

# Wallop Woodcrafts

## Terms and Conditions of Sale

### 1. **Definitions**

1.1. The definitions and rules of interpretation set out in these conditions shall have the following meaning and effect;

**Buyer:** the person, firm or company who purchases the Goods from the Firm.

**Firm:** Wallop Woodcrafts.

**Contract:** any contract between the Firm and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Firm (including any part or parts of them).

1.2. Reference to a statutory provision includes reference to any order, regulation, statutory instrument or other subsidiary legislation at any time made under it for the time being in force (whenever made) and any modification, amendment, consolidation, re-enactment or replacement of it or any of its provisions.

1.3. Words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other gender. Headings do not affect the interpretation of these conditions.

### 2. **Application of Terms**

2.1. Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. These conditions apply to all the Firm's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Firm. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Firm which is not set out in the Contract. Nothing in this condition shall exclude or limit the Firm's liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a quotation for Goods by the Buyer from the Firm shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5. No order placed by the Buyer shall be deemed to be accepted by the Firm until a written acknowledgement of order is issued by the Firm or (if earlier) the Firm delivers the Goods to the Buyer.

2.6. The Buyer shall ensure that the terms of its order and any applicable drawing and/or specification are complete and accurate. The Firm is entitled to rely on any specification, drawing and/or documentation received from the Buyer and the Firm has no responsibility or liability in respect of any error, omission, defect or inaccuracy therein.

2.7. Any quotation is given on the basis that no Contract shall come into existence until the Firm dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 42 days only from its date, provided that the Firm has not previously withdrawn it.

### 3. **Description**

3.1. The quantity and description of the Goods shall be as set out in the Firm's quotation.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Firm and any descriptions or illustrations contained in the Firm's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract and this is not a sale by sample.

### 4. **Delivery**

4.1. Unless otherwise agreed in writing by the Firm, delivery of the Goods shall take place at the Firm's place of business when the Firm makes the Goods available to the Buyer.

4.2. Any dates specified by the Firm for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3. Subject to the other provision of these conditions, the Firm shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Firm's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4. If for any reason the Buyer fails to take or accept delivery of any of the Goods when they are ready for delivery, or the Firm is unable to deliver the Goods on time because the Buyer had not provided appropriate instructions, documents, licences or authorisations;

4.4.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Firm's negligence);

4.4.2. the Goods shall be deemed to have been delivered; and

4.4.3. the Firm may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5. The Buyer shall provide at the Delivery Point and at its expense, adequate and appropriate equipment and manual labour for loading the Goods. The Firm shall have no responsibility or liability for any damage occurring to the Goods during or following their loading onto any vehicle and/or removal from the Firm's premises.

4.6. The Firm may, if it considers it appropriate, deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to any instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

### 5. **Risk/Title**

5.1. The Goods are at the risk of the Buyer from the time of delivery.

5.2. Ownership of the Goods shall not pass to the Buyer until the Firm has received in full (in cash or cleared funds) all sums due to it in respect of;

5.2.1. the Goods; and

5.2.2. all other sums which are or which become due to the Firm from the Buyer on any account.

5.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall;

5.3.1. hold the Goods on a fiduciary basis as the Firm's bailee;

5.3.2. store the Goods (at no cost to the Firm) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Firm's property;

5.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

5.3.4. maintain the Goods in satisfactory condition and keep them insured on the Firm's behalf for their full price against all risks, to the reasonable satisfaction of the Firm. On request, the Buyer shall produce the policy of insurance to the Firm.

5.4. The Buyer's right to possession of the Goods shall terminate immediately if (or if the Firm has a bona fide belief that);

5.4.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

5.4.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Firm and the Buyer, or is unable to pay its debts within the meaning of section

5.4.3. the Buyer encumbers or in any way charges any of the Goods.

