

NOVAX LTD T/A FOXWOOD FURNITURE CO. CONTRACT TERMS AND CONDITIONS OF SALE

All orders from our CONTRACT customers are governed by these Terms and Conditions of Sale. No other terms or conditions shall apply, even though referred to or contained in any order, acceptance or other document submitted by you unless those terms are expressly agreed to in writing by us and signed by a Director.

1. DEFINITIONS

- 1.1 The '**Buyer**' means the Account Applicant who buys or agrees to buy goods from the Seller.
- 1.2 The '**Seller**' means Novax Ltd t/a Foxwood Furniture Co.
- 1.3 '**Conditions**' means the Conditions of Sale set out in this document and any special conditions agreed in writing by the Seller.
- 1.4 The '**Goods**' means the subject of the order.
- 1.5 The '**Contract**' means the contract formed by the acceptance of the order.
- 1.6 The '**Order**' means the Buyer's instruction to the Seller to supply the Goods.
- 1.7 '**Working Days**' means the hours between 0900 hours and 1700 hours on any day of the week excluding Saturdays, Sundays and any public holidays.

2. CONDITIONS

- 2.1 Any Order placed with us either verbally, in writing, via purchase order, the Seller's online ordering system or electronic communication is accepted as official and binding and is subject to these Terms and Conditions and form part of the Contract.
- 2.2 All contracts of sale made by the Seller shall be deemed to incorporate these terms and conditions, which shall prevail over any other document or communication from the Buyer.
- 2.3 Acceptance of delivery of Goods shall be deemed conclusive evidence of the Buyers acceptance of these Conditions.

3. PRICE

- 3.1 The price of the Goods shall be the price contained in the Seller's quotation or order confirmation, whichever is received by the Buyer from the Seller last.
- 3.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of supplying the Goods.
- 3.3 The price of the Goods excludes delivery. Delivery costs will be listed separately on the quotation or order confirmation unless otherwise stated.
- 3.4 The price of the Goods is exclusive of VAT, which the buyer shall also pay to the Seller.

4. ORDERS AND QUOTATIONS

- 4.1 All quotations are valid for 20 Working Days only, after which they may be revised by the Seller without giving prior notice to the Buyer.
- 4.2 All quotations, offers or tenders are for the whole of the Goods included in the quotation, offer or tender. The Seller reserves the right to refuse acceptance of any Order which constitutes only part of the Goods included in the quotation, offer or tender.

- 4.3 In accepting a quotation or placing an Order for the Goods, the Buyer acknowledges that all information and specifications relating to the Goods and any products supplied by the Seller may be subject to change.
- 4.4 All orders submitted by the Buyer must be accurate and made in good time to allow the Seller to perform its obligations under the Contract.
- 4.5 All orders must be submitted on company letter headed paper with a recognisable order number or reference prior to any work being done to produce the Goods.
- 4.6 The Seller will not be held responsible for any copyright claims relevant to the Buyer's own designs or manufacturing requests. Any Buyer's own designs or products manufactured to drawings, pictures, samples or instructions supplied by the Buyer are made on the understanding they are the Buyer's property and it is therefore the Buyer's responsibility to check the design does not infringe copyright laws. By placing an order the Buyer is accepting copyright responsibility for these designs or products.

5. PAYMENT TERMS

- 5.1 The Seller may invoice the Buyer for all sums due under the Contract after the Seller has delivered or tried to deliver the Goods, unless the Invoice is on a pro-forma basis, in which case the Goods can be invoiced by the Seller prior to delivery.
- 5.2 The Buyer shall pay the Seller's invoices in full without deduction or set-off within 30 days of the date of invoice.
- 5.3 The Seller will only agree to a credit account with the Buyer following the approval of a completed credit check.
- 5.4 Time of payment is the essence of any Contract and failure to pay shall entitle the Seller to:-
 - 5.4.1 Take legal action against the Buyer to recover the sums due to it;
 - 5.4.2 Terminate the Contract;
 - 5.4.3 Suspend any deliveries to the Buyer until debts are paid for in full;
 - 5.4.4 Charge the buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% above base lending rate of NatWest plc on a daily basis until the actual date of payment;
 - 5.4.5 By the Seller giving notice in writing to the Buyer, cancel any other Contract between the Buyer and Seller.
- 5.5 Where pro-forma payment has been agreed, no work will commence until the invoice is paid in full.

6. DELIVERY

- 6.1 The time and place for delivery shall be as requested in the Buyer's order.
- 6.2 Any delivery date specified by the Seller shall be deemed an estimate only and the time of delivery will not be of the essence.
- 6.3 The Seller shall not be liable for failure to deliver in accordance with that date, nor will the Seller be deemed to be in breach of the Contract, nor will the Seller have any liability to the Buyer for direct, indirect or consequential loss (all of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay in delivery.
- 6.4 The Buyer shall not be entitled to refuse to accept the Goods because of late delivery.
- 6.5 Goods must be examined within 24 hours of delivery.
- 6.6 Any claim by the Buyer that Goods are damaged must be received in writing with 5 working days of delivery. If the Seller is satisfied that the Goods were damaged prior to delivery or in transit then they will be repaired free of charge or, at the Sellers option, allowed for credit up to their invoice value.

