

FAIRFAX 3D DESIGN LTD
TERMS AND CONDITIONS OF BUSINESS

Version: 0918

1. Interpretation

1.1 The following definitions shall have the following meanings:

- “the Customer”** means the person, firm or company purchasing goods from the Supplier;
- “Force Majeure Event”** means an event beyond the reasonable control of the Supplier, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, inability to procure materials or articles except at increased prices or default of agents, suppliers or subcontractors;
- “the Goods”** mean the goods that the Supplier is to supply to the Customer in accordance with these terms;
- “Intellectual Property Rights”** means any patent, right to an invention, copyright and related rights, trade mark, business name, design right, domain name, goodwill, the right to sue for passing off, design right, database right, right to use and protect the confidentiality of confidential information (including without limitation know-how and trade secrets) and all other types of intellectual property rights, registered or unregistered, including all applications and the right to apply for renewals or extensions of, and right to claim priority from, such rights and all similar rights or forms of protection existing or which will exist now or in the future in any country;
- “the Supplier”** means Fairfax 3d Design Ltd (company number: 10410354) whose registered office is at ; Leigh House. 28-32, St. Paul’s Street. Leeds. LS1 2JT.
- “these terms”** means these terms and conditions as amended from time to time in accordance with clause 2.2;
- “Working Day”** means a day other than a Saturday, Sunday or public holiday in England when clearing banks in London are open for business.

1.2 The rules of interpretation in this clause 1 apply in these terms.

1.3 Clause headings do not affect the interpretation of these terms.

1.4 Except where a contrary intention appears, a reference to a clause is a reference to a clause of these terms.

- 1.5 Unless otherwise specified, a reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A person includes a corporate or unincorporated body.
- 1.7 Writing or written includes faxes, but not email.
- 1.8 Any obligation in these terms on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 Unless the context otherwise requires, (a) words in the singular shall include the plural and in the plural shall include the singular and (b) a reference to one gender shall include a reference to the other genders.
- 1.10 Any words following the terms “including”, “include”, “in particular” or “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Basis of the Sale

- 2.1 The Supplier contracts on these terms only, and acceptance by the Supplier of any order from a Customer shall be upon these terms and shall override any other terms and conditions stipulated or incorporated by the Customer in its order or in any negotiations, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Variations or representations will only be binding on the Supplier if confirmed in writing by an authorised officer of the Supplier.
- 2.3 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. The Goods

- 3.1 All descriptions and illustrations (a) contained in the Supplier's website, catalogue, price list and advertisements or (b) otherwise communicated to the Customer are intended to present merely a general idea of the Goods described and shall not form part of the contract or have any contractual force.
- 3.2 If a sample of Goods supplied but not manufactured by the Supplier was exhibited to and inspected by the Customer, it is hereby agreed that such samples were so exhibited and inspected solely to enable the Customer to judge for himself the general quality of the Goods and not so as to constitute a sale by sample.
- 3.3 The Supplier reserves the right to make substitutions and modifications to the specifications of the Goods, provided that this does not materially affect their performance.

4. Price

- 4.1 Subject to clause 4.4, the price of the Goods is as stated on the Quotation or the Acknowledgement of Order is net of Value Added Tax at the appropriate rate.
- 4.2 Where carriage, insurance, storage or other charges are shown separately from the price of Goods, they are nevertheless payable by the Customer at the same time as if they form part of the price and shall be treated as such for the purposes of these terms.
- 4.3 The Supplier shall invoice the Customer at delivery or afterwards.
- 4.4 Prices are subject to alteration by the Supplier (to reflect changes in costs of raw materials, labour, transport, etc) to those ruling at date of despatch save where a fixed price has been agreed. The Customer will be notified as soon as possible of such alteration.

5. Cancellation

- 5.1 The Customer may not cancel the contract without the written consent of the Supplier. If such consent is given, it is made on the express condition that the Customer shall indemnify the Supplier against all loss, damage, claims or actions arising out of such cancellation, unless otherwise agreed in writing.

6. Payment

- 6.1 Payment shall be made in cleared funds to a bank account nominated in writing by the Supplier within 30 days of the date of the invoice relating to the Goods, but the Supplier reserves the right to require payment for the Goods prior to delivery or dispatch. Time for payment shall be of the essence of the Contract.
- 6.2 All sums payable by the Customer under these terms shall be made without any set-off, deduction or deferment of any nature.
- 6.3 In the case of overdue payment, the Supplier may charge interest to the Customer on the amount overdue calculated on a daily basis at the rate of 2% per month without prejudice to any other rights of the Supplier. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.4 Notwithstanding the provisions of clause 6.1, upon the occurrence of any event under clause 13.1 any period of credit allowed for the Customer on any contract with the Supplier, whenever made, shall cease to apply and payment for all Goods shall be or be deemed to have become due forthwith on delivery.

