

# Olivers Fitted Furniture Terms & Conditions

## Definitions and Interpretation

*"The Company"* shall refer to either Olivers Fitted Furniture Pershore Ltd, Olivers Sutton Ltd, or Olivers Shipston Ltd whichever is applicable to the individual contract. *"The Customer"* refers to the person, firm or company with whom or with which the Company Contracts subject to these terms and conditions.

*"Contract"* refers to the Contract made or to be made between the Company and the Customer subject to these terms and conditions.

*"Guarantee"* means the guarantee provided under the provisions of Clause 12 of these terms and conditions. *"Products"* shall mean any articles, products, products or services to be supplied by the Company to the Customer under Contract.

*"Workmanship"* means the manufacture and work to be carried out in respect of the Products by the Company (please note that it specifically does not include the workmanship of third parties).

## 1. Conditions Of Sale Apply

The Company's conditions of sale shall apply to and govern any Contract between the Company and the Customer to the exclusion of any condition contained on or in any order form letter, receipt acknowledgement, or other document emanating from the Customer and no variation of these Terms and Conditions shall be effective unless expressly agreed by the Company in writing.

## 2. Description

2.1 The company may make improvement or alteration before completion of the installation in; the drawings, materials, specifications and dimensions of the products - which it thinks reasonable or desirable or which it is required to make by law. We will not make any significant changes without your agreement.

2.2 It shall be the responsibility of the Customer immediately upon signing to give the Company all information required to proceed with the Contract. The Customer is deemed to have considered the Products are sufficient and suitable for the purpose or purposes intended.

### 3. Quotation/Order

3.1 All drawings, plans and paperwork are the property of the company and as such are subject to copyright.

3.2 Any quotation provided by the Company, whether written or oral, shall be deemed to be an invitation to treat and not an offer. The placing of any order, whether written or oral shall constitute an offer by the Customer and no acceptance shall be binding upon the Company and no Contract shall come into existence until the Company shall have accepted the Customer's offer in writing and a non-refundable deposit of 10% is paid by the Customer in accordance with the Contract.

3.3 Any quotation provided by the Company is valid for a period of 14 days from the date of the quotation unless the Company provides written notice to the Customer that the quotation is withdrawn. The Company reserves the right to increase the price if required after that period.

3.4 Quotations are based upon the costs of materials, labour, sub-Contracts, transport, taxes, duties and currency exchange rates ruling at the date of the quotation. Quotations may be subject to revision and the Company reserves the right to revise such quotation either to take account of any variation in such costs or the imposition of any new taxes or duties occurring or to revise the quotation due to the additional work or modifications required by the Customer. The Customer will be notified in writing of any such revision.

3.5 The price payable will be inclusive of VAT, delivery and insurance. Unless expressly stated otherwise upon the quotation.

3.6 Orders not fulfilled within 6 months of the date of acceptance of the quotation, are subject to a price review.

### 4. Terms Of Payment

4.1 Customer payments to be made comprise the following elements:

- (i) 10% of the total amount payable (stated within the Contract) must be paid upon placing of the order for acceptance by the Company;
- (ii) 80% of the total amount payable (stated within the Contract) must be paid at least 21 days before the agreed delivery date;
- (iii) Remaining 10% of the total amount payable (stated within the Contract) must be paid to the Company or its representative upon arrival at the delivery address and a receipt issued, before the Products can be fully delivered and installation commenced.

4.2 Payment is to be made in accordance with clause 4.1 either by:

- (a) cleared cheque in favour of "Olivers Fitted Furniture Pershore Ltd", or "Olivers Sutton Ltd", or "Olivers Shipston Ltd" - whichever is applicable to the individual contract - or by;
- (b) GB pounds cash or by; (c) BACS.

For the avoidance of doubt, once a Contract has been entered into, the method of payment cannot be varied.

