Imperial Office Furniture Limited – Standard Terms of Sale

1 Interpretation

1.1 In these Terms:
"Customer" means the person who accepts Imperial's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by Imperial;
"Goods" means the goods (including any instalment of the goods or any parts for them) which Imperial is to supply in accordance with these Terms;
"Imperial" means Imperial Office Furniture Limited (registered in England under number 03858693);
"Contract" means the contract for the sale and purchase of the Goods;
"Order" means the Customer's order for the Goods, as set out in the Customer's purchase order form, or the Customer's written acceptance of Imperial's quotation as the case may be;
"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and Imperial;
"Writing", and any similar expression, includes facsimile transmission and electronic mail but not other forms of electronic communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 These Terms shall govern and 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 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and Imperial.

2.3 Imperial's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Imperial in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by Imperial or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Imperial is followed or acted upon entirely at the Customer's own risk, and accordingly Imperial shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Imperial shall be subject to correction without any liability on the part of Imperial.

3 Orders and specifications

3.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms.

3.2 No order submitted by the Customer shall be deemed to be accepted by Imperial unless and until confirmed in Writing by Imperial's authorised representative, at which point the Contract shall come into existence.

3.3 A quotation for the Goods given by Imperil shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3.4 The Customer shall be responsible to Imperial for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving Imperial any necessary information relating to the Goods within a sufficient time to enable Imperial to perform the Contract in accordance with its terms.

3.5 The quantity and description of the Goods shall be as set out in the Order.

3.6 The quality of the Goods and any specification for them shall be as set out in Imperial's published literature for the Goods current at the date of the Contract.

3.7 Imperial reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory, regulatory or E.U. requirements or, where the Goods are to be supplied to Imperial's specification, which do not materially affect their quality or performance.

3.8 No order which has been accepted by Imperial may be cancelled by the Customer except with the agreement in Writing of Imperial and on terms that the Customer shall indemnify Imperial in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Imperial as a result of cancellation.

4 Price of the goods

4.1 The price of the Goods shall be the price state in the Order or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Imperial's published price list current at the date of the Contract.

4.2 Imperial reserves the right, by giving Written notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Imperial which is due to any factor beyond the control of Imperial (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Imperial adequate information or instructions.

4.3 Except as otherwise stated in the Order or in any price list of Imperial, and unless otherwise agreed in Writing between the Customer and Imperial, all prices are given by Imperial on an ex works basis, and where Imperial agrees to deliver the Goods otherwise than at Imperial's premises, the Customer shall be liable to pay Imperial's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Imperial at the prevailing rate.

5 Terms of payment

5.1 Imperial may invoice the Customer for the Goods on or at any time after completion of delivery or collection.

5.2 Unless otherwise agreed in Writing between the Customer and Imperial, the Customer shall pay the invoice in full and in cleared funds on 30 days end of month.

5.3 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.4 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Imperial, Imperial may:

5.4.1 cancel the contract or suspend any further deliveries to the Customer;

5.4.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and Imperial) as Imperial may think fit (notwithstanding any purported appropriation by the Customer);

5.4.3 charge the Customer interest on the amount unpaid at the rate of 4% per annum above the Bank of England's base rate from time to time, but at 4% per annum for any period when that base rate is below 0%. 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 amount unpaid.

6 Delivery

6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at Imperial's premises at any time after Imperial has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by Imperial, by Imperial delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and Imperial shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Imperial in Writing. The Goods may be delivered by Imperial in advance of the quoted delivery date on giving reasonable notice to the Customer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Imperial to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.4 If Imperial fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Imperial's reasonable control or the Customer's fault, and Imperial is accordingly liable to the Customer, Imperial's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Customer fails to take delivery of the Goods or fails to give Imperial adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Imperial's fault) then, without limiting any other right or remedy available to Imperial, Imperial may:

6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7 Installation

Where Imperial has agreed in Writing to install the Goods:

7.1 Before the due delivery date the Customer must;

7.1.1 ensure that any works which should properly be carried out and completed before the Goods are installed (including, without limitation, those to or in respect of: floors and floor coverings; walls, ceilings and decorations; cabling, pipework and ductwork; and, fittings, equipment and apparatus for IT, electrical, telecommunications, heating, lighting and other services) are so carried out and completed;

7.1.2 inform Imperial of any problems Imperial or its agents or its sub-contractors may encounter in gaining access to the premises or any part of the premises in which the Goods are to be installed;

7.1.3 ensure that the part or parts of the premises in or on which the Goods are to be installed are clear, clean and fully accessible; and

7.1.4 ensure Imperial has access to a safe electricity supply sufficient for Imperial's purposes;

7.2 If Imperial's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

7.2.1 without limiting or affecting any other right or remedy available to it, Imperial shall have the right to suspend performance of the installation of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default presents or delays Imperial's performance of any of its obligations;

7.2.2 Imperial shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Imperial's failure or delay to perform any of its obligations as set out in this clause 7.2; and

7.2.3 Imperial reserves the right to recover from the Customer all costs and expenses incurred by Imperial as a result of the Customer's failure to comply with these obligations.

7.3 Unless otherwise agreed in Writing between the Customer and Imperial, any goods or chattels of the Customer which are to be removed or replaced by or in the course of installation of the Goods shall upon removal or replacement belong to and be the absolute property of Imperial who shall be free to use or dispose of the same as Imperial sees fit.

