MIVA Wood Floors Ltd

Terms and conditions of sale

1. Definitions and interpretation:

The following definitions and rules of interpretation apply in the Contract.
"Acknowledgment of Order" a written document issued by the Company to the Buyer confirming that the Buyer's order for Goods has been accepted by the Company;
"Bespoke Goods" any Goods which have been specially manufactured or altered in any way to meet the requirements of the Buyer. This shall include (but not be limited to) incorporating the Goods into other Goods or materials. The company shall (acting reasonably) decide whether any Goods are Bespoke Goods.
"Buyer" a person who has agreed to purchase Goods from the Company;
"Company" **MIVA Wood Floors Limited registered in England and Wales with company number 09384592 and whose registered office is at Bentinck House, Bentinck Road, West Drayton, Middlesex, UB7 7RQ**
"Charges" has the meaning given in clause 9.1;
"Contract" the contract between the Company and the Buyer for the supply of Goods under these clauses 1 to 18;
"Delivery Site" a site specified by the Buyer where the Goods are to be unloaded;
"Force Majeure Event any circumstances beyond the Company's control including, but not limited to, acts of God, war, strikes, lockouts or any other industrial action, fire, flood, drought, tempest, freezing temperatures, insect or fungicidal attack, or the Company's failure to procure materials or articles required for the performance of the Contract in circumstances where the Company has taken reasonable endeavours to obtain such material or articles;
"Goods" the goods (including any instalment of the goods) which the Company is to supply or has supplied under these clauses; and
Risk transfer

1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
1.2 A reference to "written" or "writing" includes fax and email.

2. Formation of contract

2.1 The Contract shall come into existence and take effect if and when the Company issues the Acknowledgement of Order to the Buyer and shall remain in full force and effect until either.
2.1.1 The parties have discharged all their obligations under it (at which point it shall expire); or
2.1.2 It is terminated in accordance with these clauses. A quotation given by the Company shall not constitute an offer. The Company reserves the right to withdraw or amend a quotation at any time.
2.1.3These clauses apply to all dealings between the parties to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are implies by trade, custom, practice or course of dealing unless agreed in writing by a director of the Company.

3. Buyer's obligations

3.1 The Buyer shall pay the Charges for the Goods in accordance with clause 9 and 10.
3.2 The Buyer warrants that it has complied with all laws, regulations and official requirements applicable in the UK and in Europe, and has lawfully obtained all necessary licences, permits and consents necessary for the supply to it, and use by it, of the Goods.
3.3 The Buyer shall be fully liable for any instructions, specification or information provided by it to the Company and shall ensure that such information, specification or instruction:
3.3.1 Will not cause the Company to produce goods that are not fit for the purpose for which the Buyer intends to use the Goods; and
3.3.2 Is complete and accurate and does not contain any errors.
3.4 The Buyer shall comply with any instructions given by the Company (including, but not limited to, any installation instructions set out in a relevant method statement supplied to the Buyer by the Company).

4. Company's obligations

4.1 The Company warrants that:
4.1.1 The Goods are free from material defects at the Risk Transfer Date; and
4.1.2 Where it agrees to provide Goods in accordance with a specification provided by the Buyer (and only when it has provided such agreement in writing), the Goods shall conform in all material respects with that specification.
4.2 The Company gives no warranty in relation to the Goods other than as set out in clause 4.1.
4.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
4.4 Save as set out in clause 4.1, and without prejudice to the generality of clause 4.2 and 4.3, the Company does not give any warranty (and excludes any warranty, term or condition that would otherwise be implied) as to the quality of the Goods or their fitness for any purpose, even if such purpose has been made known to the Company.
4.5 Samples are only submitted as indications of the Goods quoted for and not as any guarantee of the colours of quantity. Sale is by description not by sample.
4.6 The Company may pass on any manufacture's guarantee to the Buyer but shall not be obliged to do so and shall not have any liability under such guarantee.

5. Collection and delivery generally

5.1 Subject to clause 7.5:
5.1.1 The Company may provide an estimate of when Goods will be ready for collection or will be delivered. The Company shall not be in breach of the Contract if any Goods are not ready for collection or are not delivered in accordance with that estimate.
5.1.2 Time shall not be of the essence in respect of any indicated, agreed or estimated collection or delivery date.
5.2 In respect of orders for timber Goods:
5.2.1 The Buyer acknowledges that it is not usually possible to provide a definitive estimate of when any orders for timber Goods shall be ready for collection or will be delivered. In Particular, timber may have to be sourced from overseas and therefore may be subject to delays beyond the control of the Company.
5.2.2 The Company may provide an estimate of which week an order for timber Goods shall be ready for collection and I or delivered.