- 4.3 In the event of late payment, interest shall be charged at the rate 4% above the Bank of England's base rate until the outstanding balance is paid in full.
- 4.4 Payment shall not be withheld as a result of late delivery of Products or where late delivery may occur as a result of late arrival of minor items ordered from subcontractors.
- 4.5 The Company reserves the right to sell the Customers debt to a third party.
- 4.6 The Company shall be entitled to charge the Customer for any bank charges it incurs as a result of any payments made or attempted to be made by the Customer under the Contract (including, without limitation, any penalties, fees and/or other payments incurred as a result of a cheque not being accepted upon presentation).
- 4.7 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). The Company 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 the Company to the Customer.
- 4.8 If the Customer has not made a payment referred to in clause 4.1 within the time frame referred to in such clauses, the Company shall be entitled to suspend preparing and/or delivering and/or installing the Products until such payment is made in full and in cleared funds and the Company shall not be liable for any delay or losses that arise as a result.
- 4.9 If the Company, at the express or implied request of the Customer, raises an invoice in respect of the Contract addressed to a third party, it is agreed that the Contract shall nevertheless remain between the Company and the Customer. The Company reserves the right, at its sole discretion, to re-issue any such invoice in respect of the Contract to the Customer.

## 5. Delivery

- 5.1 Any Delivery Date given by the Company to the Customer shall be an estimate only. Time shall not be of the essence and the Company shall not be responsible for late delivery or failure to deliver through any cause which is beyond the control of the Company.
- 5.2 The Company shall notify the Customer of the date upon which the Products will be delivered ("*the Delivery Date*") and the Company shall deliver the Products to the address provided by the Customer in the Contract.
- 5.3 Unless otherwise agreed in writing the Customer shall be bound to accept Products ordered to them on being notified by the Company that they are ready for delivery.
- 5.4 If the Customer fails to take delivery at the time required by the Contract the Company shall be entitled without prejudice to any other rights it may have to either treat the Contract as at an end and to invoice the Products whereupon payment in full shall become due forthwith and in either case to charge at rates giving an economic return for the handling and storage of Products from the invoice date to the eventual date of delivery to

the Customer or disposal elsewhere as the case may be and the Customer shall be liable to pay any premium in respect of the insurance of such Products from the date on which he is notified that the Products are ready for delivery.

5.5 The Company may discharge delivery by installments and if Products are contracted to be delivered by installments, late delivery of one installment shall not entitle the Customer to reject any other installment under the same Contract.

## **6. Risk**

6.1 All Products shall become the Customer's risk as from the date of delivery or attempted delivery to the Customer or the Customer's agent.

## **7. Retention Of Title**

7.1 Products which are the subject of a Contract between the Company and the Customer shall remain the sole and absolute property of the Company as legal and equitable owner until payment of all sums due to the Company from the Customer on any accounts whatsoever have been received in full by the Company.

7.2 Until title to the Products has passed to the Customer, the Customer shall:

- (a) hold the Products on a fiduciary basis as the Company's bailee;
- (b) store the Products separately from all other products held by the Customer so that they remain readily identifiable as the Company's property;
- (c) not remove, deface, or obscure any identifying mark or packaging on or relating to the Products;
- (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) give the Company such information relating to the Products as the Company may require from time to time.

7.3 Where payment is effected by cheque the Company shall not have received payment until that cheque has been honoured and the amount credited to the Company's bank account.

## **8. Liability**

8.1 In any case where it is established to the satisfaction of the Company that there has been a short delivery or that the Products have been damaged [whether wholly or in part] prior to delivery the Company will replace them provide that any complaint by the customer of short delivery or damage to the Products shall have been notified to the company in writing within 2 days of the installation date.

8.2 In any case where it is established to the satisfaction of the Company that when delivered Products contained some defect in quality or description the Company may (entirely at the Company's discretion) assign to the Customer the benefit of any express and/or implied guarantee or warranty received by the Company from the manufacturer or supplier of the Products (and such assignment will be in full and final settlement of any claims that the Customer may have in this respect against the Company), failing which the Company will (again, at the Company's discretion) either:-

- (a) Replace the products without further charge. In the event of the need to repair, replace or reinstall parts - due to the natural colour fading on your furniture over time, there may be slight colour variation in the items needing replacement, which is out of the company's control, or;
- (b) Accept the return of the Products and credit the Customer with the price thereof.

