

KINGDOM TEAK(A DIVISION OF GARDEN FURNITURE CENTRE LTD) TERMS & CONDITIONS

These terms and conditions do not apply to contracts in which the Customer is dealing as a consumer in so far as they would be void under the Unfair Contract Terms Act 1977. The statutory rights of parties dealing as consumers are preserved throughout.

1. CONDITIONS OF CONTRACT

In these Conditions of Sale:

- "the Company"** means Kingdom Conservatory or its successors, assignees, subcontractors and agents
- "the Contract"** means the contract for sale or supply of the Goods by the Company to the Customer, which Contract shall be subject in all respects to the terms of these Conditions.
- "these conditions"** means all of the terms and conditions set out below.
- "the Customer"** means any person or persons, firm or firms, company or companies, authority or authorities, who shall Order or buy the Goods and shall include his or their successor, executors and personal representatives.
- "the Goods"** means any Goods forming the subject of the Contract including parts ingredients and components of all materials incorporated into them and all replacements and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the Order.
- "the Order"** means the Order made by the Customer to the Company which relates to the Goods and which Order shall constitute a contractual offer capable of acceptance by the Company in accordance with these Conditions.

2. CONTRACT

- 2.1 These Conditions shall apply to all supplies of Goods by the Company to the Customer.
- 2.2 No quotation or tender by the Company shall constitute an offer. An Order shall constitute a contractual offer which is capable of acceptance by the Company. No Order shall be binding on the Company or deemed to be accepted by the Company unless and until the Company's own written acknowledgement and acceptance of such Order is issued to the Customer by the Company. The Company shall not be bound by any terms and conditions set out in the Customer's Order or any other documentation and these Conditions shall supersede and prevail over any other terms referred to by the Customer. No previous correspondence, writings, telexes, faxes, telegrams or verbal communications between the Customer and the Company regarding the Goods shall form any part of or be incorporated either into the Order or the Contract.
- 2.3 The Company reserves the right to withdraw or cancel any quotation or tender without notice at any time prior to acceptance and quotations and tenders shall be deemed to be withdrawn if not accepted within 30 days from the date of tender.
- 2.4 No variation of these Conditions shall be effective unless expressly agreed in writing by a Director of the Company.

3. PRICE

- 3.1 The prices set out in any quotation or tender issued by the Company are based upon circumstances prevailing at the date of such quotation or tender. The Company specifically reserves the right to vary such prices, in which case the price payable by the Customer in respect of the Goods shall be that prevailing at the date of delivery, in the event of the following:
- 3.1.1 Any increase attributable to fluctuations in currency exchange rates between the date of quotation and the date of delivery.
- 3.1.2 Any increase in the costs of railway carriage, road transport, air or sea freight duty, excise duty, VAT, import duty, insurance costs and other charges relating to the delivery of the Goods and component parts thereof to the Company by its suppliers or to the Customer by the Company and/or its Agents
- 3.1.3 Any variation by the Customer in specification quantities or other instructions and any suspension of work following from the Customer's instructions or through any default of the Customer or failure to give timely instructions.
- 3.2 Notwithstanding the provisions of Clause 3.1 above, should work be suspended at the request of or delayed through any default of the Customer for a period of not less than 30 days the Company shall be entitled to payment for work already carried out and materials specially ordered and shall be entitled to cease work on the Contract and on any other Contract with the Customer until such payment is made in cleared funds by the Customer.
- 3.3 All quotations and tenders are based on the Customer's instructions and specifications as given to the Company and the Customer shall be liable to pay for all of the Goods manufactured or ordered by the Company in accordance with such specifications and instructions notwithstanding that the Customer has provided erroneous information within its specifications and instructions.

4. DELIVERY

- 4.1 Delivery will be made to the Customer's address as notified to the Company, and is deemed to take place on receipt of the Goods at the Customer's address.
- 4.2 Dates for delivery mentioned in any quotation, tender, Order or other document are approximate only and while the Company will use its reasonable endeavours to effect delivery by any date indicated, such dates are not of any contractual effect.
- 4.3 Late performance does not entitle the Customer inter alia to reject the Goods, terminate the Contract (or any other contract with the Company), withhold payment of any part of the contractual price or claim damages (whether direct or consequential in nature).
- 4.4 Where damage to or loss of the Goods occurs before delivery to the Customer the Company undertakes to replace or (at its discretion) to repair free of charge any Goods so damaged or lost. The foregoing undertaking of the Company is conditional upon:
- 4.4.1 The customer giving written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier within three days of receipt of the Goods or in the case of total loss within ten days of receipt of the Company's invoice or the carrier's delivery advice or other notification.
- 4.4.2 Save as expressly provided in this Condition, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the Goods in transit to the contracted place of delivery.
- 4.5 If the Customer refuses to take delivery of the Goods the Company may charge for return transport. Any failure by the Customer to take delivery of the goods or allow the Company to render or complete Services shall not relieve the Customer of his obligation to pay the Contract price in respect thereof
- 4.6 Where delivery is:
- 4.6.1 at the Customer's request suspended, delayed or made by instalments; or
- 4.6.2 the Company gives notification of readiness to deliver or availability of the Goods for collection; or
- 4.6.3 the Company is, due to circumstances beyond its control, unable to deliver the goods.