- 6.7 If the Goods are collected by the Buyer, then they are to be examined for any defaults or damage prior to loading. Failure to do so will result in the Buyer taking Goods entirely at their own risk. The Seller shall not have any liability whatsoever for any loss or damage to goods in transit.
- 6.8 The signing of the Sellers delivery note is proof that the Goods have been checked and deemed satisfactory.
- 6.9 If a check cannot be made at the time of delivery, 'goods unchecked' must be written on the delivery note and countersigned by the Seller's representative. In this case items 6.5 and 6.6 must be adhered to.
- 6.10 In the event that the delivery and/or installation date is delayed from the date agreed by the buyer and seller, the seller will invoice for the amount(s) owed in line with the payment terms and programme previously agreed. Any delays at the buyer's request will not alter the settlement terms of any invoice.
- 6.11 Further to 6.10, if delivery cannot be accepted on the date agreed, the seller reserves the right to place the goods into storage at the buyer's expense. The buyer reserves the right to advise the seller on their preferred storage location, but the seller is not liable for any costs relating to the transport and/or storage of the goods. If the buyer waives their right to choose the storage location, the seller will organise a location, however, the liability for all costs in relation to transport and/or storage lies with the buyer.

7. RISK AND RETENTION OF TITLE

- 7.1 Risk of damage or loss of the Goods shall pass to the Buyer on delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tried to deliver the Goods.
- 7.2 The unloading of the Goods at the place of delivery shall be at the sole risk and expense of the Buyer, unless otherwise stated in the Order.
- 7.3 Ownership of the Goods will not pass to the Buyer until the Seller has received in full, in cash or cleared funds, all sums due to it in respect of:-
 - 7.3.1 The Goods; and
 - 7.3.2 All such other sums which are or which become due to the Seller from the Buyer on account.
- 7.4 Until ownership of the Goods has passed to the Buyer, the Buyer must:-
 - 7.4.1 Hold the Goods on a fiduciary basis as the Seller's bailee;
 - 7.4.2 Store the Goods, at no cost to the Seller, separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property.
 - 7.4.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.4.4 Maintain the Goods in a satisfactory condition insured on the Seller's behalf for this full price against all risks to the reasonable satisfaction of the Seller, and will whenever requested by the Seller produce a copy of the policy of insurance.
- 7.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
 - 7.5.1 Any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Seller accordingly; and
 - 7.5.2 Any such sale will be a sale of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 7.6 The Buyer's right to possession of the Goods will terminate immediately if any of the conditions set out in condition 6 occur.
- 7.7 The Buyer grants the Seller, its agent and employees an irrevocable license at any time to enter any premises where the Goods are, or may be stored in order to inspect them or, where the Buyer's right to possession has been terminated, to recover them.
- 7.8 The Seller accepts no liability for Goods damaged by the Buyer in any circumstances.

8. TERMINATION OF CONTRACT

- 8.1 The Seller may terminate the Contract forthwith by written notice to the Buyer in the occurrence of one of the following events:-
 - 8.1.1 Where the full payment in respect of the Goods or any instalment of the Goods has not been received by the Seller by the dates specified as the dates of payment. Failure to pay any sums due in accordance with conditions 5.2 and 5.4 is a material breach of the terms and conditions which is not capable of remedy.
 - 8.1.2 Where the corporation goes into liquidation or appoints a receiver, administrative receiver or administrators overall or any of its assets by virtue of the Insolvency Act 1986 is deemed unable to pay its debt, or has a petition presented for its winding up or for administrative order.
 - 8.1.3 Where the Buyer is in material breach of any of these conditions of sale.
- 8.2 On termination the Buyer shall pay to the Seller all costs, expenses (including legal and other fees incurred), arrears, charges or other payments arising in respect of the Goods under the Contract.

9. FORCE MAJEURE

- 9.1 In the event that the seller is prevented from carrying out its obligations under the contract for sale as a result of any cause beyond its control such as but not limited to acts of God, war, strikes, lock-outs, flood, fire, protests, tempest, explosion, acts of terrorism or national emergencies and failure of third parties to deliver goods, the Seller shall be relieved of its obligations and liabilities under such contract for sale for as long as such fulfilment is prevented.

