

Terms and conditions of sale of Dauphin HumanDesign® UK Ltd.

1. Definitions

In these conditions (unless context otherwise requires):

- (1) „the Company“ means Dauphin HumanDesign UK Ltd. And also (where the context so permits) it assigns and any sub-contractor for the said company.
- (2) „Goods“ means the goods (or any installment or part of them) described in the Contract;
- (3) „the Buyer“ means the person, firm or company with whom the Contract is made;
- (4) „Company's Premises“ means the premises mentioned in the Company's quotation or other contractual document in respect of the Goods or if not so mentioned means the Company's premises at Peter Street, Blackburn Lancashire, BB1 5LH;
- (5) „the Contract“ means the contract between the Company and the Buyer for the sale and purchase of the Goods and any services in respect thereof, comprising the Company's quotation for the sale of the Goods and any document referred to therein, these Conditions of Sale, the Company's acknowledgement of the Buyer's order for the Goods and the Buyer's order and if there shall be any inconsistency between such documents they shall have precedence in the order herein before listed;
- (6) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa;
- (7) the headings in these Conditions are intended for reference only and shall not affect their construction;

2. General

- (1) These Conditions shall apply to the Contract and all other contracts between the Company and the Buyer for the sale of Goods to the Buyer to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to the Company and the provisions of these Conditions shall prevail unless expressly varied in writing and signed on the Company's behalf.
- (2) Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.
- (3) If in any particular case any of these Conditions shall be or be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

3. Orders

- (1) A quotation of the Company shall not constitute an offer and no order shall be binding on the Company unless and until the Company has given written acknowledgement of its acceptance of such order.
- (2) A quotation which is stated to be for a fixed price and which specifies a period for the placing of an order in respect of it shall be deemed to have been withdrawn in any event unless such order is placed within the period specified.

4. Prices

- (1) Unless otherwise expressly stated in the Company's quotation or acknowledgement of the Buyer's order the price payable for Goods shall be the list price of the Company current at the date of despatch and in case of an order for delivery by installments the price payable for each installment shall be the list price of the Company current at the date of despatch of such installment.
- (2) Unless otherwise stated in the Company's quotation or acknowledgement of the Buyer's order to be fixed for a certain period in the Company prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in overheads, wages, the cost of materials, the cost of labour, exchange rate fluctuations, alteration of duties and other costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order. The Company according reserves the right to adjust the invoice price by the amount of any increase or decrease after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original Contract price.
- (3) All prices quoted by the Company are based on the minimum quantities (if any) specified in the relevant quotation and accordingly the Company reserves the right to increase its prices for items of the Goods in the event that reduced quantities are ordered by the Buyer.
- (4) Unless otherwise agreed in writing by the Company all prices are exclusive of assembly, installation and fitting costs in respect of the Goods and the Company shall not be under any obligation to assemble, install or fit the Goods.
- (5) All prices are exclusive of Value Added Tax and this will be charged by the Company and will be payable by the Buyer at the appropriate rate.

5. Specification

The Company has a policy of continuous improvement of its Goods and reserves the right to make any alteration in the specification or design of the Goods without notice and to deliver Goods conforming to the altered specification or design in fulfilment of any order for Goods PROVIDED THAT:

- (a) the Goods delivered are suitable for general use or such specific purpose of which the Buyer has given written notice to the Company prior or at the time of the Contract; or
- (b) such alterations are required to ensure that the Goods comply with applicable health, safety or other statutory requirements.

6. Additional Costs

The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Buyer's instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees, including (without limitation) the costs or expenses by the Company in respect of the warehousing storage and re-delivery of the Goods.

7. Patents

The Buyer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, registered designs, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

8. Terms of Payment

- (1) Unless otherwise agreed by the Company in writing payment under the Contract shall be due not later than the end of the month next following the month of the date of the invoice save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Conditions 19 hereof.

- (2) If the Goods are delivered in installments the Company shall be entitled to invoice each installment as and when delivery thereof has been made and payment shall be due in respect of each installments whereof delivery has been made notwithstanding non-delivery of other installments or other de-fault on the Company's part.
- (3) If upon the terms of the Contract the price shall be payable by installments or if the Buyer has agreed to take specified quantities of Goods at specified times, a default by the Buyer in the payment of any due installment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- (4) Payment shall be due in full to the Company in accordance with the terms of the Contract and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- (5) The time of payment shall be of the essence of the Contract.
- (6) Without prejudice to any other rights it may have the Company is entitled both before and after any judgement to charge interest at a rate equal to the higher of the interest rate payable on court judgement or 2% above the Base Rate from time to time of National Westminster Bank plc on overdue payments of the price of the Goods (or any installments thereof) and any services may be specified by the Company in respect thereof.