7. Delivery

- 7.1 The Supplier may deliver by instalments and may treat each delivery as a separate contract.
- 7.2 The Customer shall accept deliveries of Goods at the address stated on the purchase order when offered, and shall be liable for any additional costs suffered by the Supplier in the event of wrongful refusal or delay in accepting delivery, in failing to provide premises, services or information for the Supplier to effect safe delivery, or in the event of future deliveries being withheld through the Customer's non-payment. Delivery of the Goods shall be completed on the Goods' arrival at the delivery location.
- 7.3 If the Supplier requires the Customer to return any packaging material to the Supplier, the Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Return of packaging materials shall be at the Supplier's expense.
- 7.4 If a date is quoted for the Goods' delivery, it is only an estimate. Time of delivery is not of the essence. The Supplier will have no liability for delays in delivery caused by either a Force Majeure Event or the failure of the Customer to give adequate delivery instructions or other relevant instructions to the Supplier.

8. Retention of Title

- 8.1 Property in the Goods shall not pass to the Customer until the Customer has paid to the Supplier all sums owed (under this or any other contract) by the Customer to the Supplier. The Goods shall be at the risk of the Customer on completion of delivery.
- 8.2 The Customer will indemnify the Supplier against any loss or deterioration in the Goods while they remain the property of the Supplier and will keep the Goods properly insured for not less than their contract value.
- 8.3 Without prejudice to any other rights the Supplier may have, the Supplier may recover the Goods and the Customer agrees that the Supplier, its agents or employees may enter on the Customer's premises and remove the Goods at any time, if any of the events in clause 13.1 occur or the goods have not been paid for within 60 days of the due date and in either case property in the Goods has not passed to the Customer.
- 8.4 Until property in the Goods has passed to the Customer, the Customer shall:
 - 8.4.1 not pledge the Goods or documents of title thereon or allow any lien to arise thereon;
 - 8.4.2 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1;
 - 8.4.3 store the Goods on its premises separately from its own goods and those of any other person and in a manner that makes them readily identifiable as the goods of the Supplier;

- 8.4.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 8.4.5 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 8.4.6 not deal with or dispose of the Goods or documents of title thereto or any interest therein (other than by sale to an independent purchaser buying entirely in the ordinary course of the Customer's business); and
 - 8.4.7 not hold itself out as the Supplier's agent in respect of the Goods.
- 8.5 If payment of any sum is overdue the Supplier shall have the right to commence proceedings against the Customer for the price, notwithstanding that property in the Goods has not yet passed to the Customer.

9. Warranties (sale of goods)

- 9.1 The Supplier warrants that on delivery the Goods are, and for a period of 12 months after ("the Warranty Period") they will remain, (a) of satisfactory quality (within the meaning of the Sale of Goods Act 1979), (b) free from any material defect in design, workmanship and materials and (c) correspond with any agreed written specification, but the Supplier's liabilities under this warranty shall be limited to making available free of charge the labour and materials required to make good any such defects or (at the Supplier's option) replacing any defective Goods. The Supplier's liability under this warranty is also conditional upon the following and these terms shall apply to any repaired or replacement Goods supplied by the Supplier under this clause:
- 9.1.1 written notice of the defect being given to the Supplier within 14 days after discovery of the same and in any event within the Warranty Period.
 - 9.1.2 the Goods having been properly installed, stored and used by the Customer prior to the defect occurring;
 - 9.1.3 the defect not arising due to the Customer's failure to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 9.1.4 the defect not arising as a result of the Supplier following any drawing, design or specification supplied by the Customer in the manufacture of the Goods;
 - 9.1.5 the defect not arising as a result of fair wear and tear, wilful damage or negligence;
 - 9.1.6 the Goods not having been subjected to any repair (without the Supplier's consent), modification or abnormal or improper use; and
 - 9.1.7 the Goods having been returned at the Supplier's request, but at the Customer's expense, for inspection.
- 9.2 The warranty contained in clause 9.1 is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied whether arising by common law, statute or otherwise, other than that relating to title to the Goods.

- 9.3 All Goods are sold on the basis that the Customer is neither a consumer nor deals as a consumer within the meaning of the Unfair Contract Terms Act 1977 and that the Customer has satisfied itself as to the suitability of the Goods for use or resale in accordance with its own specialised knowledge and skill.

10. Limitation of Liability and Customer's obligations

- 10.1 Save as provided under the Unfair Contract Terms Act 1977 and save as mentioned in clause 9, the Supplier's liability for any loss, injury or damage of any nature whatsoever, whether direct or consequential, arising out of or in connection with any Goods supplied by the Supplier or resulting from the use thereof and whether arising out of a breach of implied or express term warranty or condition shall not exceed the cost to the Customer of replacing or repairing the Goods provided that the Supplier is afforded a reasonable opportunity of replacing or repairing the Goods. Save as provided under the Unfair Contract Terms Act 1977, the Supplier shall under no circumstances whatever be liable to the Customer for any loss of profit, any indirect loss or consequential loss arising in connection with these terms. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these terms.

11. Indemnity from the Customer

- 11.1 The Customer hereby indemnifies and holds harmless the Supplier against:
- 11.1.1 all claims relating to the Goods sold to the Customer in respect of any loss damage or expense sustained by any third party, save only in respect of death or personal injury caused by the negligence of the Supplier or any of its employees or agents; and
- 11.1.2 any costs or losses incurred by the Supplier directly or indirectly due to the Customer Default.

