

BUOYANT UPHOLSTERY LIMITED – TERM & CONDITIONS OF PURCHASE

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 Supplier seeks to impose or incorporate, or which are implied by 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 and/or Services.
- 1.2. The Order constitutes an offer by Buoyant to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. All Orders shall automatically expire if not accepted by the Supplier within 5 business days.
- 1.3. The Order shall be deemed to be accepted on the earlier of:
 - 1.3.1. the Supplier issuing written acceptance of the Order; and
 - 1.3.2. any act by the Supplier consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 1.4. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified. In the event of any inconsistency between the Order and these Conditions the Order will take priority.

2. Delivery & Performance

- 2.1. The Goods shall be delivered to, and/or the Services shall be performed at, the Delivery Location on the Delivery Date during Buoyant's usual business hours. For the purposes of these Conditions, **delivery** of the Goods means and shall, unless otherwise agreed in writing by Buoyant, be completed on the unloading of the Goods by the Supplier at the Delivery Location in accordance with the Contract. For the purposes of these Conditions, **performance** of the Services means and shall be completed when Buoyant has confirmed that the Services have been performed at the Delivery Location (where relevant) in accordance with the Contract to Buoyant's reasonable satisfaction. The Supplier is responsible for obtaining, at its own cost, any required export and import licences and other consents in relation to delivery of the Goods.
- 2.2. The Supplier shall notify Buoyant immediately in writing if delivery of the Goods and/or performance of the Services is, or is likely to be, delayed. Acceptance of delivery of any delayed Goods or performance of any delayed Services shall in no way constitute a waiver of any rights by Buoyant.
- 2.3. If Buoyant agrees in writing that the Goods are to be delivered, and/or the Services are to be performed, by instalments, the Contract will still be treated as a single contract and shall not be severable. Any delivery by instalment shall be against pre-agreed schedules.
- 2.4. Buoyant shall not be deemed to have accepted any Goods until Buoyant has had reasonable time to inspect and/or test them following delivery.
- 2.5. Whilst delivering the Goods and/or performing the Services at the Delivery Location, the Supplier shall, and the Supplier shall ensure that its representatives shall, comply in all respects with all applicable laws, and in particular, such matters as concern the health, safety and welfare of persons working at the Delivery Location, including (where relevant) all of Buoyant's health and safety, security, environmental and other policies and regulations which are in force or apply at the Delivery Location from time to time.

3. Goods

- 3.1. Buoyant and its representatives shall be entitled to inspect and test the Goods at any time prior to delivery. If following such inspection or testing Buoyant believes that the Goods do not conform or are unlikely to comply with the Contract, Buoyant shall inform the Supplier and the Supplier shall immediately take such action necessary to ensure compliance.
- 3.2. The Goods shall be:
 - 3.2.1. properly and securely packed to ensure they reach Buoyant in good condition;
 - 3.2.2. within the scope of any tolerances allowable (whether in relation to quantity, quality or otherwise) as stated in the Order or Specification. Buoyant may at its sole discretion reject excess Goods and return these at the Supplier's risk and expense; and
 - 3.2.3. accompanied by a delivery note or advice note stating the date of the Order, the Order number and any special storage instructions.

4. Services

Buoyant shall, where relevant, give the Supplier reasonable access to the Delivery Location for the purpose of carrying out the Services. The Supplier uses any such facilities at the Delivery Location at its own risk and is responsible for performing risk assessments prior to performance of the Services and shall indemnify Buoyant (and keep it indemnified) in full against any liability or loss which Buoyant may incur and damage caused to such facilities by reason of such use.

5. Risk & Property

- 5.1. Risk of damage to or loss of the Goods shall pass to Buoyant upon completion of delivery. Title in the Goods shall pass to Buoyant upon completion of delivery or, in the event that Buoyant has made any advance payment of the price in full in respect of Goods prior to delivery, upon receipt of such payment by the Supplier.