6. Delivery by the Company

6.1 The Company may agree to deliver the Goods to the Delivery sire (subject to the Buyer agreeing the Company's charges for this service), in which case the Company shall attempt to deliver the Goods to the Delivery Site at any reasonable time on a working day. The Company shall not have any obligation to give any notice before attempting any delivery.
6.2 Where the Company has agreed to deliver Goods on a certain day, the Company shall use its reasonable endeavours to deliver Goods on that day but shall not be in breach of the Contract if it delivers, or attempts to deliver, the Goods before or after the agreed date.
6.1.1 Redeliver the Goods at a mutually agreed date. The Company shall be entitled to charge for any attempted re-delivery and for storing the Goods until they are successfully unloaded at the Delivery Site.
6.2 The Company may deliver the Goods in instalments. In the event of failure to accept any delivery the balance remaining undelivered may at the option of the Company then be invoiced (payment for such balance immediately thereupon becoming due) and storage costs charged to Buyer's account.
6.3 The Company shall deliver to a good hard surface on or near the Delivery Site completely accessible by a good hard road.
6.4 The Company shall have no obligation to deliver if:
6.4.1 It believes that it would be unsafe, unlawful or unreasonably difficult to do so;
6.4.2 The Buyer is not present to take delivery; or
6.4.3 The premises (or the access to them) are unsuitable for the delivery vehicle.
6.5 Should clause 6.6 apply, then the Company shall be entitled to charge for nay attempted re-delivery and for storing the Goods until they are successfully unladed at the Delivery Site.
6.6 If the Buyer fails to provide a signature on a receipt note, delivery having been duly made, notification in writing to the Buyer by the Company following delivery shall be deemed to be conclusive evidence that the delivery was made in accordance with the Contract.

7. Buyer's remedies

7.1 The Buyer may reject any of the Goods which do not conform to the Contract in a material way provided that notice of rejection is given to the Company in writing setting out the reasons for rejection:
7.1.1 In the case of a defect that is reasonable apparent on a visual inspection at the Task Transfer Date, within seven business days of the Risk Transfer Date; and
7.1.2 In the case of any other defect, within three business days of the defect becoming reasonable apparent on normal visual inspection.
7.2 Following notification under clause 7.1 the Buyer shall ensure that the Company's representatives have a reasonable opportunity to examine the Goods and delivery documentation at the Buyer's premises or other location where the Goods are held
7.3 Where the Company agrees that any of the Goods do not conform the contract in a material way, the Company will (at its discretion) repair or replace the Goods with Goods that do conform to the contract within a reasonable period of time. The non-conforming Goods shall be returned by the Buyer within 10 working days of request by the Company. The Company shall act reasonably when deciding whether or not the Goods conform to the Contract in a material way.
7.4 At the Buyer's request, the Company shall reimburse the Buyer's reasonable costs in returning any Goods to the Company which the Company has agreed to repair or replace.
7.5 Unless the provision of the Goods are subject to a Force Majeure Event, if the Company fails to deliver within 42 days of any estimated delivery date, or if the Goods are not ready for collection from the Collection Site 42 days after the Company estimated that they would be ready for collection, the Buyer may (by informing the Company in writing) cancel the Contract, however the Contract shall not be cancelled if the Company receives the Buyer's notice after the Goods have been dispatched by the Company's supplier.
7.6 Where the Contract is cancelled under clause 7.5, the Buyer shall remain liable to pay for nay Goods already received by it.
7.7 The absence of any written notice served in accordance with clause 7.1 or 7.5, shall be conclusive evidence in any proceedings that the Company has fully discharged all its obligations under the Contract and in particular that the Goods were in conformity with the Contract in all respects.
7.8 Subject to clause 7.9, the remedies referred to in this clause 8 shall be the Buyer's only remedies in respect of any Goods not conforming to the Contract.
7.9 The remedy referred to in clause 7.5 shall be the Buyer's sole remedy in respect of late delivery or delay.

8. Cancellation and return of Goods

8.1 Subject to clauses 7.5 and 17.2, the Buyer may not cancel any order following its acceptance by the Company, other than with the Company's written agreement.
8.2 Where the Company agrees that an order may be cancelled (other than under clause 7.5):
8.2.1 The indemnity set out in clause 13.1.2 shall apply; and
8.2.2 In respect of any Goods to be returned to the Company, those Goods must be returned to the Company at the Buyer's expense and in the same condition as they were at the Risk Transfer Date.
8.3 If the order is cancelled the Buyer shall pay for all stock (finished or unfinished) that the Company may then hold (or to which it is committed) for the order.
8.4 This clause 8 does not affect any right which the Buyer may have to terminate the Contract for the Company's breach.