7.4 Any dates quoted for installation of the Goods are approximate only and Imperial shall not be liable for any delay in installation however caused. Time for installation shall not be of the essence of the Contract unless previously agreed by Imperial in Writing. The Goods may be installed by Imperial in advance of the quoted date upon giving reasonable notice to the Customer.

7.5 Once installation of the Goods is completed;

7.5.1 Imperial will leave the site and the premises clear of all rubbish and unused materials which had been brought to the site by Imperial or its agents, employees or subcontractors; and

7.5.2 the Customer will be asked to sign an acceptance form to confirm its acceptance of the Goods. The Customer must inspect the Goods thoroughly and test any fittings and fixtures to ensure that it is satisfied with them. If the Customer finds any faults it must note them on the acceptance form.

8 Risk and property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer:

8.1.1 in the case of Goods to be delivered at Imperial's premises, at the time when Imperial notifies the Customer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at Imperial's premises (but not installed by Imperial), at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Imperial has tendered delivery of the Goods; or,

8.1.3 in the case of Goods to be delivered and installed by Imperial, at the time when Imperial or its agents or sub-contractors inform the Customer that the Goods have been installed or, if the Customer wrongfully fails to allow Imperial or its agents or sub-contractors to install the Goods, the time when Imperial or its agents or sub-contractors inform the Customer that they are ready and willing to install the Goods.

8.2 Notwithstanding delivery, installation and the passing of risk in the Goods, or any other provision of these Terms, ownership of the Goods shall not pass to the Customer until Imperial has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to Imperial from the Customer on any account.

8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as Imperial's bailee;

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

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

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

8.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

8.4.2 any such sale shall be a sale of Imperial's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.5 The Customer's right to possession of the Goods shall terminate immediately if:

8.5.1 the Customer 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

8.5.2 the Customer 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 Imperial and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

8.5.3 the Customer encumbers or in any way charges any of the Goods.

8.6 Imperial shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Imperial.

8.7 The Customer grants Imperial, 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 Customer's right to possession has terminated, to recover them.

8.8 Where Imperial is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Imperial to the Customer in the order in which they were invoiced to the Customer.

8.9 On termination of the Contract, howsoever caused, Imperial's (but not the Customer's) rights contained in this Clause 9 shall remain in effect.

9 Warranties and Limitation of Liability

9.1 Subject to the following provisions Imperial warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 5 (five) years from delivery.

9.2 The above warranty is given by Imperial subject to the following conditions:

9.2.1 Imperial shall be under no liability in respect of any defect arising from wilful damage, negligence, misuse or alteration as a result of a third party installing the Goods (unless installed by Imperial pursuant to clause 9);

9.2.2 Imperial shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Imperial's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without Imperial's approval;

9.2.3 Imperial shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by Imperial, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Imperial;

9.2.5 Imperial shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the claim is not notified to them before the expiry of the warranty period;

9.2.6 the Customer must co-operate fully with Imperial and assist it in determining the validity of any claim under the above warranty and in particular, but without limitation, Imperial shall be entitled to require the Customer to return the Goods (at the Customer's risk and expense in all respects) to Imperial for such purposes (subject only to Imperial reimbursing to the Customer the reasonable and proper costs of transport and insurance in the event that the warranty claim is found to be valid);

9.2.7 where Imperial replace any Goods (or any part or parts thereof) under the warranty in clause 9.1, such warranty shall only apply to the replacement Goods (or the part or parts in question) for the remainder of the period of the warranty applicable to the Goods (or the part or parts in question) so replaced.

9.3 Where a valid claim in respect of any of the Goods under the warranty in clause 9.1, Imperial may repair or replace the Goods (or the part in question) free of charge or, at Imperial's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case Imperial shall have no further liability to the Customer.

9.4 Nothing in these Terms shall limit or exclude Imperial's liability for:

9.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontracts (as applicable);

9.4.2 fraud or fraudulent misrepresentation;

9.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.4.4 defective products under the Consumer Protection Act 1987; or

9.4.5 any matter in respect of which it would be unlawful for Imperial to exclude or restrict liability.

9.5 Subject to clause 9.4:

9.5.1 Imperial 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

9.5.2 Imperial's 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 Goods.

9.6 Imperial shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Imperial's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Imperial's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Imperial's reasonable control:

9.6.1 Act of God, explosion, flood, tempest, fire or accident;

9.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.6.4 import or export regulations or embargoes;

9.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Imperial or of a third party);

9.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.6.7 power failure or breakdown in machinery.

10 Termination

10.1 Without limiting its other rights or remedies, Imperial may terminate this Contract with immediate effect by giving written notice to the Customer if:

10.1.1 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 7 days of that party being notified in writing to do so;

10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or voluntary 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 solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or (being an individual or firm) becomes bankrupt; or

10.1.3 the Customer suspends, threatens to suspend, ceases, or threatens to cease, to carry on all or a substantial part of its business; or

10.1.4 the Customer's financial position deteriorates to such an extent that in Imperial's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

10.1.5 Imperial reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 Without limiting any other right or remedy available to Imperial, Imperial may suspend provision of the Goods or any further deliveries under the Contract without any liability to the Customer if the Customer becomes subject to any of the events listed in clause 10.1.1 to 10.1.5, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, Imperial 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.

10.4 On termination of the Contract for any reason, if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10.5 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.

10.6 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.

11 General

11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by Imperial of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.4 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.