12. Force Majeure

- 12.1 The Supplier shall bear no liability for loss, damage or delay howsoever arising by a Force Majeure Event, and in these circumstances may suspend or cancel the whole or part of any delivery. The Supplier shall endeavour to notify the Customer as quickly as reasonably possible if a Force Majeure Event occurs.
- 12.2 If the Force Majeure Event prevents the Supplier from providing any of the Goods for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this contract immediately by giving written notice to the Customer.

13. Default

- 13.1 Without prejudice to any other rights it may have and without prejudice to the provisions of clause 8, the Supplier may, by notice to the Customer, terminate any contract between the Customer and Supplier forthwith and/or immediately recover from the Customer all sums due from the Customer under any contract with the Supplier (notwithstanding any period of credit which may have been allowed) together with any accrued interest and other legitimate charges and any loss caused to the Supplier as a result of any termination if:
- 13.1.1 any payment due by the Customer to the Supplier is overdue in whole or in part;
 - 13.1.2 the Customer commits any breach of any of the terms of any contract with the Supplier and, if the breach is remediable, fails to remedy that breach within 7 days after receipt of notice in writing to do so;
 - 13.1.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 13.1.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay 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;
 - 13.1.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than (where a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction;
 - 13.1.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 13.1.7 a resolution is passed or a court order made resolving or ordering the Customer to be placed into liquidation or ordering that an administrator be appointed over all or any of its assets;
 - 13.1.8 a receiver or administrative receiver is appointed over all or any of the assets of the Customer; or
 - 13.1.9 the Customer (being an individual) has a petition in bankruptcy entered against him, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 13.2 Where the Customer is situated outside of the United Kingdom, the Supplier shall be entitled to terminate the contract and/or recover all sums due pursuant to clause 13.1 if any event occurs in relation to the Customer that is analogous to the events described in clauses 13.1.4 to 13.1.9.
- 13.3 Without limiting its other rights or remedies, the Supplier may suspend all further deliveries of Goods if the Customer fails to pay any amount due on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13.4 On termination of a contract for any reason:
- 13.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.4.2 the Customer shall return all of the Supplier's Goods that have not been paid for in full. If the Customer fails to do so, then the Supplier has the right to enter the Customer's premises and repossess them. Until their return, the Customer shall be responsible for keeping them safe and will not use them;
- 13.4.3 termination will be without prejudice to the parties' accrued rights; and
- 13.4.4 any clauses in these terms that expressly or by implication continue to have effect after termination shall continue in full force and effect.

14. Arbitration

- 14.1 If at any time any question, dispute or difference whatsoever shall arise between the Supplier and the Customer in relating to or in connection with the contract, either of them shall give to the other notice in writing that it requires such question, dispute or difference to be referred to the arbitration of a person to be agreed upon or, failing agreement within 14 days after the date of such notice, of some person to be appointed on the application of either party by the President for the time being of the Law Society pursuant to the Arbitration Act 1996.

15. Intellectual Property Rights

- 15.1 The Goods are sold and/or supplied subject to the Intellectual Property Rights of any person to prevent or restrict the sale or use of the Goods in any part of the world; the Customer will in this respect accept such title to the Goods as the Supplier may have.
- 15.2 Where the Goods have been manufactured according to designs or configurations or processes specified or supplied by the Customer, the Customer represents and warrants to the Supplier that the Goods so designed or configured and processes so used do not infringe the Intellectual Property Rights of any person to prevent or restrict the sale or use of the

Goods or materials or the use of such processes in any part of the world. The Customer hereby indemnifies and holds harmless the Supplier against all actions, suits, claims, demands, losses, charges, costs and expenses that the Supplier may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of the representations and warranties contained in this clause 15.2.

16. Miscellaneous

- 16.1 No waiver by the Supplier of any breach of contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of the contract.
- 16.2 The parties agree to be bound by these terms, which they consider to be reasonable. If any clause of these terms is held by any Court or competent authority as invalid or unenforceable in whole or in part the validity of the remainder of these terms and of the remainder of the provisions in question shall not be affected thereby.
- 16.3 The Customer shall not assign or transfer any contract to which these terms apply nor the benefit thereof to any person whatsoever.
- 16.4 Without prejudice to any other remedies, in the event of default by the Customer or any of the situations set out in clause 13.1 arising, the Supplier shall have a general lien on all goods and property in its possession (whether worked on or not) and belonging to the Customer in respect of any sums due from the Customer and shall be entitled, after giving 14 days' written notice to the Customer, to dispose of such goods or property as it thinks fit.
- 16.5 These terms constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between them relating to the subject matter of these terms. 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 Supplier that is not set out in these terms.
- 16.6 Any notice given under these terms must be in writing and delivered to the recipient at the address of (a) its registered office (in the case of a company) or (b) its principal place of business (in any other case), or at such other address as has been notified to the sender previously in writing for the purpose of this clause.
- 16.7 A notice given under these terms [shall be] **OR** [will not be] validly served if sent by email.
- 16.8 A person who is not a party to these terms may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 16.9 These terms shall be governed by and construed in accordance with the laws of England and each of the parties hereto submits to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under these terms.