8.3 Any claim by the Customer (including any claim in respect of 8.2 above) which is based on defects and the quality or condition of the Products or their failure to correspond with the specifications shall (whether or not delivery is refused by the Customer) be notified to the Company in writing within 7 days from the date of delivery or if installation has taken place, 7 days from the date of installation. Where the defect or failure was not apparent upon reasonable inspection then such notice should be given within a reasonable time after the discovery of the defect or failure. The Company shall be permitted to refuse to accept any claim which is notified to the Company otherwise in accordance with the time frame set out in this clause.

8.4 The Company will not be liable to the Customer for any loss or damage suffered and without prejudice to the generality of the foregoing any implied term, condition or warranty statutory or otherwise as to the quality of the Products sold or their fitness for any particular purpose or as to their correspondence with any description or sample is hereby excluded to the fullest extent permitted by law and if any provision is held to be invalid then the remainder of these provisions shall continue to apply.

8.5 The Company shall not be bound by any warranty or representation given by or made on its behalf unless specifically stated in writing and expressly signed stating it is to be incorporated in the Contract.

8.6 The Company's entire liability shall in any event be limited to the value of the Contract.

8.7 Nothing in these conditions shall limit or exclude the Company's liability for:-

- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (ii) fraud or fraudulent misrepresentation;
- (iii) breach of the terms implied by Consumer Rights Act 2015;
- (iv) defective products under the Consumer Protection Act 1987; or
- (v) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability

8.8 Consumers have statutory protection in respect of faulty or misdescription of goods or unsatisfactory services i.e. installation, these terms do not affect those rights.

## 9. Installation

9.1 All installation start dates and length of time quoted for the installation are approximate. The Company will ensure that they complete the installation of the Products within a reasonable time. It is an express condition of this Contract that time shall not be of the essence.

9.2 The Customer agrees to give and/or procure that the Company is given free and adequate (in the Company's absolute opinion) access to the Customer's premises to the Company's installers to carry out installation of the Products upon request.

9.3 The Customer shall ensure that such necessary re-routing of electrical and plumbing installations or equipment or supplies are carried out and completed before the installation of the Products commences and at the Customer's own cost. It is the Customer's responsibility to inform the fitter at the commencement of installation of the position of any cables or pipes that remain within the area of installation. All work will be carried out with reasonable care and skill.

9.4 Upon confirmation from the Company that installation is due to commence, If the Customer does not give access to the Company within 14 days then the Company may (in its absolute discretion) notify them in writing that the Products are ready for installation and the Customer shall be liable to pay the Company the full outstanding balance of the Contract within 7 days of the date of the letter.

9.5 The methods of installation of the Products are totally at the discretion of the Company.

9.6 The Company cannot guarantee that any individual room will be completed at any one time or any particular order.

9.7 The Company will reasonably ensure that all reasonable action is taken to avoid damage to decoration and other items that may be left outside or in the property, but the Company cannot accept any liability for the damage caused.

9.8 Customers are advised to decorate after fitting has taken place. Only fillers are scribed to walls and ceilings, only ceiling lines may or may not be caulked. A fillet piece is scribed down end panels and round bridging cupboards if required. This minimises damage to Products so that it can be relocated with the minimum of replacement materials.

9.9 The Customer must ensure that all paths, driveways and passageways located at the property are kept completely free from any and all obstructions.

9.10 Prior to installation the room in which furniture is to be installed must only contain the bed without any headboard and relevant drawers (if applicable). When units are to be fitted directly to the floor, the carpet must either be removed or placed in a position where it cannot be damaged/marked or endanger the health and safety of the Company's employees. We cannot guarantee settlement will not occur over time if the above is not adhered to. All walls and windowsills must be cleared. All curtains must be removed from the room.