The Company may treat the Contract as fulfilled by notifying the Customer accordingly.

- 4.7 Where the Company treats the Contract as fulfilled under clause 4.5 above the Company may pay for the Goods to be put into store and from the date of sending notification thereof to the Customer, the risk in and of loss or damage to the Goods is on the Customer and the Customer from that point assumes the duty to pay the price together with all costs in relation to the Goods including (but not limited to) the costs of storage. The costs of storage shall be recoverable from the Customer as part of the price of the Goods and the Goods shall not be released to the customer until the price, inclusive of costs of storage and any other connected costs are paid by the Customer to the Company in cleared funds.
- 4.8 While the Company shall use its reasonable endeavours to supply the precise amount of any Goods ordered but the Customer hereby agrees to accept variations in amount of 10% below or above the amount ordered, without claim against the Company.

5. PAYMENT

- 5.1 Payment is due 30 days following invoice which may be submitted at or any time subsequent to delivery.
- 5.2 If the Customer fails to pay any instalment on the date it becomes payable, the whole of the balance of the price then outstanding shall become immediately payable [interest?]
- 5.3 In the event the Company employs the use of a debt recovery company, the Company reserves the right to charge 15% of any outstanding payments which are referred to the debt recovery company.

6. PASSING OF OWNERSHIP AND RISK

- 6.1 Risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer or its agents in accordance with clause 4.1 above.
- 6.2 Notwithstanding risk in the Goods passing in accordance with clause 6.1 hereof legal title in the Goods shall not pass to the Customer until whichever shall be the first to occur of the following:
- 6.2.1 Payment being received by the Company for the Goods in cleared funds and no other amounts then being outstanding from the Customer to the Company in respect of the Goods or in respect of any other Goods.
- 6.2.2 The Company waiving its rights under clause 6.2 in respect of specified Goods title to which shall then forthwith vest in the Customer.
- 6.3 Before legal title is passed to the Customer under clause 6.2 and without prejudice to any of its other rights, the Company shall have the right to recover or resell the Goods or any of them and may enter upon the Customer's premises in which the Goods or any part thereof are stored or kept or are reasonably believed by the Company to be so stored or kept by servants or agents for that purpose at any time without notice.
- 6.4 Until payment due under all contracts between the Customer and the Company has been made in full in cleared funds the Customer shall hold the Goods as mere bailee and shall store them in such a way that they are identifiable as the property of the Company and separate from all other Goods in the Customer's possession.

7. CANCELLATION

- 7.1 The Customer is not permitted to cancel this Contract except with the written consent of a Director of the Company.
- 7.2 Where there is an agreed cancellation as permitted by paragraph 7.1 above, the Customer shall pay to the Company a sum to be determined representing liquidated damages to compensate the Company against all losses incurred as a result of cancellation.

8. CONSEQUENTIAL LOSS

- 8.1 The Company shall not be liable for any consequential loss or indirect loss suffered by the Customer whether the same arises from breach of a duty, contract or tort, or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential and indirect loss are loss of profit, loss of contracts, damage to property of the Customer or anyone else.
- 8.2 In respect of any claim whatsoever made by the Customer against the Company in respect of the Goods, the liability of the Company shall be limited to the contract price of the Goods.
- 9. EXCLUSION AND LIABILITY**
- 9.1 Save insofar as the Company has expressly undertaken liability under the conditions contained herein, all express and implied warranties or conditions statutory or otherwise as to the quality or fitness for any specific purpose of materials used, Goods supplied, or any other matters are expressly excluded in so far as legally permissible.
- 9.2 It is expressly agreed that the Company shall be under no liability whatsoever to indemnify the Customer against
- 9.2.1 loss or damage consequential or otherwise of whatsoever nature and whensoever and howsoever arising for which the Customer may be liable to third parties as a direct or indirect result of any act or omission by the Company.
- 9.3 Where Goods are defective for any reason, including negligence, the Company's liability (if any) shall be limited to rectifying such defect or in the absolute discretion of the Company refunding the customer for the difference between the value of the Goods ordered and delivered.
- 10. SPECIFICATIONS**
- 10.1 Unless otherwise expressly stated, the Company does not guarantee that the illustrations, weights and dimensions specified in the Company's catalogues or in any relevant drawings or documents, supplied by the Company will in all cases be identical with the Goods or in their specifications that may be made from time to time. The Company will use reasonable endeavours to notify the Customer of any material alterations to any standard specifications relating to the Goods but the Company reserves the right to any time without notice make alterations to the Goods.
- 10.2 If the Company expressly guarantees the accuracy of any performance figures or statements then in the event of the Goods after commissioning (if appropriate) failing to achieve and to comply with the same of the Company shall thereafter be entitled to a reasonable period and to reasonable facilities to enable it to bring the Goods up to the guaranteed standard of performance and the time for delivery (but without prejudice to Conditions 4) of the Goods shall be extended for such reasonable period.
- 11. SUBCONTRACTORS**

