Buoyant notified the Buyer that the Goods would be ready for collection;
  - 2.7.2. delivery is to anywhere else and the Buyer fails to accept delivery of the Goods following Buoyant notifying the Buyer that the Goods are to be delivered;
  - 2.7.3. Buoyant is unable to deliver the Goods as a result of an act or omission of the Buyer; or
  - 2.7.4. Buoyant is withholding delivery of the Goods in accordance with clause 4.5;
- 2.8. The Buyer shall give written notice to Buoyant of any claim relating to shortage of the Goods which would be apparent upon a reasonable visual inspection within 5 days of receipt of the Goods. In the event of loss or non-delivery of the Goods the Buyer shall notify Buoyant in writing on the date quoted for delivery.
- 2.9. Buoyant's liability in respect of any shortage, loss or non-delivery of the Goods shall be limited to replacement of the Goods not delivered or refund of the proportion of the price attributable to the Goods not delivered.

**3. Risk & Property**

- 3.1. Risk of damage to the Goods shall pass to the Buyer upon completion of delivery.
- 3.2. Title in the Goods shall not pass to the Buyer until Buoyant has received payment in full (in cash or clear funds) for the Goods and any other goods which Buoyant has supplied to the Buyer under any other agreement, provided that the Buyer may resell or use the

Goods in the ordinary course of its business.

- 3.3. Until title in the Goods has passed to the Buyer, the Buyer shall:
  - 3.3.1. hold the Goods on a fiduciary basis as Buoyant's bailee;
  - 3.3.2. store the Goods separately from other goods, ensure that they are clearly identifiable and not deface or obscure any identifying marks on the Goods;
  - 3.3.3. maintain the Goods in satisfactory conditions and keep them insured against all risks for their full price from the date of delivery;
  - 3.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2.2 to 9.2.5 (inclusive); and
  - 3.3.5. give Buoyant such information as Buoyant may reasonably require from time to time relating to:
    - 3.3.5.1. the Goods; and
    - 3.3.5.2. the ongoing financial position of the Buyer.
- 3.4. If, prior to title in the Goods passing to the Buyer, the Buyer is, or in Buoyant's reasonable opinion the Buyer is about to be, subject to any event listed in clause 9.2.3, Buoyant may demand immediate return of the Goods and/or enter any premises of the Buyer or any third party where the Goods are stored to recover possession of the Goods.

#### 4. Price & Payment

- 4.1. The price of the Goods shall be:
  - 4.1.1. the price set out in the Order, or as otherwise agreed in writing between the parties;
  - 4.1.2. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice);
  - 4.1.3. exclusive of duties unless stated in the Order or otherwise agreed in writing by Buoyant; and
  - 4.1.4. exclusive of the costs and charges of packaging, insurance, transport and delivery of the Goods, which shall be invoiced to the Buyer.
- 4.2. Buoyant shall have the right to adjust the price of the Goods at any time to reflect any increase in the cost of materials upon giving notice to the Buyer in writing. In the event that the Buyer does not agree to the price increase the Buyer must give Buoyant written notice of its intention to cancel the Contract within 7 days of receipt of notice of the price increase, otherwise the price increase shall be deemed to have been accepted by the Buyer.
- 4.3. Buoyant may invoice the Buyer at any time following despatch of the Goods or the Goods being made available for collection (as applicable). Each invoice shall include the Order number.
- 4.4. The Buyer shall pay invoiced amounts in cash upon delivery in Pounds Sterling (£), or by such other means, within such other period and in such other currency as is stated in the Order or otherwise agreed in writing by Buoyant.
- 4.5. Buoyant shall be entitled to withhold delivery of the Goods:
  - 4.5.1. where payment is to be upon delivery of the Goods and payment is not made;
  - 4.5.2. the Buyer is in breach of or exceeds any agreed credit terms; or
  - 4.5.3. where any amount is overdue in respect of any other agreement between Buoyant and the Buyer.
- 4.6. Except where a sum is overdue as a result of a bona fide dispute, Buoyant shall have the right to charge interest on any overdue amount at the rate of 4% per annum above the base rate for the time being of the Bank of England, but at 4% per annum for any period when that base rate is below 0% up to the date of actual payment, whether before or after judgment without limiting Buoyant's remedies under clause 9.
- 4.7. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding. Buoyant may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by Buoyant to the Buyer under the Contract or any other agreement between Buoyant and the Buyer.

