

BLUE MOON DESIGN LTD TERMS & CONDITIONS OF SALE

I. SCOPE

The Seller means Blue Moon Design Ltd, the manufacturer of the goods sold or to be sold by it to any customer ("the Purchaser").

- 1.1 These conditions alone shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Seller with the Purchaser. They shall apply in place of and prevail over any inconsistent terms or conditions contained or referred to in the Purchaser's order or in correspondence unless specifically excluded or varied in writing by a Director of the Seller and any stipulations or conditions to the contrary are hereby excluded.
- 1.2 Acceptance by the Purchaser of delivery of the goods shall (without prejudice to Condition 2 or any other matter in which acceptance of these Conditions may be evidence) be deemed to constitute unqualified acceptance of these Conditions.
- 1.3 If, subsequent to any contract of sale which is subject to these Conditions, a contract of sale is made with the same Purchaser without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions.

2 GENERAL

- 2.1 All statements, technical information and recommendations concerning the goods or samples provided by the Seller are based upon tests believed to be reliable, but do not constitute a guarantee or warranty. All goods are sold and samples of all goods provided with the understanding that the Purchaser has independently determined, prior to use, that the goods are suitable for the purposes the Purchaser intends to use the goods for. No salesman, representative or agent is authorised to give any guarantee, warranty or make any representation contrary to the foregoing.

3. PRICES

- 3.1 The Seller shall be entitled to charge the amount of any Value Added Tax payable whether or not included on the estimate or invoice.
- 3.2 If Seller uses list prices for goods sold, the prices payable for the goods shall be the seller's list prices therefore current at the time of despatch.

4. FREIGHT AND PACKAGING CHARGES

- 4.1 Charge for freight and packaging will be made in accordance with the Seller's rates therefore current at the time of despatch.

5. TERMS OF PAYMENT

- 5.1 Seller may at any time require the Purchaser to make payment in advance of delivery or manufacture.
- 5.2 The Seller reserves the right to suspend the provision of goods to the Purchaser where the amounts are overdue under any contract with the Purchaser until all such amounts have been paid or to terminate the contract in its entirety by notice in writing to the Purchaser.
- 5.3 Any extension of credit allowed to the Purchaser may be changed or withdrawn at any time.
- 5.4 Unless otherwise indicated in writing, payment must be made within 7 days of the date of invoice. When payment is overdue the Purchaser owes an interest of 1.5% per month over the outstanding amount; part of a month will be deemed to be a month. All costs, judicial and extrajudicial incurred by Seller with respect to the breach of any obligation on the part of the Purchaser, must be reimbursed by the Purchaser.

6. DELIVERY

- 6.1 Time for delivery shall not be of the essence. Delivery dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect.
- 6.2 The Purchaser has an obligation to accept goods to be delivered. In the event of the Purchaser returning or failing to accept any delivery of the goods in accordance with the contract, the Seller shall without prejudice to Seller's other rights be entitled, at its option, to suspend and/or cancel in whole or in part (further deliveries under) the contract and/or to store at the risk of the Purchaser any goods which the Purchaser refuses or fails to accept and the Purchaser shall pay all costs of such storage and any additional costs or carriage incurred as a result of such refusal or failure.
- 6.3 Where the goods are delivered by the Seller's own transport or by a carrier on behalf of the Seller the risk therein shall pass to the Purchaser upon delivery. Unless the Seller receives notice in writing from the Purchaser within 3 days of receipt of the goods by the Purchaser, the Seller shall not be liable for any loss or damage of the goods in transit and the goods shall be deemed to have been delivered in good order and condition. Where the Seller receives notification from the Purchaser under this Condition 6.3, the Seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods damaged in transit.

7. TITLE

- 7.1 NOTWITHSTANDING DELIVERY AND PASSING OF RISK, THE GOODS SHALL REMAIN THE PROPERTY OF THE SELLER UNTIL SUCH TIME AS THE PURCHASER SHALL HAVE PAID TO THE SELLER THE AGREED PRICE (TOGETHER WITH ANY ACCRUED INTEREST) AND ALL OTHER AMOUNTS OWED BY THE

PURCHASER TO THE SELLER IN RESPECT OF ANY OTHER CONTRACT FOR THE SALE OF GOODS, OR THE RENDERING OF SERVICES RELATED THERETO OR OF ANY BREACH OF CONTRACT BY THE PURCHASER.

7.2 The Purchaser hereby grants an irrevocable right and licence to the Seller and its servants and agents to enter upon all or any of the Purchaser's premises with or without vehicles for the purpose of taking back goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of any contract which is subject to these Conditions and is without prejudice to any accrued right of the Seller under such contracts or otherwise.

8. VARIATIONS

8.1 Slight deviations in quality, symmetry, format, colour and finish shall not constitute ground for rejection of a delivery. At the Seller's discretion it may be necessary to substitute goods ordered of a certain size for equivalent goods of a larger size. The Seller may only make a substitution for goods of one size higher and in any case the number of goods substituted may not represent more than 25% of the total order.

