

CPS Seating Ltd Terms & Conditions

1 Definitions and Interpretation

- 1.1 In these Conditions the following words have the following meanings:
"Company" means CPS Seating Ltd, with registered offices at Unit 11, Kingshill Industrial Estate, Bude, Cornwall, EX23 8QN UK (Registered No: 14568437) .
"Contract" means any contract between the Company and the Customer for the sale of Goods, incorporating these Conditions;
"Customer" means the personal, firm or company who purchases the Goods from the Company;
"Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

2 Basis of Contract

- 2.1 Subject to any variation under Condition 2.2 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Each order (for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to those Conditions. It is the Customer's obligation to ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.3 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and executed by the Company.
- 2.4 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences manufacture of the Goods, their appropriation to the Customer's order or despatch of the Goods to the Customer. Any order shall be accepted entirely at the discretion of the Company.
- 2.5 Any quotation or estimate made by the Company is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, quotations will be valid for 30 days from date of issue.
- 2.6 The Customer can only cancel an order (or any part of an order) which the Company has already accepted, with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in terms established by the Company.

3 Delivery and Acceptance of Goods

- 3.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business in normal business hours and the Customer shall take delivery of the Goods as agreed between the parties.
- 3.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 3.3 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence) and the Company may make the following charges:
- [a] where notice of delay is less than 72 hours from time of delivery:- 5% of the value of the order per week of delay; or
- [b] in all other cases:- 2.5% of the value of the order per week of delay.
- 3.4 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within 10 days of the date of delivery of the Goods where the defect or failure would be apparent upon reasonable inspection and testing of the Goods or within a reasonable time where the defect or failure would not be so apparent within 12 days of the date of delivery, failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 3.5 Goods, once delivered, may not be returned unless their return is agreed in advance in writing by the Company, and subject to the following conditions:
- [a] Goods are returned in a new and unused condition;
- [b] Any packaging remains unbroken and in reasonable condition;
- [c] Returns are made within 2 weeks of delivery of those Goods, all transport and other re-delivery costs of whatever nature are paid by the Customer;
- [d] Returned goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.

4 Passing of Risk and Legal Title

- 4.1 The Goods shall be at the risk of the Customer from the time of delivery.
- 4.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until payment in full, in cash or cleared funds, for all the Goods has been received by the Company and all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.
- 4.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
- [a] the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
- [b] the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods separately from any other goods (whether or not supplied by the Company) and ensure that they are clearly identifiable as belonging to the Company and shall insure them, without any charge to the Company;
- [c] the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 10 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due; and
- [d] the Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 10 and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of the sale into a separate bank account. At the Company's request, the Customer shall assign to the Company all claims that the Customer may have against purchasers of the Goods from the Customer.

5 Price and Payment

- 5.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set by the Company on the date of delivery or deemed delivery of the Goods.
- 5.2 Unless otherwise agreed in writing the price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, labelling, loading, unloading, carriage, freight and insurance all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay for the Goods.
- 5.3 Payment of the price for the Goods is due with order unless otherwise agreed in writing. Time for payment shall be of the essence.
- 5.4 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.
- 5.5 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and the Company shall be entitled to:
- [a] cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods;
- [b] require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business, and
- [c] charge the Customer
- [i] interest calculated on a daily basis on all overdue amounts [both before and after judgment] until actual payment at the rate of four (4) per cent per annum above the base lending rate of Barclays Bank plc prevailing from time to time until payment is made in full;
- [ii] and the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

6 Warranty of Quality of Goods

- 6.1 If the Customer establishes to the Company's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Company in relation to the conformity of the Goods with the Contract, then provided the Customer has returned the Goods to the Company together with written notification of such alleged defect within 7 days of the time when the Customer discovers or ought to have discovered the defect and in any event within three [3] years of the delivery of the Goods to the Customer the Company shall at its option, at its sole discretion and within a reasonable time:
- [a] repair or make good such defect or failure in such Goods free of charge to the Customer [including all costs of transportation of any Goods or materials to and from the Customer for that purpose];
- [b] replace such Goods with Goods which are in all respects in accordance with the Contract; or
- [c] issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods or materials relating to such Goods, provided that the liability of the Company under this Condition 6 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.
- 6.2 The Company shall be under no liability under the warranty at Condition 6.1 above:
- [a] in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions [whether oral or in writing], misuse or alteration or repair of the Goods without the Company's approval;
- [b] if the total price for the Goods has not been paid by the due date for payment;
- [c] for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Company by the Customer;
- [d] in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; or
- [e] if the Customer makes any further use of the Goods after giving notice in accordance with Clause 6.0;
- [f] for any defects in the fabric used for the Goods.
- 6.3 The warranties set out in this Contract are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7 Exclusion and Limitation of Liability

- 7.1 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 this Contract shall be limited to the price of the Goods.
- 7.2 The Company shall not be liable to the Customer for any Loss of profit or other economic loss (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arises out of or in connection with the Contract, or for any liability incurred by the Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Goods or otherwise
- 7.3 Nothing in these Conditions excludes or limits the Liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.

8 Subcontracting, Assignment and Third Party Rights

- 8.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company. The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.
- 8.2 The Contracts [Rights of Third Parties] Act 1999 shall not apply to the Contract and no third party shall have the benefit of or the right to enforce these Conditions

9 Force Majeure

The Company reserves the right to suspend or cancel the Contract in whole or in part [without Liability to the Customer] if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to any circumstances beyond the reasonable control of the Company including, without limitation, acts of God, flood, lightning, war, revolution, act of terrorism, not or civil commotion [but excluding] strikes, lock outs or other industrial action (whether of the affected party's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

10 Breach of Contract or Insolvency

- 10.1 The Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
- [a] the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days; or
- [b] the Customer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement as defined by the Insolvency Act 1986 or any procedure analogous to the above; or
- [c] any sum payable under the Contract is not paid within fourteen days of its due date for payment in accordance with this contract.
- 10.2 Notwithstanding any such termination or suspension in accordance with Condition 10.1 the Customer shall pay the Company for all Goods delivered up to and including the date of suspension or termination.
- 10.3 Termination of the contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination

11 Non-Solicitation

- 11.1 The Customer undertakes with the Company that, during the term of the Contract and for the period of 12 months after its termination, it shall not without the prior written consent of the Company; (a) make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the Customer at any time during the term of the Contract; and/or
- [b] solicit or attempt to solicit services from any employee on their own account or entice or attempt to entice any employee away from the Company.

12 General

- 12.1 Any intellectual property rights created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods shall remain the Company's property. Nothing in the Contract shall be deemed to have given the Customer a Licence or any other right to use any of the intellectual property rights of the Company. 12.2 Both the Company and the Customer shall each keep confidential and shall not, without the prior written agreement of the other, disclose to any third party or otherwise make public the terms of the Contract or any other confidential or sensitive information of the other party.
- 12.3 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 12.4 If any condition is held to be invalid for any reason, such invalidity will not affect the rest of the Contract which will remain valid and enforceable in all respects.
- 12.5 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods.

13 Law and Jurisdiction

- 13.1 This Contract shall be governed by and be construed in all respects in accordance with English law and all disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.