

EOS INTERIORS LIMITED TERMS OF BUSINESS



1. Interpretation

- 1.1 In these Conditions:
- 1.1.1 "**Customer**" means the person who accepts a quotation of the Company for the supply of the Services or whose order is accepted by the Company;
- 1.1.2 "**Company**" means EOS Interiors Limited (company number 7059665) of 15 The Orb, Albion Street, Birmingham B1 3ED
- 1.1.3 "**Completion**" means the substantial completion of the Services;
- 1.1.4 "**Conditions**" means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company;
- 1.1.5 "**Confidential Information**" means, in respect of a party, its secret or confidential commercial, financial, marketing, technical or commercial information, know-how, trade secrets, any other confidential information concerning its business, its products and services, in any form or medium whether disclosed orally or in writing before or after the date of the Contract, together with any reproductions of such information in any form or medium or any part(s) of this information (and "**confidential**" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);
- 1.1.6 "**Contract**" means the contract for the provision of the Materials and Services incorporating these Conditions;
- 1.1.7 "**Drawings**" include plans, photographs, models, patterns, samples, data and technical information of every description whether written oral or three dimensional;
- 1.1.8 "**Intellectual Property**" means any patent, copyright, design right, trade mark, service mark, know-how, utility model, rights in get-up, goodwill and the right to sue for passing off, and all other industrial and intellectual property rights whether registered or unregistered and including all applications for the same, and all similar or equivalent rights or forms of protection which subsist now or will subsist in the future anywhere in the world;
- 1.1.9 "**Materials**" means any goods, materials, fixtures or fittings which are agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them) in accordance with these Conditions;
- 1.1.10 "**Price**" means the price quoted by the Company for the provision of the Materials and/or Services;
- 1.1.11 "**Services**" means the services, work and materials which the Company is to supply provide or carry out in connection with the Contract and in accordance with these Conditions;
- 1.1.12 "**Specification**" means any description, designs, Drawings and specifications for the Services or any Materials;
- 1.1.13 "**Writing**" includes without limitation facsimile transmission;
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision 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 the Sale

- 2.1 Each order for Materials and/or Services, made by the Customer ("**Offer**") shall be deemed to be an offer by the Customer to purchase the Materials and/or engage the Company to provide the Services subject to these Conditions. The Offer shall only be deemed to be accepted when the Company issues written acceptance to the Customer or takes a material step towards providing the Materials and/or Services subject to the Offer, at which point and on which date the Contract shall come into existence
- 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 or incorporate or which are implied by trade, custom, practice or course of dealing).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract unless confirmed by the Company in Writing.
- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company [(except to the extent that the same have become a term of the Contract)] shall be subject to correction without any liability on the part of the Company.

3. Specifications

- 3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Offer including (without limitation) all applicable Drawings and Specifications submitted or approved by the Customer, and for giving the Company any necessary information relating to the Materials and Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and Specification for the Materials or Services shall be those set out in the Company's quotation.
- 3.3 All dimensions quoted are nominal only.
- 3.4 All [Drawings,] descriptive matter and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Materials or Services described in them and they will not form part of the Contract except to the extent otherwise agreed in Writing.
- 3.5 The Company shall not be obliged to provide test or performance certificates unless agreed in Writing. Any costs incurred in carrying out such testing or inspection shall be paid by the Customer in addition to the price of the Services.
- 3.6 The Company reserves the right to make any changes to the Specification or otherwise to the Materials or Services which are required to conform with any applicable safety or other statutory requirements or which do not materially affect the quality or performance of the Materials or the Services.