10. WARRANTY

- 10.1 The Seller warrants that on all new Goods (excluding refurbished or pre-used Goods which the Seller may supply) supplied will be free from defects for a period of 12 months, unless otherwise stated, from the date of delivery subject to fair and appropriate usage of the Goods.
- 10.2 If the Seller is in breach of the warranty contained in clause 10.1, the Buyer shall advise the Seller in writing immediately and in any case no later than 5 Working Days from the date of discovery of the defect. On receiving such a notice, the Seller may at its discretion:-
 - 10.2.1 Repair the Goods;
 - 10.2.2 Refund the price of those Goods which are defective; or
 - 10.2.3 Replace all or any part of the defective Goods.
- 10.3 The warranty obligation will not apply when:-
 - 10.3.1 The Goods have been improperly altered in anyway whatsoever, or have been subject to misuse or unauthorised repair;
 - 10.3.2 Any maintenance requirements relating to the Goods have not been complied with;
 - 10.3.3 Any instructions as to storage of the Goods has not been complied with in all respects; or
 - 10.3.4 The Buyer has failed to notify the Seller of any defect or suspected defect within 5 Working Days of the date of discovery of the defect, and in any event no later than 12 months from the date of delivery.
- 10.4 Any Goods which have been replaced will belong to the Seller. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in clause 10.1 for the unexpired portion of the 12-month period from the original date of delivery of the replaced Goods.

11. LIABILITY

- 11.1 The Seller does not exclude its liability (if any) to the Buyer:-

- 11.1.1 For breach of the Seller's obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Sale and Supply of Goods and Services Act 1982;
- 11.1.2 For personal injury or death resulting from the Seller's negligence.
- 11.2 Except as provided in Condition 6.2 and 10.1 the Seller will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
 - 11.2.1 Any of the Goods or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Seller or on the part of the Sellers employees, agents or sub-contractors;
 - 11.2.2 Any shortages in quality delivered to the Buyer unless the Buyer notifies the Seller at the time of the delivery;
 - 11.2.3 Any damages to or loss of the Goods whether caused in transit or otherwise;
 - 11.2.4 Any defect in the Goods, unless notified in writing to the Seller within 5 days of receipt of the Goods by the buyer;
 - 11.2.5 Any breach by the Seller of any of the express or implied terms of the Contract;
 - 11.2.6 Any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
 - 11.2.7 Any statement made or not made, or advice given or not given, by or on behalf of the Seller.
- 11.3 Except as set out in Conditions 9 and 8.1 the Seller hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 11.4 Each of the Sellers employees, agents and subcontractors may rely upon and enforce the exclusions and restrictions of liability in Conditions 6.3 and 11.1 to 11.3 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Seller wherever it appears in those clauses.
- 11.5 Except as provided for in condition 10.1 and without prejudice to condition 11.3 the Sellers liability shall be limited to the price of the Goods.
- 11.6 The Buyer acknowledges that the above provisions of this Condition 8 are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.

12. INDEMNITY

- 12.1 The Buyer agrees to the indemnity, keep indemnified and hold harmless the Seller from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which include without limitation, pure economic loss, loss of profits, loss of business, depletion of good will and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which the Seller incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Buyer of the terms of the Contract entered into by the Buyer where the Goods are subsequently sold on.

13. PRODUCT SPECIFICATIONS

- 13.1 The Seller has a policy of constant product development and reserves the right to amend product specifications without notice.
- 13.2 Goods supplied may differ from those advertised or provided as a sample.

- 13.3 The Seller will do its utmost to match the finish and colour of any finish samples provided to the Buyer, but variations in both colour and texture might occur due to the nature of the finishing process and variations in the base material.
- 13.4 The Seller does not guarantee to make all Goods within an order from the same fabric or leather batch due to variations in material availability from suppliers.
- 13.5 The Seller does guarantee to make each individual item using fabric or leather from the same batch.
- 13.6 Materials such as wood, metal and fabric may be subject to variances in appearance and any images supplied to the Buyer are to be used as a guide only.
- 13.7 While the Seller endeavours to ensure the dimensions of all Goods supplied are consistent with those advertised online, in verbal, written or electronic communication, publicised dimensions are nevertheless approximate.
- 13.8 The Seller accepts no liability in respect of Goods ordered by the Buyer being of dimensions unsuitable for the Buyer's customer's premises or if access to the customer's premises is impossible or impracticable.

14. WAIVER

The Seller's failure to insist upon strict performance of any provision of these Conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the Buyer in performance or compliance with any of these conditions.

15. MODIFICATION

These terms may only be modified in writing signed by the authorised representatives of both Company and the Customer.

16. GOVERNING LAW

- 15.1 This Agreement shall be governed by and interpreted in all respects in accordance with the Laws of England and the parties hereby submit to the jurisdiction of the English Courts.
- 15.2 If any part of these terms and conditions that is not fundamental is found to be illegal or Unenforceable, such finding will not affect the validity or enforceability of the remainder of these terms and conditions.