9. Delivery

- (1) All times date or periods given for delivery of the Goods and performance of the Company's obligation are given in good faith but without any responsibility on the Company's behalf.
- (2) Time of delivery and performance by the Company shall not be of the essence of the Contract.
- (3) Any period for delivery shall be calculated from the time of the Company's acceptance of the Buyer's order or from the Company's receipt of all information necessary to enable the Company to manufacture or procure the manufacture of the Goods (whichever shall be the later).
- (4) Unless otherwise agreed by the Company in writing the Goods shall be delivered to the ground floor entrance of such premises as may be agreed for the purposes of delivery. In such event the Buyer hereby agrees to provide (free of charge) such assistance in unloading the Goods as the driver of the vehicle carrying the Goods may reasonably require. In no event shall the Company be liable for any act or omission of the Buyer, its agents or employees in providing such assistance and the Buyer shall indemnify and keep the Company indemnified against all claims, proceedings, demands, losses, liabilities and costs therefrom.
- (5) Where the goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Section 44, 45 and 46 of the Sale of Goods Act 1979.
- (6) The Buyer agrees that Section 32(3) of the Sales of Goods Act 1979 shall not apply to Goods sent by the Company.
- (7) No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the Goods occurring prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) or for non-delivery will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in case of claims for loss, damage or non-delivery with a copy to the carrier if the Company's own vehicles have been used to deliver the Goods):
 - (a) within seven days of delivery for loss, damage, defect or non-compliance with the contract; or
 - (b) within ten days of the date of the invoice for non-delivery.
- (8) In the event of a valid claim for defect, loss, damage or non-compliance with the Contract or non-delivery the Company undertakes at its option either to reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.
- (9) If the Buyer shall fail to give notice in accordance with Conditions 9 (7) above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set out in Condition 15 below) thereafter be wholly barred.
- (10) If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its other rights and for such period as the Company may determine store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be immediately informed thereof.
- (11) The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

10. Returns

Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense.

11. Carriage

- (1) Unless otherwise agreed in writing by the Company the cost of delivery of the Goods to any agreed place of delivery on the mainland of Great Britain shall be included in the Contract price where the value of the Goods ordered exceeds or equals the value specified in the current price list of the Company for the purposes of this Condition 11 (1). Where the Buyer requests delivery in a manner other than that selected by the Company pursuant to this Condition 11 (1), any difference in price shall be charged to the Buyer's account.
- (2) Save as provided in Condition 11 (1) above the price of the Goods is exclusive of the costs of delivery.

12. Passing of Title and Risk

- (1) From the time of delivery to the Buyer (which for the avoidance of doubt shall include, without limitation, delivery to the Buyer's carrier or agent) the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other Contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.

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- (2) Pending the passing of title to the Goods to the Buyer, the Buyer may only re-sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other money's or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.
- (3) Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon premises or land occupied or owned by the Buyer to remove the Goods.
- (4) Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.
- (5) The Company is hereby licensed to enter upon any premises in the ownership, possession or control of the Buyer at any time to recover the Goods pursuant to this Clause 12.

13. Exports

- (1) Where the Purchaser requests delivery of the Goods outside the mainland of Great Britain the provisions of this Clause 13 shall (subject to any special terms agreed in writing between the Company and the Buyer) also apply. In the event of any conflict between any provisions of these Conditions of Sale and this Condition 13 the latter shall prevail.
- (2) Unless otherwise stated in the Company's quotation or acknowledgement of order the Goods will be delivered ex the Company's premises and the price of the Goods is exclusive of carriage, packaging and insurance to the Buyer's Premises.
- (3) If at the Buyer's request the Company agrees to delivery in a manner other than that selected by the Company in Condition 13 (2) above, any difference in price will be charged to the Buyer's account.
- (4) Unless otherwise stated in the Company's quotation or acknowledgement of order payment of all sums due to the Company shall be made in pound sterling by a confirmed irrevocable letter of credit to be drawn by the Buyer on a bank in England in favour of the Company on such terms as the Company may reasonably specify and confirmed by a bank in England acceptable to the Company.
- (5) The Buyer shall obtain all necessary import licenses, permits, consents and other requisite documents in respect of the importation of Goods into the country or countries of destination.
- (6) The Buyer shall be responsible for the payment of any duties on the importation of the Goods into the country or countries of destination.