#### 5. Manufacturer's Warranty

- 5.1. Buoyant warrants to the Buyer that, on delivery, the Goods will:
  - 5.1.1. be free from material defects in design, material and workmanship;
  - 5.1.2. correspond with any Specification in all material respects; and
  - 5.1.3. comply with all applicable law in England and Wales including the Furniture and Furnishings (Fire) (Safety) Regulations 1998, (together the **Manufacturer's Warranty**).
- 5.2. In the event of any breach of the Manufacturer's Warranty notified to Buoyant during the Warranty Period, Buoyant shall, at its discretion, be entitled to either repair or replace the non-compliant Goods, or issue a refund in respect of the non-compliant Goods (such refund shall be subject to the provisions of clause 5.4). In the event that Buoyant repairs or replaces the defective Goods, it will deliver the repaired or replacement Goods to the Delivery Location or make them available for collection from Buoyant's premises (as applicable). Repair, replacement or refund under this clause 5.2 shall be the Buyer's sole remedy and Buoyant's sole liability in respect of breach of the Manufacturer's Warranty.
- 5.3. Notwithstanding clause 5.1 and 5.2, Buoyant's liability for breach of the Manufacturer's Warranty is conditional upon:
  - 5.3.1. the Buyer giving written notice to Buoyant of the alleged non-compliance, such notice to be received by Buoyant: (i) in respect of non-compliance which would be apparent upon a reasonable visual inspection, within 5 days of receipt of the Goods; and (ii) in respect of any other non-compliance, within 10 days of the time when the Buyer discovers, or ought reasonably to have discovered, the non-compliance;
  - 5.3.2. the Buyer giving Buoyant a reasonable opportunity to inspect the Goods, and if requested, returning the Goods carriage pre-paid to Buoyant at the Buyer's cost to allow inspection to take place;
  - 5.3.3. the Goods having not been subjected to secondary treatment to fabrics or other alteration or additions; and
  - 5.3.4. the Buyer having paid the price for the Goods and being in compliance with its obligations under the Contract.
- 5.4. Where Buoyant elects to provide a refund for Goods which do not comply with the Manufacturer's Warranty in accordance with

clause 5.2, any such refund granted in the 6 month period from delivery will be in full. Following such 6 month period, a reduced refund (only) shall be due for the remainder of the Warranty Period (such refund shall be calculated by Buoyant deducting such sum from the refund as Buoyant deems reasonably necessary to account for the Buyer's use of the Goods in the period between their delivery and their rejection).

## **6. Buyer's Responsibilities**

- 6.1. The Buyer shall:
  - 6.1.1. co-operate with Buoyant in all matters relating to the supply of the Goods;
  - 6.1.2. provide Buoyant with such information as Buoyant may reasonably require to supply the Goods and ensure that such information is accurate in all material respects.
- 6.2. If Buoyant's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer (a **Default**):
  - 6.2.1. Buoyant shall, without limiting its other rights or remedies, have the right to suspend performance of its obligations until the Buyer remedies the Default;
  - 6.2.2. Buoyant shall not be liable for any costs or losses incurred by the Buyer arising directly or indirectly from Buoyant's failure or delay to perform any of its obligations; and
  - 6.2.3. the Buyer shall reimburse Buoyant for any costs or losses incurred arising directly or indirectly from the Default.

## **7. Alterations**

- 7.1. Buoyant may, without notice, alter or improve designs, materials, parts and methods of manufacture of the Goods from time to time provided this shall not materially impact upon the nature of the Goods. Buoyant may substitute parts deemed suitable for the intended purpose as understood by Buoyant for any parts which are unavailable, economical or commercially unviable for the timely compliance with the Contract, whether or not such specific part was requested by the Buyer. Such substitute part shall be accepted by the Buyer.
- 7.2. If Buoyant deems that there is no suitable substitute for any unavailable material or part for the manufacture of the Goods, or there is no suitable substitute design or type, or such substitute design or type is unavailable, this shall be deemed a Force Majeure Event for the purposes of clause 11.

