

Furnitubes International Ltd: Terms & Conditions of Sale

1. INTERPRETATION:

1.1 Definitions:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions means the terms and conditions set out in this document as amended from time to time.

Contract means the contract between Furnitubes and the Customer for the sale and purchase of Goods in accordance with these Conditions.

Customer means the person or firm who purchases the Goods from Furnitubes.

Force Majeure Event means an event or circumstance beyond a party's reasonable control. Furnitubes means Furnitubes International Limited (registered in England and Wales with company number 01331689).

Goods means the goods (or any part of them) set out in the Order.

Order means the Customer's order for the Goods.

Specification means any specification for the Goods, including any related designs and drawings, that are agreed in writing between the Customer and Furnitubes.

1.2 Interpretation:

1.2.1 A reference to statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 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;

1.2.3 a reference to writing or written includes faxes and emails.

1.2.4 Customers will have different rights under these Conditions depending on whether they are a business or consumer. A Customer is a consumer if:

- he/she is an individual; and
- he/she is buying Goods from Furnitubes wholly or mainly for their personal use (not for use in connection with their trade, business, craft or profession).

2. BASIS OF CONTRACT:

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

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Furnitubes issues a written acceptance of the Order ("Confirmation of Order") or commences the supply of the Goods, whichever is the earlier, at which point the Contract shall come into existence.

2.4 Furnitubes shall be under no obligation to start processing any Order until it has issued a Confirmation of Order and where specified in the quotation or Confirmation of Order (as the case may be), the Customer has paid the deposit (where applicable) or price in full.

2.5 A quotation for the Goods given by Furnitubes shall not constitute an

offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue (or such other period as Furnitubes specifies in writing).

2.6 Any description or technical information contained in Furnitubes' advertising literature or website shall represent a general description of the Goods only and shall not form part of the Contract.

2.7 In the event of any discrepancy between the Order and these Conditions, these Conditions shall prevail unless otherwise agreed in writing by a duly authorised representative of Furnitubes.

3. GOODS:

3.1 Dimensions stated are meant as a guide only and do not form part of the Contract.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification:

3.2.1 Goods will be supplied with Furnitubes' current standard design and finish;

3.2.2 Painted finishes will be to Furnitubes' current standard RAL colour for those Goods unless the Customer has explicitly stated a different RAL colour at the time of placing the Order; and

3.2.3 Furnitubes reserves the right to amend or change the detail, design or Specification of any item offered at any time if required by any applicable statutory or regulatory requirements or otherwise without notifying the Customer.

3.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Furnitubes against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Furnitubes in connection with any claim made against Furnitubes for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Furnitubes' use of the Specification. This clause 3.3 shall survive termination of the Contract.

4. DELIVERY:

4.1 Furnitubes shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location").

4.2 Whilst Furnitubes will use its best endeavors to comply with any estimated delivery date, any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Furnitubes shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Furnitubes with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3 In the event that delivery is made by a third-party contractor, such delivery is subject to the terms and conditions laid down by such contractor and the Customer shall be bound by those terms and conditions.

4.4 The Customer shall ensure that all Goods can be and are unloaded immediately upon arrival at the Customer's premises. Such unloading is entirely at the risk of the Customer who shall also ensure that any site or location to which the Goods are to be delivered is suitable for the purpose

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of such delivery including the provision of proper access and suitable and appropriate hard standing for vehicles used in the carriage and delivery of Goods.

4.5 All Goods must be examined by the Customer upon receipt and notification of any Goods lost or damaged in transit must be given in writing to Furnitubes immediately and certainly no later than twenty-four (24) hours following delivery to the Customer who shall retain the packaging and contents for inspection by Furnitubes. Subject to clause 5, any other complaint shall be null and void if not received by Furnitubes in writing within twenty-one (21) days of receipt of the Goods by the Customer. Goods shall be returned to Furnitubes upon receipt of such written complaint if so required by Furnitubes.

4.6 All Furnitubes' packaging, including pallets and stillages, are non-returnable. It is the responsibility of the Customer to dispose of such items in a suitable manner.

4.7 If the Customer fails to accept delivery of the Goods, then except where such failure or delay is caused by a Force Majeure Event or Furnitubes failure to comply with its obligations under the Contract:

4.7.1 Delivery of the Goods shall be deemed to have been completed at 9.00am on the delivery date; and

4.7.2 Furnitubes shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance). This charge will be at a minimum rate of £35 (plus VAT if applicable) per pallet of Goods per week or part week.

4.8 If ten (10) Business Days after the delivery date the Customer has not accepted delivery of the Goods, Furnitubes may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 Furnitubes may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY:

5.1 Furnitubes warrants that on delivery, and for a period of twelve (12) months from the date of delivery ("guarantee period"), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Specification.

5.1.2 be free from material defects in design, material and workmanship.

