

EOS INTERIORS LIMITED
PURCHASE TERMS AND CONDITIONS



1. Interpretation

1.1 In these Conditions, the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in England;
Conditions	these terms and conditions as amended from time to time in accordance with clause 12.7;
Confidential Information	a party's secret or confidential commercial, financial, marketing, technical or commercial information, know-how, trade secrets and 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);
Contract	the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;
Customer	EOS Interiors Limited registered in England and Wales with company number 07059665;
Deliverables	all documents, products and materials developed by the Supplier as part of the Services, in any form or media (but for the avoidance of doubt excluding Goods);
Goods	the goods (or any part of them) set out in the Order;
Goods Specification	any specification for the Goods, including any related plans and drawings, agreed in writing by the Customer and the Supplier;
Intellectual Rights	Property any patent, copyright, design right, trade mark, service mark, know-how, rights in get-up, goodwill and the right to sue for passing off, utility model, 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;
Order	the Customer's written order for the supply of Goods and/or Services;
Services	the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification;

Service Specification the description or specification for Services agreed in writing by the Customer and the Supplier;

Supplier the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under it;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (d) a reference to **writing** or **written** includes faxes [and emails].

2. **Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. **Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Customer or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (c) subject to any longer warranty period offered by the Supplier, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery during the Supplier's normal hours of business on a Business Day and upon reasonable prior notice in writing to the Supplier, for the purpose of confirming the Supplier's compliance within clause 3.1. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods.

4. **Delivery of Goods**

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order or otherwise agreed between the parties;

(b) to the location set out in the Order or as otherwise instructed by the Customer before delivery (**Delivery Location**);

(c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Time of delivery is of the essence of the Contract.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent.

4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. **Supply of Services**

- 5.1 The Supplier shall from the date set out in the Order and until completed to the Customer's reasonable satisfaction provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or agreed by the Customer and the Supplier prior to the Commencement Date.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the reasonable care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and ensure that the Deliverables comply with the requirements of clause 3.1(b);
 - (e) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
 - (f) observe all health and safety rules and regulations and any other security requirements that apply at any of the premises at which the Services are performed.
- 5.4 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

6. **Customer remedies**

- 6.1 Except to the extent that the Supplier's default is directly caused by the acts or omissions of the Customer, if the Supplier fails to deliver the Goods and/or perform the Services by the applicable date by which they are required in accordance with the terms of the Contract, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (d) where the Customer has paid in advance for Services that have not been provided and/or Goods which have not been delivered, to have such sums refunded by the Supplier; and

- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, or supplies Services which do not comply with the undertakings set out in clause 5.3 then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods or Services:

- (a) in respect of Goods, to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense and to require the Supplier to (at the Customer's option) repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (b) in respect of Services, (at the Customer's option) to require the Supplier to repeat or correct the Services (without delay and without causing undue inconvenience to the Customer), or to require the price of the Services to be reduced by a reasonable amount to reflect the default;
- (c) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (d) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods or Services from a third party; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's default.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7. **Charges and payment**

7.1 The price for the Goods shall be the price set out in the Order and shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer.

7.2 The charges for the Services shall be set out in the Order. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier incurred in connection with the performance of the Services.

7.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services unless agreed otherwise in writing by the Customer.

7.4 Subject to clause 7.5, the Customer shall pay invoices by the end of the month following the month the invoice was dated.

7.5 The Customer may withhold payment of any part of an invoice which it disputes in good faith, provided that it notifies the Supplier in writing of such dispute.

- 7.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**) which the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier in addition.
- 7.7 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

8. **Intellectual property rights**

- 8.1 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables. The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this clause.
- 8.2 The Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9. **Insurance**

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. **Confidentiality**

A party (**receiving party**) shall keep in strict confidence all Confidential Information disclosed to the receiving party by the other party (**disclosing party**), or which the receiving party may otherwise obtain. The receiving party shall only disclose such confidential information 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, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

11. Termination

11.1 If, as a result of the amendment to or termination of the contract between the Customer and the Customer's client in relation to whom the Customer requires the Goods and/or Services, the Customer no longer requires the Goods or Services (or any part of them) it may terminate the Contract immediately by giving the Supplier written notice whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination and a pro-rata amount to reflect the proportion of the Services actually performed at the time of termination.

11.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of receipt of notice in writing to do so;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) any step is taken in relation to the administration, liquidation, insolvency or bankruptcy of the Supplier;
- (d) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(b) or clause 11.2(c); or
- (e) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

11.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. General

12.1 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

- 12.2 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 clause to the party giving the notice.
- 12.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted. Any deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.4 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.7 No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 12.8 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.