

# Terms and Conditions of Gallery Direct Limited

## 1 DEFINITIONS

- 1.1 'Buyer' means the organisation or person who buys or agrees to buy the Goods from the Seller;
- 1.2 'Buyer's Purchase Order' means an order for Goods by the Buyer given in accordance with clause 2.2;
- 1.3 'Contract' means any contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these Terms and Conditions;
- 1.4 'Delivery Date' means the date estimated by the Seller when the Goods are to be delivered;
- 1.5 'Goods' means the articles that the Buyer agrees to buy from the Seller;
- 1.6 'List Price' means the list of Prices of the Goods maintained by the Seller as amended from time to time;
- 1.7 'Price' means the price of the Goods excluding VAT (if applicable) or any analogous sales tax, carriage, freight, postage, small order surcharge or insurance costs, all of which the Seller shall pay in addition unless otherwise agreed in writing by the Seller;
- 1.8 'Seller' means Gallery Direct Limited of Palisade House, Bonham Drive, Eurolink Commercial Park, Sittingbourne, Kent ME10 3YR;
- 1.9 'Terms and Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.10 'VAT' means the sales tax as constituted by the Value Added Tax Act 1994 in England and Wales and/or equivalent sales tax imposed in any other jurisdiction;
- 1.11 It is expressly understood that neither the Buyer nor the Seller are consumers, as defined by the Unfair Contract Terms Act 1977;
- 1.12 Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2 CONDITIONS

- 2.1 These terms and conditions shall apply to all Contracts for the sale of Goods by the Seller to the Buyer in any jurisdiction to the exclusion of all other terms and conditions including any terms and conditions that the Buyer may purport to apply under the Buyer's Purchase Order or any other purchase order, confirmation of order or similar document;
- 2.2 Each Buyer's Purchase Order shall be deemed to be an offer to buy the Goods according to the Seller's current List Price and order form Pursuant to these Terms and Conditions;
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions;
- 2.4 Any variations to these Terms and Conditions (including any special terms and Conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

## 3 PRICE AND PAYMENT

- 3.1 The Price shall be that in the Seller's current List Price, or such other Price as the parties may agree in writing.
- 3.2 Payment of the Price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller, unless otherwise specified by the Seller;
- 3.3 There will be a surcharge applicable to orders under the value of £500 which will be as notified to the Buyer following receipt of a Buyer's Purchase Order;
- 3.4 Interest on overdue invoices shall accrue from the date when payment for the Goods becomes due until the date of actual payment at a rate of 3.00% per annum above the base rate of Barclays Bank PLC from time to time in force.

## 4 THE GOODS

- 4.1 The quantity and description of the Goods shall be as set out in the Buyer's Purchase Order;
- 4.2 The Goods shall be required only to conform to the specification on the Buyer's Purchase Order. Photographs or other descriptions of the Goods issued by the Seller in any form are for illustrative purposes only, may not exactly match the product itself and shall not form part of this Contract;
- 4.3 Sizes are approximate only and may vary according to manufacturing tolerances.

## 5 DELIVERY OF THE GOODS

- 5.1 Unless otherwise agreed, delivery of the Goods shall take place at the address specified in the Buyer's Purchase Order on the Delivery Date and the Buyer shall be deemed to have accepted the Goods upon their delivery. The Buyer shall at its own cost make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery;
- 5.2 The Delivery Date specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the Contract;
- 5.3 If the Seller is unable to deliver the Goods at the request of or due to the default of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as the delivery may be effected and the Buyer shall be liable for any expense associated with such storage;
- 5.4 Any defect in the Goods must be notified to the Seller in writing within 7 days of delivery;
- 5.5 Risk shall pass on delivery of the Goods to the Buyer.

## 6 TITLE

- 6.1 The Seller warrants that it has good title to the Goods.
- 6.2 The risk in the Goods shall pass from the Seller to the Buyer upon delivery of the Goods to the Buyer. However, title of the Goods shall not pass to the Buyer until the Seller has received cash or cleared funds in full for all Goods delivered to the Buyer under this and all other contracts between the Seller and the Buyer for which payment of the Goods has not been paid.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
  - (a) hold the Goods on a fiduciary basis as the Seller's bailee;
  - (b) store the Goods (at no cost to the Seller) separately from all the other goods of any third party in such a way as they remain identifiable as the Seller's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction and, on request from the Seller, produce the policy of insurance to the Seller.
- 6.4 The Buyer's right to possession of the Goods shall terminate automatically and immediately if the Buyer ceases to trade, becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party or shall enter into liquidation whether voluntarily or compulsorily (other than for the purposes of a reconstruction or amalgamation) or shall make any arrangement or composition with its creditors or shall suffer the making of an administration order in respect of all or part of its assets or suffers any similar action in consequence of a debt. In the case of any such event, the Buyer acknowledges that the Seller shall have the right to recover the Goods or any proceeds from the sale of the Goods forthwith and pending such recovery, but notwithstanding that the terms of Clause 6.2 shall continue to apply, any proceeds from the sale of the Goods (whether received before or after the relevant event) shall be placed in a separate account which is identified as for the exclusive benefit of the Seller.

## 7 LIMITATION OF LIABILITY

- 7.1 Subject to Clause 8, the remedies of the Buyer for any breach of these Terms and Conditions by the Seller, for any use made or resale by the Buyer of any of the Goods, or for any representation, statement or tortious act or omission including negligence arising under or in connection with Contract shall be limited to damages which shall in no circumstances exceed the Price of the Goods;
- 7.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents;
- 7.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for Breach of the warranty contained in Clause 6.1 or for breach of warranty as to title implied by the Sale of Goods Act 1979 so far as such Act applies to the Contract.
- 7.4 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller or any party, whether in writing or at any time prior to the date of the Contract which is not set out in this Contract.
- 7.5 The Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, loss of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 8 FORCE MAJEURE

- 8 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## 9 SEVERANCE

- 9 If any term or provision of these Terms and Condition is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 10 GOVERNING LAW AND JURISDICTION

- 10 These Terms and Conditions shall be governed by and construed in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.