## **8. Limit of Liability - READ THIS CLAUSE CAREFULLY**

- 8.1. Nothing in the Contract shall limit or exclude Buoyant's liability which cannot legally be limited, including liability for:
  - 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
  - 8.1.2. fraud or fraudulent misrepresentation;
  - 8.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 8.1.4. defective products under the Consumer Protection Act 1987; or
  - 8.1.5. any other event or occurrence it would be unlawful for Buoyant to exclude or restrict liability.
- 8.2. Subject to clause 8.1, Buoyant shall have no liability whatsoever in respect of defects in the Goods arising from secondary treatment to fabrics or other alterations or additions to the Goods following delivery. Recommendations for fabric maintenance are given in good faith but Buoyant shall not be liable for any damage resulting from their observance.
- 8.3. Subject to clause 8.1:
  - 8.3.1. Buoyant shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, sales, revenue, business, agreements, contracts, anticipated savings, opportunity, use or corruption of data or information, goodwill, business interruption or any indirect or consequential loss arising under or in connection with the Contract; and
  - 8.3.2. Buoyant's total liability to the Buyer 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 in no circumstances exceed the price paid for the Goods.
- 8.4. 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.
- 8.5. **If the Buyer deals with Buoyant as a consumer** the exclusions and limitations on liability in clause 8.3, 8.4 and 14.1 shall not apply to the Contract but Buoyant shall only be responsible for any losses which are foreseeable. Where the Buyer deals with Buoyant as a consumer the Buyer shall not use the Goods for any commercial, business or re-sale purpose, and accordingly Buoyant shall have no liability to the Buyer for any any loss of profit, revenue, contracts, opportunity, goodwill or business interruption.
- 8.6. This clause 8 shall survive termination of the Contract.

## **9. Cancellation & Termination**

- 9.1. The Buyer may not cancel an Order without Buoyant's prior written agreement. Where cancellation is accepted by Buoyant, Buoyant shall, in addition to any express terms of acceptance of the cancellation, be entitled to reimbursement for any costs incurred by Buoyant in connection with the Contract.
- 9.2. Buoyant shall be entitled to terminate the Contract without liability to the Buyer by giving notice to the Buyer at any time if:
  - 9.2.1. the Buyer commits a material or persistent breach of the Contract and (if remediable) fails to remedy that breach with 14 days of written notice of the breach;
  - 9.2.2. any payment from the Buyer under the Contract is more than 14 days overdue;
  - 9.2.3. the Buyer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary

arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up (or any application is made or notice filed in relation to any of the foregoing events), is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or otherwise;

9.2.4. the Buyer ceases, or threatens to cease, to carry on business;

9.2.5. the Buyer'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; or

9.2.6. Buoyant reasonably believes that any of the events mentioned in clause 9.2.3 or 9.2.4 are about to occur.

## 10. Post-Termination

10.1. In the event of expiration or termination of the Contract:

10.1.1. where the termination occurs under clause 9.2, the Buyer shall immediately pay to Buoyant all of Buoyant's outstanding unpaid invoices and interest and, in respect of all Goods supplied but for which no invoice has yet been submitted, Buoyant shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

10.1.2. for any reason the Buyer shall, on request, return all of Buoyant's property in its possession or control;

10.1.3. for any reason the accrued rights and remedies of the parties as at termination or expiration shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiration; and

10.1.4. for any reason the terms of these Conditions which expressly or by implication have effect after termination or expiration shall continue in full force and effect.

## 11. Force Majeure

11.1. For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of Buoyant including strikes, lock-outs or other industrial disputes (whether involving the workforce of Buoyant or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

11.2. Buoyant shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

11.3. If the Force Majeure Event prevents the Buyer from supplying the Goods for more than 4 weeks, Buoyant shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Buyer.

## 12. Intellectual Property

12.1. All Intellectual Property Rights in or arising out of or in connection with the Goods or their manufacture or supply (other than any Specification provided by the Buyer) shall be owned by Buoyant or its licensors.