9. ILLEGAL MATTER

9.1 The Purchaser shall indemnify and keep indemnified the Seller against all claims, liabilities, costs, damages and expenses incurred by or for which the Seller may become liable as a direct or indirect result of:

- a) carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Purchaser involving any infringement or alleged infringement of any intellectual or industrial property rights vested in any third party.
- b) any person other than the Seller (or with the Seller's express consent in writing) using the goods or carrying out any amendments, alteration or any other work on the goods involving any infringement or alleged infringement of any intellectual or industrial property rights vested in any third party.

9.2 THE SELLER SHALL HAVE NO LIABILITY TO THE PURCHASER IN THE EVENT OF GOODS INFRINGING OR BEING ALLEGED TO INFRINGE THE RIGHTS OF ANY THIRD PARTY.

10 WARRANTY AND COMPLAINTS

10.1 The Seller warrants the goods to be free from defects in materials and workmanship under normal use and service. The Seller's sole obligation hereunder shall be limited to, at the Seller's option, either crediting in whole or in part, the Purchaser with the purchase price of, or replacing, the goods or any part or parts thereof provided that each of the following three conditions are fulfilled: i) written notice of non-conformance hereunder is received by the Seller not more than 7 days after the defect in question has come to the attention of the Purchaser or ought reasonably to have come to its attention, ii) after the Seller's written authorisation the goods in question are returned to the Seller's shipping location freight charges prepaid and iii) after examination the goods in question are disclosed to the Seller's satisfaction to be non-conforming. This warranty shall not apply to goods which the Seller determines have, whether by the Purchaser or any other person, been subject to operating and/or environmental conditions in excess of the maximum value therefore in the applicable specifications or otherwise have been subject to misuse, neglect, improper damage or abnormal or unsuitable conditions of storage or which have been in any way altered, modified or otherwise interfered with by any person other than the Seller's own authorised personnel. The Seller shall not be liable for defects in the goods caused by fair wear and tear. This warranty may be asserted by the Purchaser only and not by the Purchaser's customers or users of the Purchaser's products.

11 LIABILITY

11.1 THE SELLER'S AGGREGATE LIABILITY TO THE PURCHASER, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR OTHERWISE SHALL IN NO CIRCUMSTANCE EXCEED THE COST OF THE DEFECTIVE, NON-CONFORMING, DAMAGED OR UNDELIVERED GOODS, WHICH GIVE RISE TO SUCH LIABILITY AS DETERMINED BY NET PRICE INVOICES TO THE PURCHASER IN RESPECT OF ANY OCCURRENCE OR SERIES OF OCCURRENCES.

11.2 In no event will the Seller be liable to the Purchaser for any direct or indirect incidental or consequential loss, damage or injury and including without limitation loss of anticipated profits, goodwill, reputation, business receipt or contract or losses or expense resulting from third party claims.

12 FORCE MAJEURE

12.1 The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the Seller being prevented, hindered or delayed in the performance of its obligations under the contract by reason of force majeure circumstances.

12.2 In this Condition 14 "force majeure circumstances" shall include, without limitation the following circumstances whether foreseeable or not: Any Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, epidemic, accident, breakdown of plant or machinery, fire, explosion, flood, drought, government action, difficulty in obtaining workmen, materials or transport or other circumstances whatsoever outside the control of the Seller affecting the provision therefore by the Seller's usual source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the goods by the Seller's normal route or means of delivery.

12.3 In force majeure circumstances the Seller may in its sole discretion terminate any contract for the supply of goods

pursuant to these Conditions or cancel delivery of goods to the Purchaser or may, with the agreement of the Purchaser, deliver goods at an agreed rate of delivery commencing after any suspension of deliveries.

13 TERMINATION

13.1 If the Purchaser (being an individual) enters into a deed of arrangement or if a petition is presented for the making of a bankruptcy order against him or if he compounds with his creditors or if (being a company) an application for an order is made or a resolution is passed for the winding-up of the Purchaser or if a meeting is called to approve the appointment of a liquidator to the Purchaser or if a petition is presented to the Court for the appointment of an administrator to the Purchaser or over any part of the Purchaser's undertaking or if circumstances arise which might entitle the Court of a creditor or the Purchaser to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Purchaser takes or suffers any similar or analogous action in consequence of debt or commits a breach of any contract between the Seller and the Purchaser the Seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries to the Purchaser and/or exercise its rights under Condition 7 and/or by notice in writing to the Purchaser terminate any contract with the Purchaser.

13.2 Upon termination of any contracts pursuant to Condition 14 any indebtedness of the Purchaser to the Seller shall become immediately due and payable and the Seller shall be relieved of any further obligation to supply any goods to the Purchaser pursuant to such contracts.

14 WAIVER

14.1 The failure on the part of the Seller to exercise or enforce any rights conferred by the contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

15 ASSIGNMENT

15.1 None of the rights or obligations of the Purchaser under these conditions may be assigned or transferred in whole or in part without the prior written consent of the Seller.

16 HEADINGS

Headings to any of these Conditions are included to facilitate reference only and shall not affect the construction hereof.

17 GOVERNING LAW, COMPETENT COURT

17.1 Any contract between the Seller and the Purchaser shall be governed by and construed and interpreted in accordance with the laws of the country of residence of the Purchaser.

17.2 Any dispute arising out of or in connection with the contract shall be brought before the competent courts of the country of residence of the Seller.