The Company reserves the right at its sole discretion to sub-contract the whole or any part of the work involved in the supply or delivery of the Goods or of any part thereof.

12. INSOLVENCY/DEFAULT

If the Customer

- 12.1 Being a Company: has a Petition presented for its winding up; passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction); or compounds with its creditors; or has a Receiver, Administrative Receiver or Administrator appointed over all or any of its assets; or
- 12.2 Being an individual: becomes bankrupt or insolvent; or enters into any arrangement with his/her Creditors; or commits a serious breach of this agreement (and in the case of such a breach being remediable, fails to remedy it within seven days after receiving notice to do so) then the price of all Goods delivered and all work in progress shall immediately become due and payable to the Company in cleared funds and in addition the Company shall have the right in its absolute discretion to cancel or suspend forthwith any Contract subsisting with the Customer without prejudice to the Company's rights to recover any loss or damage sustained.
- 13. SUBCLAUSES**

Each of the subclauses in the Contract is to be treated as separate and independent and unless expressly stated no clause or clauses shall be taken to limit any other or others.

14. FORCE MAJEURE

- 14.1 The Company accepts no liability for any failure to deliver the Goods arising from circumstances outside the Company's control.
- 14.2 Non-Exhaustive illustrations of circumstances referred to in 13.1 above are: Act of God, civil commotion, war, riot, explosion, abnormal weather conditions, fire, flood, strike, lock-outs, Government action or regulations (UK or otherwise), delay by accidents, action or inaction by the Company's suppliers and shortage of materials labour or manufacturing facilities or any other cause of any description not within the absolute control of the Company preventing, hindering or delaying the manufacture or delivery of any Goods specified in the Contract.
- 14.3 If the Company is prevented from delivering the Goods in the above circumstances it shall notify the Customer of the fact in writing within ten days commencing with the contractual delivery date.
- 14.4 If the circumstances preventing delivery are still continuing three months from and including the date of delivery and the Company sends such notice then either party may give written notice to the other cancelling the Contract.
- 14.5 If the Contract is cancelled the Company shall refund any payment, which the customer has already made on account of the price (subject to deduction of any amount, which the Company is then entitled to claim from the Customer) in respect of Goods delivered. In the case of partial delivery, the price of the Goods shall be apportioned pro rata in respect of Goods already delivered and those outstanding. The Company accepts no liability to compensate the Customer for any further loss or damage caused by the failure to deliver the Goods and neither party shall have any claim against the other in respect of the failure of the contract due to an event of Force Majeure.
- 15. FURTHER ASSURANCE**

The Customer shall from time to time upon the request of the Company execute any additional documents and do any other acts or things which may reasonably be required to give effect to this Contract.

16. NOTICES

Any notice to be given under the Contract shall be in writing and telexed, sent by facsimile transmission or by first class pre-paid letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given to the other party on the date of telex or facsimile transmission or on the day following that on which the notice was posted.

17. LEGAL CONSTRUCTION AND ARBITRATION

The construction, validity and performance of any contract to which these Conditions are subject shall be governed by the Laws of England and all disputes which may arise out of or in connection with any such contract or the meaning or effect of the terms herof shall be settled by arbitration in accordance with the provisions of the Arbitration Act of 1950 or any statutory modification thereof for the time being in force.

No variation of these Conditions or of the terms of any order accepted by the Company shall be binding upon the Company unless the same shall be in writing and signed by a Director of the Company.

<p>Signed by customer..... Print Name.....</p> <p>Company Name.....Job Title.....</p> <p>Date.....</p>