- 3.7 No Contract, Drawings or Specification may be amended or varied by the Customer except with the written agreement of the Company and on terms that the Customer shall indemnify the Company 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 Company as a result of such amendment or variation. The Company is not bound to agree to any such amendment or variation.
- 3.8 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property arising out of or in connection with the Company's use of the Specification.
4. **Price**
- 4.1 The Company reserves the right, by giving notice to the Customer at any time prior to Completion to increase the Price of the Materials and/or Services to reflect any increase in the cost to the Company which is due to:
- 4.1.1 any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties);
- 4.1.2 any change in delivery dates required by the Customer;
- 4.1.3 any change in quantities or the Specifications for the Materials or Services which is requested by the Customer and agreed by the Company; or
- 4.1.4 any delay caused by any instructions or acts or omissions of the Customer or failure by the Customer to comply with the terms of the Contract.
- 4.2 The Price is exclusive of any applicable value added tax which the Customer shall pay in addition.
5. **Terms of Payment**
- 5.1 Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall invoice the Customer for the Price on or at any time after Completion.
- 5.2 The Customer shall pay the Price in full in pounds sterling without any deduction or set-off within 14 days of the date of the Company's invoice. The time of payment of the Price shall be of the essence. Receipts for payment will be issued only upon request.
- 5.3 Notwithstanding any other provision, all amounts payable to the Company under the Contract shall become due immediately upon termination of the Contract for whatever reason.
- 5.4 If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.4.1 terminate the Contract without any liability, or suspend performance of the Contract until any outstanding amounts due to the Company have been paid in full;
- 5.4.2 appropriate any payment made by the Customer to such of the Materials or Services (supplied under any contract between the Customer and the Company) as the Company may think fit;
- 5.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent (4%) per annum above [Lloyds TSB Bank plc] base rate from time to time, accruing on a daily basis until payment in full is made; and
- 5.4.4 charge the Customer for the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise incurred pursuing a debt recovery procedure.
- 5.5 No indulgence granted by the Company to the Customer concerning the Customer's obligations under this Condition 5 shall be or be deemed to be a credit facility.
- 5.6 Payment shall not be deemed to have been made until payment in cash or cleared funds has been received by the Company.
6. **Delivery of Materials and Provision of Services**
- 6.1 Unless otherwise agreed in Writing delivery of the Materials shall take place at the Customer's place of business in normal business hours.
- 6.2 Any dates specified by the Company for delivery of Materials are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, without prejudice to the foregoing the Company shall use reasonable endeavors to deliver any Materials within a reasonable time.
- 6.3 Any dates specified by the Company for either the commencement or completion of the Services are intended to be estimates only and time for performance shall not be of the essence.
- 6.4 The Company may sub-contract performance of any of the Services (or part thereof) to any person, firm or corporation.
- 6.5 If for any reason the Customer does not accept delivery of any of the Materials, or the Company is unable to deliver the Materials on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then the Materials will be deemed to have been delivered, risk passing to the Customer and the Company may:
- 6.5.1 store the Materials until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or
- 6.5.2 sell the Materials at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract Price.

- 6.6 The Company shall be entitled at its discretion to make delivery of the Materials by instalments and to invoice the Customer for each instalment individually. Where the Materials are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.
- 6.7 The Company will not be liable for any loss (including but not limited to loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Materials (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 6.8 The Company shall only be liable for any non-delivery of Materials (even if caused by the Company's negligence) if the Customer gives written notice to the Company within 7 days of the date when the Materials would, in the ordinary course of events, have been delivered.
- 6.9 The liability of the Company for non-delivery of the Materials or non-performance of Services shall be limited to replacing the Materials or performing the Services within a reasonable time, or issuing a credit note at the pro rata Contract rate against any invoice raised for such Materials or Services (as the case may be).
- 6.10 The Services will be deemed to be completed and the relevant element of the Price to be due and payable forthwith when the Company issues a written notice to the Customer confirming Completion.

7. Risk and Property

- 7.1 Risk of damage to or loss of any Materials shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Materials, the time when the Company has tendered delivery.
- 7.2 Title to and property in the Materials supplied under the Contract shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:
- 7.2.1 the Price has been paid in full; and
- 7.2.2 all other money payable by the Customer to the Company under this or any other contract, and which has become due for payment prior to title to the Materials passing, has been paid, discharged or satisfied in full.
- 7.3 The Customer acknowledges that it is in possession of the Materials solely as bailee for the Company until such time as title in the Materials passes to the Customer.
- 7.4 Until title to and property in the Materials pass to the Customer the following provisions shall apply:
- 7.4.1 the Company may at any time without prior notice to the Customer require the Customer to deliver the Materials up to the Company and the Company may repossess and resell the Materials whether or not they have been affixed to any property if any of the events specified in Conditions 12 or 13 occur or if any sum due to the Company from the Customer under this Contract or any other contract or on any other account is not paid when due and the Company will be entitled to free and unrestricted entry and access to the Customer's premises and/or other locations where any of the Materials are situated at any time without prior notice to exercise its rights under this Condition 7.4.1;
- 7.4.2 the Customer must store any Materials delivered prior to the commencement of the provision of the Services in a proper manner in conditions which adequately protect and preserve them without any charge to the Company and not tamper with any identification upon the Materials or their packaging but shall ensure that they are clearly identified as belonging to the Company. Without prejudice to Condition 7.4.1 above the Company will be entitled to examine the Materials in storage at any time during normal business hours but the Company must give the Customer reasonable notice of the Company's intention to do so and to enter upon any premises the Customer owns, occupies or controls for that purpose.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Materials which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 7.6 The Company's rights and remedies set out in this Condition 7 are in addition to and shall not prejudice, limit or restrict any of the Company's other rights or remedies under these Conditions or the Contract or otherwise implied by law.
- 7.7 Nothing contained in this Condition shall confer any right on the Customer to return the Materials or refuse or delay payment.