9.11 Any alterations to be made to the Products supplied after installation shall only be undertaken at the agreement of the Company in writing. The Customer will be liable for all

costs and charges in connection with all further work carried out by the Company. The Company will submit an invoice for payment prior to commencement of the work.

9.12 The Company will not be liable for any costs for any alterations or works undertaken by a third party on the Products. The Customer must obtain the Company's agreement in writing for any work to be undertaken by a third party in respect of the Products otherwise the Guarantee will become null and void.

9.13 The Customer must not request the Company's installers/fitters and/or other contractors and/or employees to do any work over and above the work set out in the initial Contract without contacting the Company for a quotation. If this procedure is not adhered to you will be invoiced for any extra work requested. The additional work will only be covered by our Guarantee if the work is authorised by the Company prior to such work being undertaken.

9.14 Upon installation, if a panel within a Product is required to be greater in length than 2.4 metres, the Company reserves the right to make a join in the panel making good the same. For the avoidance of any doubt, such a join shall not be considered to be a defect for the purposes of the Guarantee.

## **10. Consequential Loss**

10.1 We will not be liable under this contract for any loss or damage caused by us or our employees or agents in circumstances where:

- (i) there is no breach of a legal duty of care owed to you by us or by any of our employees or agents;
- (ii) such loss or damage is not a reasonably foreseeable result of any such breach, and;
- (iii) any increase in loss or damage results from a breach by you of any term of this contract.

## **11. Termination**

11.1 The goods designed and ordered under the agreements are purpose made specifically for the customer, and any cancellation of this agreement may incur costs, the minimum will represent 10% of the total order value to cover reasonable design and administration costs. Instructions by the Customer to terminate agreements must be received in writing. The cost incurred will be more if goods have already been manufactured, in which circumstances the cost shall be up to a maximum of 90% of the total order value. The Company may terminate the Contract at any time if the Customer is in breach of the Company's payment terms and may seek compensation for any costs incurred. The Company may also cancel the Contract if in the opinion of the Company the property or its access is not suitable for installation of its furniture. The Company shall not be liable to the Customer for any costs the Customer may have incurred.

## 12. Guarantee

12.1 We guarantee against material defects in the Workmanship and installation of the Products for a period of 6 years following the date of completion of the installation of the Products

12.2 Notwithstanding clause 12.1, the Guarantee does not cover:

- (a) Natural colour fading as a result of exposure to direct sunlight (see clause 8.2.1); (b) Natural wear and tear or where the products have been abused and/or misused, including:
  - (i) Products that have not been cared for and used in accordance with any instructions provided by the Company (whether provided in writing or otherwise) including, without limitation, if the Products are cleaned using anything other than the Company's recommended cleaning product or a water damp cloth;
  - (ii) Any Products that have been damaged by the use of solvent based sprays and/or products and/or any heat source that exceeds 60 degrees celsius;
  - (iii) Any Products that have been damaged in any way by the negligence of the Customer or any other third parties;
  - (iv) Consumables – electrical light fittings [bulbs] glass and mirrors etc;
  - (v) Movement of caulking due to natural settlement;
  - (vi) Door and drawer adjustments;
  - (vii) Accidental damage;
  - (viii) Any defects caused by condensation or other damage by heat or chemicals; (ix) Products that have been altered and/or modified (including by the addition of other items), disassembled or moved from the location in which they were installed by us without the prior written consent of the Company;
  - (x) Any defects/fitting/installation issues reported beyond 30 days from date of installation;
  - (xi) Movement of fillets or worktops caused by natural structural movement or where customers have requested fitting on top of carpet and/or laminate floating flooring – (see clause 9.10);
  - (xii) Hardware such as handles and other items that are likely to suffer from oxidation from the air;
  - (xiii) Re-decoration or damage to flooring if products have to be removed for repair or replacement.

12.3 In order to make a claim under this Guarantee, the Customer must notify the Company as soon as is reasonably practicable after discovering the defect in respect of which they wish to claim under the Guarantee setting out full details of the defect. The Customer may be asked to provide the original invoice as proof of purchase of the Products together with the original guarantee certificate provided by the Company to the Customer upon completion of the installation of the Products (*"the Claim"*);

12.4 The Company will then arrange for the Products to be inspected at a date and time that is practical to both the customer and The Company. Following inspection, The Company will then decide in its sole discretion, whether the defect is covered by the Guarantee.