9. Price

9.1 In consideration for he Goods, and subject to clauses 1.1 and 9.4:
9.1.1 The Buyer shall pay the price notified by the Company to the Buyer ("the Charges");
9.1.2 if no such price for the Goods has been provided, the price shall be that listed in the Company's published price list at the date of the Company's Acknowledgment of Order; and
9.1.3 Any other sums payable or paid by the Buyer to the Company are accordance with, arising out of or in connection with the Contract shall also be "Charges".
9.2The price quoted excludes delivery (unless otherwise stated).
9.3 Rates of tax and duties on the Goods will be those applying at the time of delivery.
9.4 At any time before the Risk Transfer Date, the Company may adjust the Charges to reflect any increase in its costs of supplying the Goods.
9.5 In the event that the price of Goods has increased then, the Buyer may inform the Company that it does not wish to purchase the Goods at the new price and the Company may (at its option);
9.5.1 Cancel the order for those Goods; or
9.5.2 Supply the Goods at the price previously quoted.

10. Payment terms

10.1 If the Buyer fails to pay the Company in full on the due date:
10.1.1 The Company may suspend or cancel all or any outstanding orders with the Buyer;
10.1.2 The Company may withdraw any discount offered to the Buyer;
10.1.3 The Buyer must pay the Company interest at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be:
10.1.3.1 Calculated (on a daily basis) from the date of the Company's invoice until payment;
10.1.3.2 Compounded on the first day of each calendar month; and
10.1.3.3 Before and after any judgement (unless the court orders otherwise).
10.2 If the Buyer has an approved credit account, the Company may withdraw it or reduce the Buyer's credit limit or bring forward the Buyer's due date for payment. The Company may do any of these at any time without notice.
10.3 All amounts due from the Buyer to the Company under the Contract shall be paid in full without any deduction or withholding (other than any deduction or withholding of tax as required by law), and the Buyer hall not be entitled to claim set-off or to counterclaim against the Company in relation to the payment of the whole or part of any such amount.
10.4 While the Buyer owes money to the Company, the Company has a lien on any of the Buyer's property in the Company's possession.

11. Title

11.1 Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) for:
11.1.1 The Goods; and
11.1.2 Any other goods or services that the Company has supplied to the Buyer in respect of which payment has become due.
11.2 Until title to the Goods has passed to the Buyer, the Buyer shall:
11.2.1 Hold the Goods on a fiduciary basis as the Company's Bailee;

11.2.2 Store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
11.2.3 Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
11.2.4 Ensure that the Company has a right to enter any premises of the Buyer, or of any third party where Goods are kept, to enable the Company to exercise its rights set out in clause 11.3
11.2.5 Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
11.2.6 Notify the Company immediately if it becomes subject to any of the events listed in clauses 14.4 to 10.15;
11.2.7 Give the Company such information relating to the Goods as the Company may require from time to time, but the Buyer may resell or use Goods in the ordinary course of its business.
11.3 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clauses 14.4 to 14.15 (inclusive), or the Buyer reasonably believes that any such event is about to happen and notifies the Company accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Company may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

12. Liability

12.1 In this clause 12, a reference to the Company's liability for something is a reference to any liability whatsoever which the Company might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Company's negligence or from negligence for which the Company would otherwise be liable.
12.2 The Company is not in breach of the Contract, and does not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Buyer's breach of the Contract.
12.3 Subject to clause 12.5 the Company shall not have any liability for:
12.3.1 Any indirect or consequential loss or damage;
12.3.2 Any loss of business, rent profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
12.3.3 Its failure to deliver Goods within the time specified in clause 7.5 if the Buyer subsequently accepts delivery of those Goods;
12.3.4 The Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
12.3.5 Any loss caused by any specification or information provided by the Buyer being inaccurate or incomplete or containing any errors or inaccuracies;
12.3.6 Any damage to goodwill or reputation;
12.3.7 Any delay, loss of opportunity, or loss of business;
12.3.8 Loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment used in connection with the Goods or brought onto any premises of the Company or the Collection Site.
12.3.9 Any loss, damage, costs or expenses suffered or incurred by any third party.
12.4 Subject to clause 15.5, the Company's total liability shall be limited to a sum equal to the Charges.
12.5 Nothing in the Contract restricts the Company's liability for:
12.5.1 Death or personal injury resulting from negligence for which it is responsible;
12.5.2 Its fraud (including fraudulent misrepresentation); or
12.5.3 Any other liability, to the extent that the liability cannot be restrict ted by law

13. Indemnity

13.1 The Buyer shall indemnify the Company 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 professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
13.1.1 The Buyer's breach or negligent performance or non-performance of the Contract;
13.1.2 The Company agreeing to cancel the Buyer's order for Goods in accordance with clause 8;
13.1.3 The Buyer refusing to take delivery or not being present to take delivery in accordance with clause 6.3 and 6.4; and
13.1.4 To the extent that the Goods are to be produced in accordance with a specification supplied by the Buyer, any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the specification.