12.2. Buoyant shall indemnify the Buyer against all liability incurred by the Buyer as a result of or in connection with any claim that the Goods infringe the Intellectual Property Rights of any third party, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer. This indemnity is conditional upon the Buyer giving Buoyant notice of any such claim at the earliest opportunity, Buoyant being given prompt control of the claim and the Buyer providing Buoyant with all assistance reasonably requested at Buoyant's expense.

## 13. Confidentiality

13.1. The Buyer shall refer to neither Buoyant's name nor the Contract for advertisement or publicity purposes without Buoyant's prior written consent.

13.2. Each party undertakes that it shall not disclose to any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party except as permitted by clause 13.3.

13.3. Each party may disclose the other party's confidential information:

13.3.1. to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with clause 13.2.

13.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.4. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 14. General

14.1. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Buoyant which is not set out in the Contract. All drawing, photographs, dimensions, weights, performance data and promotional materials whether in on Buoyant's website, in brochures or elsewhere, are for illustrative purposes only and do not constitute a description of the Goods or any representation and are not warranted to be accurate.

14.2. Buoyant may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without Buoyant's prior written consent.

14.3. Any notice required to be given to a party in connection with the Contract shall be in writing and shall be delivered to the other party personally or by prepaid first-class post, at its registered office or principal place of business, or sent by fax to the other party's main fax number.

- 14.4. Any notice or communication shall be deemed to have been received if delivered personally, when left at the address referred to above; if sent by prepaid first-class post, at 9.00 am on the second business day after posting; or if sent by fax, on the next business day after transmission.
- 14.5. If a court or other regulatory body with competent jurisdiction finds that any part of the Contract is invalid, illegal or unenforceable, the remainder of the Contract shall not be affected and it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 14.6. A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.7. 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. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 14.8. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Buyer.

## 15. Governing Law & Jurisdiction

- 15.1. 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 the law of England and Wales and the parties irrevocably agrees to the exclusive jurisdiction of the courts of England and Wales.
- 15.2. Nothing in clause 15.1 shall limit the right of Buoyant to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude Buoyant from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## 16. Definitions & Interpretation

- 16.1. In these Conditions words with capital letters have the meaning indicated below, and **Conditions** means the standard conditions of purchase set out in this document.

<b>Buoyant</b>	means Buoyant Upholstery Limited, a company registered in England and Wales with company number 03690496;
<b>Buyer</b>	means the person or firm to whom Buoyant is supplying the Goods as identified in the Order;
<b>Contract</b>	means the contract of sale and purchase of the Goods incorporating these Conditions, the Order and, if applicable, any Specification;
<b>Delivery Location</b>	means the location for delivery stated in the Order (if any);
<b>Goods</b>	means the Goods described in the Order;
<b>Intellectual Property Rights</b>	means patent, copyright, design right, trade marks, design rights, database rights, rights in confidential information (including know-how and trade secrets), rights in goodwill or to sue in passing off and any other intellectual property or equivalent rights in any part of the world whether registered or unregistered;
<b>Order</b>	means the Buyer's order for the supply of Goods, as set out in the Buyer's purchase order form, or the Buyer's electronic data interchange order, or in the Buyer's acceptance of Buoyant's quotation, or overleaf, as the case may be;
<b>Specification</b>	means any specifications, descriptions, plans, drawings, data or other technical information relating to the Goods provided with the Order or otherwise agreed in writing by Buoyant; and
<b>Warranty Period</b>	means two years following delivery of the Goods.

- 16.2. In these Conditions: (a) the headings are included for convenience only; (b) the expressions **including, include, in particular** and any similar expressions shall not limit the preceding words; (c) words in the singular shall include the plural and vice versa, references to any gender shall include all genders and references to legal persons shall include natural persons and vice versa; (d) references to any statute or statutory provision will, unless the context otherwise requires, be construed as including references to any amended and/or replacement statute or statutory provision; (e) references to **writing** and **written** shall include e-mail and fax; and (f) **business day** means any day other than a Saturday or Sunday and bank holidays in England and Wales.

1<sup>st</sup> January 24