6. Price & Payment

- 6.1. The price of the Goods and/or the Services shall be:
 - 6.1.1. the price set out in the Order, or otherwise agreed in writing between the parties or, if no price is agreed in writing, on the same pricing terms as agreed in respect of the most recent contract between the parties for goods and/or services of similar quality as the Goods and Services.;
 - 6.1.2. exclusive of any applicable value added tax (which shall be payable by Buoyant subject to receipt of a VAT invoice); and
 - 6.1.3. inclusive of all expenses and the costs of packaging, duties, insurance, freight, handling and carriage of the Goods, unless

stated in the Order or otherwise agreed in writing by Buoyant.

- 6.2. Buoyant shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown in its own terms and condition of sale. If the Supplier quotes for or gives more favourable pricing terms to any third party for goods and/or services of similar quantity and quality to the Goods and/or Services, Buoyant shall be entitled, at its discretion, to purchase on such pricing terms and to receiving a retrospective refund of such price difference to the date on which the Supplier quoted or supplied on such pricing terms, whichever is earlier.
- 6.3. The Supplier shall invoice Buoyant within 2 days of (but not before) completion of delivery of the Goods and/or performance of the Services (as applicable), whichever is later. Each Order shall be invoiced separately and each invoice shall include such supporting information required by Buoyant to verify the accuracy of the invoice, including Order number.
- 6.4. A statement of account shall be rendered monthly by the Supplier otherwise the Supplier acknowledges that payment by Buoyant may be delayed and such delay shall be without liability.
- 6.5. Subject to clause 6.4, Buoyant shall pay invoiced amounts at the end of the second month following receipt of a correctly rendered, undisputed invoice by bank transfer or BACS to an account nominated in writing by the Supplier or cheque 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.
- 6.6. Buoyant may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Buoyant to the Supplier under the Contract or any other agreement between Buoyant and the Supplier.

7. Warranties

- 7.1. The Supplier warrants and represents to Buoyant that the Goods and/or Services will:
 - 7.1.1. be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier, expressly or by implication, before the Contract was entered into;
 - 7.1.2. be performed with all due care, skill and in accordance with good industry practice by appropriately qualified and trained personnel;
 - 7.1.3. be free from all defects in design, material and workmanship;
 - 7.1.4. correspond with their description, any Specification, any sample and any previously approved goods;
 - 7.1.5. not (and their importation, use or resale by the Supplier, Buoyant or its customers will not) infringe the Intellectual Property Rights of any third party, except to the extent such infringement arises from compliance with any Specification supplied by Buoyant; and
 - 7.1.6. comply with all applicable law including all statutory requirements and regulations relation to the manufacture, labelling, packaging, storage, handling, delivery and sale of the Goods and the performance of the Services (and the Supplier warrants that it has all relevant licences, consents and permits for the same).
- 7.2. The Supplier shall indemnify Buoyant (and keep Buoyant indemnified) in full against all liability, loss, damages, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by Buoyant as a result of or in connection with:
 - 7.2.1. any claim that the Goods infringe (or their importation, use or resale by the Supplier, Buoyant or its customers infringes) the Intellectual Property Rights of any third party, except to the extent that the claim arises from compliance with any Specification supplied by Buoyant and any costs incurred by Buoyant in relation to the licensing intellectual property to prevent or rectify any infringement;
 - 7.2.2. any failure to deliver or delay to the delivery of the Goods and/or any failure to perform or delay to the performance of the Services;
 - 7.2.3. any liability under the Consumer Protection Act 1987 in respect of the Goods; and
 - 7.2.4. death, personal injury or damage to property (whether suffered by Buoyant or a third party) arising out of, or in connection with defects in or non-compliance of the Goods and/or Services, to the extent that the defect in or non-compliance of the Goods and/or Services is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.