14. Termination

14.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:
14.2 The Buyer breaches clause 10;
14.3 The Buyer commits a material or persistent breach of the Contract and (it such a breach is remediable) fails to remedy that breach within 5 business Days pf receipt of written notice of the breach;
14.4 The Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has nay partner to whom any of the foregoing apply;
14.5 a petition is filed, a notice if given, a resolution is passed, or an order is made, for or in connection with eh winding up of the Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
14.6 The Buyer (being an individual) is the subject of a bankruptcy petition order;
14.7 A creditor or encumbrance of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
14.8 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);
14.9 A floating charge holder over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
14.10 A person becomes entitled to appoint a receiver over the assets of the buyer or a receiver is appointed over the assets of the Buyer;
14.11 The Buyer becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);
14.12 Any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.4 to clause 14.12 (inclusive);
14.13 The Buyer suspects or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

15. Consequences of termination

15.1 On expiry or termination of the of the Contract or any part of it for any reason the following shall apply;
15.1.1 The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
15.1.2 the following clauses shall survive expiry or termination and shall continue in full force and effect: clauses 1 (Definitions and interpretation), 2 (Formation of contract), 3 (Buyer's obligations), 9 (Price), 10 (Payment terms), 11 (Title), 12 (Liability, 13 (Indemnity), 15 (Consequences of termination), 16 (Waiver and variations), 17 (Force majeure), 18 (General) and any other clause which expressly or by implication has effect after expiry or termination shall continue in full force and effects;
15.1.3 The Company shall become entitled to exercise its rights under clause 11; and
15.1.4 All sums shall become immediately due and payable, notwithstanding any credit terms previously in effect.
15.2 In the event that collection of sums due from the Buyer to the Company is referred to a lawyer, debt recovery agent or other person, or if proceedings are brought to collect such sums or to enforce the rights of the Company, the Buyer shall pay all costs, commissions, administration charges and fees incurred by the Company as a result of collection, including such costs and fees incurred in any Appeal or Proceedings and in executing on any Judgment.

16. Waiver and variations and authority

16.1 Any waiver or variation of the Contract shall not be binding unless:
16.1.1 Made (or recorded) in writing;
16.1.2 Signed on behalf of each party (in the case of the Company, by a director of the Company); and
16.1.3 Expressly stating an intention to vary the Contract.
16.2 The Company shall not be bound by any of the following unless agreed by a director of the Company in writing:
16.2.1 Any variation to the Contract;
16.2.2 Any admission that the Company has breached any of its obligations under the Contract;
16.2.3 Any agreement to cancel the Buyer's order for goods; or
16.2.4 Any refund or credit note.

17. Force majeure

17.1 If, as a result of a Force Majeure Event, the Company is unable to perform its obligations under the Contract (or able to perform them only at unreasonable cost), the following shall apply;
17.1.1 The Company may cancel or suspend performance of its obligations to the Buyer at any time without liability;
17.1.2 The Buyer shall not be liable to pay for any Goods which the Company has been unable to provide because of the Force Majeure Event (unless and until the Company resumes provision of the Goods where the Company has not cancelled the Contract in respect of those Goods).
17.2 If a Force Majeure Event prevents the Company from providing any of the Goods for a continuous period of more than three months, the Buyer may, by serving written notice on the Company, cancel the Contract in respect of those Goods.

18 General

18.1 The Contract shall be construed and be subject to English law and the exclusive jurisdiction of the English Courts.
18.2 If the Buyer is more than one person, each person is jointly and severally liable for the Buyer's obligations under the Contract.
18.3 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected, unless that would fundamentally frustrate the parties' original intentions, in which case it shall terminate immediately.
18.4 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable, unless that would inadvertently frustrate the parties' original intentions, in which case it shall terminate immediately.
18.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of the Contract or any other contract between the Company and the Buyer and the Buyer has not relied on them in entering into any contract.
18.6 Any notice by either the Company or the Buyer which is to be served under the Contract may be served by leaving it at or by delivering it to (by signed for delivery, first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
18.7 No person other than the Company and the Buyer shall be a party to the Contract.
18.8 A person who is not a party to the Contract shall not have any rights under it and shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
18.9 It is not the parties' intention to confer any benefit on any third party as a result of the Contract
18.10 The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
18.11 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the clauses or set out in any document in the Contract (whether made innocently or negligently) shall be for breach of contract.
18.12 Nothing in the clauses limits either party's liability for fraudulent misrepresentation.
18.13 The Buyer shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.
18.14 The Company may assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

March 2015