

# Terms & Conditions

## 1. INTERPRETATION

### 1.1 In these conditions

'**BUYER**' means the person who accepts a quotation of the seller for the sale of the goods or whose order for the Goods is accepted by the seller.

'**GOODS**' means the goods (including any instalment of the goods or any parts for them) which the seller is to supply in accordance with these conditions.

'**SELLER**' means DTW Leeds Ltd trading as Counter Creations , Unit 1, Farnely Low Mills, Bangor Terrace , Farnely, Leeds, LS12 5PS

'**CONDITIONS**' means the Standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

'**CONTRACT**' means the contract for the purchase and sale of the Goods.

'**WRITING**' includes cable, facsimile, transmission and comparable means of communication.

**1.2** Any reference in these conditions to any provision of a statute shall be construed as a reference to the provisions as amended, re-enacted or extended at the relevant time.

**1.3** The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. BASIS OF SALE

**2.1** The Seller shall sell and the buyer shall purchase the Goods in accordance with any written quotation of the Seller's authorised representative which is accepted by the buyer, or any written order of the Buyer which is accepted by the Seller's authorised representative subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer. These have to be agreed and signed by the directors of counter creations uk ltd.

**2.2** No variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Buyer and the Seller.

**2.3** The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller's authorised representative in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

**2.4** Any advice or recommendation given by the Seller or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller's authorised representative is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

**2.5** Any typographical, clerical or other error omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

**2.6** Buyers will be subject to credit limits. Any purchases exceeding credit limits will require payment up front

### **3. ORDERS AND SPECIFICATION**

**3.1** No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing to the Buyer by the Seller's authorised representative.

**3.2** The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

**3.3** The quantity, quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

**3.4** If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

**3.5** The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality of performance.

**3.6** No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### **4. PRICE OF THE GOODS**

**4.1** The price of the Goods shall be the Seller's quoted price aforesaid or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

**4.2** The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials, or other costs of manufacture), any change in delivery date, quantities or specifications for the Goods which is requested by the Buyer or failure of the Buyer to give the Seller adequate information or instruction.

**4.3** Except as otherwise stated under the term of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

**4.4** The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

**4.5** The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## **5. TERMS OF PAYMENT**

**5.1** Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be ) the Seller has tendered delivery of the Goods.

**5.2** The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of the payment of the price shall be the essence of the contract. Receipts for payment will be issued only upon request. All Goods remain the property of counter creations uk ltd until payment is made in full.

**5.3** If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to :

**5.3.1** Cancel the contract or suspend any further deliveries to the Buyer

**5.3.2** Appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer)

**5.3.3** Charge the buyer interest (both before and after any judgement) on the amount unpaid, at the rate of three percent per annum above Bank of Scotland base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

## **6. DELIVERY**

**6.1** Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for the delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

**6.2** Any date quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

**6.3** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

**6.4** If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any right or remedy available to the Seller, the Seller may:

**6.4.1** Store the Goods until actual delivery and charge the Buyer for the reasonable cost (including insurance) of storage: or **6.4.2** Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the contract.

## **7. RISK AND PROPERTY**

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer :

**7.1.1.** In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection : or

**7.1.2.** In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

**7.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payments in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

**7.3** Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored protected and insured.

**7.4** Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

**7.5** The Buyer shall not be entitled to pledge or in any way change by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all the moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. WARRANTIES AND LIABILITIES**

**8.1** Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from delivery.

**8.2** The above warranty is given by the Seller subject to the following conditions :

**8.2.1** The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer,

**8.2.2** The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

**8.2.3** The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

**8.2.4** The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to the Seller

**8.3** Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or to the terms implied by statute or common law are excluded to the fullest extent permitted by law.

**8.4** Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.

**8.5** Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refunded and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.

**8.6** Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

**8.7** Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express term of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

**8.8** The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control :

**8.8.1** Act of God, explosion, flood, tempest, fire or accident

**8.8.2** War or threat of war, sabotage, insurrection, civil disturbance or requisition

**8.8.3** Acts, retributions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority

**8.8.4** Import or export regulations or embargoes

**8.8.5** Strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Seller or a third party)

**8.8.6** Difficulties in obtaining raw materials, labour, fuel parts or machinery

**8.8.7** Power failure or breakdown in machinery

## **9. INSOLVENCY OF BUYER**

**9.1** This clause applies if:

**9.1.1.** The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

**9.1.2.** An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;  
or

**9.1.3.** The Buyer ceases, or threatens to cease, to carry on business; or

**9.1.4.** The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

**9.2** If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10. GENERAL**

**10.1** Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provisions to the party giving the notice

**10.1.1** No waiver to the Seller of any breach of the Contract or the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**10.1.2** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

**10.1.3** The contract shall be governed by applicable laws in the UK.