8. Remedies

- 8.1. Without prejudice to any other right or remedy available to it, if any Goods and/or Services are not delivered or performed (including any delayed delivery or performance) in accordance with the Contract, or any Goods and/or Services do not comply with clause 7.1 and this is notified to the Supplier during the Warranty Period, then Buoyant shall, notwithstanding prior acceptance, at its discretion, be entitled to:
 - 8.1.1. terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 8.1.2. reject the Goods (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense and refuse to accept any further delivery of the Goods and any subsequent performance of the Services;
 - 8.1.3. require the Supplier, at the Supplier's expense, to promptly remedy any defects or non-compliance with the Contract and repair the Goods and/or supply replacement Goods and/or Services. If the Supplier fails to promptly remedy any such defects or non-compliance and, in Buoyant reasonable opinion this will impact upon Buoyant's business activities, Buoyant may procure that the defects or non-compliance are remedied by other means and the Supplier shall indemnify Buoyant (and keep it indemnified) in full against any costs incurred by Buoyant in so doing; and/or
 - 8.1.4. receive a refund of any advance payment made in respect of the Goods and/or Services.

9. Insurance

For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, public liability insurance and (where relevant) professional indemnity insurance, product liability and product recall insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Buoyant's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. Cancellation & Termination

- 10.1. Buoyant shall be entitled to cancel the Contract in respect of all or any part of the Goods and/or the Services by:
 - 10.1.1. giving notice to the Supplier at any time prior to delivery or performance, in which event Buoyant's sole liability shall be to purchase from the Supplier any items or raw materials reasonably purchased by the Supplier specifically in order to supply the Goods and/or perform the Services at the price paid by the Supplier, if the Supplier cannot use such items in the ordinary course of its business and provided such items are in good condition. In addition, Buoyant may, at its option, purchase any or all other items or raw materials purchased by the Supplier in order to supply the Goods and/or perform the Services at the price paid by the Supplier. All terms of the Contract shall apply to the purchase of such items as if they were the Goods; or
 - 10.1.2. in respect of the performance of Services only, at any time by giving not less than 7 days written notice.
- 10.2. The Supplier shall be entitled to cancel the Contract in respect of the performance of Services only, at any time by giving not less than 3 months written notice.
- 10.3. Buoyant shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:
 - 10.3.1. the Supplier 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 (and for the avoidance of doubt a breach of any statutory requirements or regulations shall be a material breach);
 - 10.3.2. the Supplier 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;
 - 10.3.3. the Supplier ceases, or threatens to cease, to carry on business; or
 - 10.3.4. Buoyant reasonably believes that any of the events mentioned in clause 10.3.2 or 10.3.3 are about to occur.
- 10.4. In any circumstances in which Buoyant may terminate the Contract, where both Goods and Services are being supplied, Buoyant may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of supply of the non-terminating part.

11. Post-Termination

- 11.1. In the event of termination of the Contract by Buoyant pursuant to clause 10.3 then, without prejudice to any other right or remedy available to it, Buoyant shall be entitled to:
 - 11.1.1. keep any of the Goods already delivered to it subject to payment of that proportion of the price attributable to such Goods in accordance with the terms of the Contract (less any sums already paid to the Supplier for any Goods which have not yet been delivered); or
 - 11.1.2. repudiate the Contract, return the Goods, and require the repayment of the whole or any part of the price which has been paid.
- 11.2. In the event of termination of the Contract by Buoyant pursuant to clause 10.3.1 to 10.3.4 (inclusive) the Supplier hereby grants Buoyant a royalty-free, irrevocable, sub-licensable, perpetual licence to exploit any of the Supplier's Intellectual Property Rights in the Goods necessary to enable Buoyant to continue to procure goods and/or services similar to the Goods and/or Services.
- 11.3. In the event of expiration or termination of the Contract for any reason:
 - 11.3.1. the Supplier shall, on request, return all Specifications, information and materials supplied by Buoyant (or at Buoyant's option, destroy them) and all of Buoyant's property in its possession or control;
 - 11.3.2. 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
 - 11.3.3. the terms of these Conditions which expressly or by implication have effect after termination or expiration shall continue in full force and effect.