14. Conditions and Warranties

- (1) The Contract shall not constitute a sale by description or sample.
- (2) Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

15. Defective Goods

- (1) Subject to Conditions 15 (2), in substitution for all rights which the Buyer would or might have but for these Conditions the Company undertakes that if within five years of delivery of the Goods the structure of the Goods is found upon inspection by or on behalf of the Company to have proved defective in workmanship or materials under normal use and service it will (at its option) either repair or replace the defective Goods or parts thereof or credit the price paid by the Buyer to the Company for such defective Goods or parts PROVIDED THAT in any case the original Goods have been accepted and paid for and PROVIDED ALSO THAT the Goods have been properly maintained and have not been subjected to any misuse, unauthorised repair, replacement, modification or alteration.
- (2) In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's Supplier provided that the Goods have been accepted and paid for.
- (3) In order to exercise its rights under Condition 15 (1) the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable (and in any event within the relevant warranty period specified in Condition 15 (1)) and shall at the Company's written request return the defective Goods carriage paid to the Company's Premises.
- (4) Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods due to defects in any material supplied by the Buyer which is incorporated in the Goods or any design required by the Buyer and submitted to the Company or approved by the Buyer or otherwise arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company as to storage, use, maintenance and handling of the Goods.
- (5) Where the Goods are for delivery by installments any defect in any installment shall not be a ground for cancellation of the remainder of the installments and the Buyer shall be bound to accept the delivery thereof.
- (6) Nothing in these Conditions shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

16. Installation

- (1) In the event that the Company undertakes the assembly, installation and/or fitting of the Goods the Company shall not be liable for any defects or failure to exercise reasonable skill and care in the assembly, installation and/or fitting of the Goods unless the Buyer notifies the Company thereof within 30 days of the date of such assembly, installation and/or fitting of the Goods.
- (2) In the event of a valid claim by the Buyer pursuant to Condition 16 (1) above the Company shall (subject to Condition 16 (3) below) re-perform the assembly, installation and/or fitting of the Goods free of charge but this shall constitute the Buyer's sole remedy in respect thereof and the Company shall have no other liability therefor.
- (3) Nothing herein shall impose any liability upon the Company in respect of any interference with the assembly, installation and/or fitting of the Goods by the Buyer or any unauthorised third party.

17. Buyer's Specification

The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill or quantities, specification or other information supplied by the Buyer.

18. Consequential Loss

The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act omission (whether negligence or otherwise) or any breach of contract or statutory duty calculated be reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual or such costs, claims, damages or expenses on a time basis.

19. Default or Insolvency of Buyer

If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement to composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed or if anything analogous to the foregoing under the law of any jurisdiction shall occur in relation to the Buyer the Company in its discretion and without prejudice to any other right or claim and by notice in writing determine wholly or in part any and every Contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods or suspend performance or any further performance of the Contract until any default by the Buyer be remedied.

20. Limitation of Liability

The aggregate liability of the Company (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods and any services supplied by the Company in respect thereof.

21. Representations

No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these Conditions.

22. Force Majeure

The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered or delay or cancel its performance of the Contract if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery or performing the Contract through any circumstances beyond its reasonable control including (but not limited to) strikes, lock outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, delays by sub-contractors, breakdown of plant or, machinery or shortage or unavailability of raw materials from normal sources of supply.

23. Cancellation

- (1) Save as provided in Conditions 19 and 22 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from said cancellation.
- (2) The Company reserves the right (without prejudice to its rights under Condition 23 (1) above) to charge a cancellation fee in the event that the Buyer cancels any orders for the Goods. Such cancellation fee shall be equal to 20% of the Contract price (excluding any discounts) of those Goods in respect of which the cancellation is made and shall be payable forthwith upon cancellation by way of liquidated damages.

24. Assignment

- (1) The Company may assign the Contract (or any of its rights or obligations thereunder) or sub-contract the whole or any part thereof to any person, firm or company without the prior written consent of the Buyer.
- (2) The Buyer shall not assign the Contract or any of its rights or obligations thereunder without the prior written consent of the Company.

25. Applicable Law

All transactions are covered by the Laws of England & Wales.