- 5.5. The Firm shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Firm.
- 5.6. The Buyer grants the Firm, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to re-possess them following which the Firm shall be entitled to use, sell or otherwise deal with the Goods without any liability to the Buyer.
- 5.7. Where the Firm is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Firm to the Buyer in the order in which they were invoiced to the Buyer.
- 5.8. On termination of the Contract, howsoever caused, the Firm's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.
- 5.9. The Firm shall have a lien on all the property of the Buyer in the Firm's possession for all sums due from the Buyer. The Firm shall be entitled to use, sell or dispose of that property as agent for the Buyer (and at its expense) and shall apply the proceeds in and towards the payment of all sums owing.
6. **Price**
- 6.1. Unless otherwise agreed by the Firm in writing, the price for the Goods shall be the price set out in the Firm's quotation.
- 6.2. The price for the Goods shall be exclusive of any value added tax, and other taxes and duties which may apply and all costs or charges in relation to packaging, loading, unloading, freight, carriage and insurance, all of which amounts (if applicable) the Buyer shall pay in addition when it is due to pay for the Goods.
7. **Payment**
- 7.1. Subject to condition 7.4, payment for the Goods is due in pounds sterling within 30 days of delivery or date of invoice (whichever is earlier) unless otherwise specified in writing by the Firm.
- 7.2. Time for payment shall be of the essence.
- 7.3. No payment shall be deemed to have been received until the Firm has received cleared funds.
- 7.4. All payment payable to the Firm under the Contract shall become due immediately on its termination despite any other provision.
- 7.5. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Firm to the Buyer.
- 7.6. If the Buyer fails to pay the Firm any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Firm on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank Plc, accruing on a daily basis until judgement or sooner payment. In addition, the Buyer shall reimburse the Firm for all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- 7.7. Where payment by instalments has been agreed by the Firm, the failure by the Buyer to pay any instalment by the due date shall entitle the Firm to demand the full invoice price for the Goods immediately or to treat such failure as repudiation of the Contract by the Buyer and to recover damages for breach of contract.
8. **Quality**
- 8.1. The Firm is obliged to provide Goods that comply with the requirements and specification of the drawings provided by the Buyer and referred to in the Firm's quotation.
- 8.2. Subject to condition 8.6 below, if the Buyer establishes that the Firm has failed to comply with its obligation set out in condition 8.1, the Firm shall, at its sole option, either replace the Goods with similar goods or repair any damaged Goods provided that, if the Firm so requests, the Buyer shall, at the Firm's cost, return the Goods (or the part thereof which is defective) to the Firm.
- 8.3. Delivery of any repaired or replacement goods shall be at the Firm's premises.
- 8.4. The Firm shall not be liable for any defect arising from any design, description, specification or drawing provided by the Buyer (or on its behalf) or if any adjustments, alterations or other work have been carried out on the Goods (or replacement goods) by any entity other than the Firm.
- 8.5. The Buyer shall indemnify the Firm from and against all claims, cost, expenses and liabilities of any nature in connection with the designs, specifications and drawings provided by the Buyer, including any claim that they infringe the rights of any third party.
- 8.6. Any claim that the Firm is in breach of its obligations set out in condition 8.1 shall be notified by the Buyer to the Firm either before starting to use the Goods in the Buyer's manufacturing process or within 4 working days of the Buyer taking delivery of the Goods whichever is the earlier. Any such claim must be in writing and contain full details of the claim and the Firm shall be afforded a reasonable opportunity to make such investigations as it considers appropriate into any claim received. The Firm shall have no liability with regard to any claim where the Buyer has failed to comply with the terms of this condition.
- 8.7. The obligations set out in this condition 8 constitute the entire responsibility and liability of the Firm in respect of the Goods.
9. **Limitation of Liability**
- 9.1. The following provisions set out the entire financial liability of the Firm (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of;
- 9.1.1. Any breach of these conditions;
- 9.1.2. Any use made or resale by the Buyer of any of the Goods or of any product incorporating any of the Goods; and
- 9.1.3. Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3. Nothing in these conditions excludes or limits the liability of the Firm;
- 9.3.1. For death or personal injury caused by the Firm's negligence; or
- 9.3.2. For any matter which it would be illegal for the Firm to exclude or attempt to exclude its liability; or
- 9.3.3. For fraud or fraudulent misrepresentation.
- 9.4. Subject to condition 9.2 and condition 9.3;
- 9.4.1. The Firm's total liability in contract, tort (including negligence or breach of statutory duty, misrepresentation, restitution or otherwise), arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods as provided in the Contract; and
- 9.4.2. The Firm shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
10. **Assignment**
- 10.1. The Firm may assign or subcontract the Contract or any part of it or its performance to any person, firm or company.
- 10.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Firm.
11. **Force Majeure**
- The Firm reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Firm including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Firm to terminate the Contract
13. **General**
- 13.1. Each right or remedy of the Firm under the Contract is without prejudice to any other right or remedy of the Firm whether under the Contract or not.
- 13.2. If any provision of the Contract is found by any court or tribunal of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3. Failure or delay by the Firm in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4. Any waiver by the Firm of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.
- 13.7 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
14. **Communications**
- 14.1 Any notices to be given pursuant to the terms of this Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 14.1.1 (in case of communications to the Firm) to Unit 3, Hollom Down Road, Lopcombe Corner, Salisbury, Wiltshire, SP5 1BP or such changed address as shall be notified to the Buyer by the Firm; or
- 14.1.2 (in the case of the communications to the Buyer) to the registered office of the Buyer (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as has been notified to the Firm by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2 if delivered by hand, on the day of delivery; or
- 14.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Firm shall be marked for the attention of Nick or Lucy Rickman.