12. Force Majeure

- 12.1. For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of either party, including failure of a utility service or transport network, act of God, war, riot, civil commotion, fire, flood or storm. For the avoidance a Force Majeure Event shall not include the default of any suppliers or sub-contractors or a strike of the Supplier's personnel.
- 12.2. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 12.3. If the Force Majeure Event prevents the Supplier from delivering the Goods and/or performing the Services for more than 2 weeks, Buoyant shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Supplier.

13. Intellectual Property

- 13.1. Where any Specification, Goods, any developments to Goods or any other materials, items, data, plans, designs, reports or documents are specifically produced or developed by the Supplier for the Company in connection with a Contract (**Works**), all Intellectual Property Rights in such Works shall be the exclusive property of the Company.
- 13.2. The Supplier hereby assigns to the Company absolutely with full title guarantee, all right, title and interest in any and all existing and future Intellectual Property Rights in or arising out of any Works (whether created before, on or after the date of the Order) with the intention that the same shall vest in Buoyant forthwith upon coming into existence. The Supplier hereby waives or shall procure a waiver of all moral rights in such Works.
- 13.3. Nothing in this clause 13 will affect the pre-existing Intellectual Property Rights of either party.
- 13.4. The Supplier shall, promptly at Buoyant's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Buoyant may from time to time require for the purpose of securing for Buoyant the full benefit of the

Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Buoyant in accordance with this clause 13.

14. Confidentiality

- 14.1. The Supplier shall refer to neither Buoyant's name nor the Contract for advertisement or publicity purposes without Buoyant's prior written consent.
- 14.2. Both parties shall keep in strict confidence all technical and commercial know-how, specifications, processes or other information which are of a confidential nature and have been disclosed in relation to the supply of Goods and/or Services using the same standard of care and technical measures as it uses to protect its own confidential information (and in any event at least a reasonable standard of care). The receiving party shall restrict disclosure of such information to such employees who need to know such information for the purpose of discharging the receiving party's obligations under the Contract.

15. Records and Information

- 15.1. The Supplier shall maintain complete and accurate records in connection with the Contract for a period of 6 years.
- 15.2. The Supplier shall supply Buoyant with such information as Buoyant reasonably requests from time to time in relation to the Contract.

16. General

- 16.1. 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 Supplier 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.
- 16.2. Any notice or other communication 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.
- 16.3. Any notice 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.
- 16.4. 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.
- 16.5. 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.
- 16.6. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.7. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.8. 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 Buoyant.

17. Governing Law & Jurisdiction

- 17.1. 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.
- 17.2. Nothing in clause 17.1 shall limit the right of Buoyant to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude Buoyant from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

18. Definitions & Interpretation

- 18.1. 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.

Buoyant	means Buoyant Upholstery Limited, a company registered in England and Wales with company number 03690496;
Contract	means the contract of sale and purchase of the Goods and/or Services incorporating these Conditions, the Order and, if applicable, any Specification;
Delivery Date	means the date or the period for delivery and/or performance stated in the Order;
Delivery Location	means the location for delivery and/or performance stated in the Order;
Goods	means the Goods described in the Order or any deliverables delivered as part of the Services;
Intellectual	means patent, copyright, design right, trade

Property Rights	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;
Order	means Buoyant's order for the supply of Goods and/or Services, as set out in Buoyant's purchase order form, or Buoyant's electronic data interchange order, or in Buoyant's written acceptance of the Supplier's quotation, or overleaf, as the case may be;
Services	means the Services described in the Order including any installation of the Goods;
Specification	means the quality standards notified to the Supplier by Buoyant from time to time and any specifications, descriptions, plans, drawings, data or other technical information relating to the Goods and/or Services provided in the Order or otherwise agreed in writing by Buoyant;
Supplier	means the person or firm from whom Buoyant is purchasing the Goods and/or Services as identified in the Order; and
Warranty Period	in respect of Goods which are to be incorporated into Buoyant's products, means two years from the date when products incorporating the Goods are first delivered to an end customer of Buoyant, and in respect of all other Goods and Services, means two years from the date when the Goods are delivered or the Services are performed.

18.2. 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.

11th June 2014