12.5 If the matter is covered by the Guarantee, the Company shall in its absolute discretion; either repair the defect and/or replace the relevant Products or part thereof with full or partial replacement Product(s) and/or a replacement comparable product(s) (for the avoidance of doubt, what constitutes an appropriate comparable replacement product shall be determined by the Company in its absolute discretion and, without prejudice to such discretion, if the relevant product range and/or colours have been discontinued, the Company may select a replacement product from a different range and/or with a different colour than the original). The Company will pay the costs of such repairs, spare parts, labour and travel for the Company's personnel in respect of the work undertaken under a valid claim under this Guarantee and, if a valid claim, will refund the Call Out Fee.

12.6 If the Customer's claim is not covered by the Guarantee, the Customer will not be able to recover the Call Out Fee and in addition, the Customer will have to pay for any repairs and/or materials to remedy any defects at the Company's then current price for repairs and/or costs of such materials.

12.7 For the avoidance of doubt, the Company's contractors/employees will not take unreasonable risks in attempting to access the Products in question either for the purpose of inspecting the same and/or repairing and/or making good any defect. The Company's contractors'/employees' decision in this regard shall be final.

12.8 The Company will not be liable or responsible for any damages caused to any other property when trying to gain access to the Products in the course of any repairs under this Guarantee.

12.9 Any defective parts of the Products removed in the course of any repairs under this Guarantee will become, for the avoidance of any doubt, the property of the Company.

12.10 The Guarantee is non-assignable and shall only be for the benefit of the original Customer (being the person whose details are set out in the Guarantee Certificate) and furthermore this Guarantee shall cease and terminate automatically if the Products (or any of them) are sold and/or otherwise transferred and/or taken out of the possession of the original Customer.

12.11 Failure by the Customer to comply with any of the clauses shall render the guarantee null and void.

## 13. Alternative Dispute Resolution

13.1 In the unlikely event that a complaint has not been resolved through our complaints procedure we will issue a final response letter. Upon receipt of this you may refer your complaint to The Furniture Ombudsman. We are full members of The Furniture Ombudsman who are an independent not-for-profit organisation specialising in providing Alternative Dispute Resolution services for consumers and retailers in the furniture, home improvement and floor covering industries.

## 14. Material

14.1 We will not make any significant changes without your agreement as detailed in clause 2.1.

## 15. Value Added Tax

15.1 Value Added tax (VAT) will be charged at the rate subsisting on the date of the Invoice.

## 16. Force Majeure

16.1 The Company shall not be liable for failing to perform the Contract whether wholly or in part if the failure is caused wholly or partly by any circumstance or circumstances outside the Company's control.

## 17. General

17.1 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from the other terms and conditions and shall be deemed to be deleted from them.

## 18. Law

18.1 These terms and conditions are governed by and are to be construed in accordance with English law and are subject to the exclusive jurisdiction of the English Courts.

## 19. Third Party Rights

19.1 The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Contract.

## 20. Assignment & Other Dealings

20.1 The Company 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.

20.2 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 the Supplier.

## 21. Notice

21.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to the address as set out in the Contract for that party or such other address as that party may have specified to the other party in writing and shall be delivered personally, sent by pre-paid post.

21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00am on the second business day after posting; if delivered by a commercial courier, on the date and at the time that the courier's delivery receipt is signed.

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

## 22. Alterations

22.1 Alterations to the order may incur additional costs for which the Customer will be liable. In the event that a re-design is required by the Customer (and such request is accepted by the Company) a fee of £150.00 may be charged. Alterations will only be made to the order if the Company agrees in writing to make such alterations and the Company is in receipt of a signed and dated "variation to order" form at least 21 days before the commencement of installation. Verbal communication will not be accepted without written confirmation.