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4 be fit for any purpose held out by Furnitubes.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to Furnitubes during the guarantee period within a reasonable time of discovery that some or all of the Goods do not comply with the guarantee set out in clause 5.1;

5.2.2 Furnitubes is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by Furnitubes) returns such Goods to

Furnitubes' place of business at the Customer's cost, Furnitubes shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Furnitubes shall not be liable for the Goods' failure to comply with the guarantee set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow Furnitubes oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of Furnitubes following any drawing, design or Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of Furnitubes;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The Customer must ensure that Goods returned to Furnitubes are properly packaged so as not to allow damage to be sustained in return transit. Furnitubes shall not be liable for any loss or damage caused to Goods during transit.

5.5 The failure of Goods to match exactly the finish and design of other goods previously supplied by Furnitubes shall not be regarded as a defect for the purposes of this guarantee.

5.6 The guarantee given by Furnitubes under this clause shall not be transferable or assignable to any other person, firm or company.

5.7 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 the Contract.

5.8 All Furnitubes' electrical components are non-returnable. It is the responsibility of the Customer to dispose of such items in a suitable manner.

5.9 These Conditions shall apply to any repaired or replacement Goods supplied by Furnitubes.

5.10 Where the Customer is a consumer, the guarantee given by Furnitubes does not take away any rights the Customer may have under law and are in addition to the Customer's statutory consumer rights. For full details of Customer's rights, please contact the Citizens Advice Bureau.

6. INTELLECTUAL PROPERTY RIGHTS:

6.1 The Customer acknowledges and agrees that any and all intellectual property rights and other rights of any kind in relation to the Goods (other than rights in the physical Goods themselves) or otherwise arising out of Furnitubes' services or work with the Customer (including in relation to the Specification) shall be owned by Furnitubes (Work IP). Furnitubes grants a limited, revocable, non-assignable, non-transferrable license to the Customer for the duration of the Contract to use the Work IP only as necessary for the approval of the Goods and/or any Specification. No other rights or licenses in or to the Work IP shall be granted to the Customer other

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than as expressly agreed in writing with Furnitubes and subject to the explicit allocation (and payment) of a fee relating to such right or license. 6.2 If and to the extent that the Customer provides or makes available (directly or indirectly) any content, data, materials or other data, including through or in relation to the Specification (Client Contribution) the Customer grants Furnitubes a fully paid-up, non-exclusive, royalty-free, perpetual, irrevocable, transferable, sub-licensable license to copy, modify and otherwise deal with such Client Contribution for the purposes of developing the Work IP, manufacturing the Goods, and for any such other purposes as Furnitubes sees fit, in perpetuity. The Customer warrants that it has all rights necessary to grant such rights in the Client Contribution and that Furnitubes' use of such Client Contribution shall not infringe upon any third-party rights. The Customer shall indemnify Furnitubes in full for any losses, damages, costs, expenses or other sums Furnitubes incurs or pays in relation to or arising out of any breach of such warranty.

7. TITLE AND RISK:

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1 Furnitubes receives payment in full (in cash or cleared funds) for the Goods and any other goods that Furnitubes has supplied to the Customer; and
- 7.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain identifiable as Furnitubes' property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.4 notify Furnitubes immediately if it becomes subject to any of the events listed in clause 9.1; and
- 7.3.5 give Furnitubes such information relating to the Goods as Furnitubes may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Furnitubes receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as Furnitubes' agent; and
- 7.4.2 title to the Goods shall pass from Furnitubes to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy Furnitubes may have:
- 7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and 7.5.2 Furnitubes may at any time:
- a) require the Customer to deliver up all Goods in its possession that have

not been resold, or irrevocably incorporated into another product; and b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT:

- 8.1 Unless otherwise agreed in writing by Furnitubes:
- 8.1.1 where the Customer does not have an account and/or satisfactory credit checks, the Customer agrees to pay Furnitubes in full a deposit (if so requested) or amount specified in the quotation or Confirmation of Order (as the case may be) prior to the Order being processed.
- 8.1.2 in all other cases, the Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of delivery.
- 8.2 Payment shall be made to the bank account nominated in writing by Furnitubes. Time for payment shall be of the essence of the Contract.
- 8.3 Orders are accepted by Furnitubes on the basis that the Goods will be supplied at the prices ruling at the date of dispatch. Prices previously quoted shall be as a guide only.
- 8.4 Furnitubes may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.4.1 any factor beyond Furnitubes' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
- 8.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 8.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give Furnitubes adequate or accurate information or instructions.
- 8.5 All prices quoted shall be exclusive of value added tax which will be charged separately.
- 8.6 If the Customer fails to make any payment due to Furnitubes under the Contract by the due date for payment, then Furnitubes reserves the right to charge the Customer interest on the overdue amount at the rate of four percent (4%) per annum above National Westminster Bank plc's base rate from time to time. 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. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Furnitubes may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Furnitubes to the Customer.