8. Customer's Obligations

- 8.1 The Customer shall:
- 8.1.1 procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities or supplies for the Company's employees or agents in accordance with the demands of any applicable legislation and as the Company shall reasonably require in order for the Company to perform the Services and deliver the Materials;
- 8.1.2 co-operate with the Company in all matters relating to the Services;
- 8.1.3 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.1.4 comply with all applicable laws and regulations requirements in force from time to time;
- 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services or the delivery of the Materials before the date on which the Services are to start or the Materials are to be delivered (as the case may be); and
- 8.1.6 keep and maintain all materials, equipment, documents and other property of the Company at the Customer's premises in safe custody at its own risk in good condition.

- 8.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or its representatives or failure by the Customer to perform any relevant obligation, then:
- 8.2.1 without limiting the Company's other rights and remedies the Company may suspend performance of the Contract until the Customer remedies the default;
- 8.2.2 the Company will not be liable for any costs, loss or damage incurred by the Customer as a direct or indirect result of the Company's failure or delay to perform any of its obligations which it is prevented or delayed from performing, or the performance of which the Company has suspended; and
- 8.2.3 the Customer will reimburse the Company on written demand for any costs, expenses, loss or damage incurred by the Company as a direct or indirect result of the Customer's default.

9. Warranties

- 9.1 Subject to the Condition 9.4 below the Company warrants that:
- 9.1.1 the Materials supplied will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose explicitly made known to the Company and the Services shall be provided or carried out with reasonable care and skill;
- 9.1.2 [the Materials and the Services will conform in all material respects with any applicable Specification]
- 9.1.3 all relevant Health and Safety legislation and requirements together with the Construction (Design and Management) Regulations currently in force will be complied with during the provision of the Services.
- 9.1.4 [it holds the Public Liability and Professional Indemnity Insurance necessary to undertake Services of the kind dealt with in the Contract.]
- 9.2 The above warranties are given by the Company subject to the following conditions:
- 9.2.1 the Company shall be under no liability in respect of any defect in the Materials or Services arising from any Specifications supplied or approved by the Customer;
- 9.2.2 the Materials or Services differ from their Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- 9.2.3 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage or negligence (other than by the Company), abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair without the Company's approval;
- 9.2.4 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price has not been paid in full;
- 9.2.5 the above warranty does not extend to Materials which have not been manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 9.3 Condition 8.1 shall not apply unless the Customer:
- 9.3.1 notifies the Company in Writing of the alleged defect within 7 days of the time when the Customer discovers or ought to have discovered the defect and in any event within 12 months of Completion; and
- 9.3.2 affords the Company reasonable opportunity to inspect the defect including allowing the Company access to the Customer's premise for inspection, examination and testing to be conducted, or in the case of defective Materials, promptly returning the items to the Company if requested to do so.
- 9.4 Where any valid claim in respect of the Materials or Services is notified to the Company in accordance with these Conditions, the Company shall be entitled to carry out such repairs or remedial work as it considers necessary free of charge or, at the Company's sole discretion, refund to the Customer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Customer.
- 9.5 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10. Liability

- 10.1 Nothing in this Condition 9 shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation, or for any other liability that cannot be limited or excluded by law.
- 10.2 Subject to condition 9.1, the Company shall not in any circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or other economic loss, loss of anticipated savings, loss of goodwill, loss of business or loss of data (in each case whether direct, indirect or consequential), or any indirect or consequential loss arising under or in connection with the Contract.
- 10.3 Subject to Condition 9.1, the Company's aggregate liability 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 lower of the Price or £2,000,000.

11. Force Majeure

- 11.1 The Company shall not be liable to the Customer 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 Company's obligations under the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 11.1.1 Act of God, explosion, flood, tempest, fire or accident;
- 11.1.2 war or threat of war, act of terrorism, sabotage, insurrection, civil disturbance or requisition;
- 11.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority;

- 11.1.4 import or export regulations or embargoes;
- 11.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- 11.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 11.1.7 power failure or breakdown in machinery.

12. Termination

- 12.1 The Company may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Materials or stop any Materials in transit or by notice in Writing to the Customer terminate the Contract without liability to the Customer if:
 - 12.1.1 the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
 - 12.1.2 the Customer fails to remedy a breach of its obligations under the Contract which is capable of remedy within 7 days of receiving written notice from the Company requiring it to do so, or persists in any breach of any of its obligations under the Contract after having been requested in Writing by the Company to desist from such breach within a period of 14 days;
 - 12.1.3 any sum payable under the Contract is not paid within 7 days of its due date;
 - 12.1.4 the Customer is subject to an Insolvency Event (as defined in Condition 13).
- 12.2 Notwithstanding any termination or suspension in accordance with Condition 12.1 (and without prejudice to any other rights or remedies which the Company may have against the Customer) the Customer shall pay the Company for all Materials delivered, Services performed, and the value any work in progress on any Contract as determined by the Company acting reasonably, up to and including the date of suspension or termination.

13. Insolvency of Customer

- 13.1 An "Insolvency Event" means any of the following:
 - 13.1.1 the Customer makes any voluntary arrangement with its creditors; or
 - 13.1.2 any step is taken in relation to the Customer's bankruptcy, administration, liquidation or insolvency (otherwise than for the purposes of amalgamation or reconstruction); or
 - 13.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - 13.1.4 the Customer suspends or threatens to suspend the payment of its debts;
 - 13.1.5 the Customer ceases, or threatens to cease, to carry on business; or
 - 13.1.6 any event occurs which has an effect equivalent or similar to any of the foregoing in any other jurisdiction; or
 - 13.1.7 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 13.2 If an Insolvency Event occurs then, without prejudice to any other right or remedy available to the Company (including but not limited to the rights in Condition 12), the price for any Services provided and Materials delivered but not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. Intellectual Property Rights

- 14.1 The Company is the sole and exclusive owner of the Intellectual Property in all Drawings and Specifications produced by the Company in connection with the Contract.
- 14.2 The Contract is not an agreement to assign the Intellectual Property in the Drawings or Specifications to the Customer.
- 14.3 The Company warrants that any and all the Intellectual Property rights subsisting in or used in connection with the Services are the sole property of the Company or it has the right to use them.

15. Dispute Resolution

- 15.1 Any dispute relating to a defect arising under or in connection with these Conditions or the Contract shall first be dealt with in accordance with the procedure outlined in Condition 9.3.
- 15.2 If the Customer remains unsatisfied with the response under Condition 15.1 or the dispute arises more than 1 year after Completion or relates to some matter other than the quality of the Materials or Services, the Customer shall complain in writing ("**Complaint**") to the Managing Director of the Company whereupon both parties shall use their reasonable endeavors to resolve the dispute within 3 months of the receipt of the Complaint.

16. Subcontracting, Assignment and Third Party Rights

- 16.1 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.
- 16.2 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.

17. General

- 17.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 17.2 Neither party shall reveal to any third party any Confidential Information relating to the other party which they obtain during the performance of the Contract, except to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, or as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction..
- 17.3 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 provision to the party giving the notice.

- 17.4 No variation to the Contract, including but not limited to the introduction of any additional terms and conditions or variations to these Conditions, shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.
- 17.5 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No failure or delay by the Company in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right of remedy, nor prevent or restrict its further exercise of that or any other right or remedy.
- 17.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part it shall be deemed deleted. The validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 17.7 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Materials and provision of the Services and shall supersede and replace all previous agreements, promises, assurances, warranties, representations and understandings whether written or oral, relating to its subject matter.
- 17.8 Any dispute or claim arising out of the Contract or these Conditions or in connection with them shall be governed by and be construed in all respects in accordance with English law and each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.
- 17.9 Any manufacturer's terms and conditions of sale of general application endorsed on Materials supplied by the Company, shall be observed and complied with by the Customer. In the event of there being any inconsistency between the manufacturer's terms and conditions and these Conditions, these Conditions shall prevail.