9. TERMINATION:

- 9.1 Without limiting its other rights or remedies, Furnitubes may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within

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seven (7) days of the Customer being notified in writing to do so;
9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
9.1.4 the Customer's financial position deteriorates to such an extent that in Furnitubes' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
9.2 Without limiting its other rights or remedies, Furnitubes may suspend provision of the Goods under the Contract or any other contract between the Customer and Furnitubes if the Customer becomes subject to any of the events listed in clauses 9.1.1 to 9.1.4, or Furnitubes reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
9.3 Without limiting its other rights or remedies, Furnitubes may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
9.4 On termination of the Contract for any reason the Customer shall immediately pay to Furnitubes all of Furnitubes' outstanding unpaid invoices and interest and in respect of any amounts not invoiced, all costs reasonably incurred by Furnitubes in fulfilling the Contract up until the date of termination.
9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. CUSTOMERS' CANCELLATION RIGHTS IF IT IS A BUSINESS:

10.1 If the Customer is a business, it may cancel the Contract up to the point of dispatch by written notice to Furnitubes subject to the remainder of this clause 10.
10.2 The right to cancel is not applicable for bespoke or customised Goods that have been made to the Customer's specific requirements or Specification.
10.3 Where the Customer exercises its right under this clause 10, the Customer shall remain liable to Furnitubes for all costs reasonably incurred by Furnitubes in fulfilling the Contract up until the date of deemed receipt of cancellation up to the maximum value of the Order, except that the Customer shall have no liability to Furnitubes where the cancellation results from Furnitubes' failure to comply with its obligations under the Contract.

11. CUSTOMERS' CANCELLATION RIGHTS IF HE/SHE IS A CONSUMER:

11.1 Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Customers have the right to cancel their Contract as long as they do so no later than fourteen (14) days after the Goods have been delivered. This is the statutory 'cooling off period'. After this period has expired, the Customer has no right to cancel. For full details of consumers' protection rights, please contact the Citizens Advice Bureau.
11.2 The statutory cooling off period is not applicable for bespoke Goods and/or customised Goods that have been made to the Customer's specific requirements or Specification.
11.3 Bespoke Goods include those Goods of a specialist, unique and/or individual nature required by the Customer but not detailed in Furnitubes' current product list as amended from time to time such that there is no market for the Goods once the Customer has cancelled the Contract.
11.4 Subject to clause 11.2, if the Customer wishes to cancel the Contract within the cooling off period, the Customer can do so by sending an email which can be accessed here: <https://www.furnitubes.com/contact/#get-in-touch>
11.5 If the Customer cancels the Contract within the cooling off period, then subject to clause 11.6 Furnitubes will refund to the Customer all payments that Furnitubes has received from the Customer.
11.6 If the Customer cancels the Contract within the cooling off period and after the Goods have been dispatched, it is the Customer's responsibility to return the Goods to Furnitubes at their own cost. Furnitubes will not be responsible for any loss or damage to the Goods during transit. If the Goods are lost or damaged in transit, Furnitubes may charge the Customer or not refund to the Customer the amount that is attributable to the loss or damage. Alternatively, Furnitubes can arrange to collect the Goods from the Customer on a date agreed between the parties and the Customer agrees to pay Furnitubes' reasonable and direct costs and expenses incurred in their collection. This must be done within fourteen (14) days of the Customer's notification of their decision to cancel the Contract.
11.7 The Customer must take reasonable care of the Goods and not use them. The Goods should also be returned in their original packaging, wherever possible.

12. LIMITATION OF LIABILITY:

12.1 Nothing in these Conditions shall limit or exclude Furnitubes' liability for:
12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).
12.1.2 fraud or fraudulent misrepresentation.
12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
12.1.4 defective products under the Consumer Protection Act 1987; or
12.1.5 any matter in respect of which it would be unlawful for Furnitubes to exclude or restrict liability.
12.2 Subject to clause 12.1:
12.2.1 Furnitubes shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

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12.2.2 Furnitubes' total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Order.

12.3 Where the Customer is a consumer, nothing in these Conditions takes away any rights the Customer may have under law.

13. FORCE MAJEURE:

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Contract by giving fourteen (14) days' written notice to the affected party.

14. GENERAL:

14.1 Assignment and other dealings:

14.1.1 Furnitubes may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

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

14.2 Entire agreement:

14.2.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14.3 Variation: No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 Waiver: A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

14.4.1 waive that or any other right or remedy; nor

14.4.2 prevent or restrict the further exercise of that or any other right or remedy.

14.5 Severance: If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or

part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.6 Notices

14.6.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by recorded delivery or other next working day delivery service or commercial courier, or sent by fax or email.

14.6.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.6.1; if sent by recorded delivery, at the time recorded by the delivery service; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one (1) Business Day after transmission.

14.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.7 Third party rights: No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

14.8 Governing law: The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

14.9 Jurisdiction: Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

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