

TERMS AND CONDITIONS OF TRADING

1. Introduction

These terms and conditions (**Conditions**) set out the basis on which Burton & Towers Ltd. (**we/us/our**), trading as BT Office Furniture and Interiors, will supply goods (**Goods**) and installation services (**Services**) to you, the customer, as set out in the Order (as defined below). These Conditions do not affect your statutory rights.

2. Order Placing

- 2.1 To place an order (**Order**) you must contact us to obtain a quote for the Goods (**Quote**). We will respond via e-mail with the Quote and upon receipt of your written acceptance of the Quote (whether by e-mail, post or fax), and payment of a sum not less than the deposit as set out in the Quote (**Deposit**), the contract between us shall come into existence (**Contract**).
- 2.2 If you do not have a trading account with us, payment of the Deposit must be made at the time the Order is placed, by BACS, cheque or debit/credit card.
- 2.3 We may, at our sole discretion, provide trading accounts to recognised organisations and institutions.
- 2.4 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us, which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between us for the supply of the Goods and we reserve the right to change such literature without notice to you.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by us shall not constitute an offer, and is only valid for a period of 7 business days from its date of issue.

3. Delivery

- 3.1 We reserve the right to charge for delivery and we ask that you contact us for delivery rates. All Goods will be delivered to the location set out in the Order or such other location as is agreed between us (**Delivery Location**).
- 3.2 We will ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the Order.
- 3.3 We will attempt to meet your reasonable delivery requirements but delivery dates quoted are not guaranteed and time of delivery shall not be of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined below) or your failure to provide us with adequate delivery instructions or any other instructions relevant to the supply of the Goods.
- 3.4 Delivery of the Goods shall be completed on the Good's arrival at the Delivery Location.
- 3.5 If you fail to take delivery of the Goods within 5 business days of us notifying you that we have attempted delivery, delivery of the Goods shall (unless we have failed to comply with our obligations under these Conditions) be deemed to have been accepted at 9am on the 5th business day following the day on which the initial attempted delivery was made, and we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 3.6 We may deliver the Goods by instalments which shall be invoiced for separately and paid for separately.

4. Goods and Defects

- 4.1 We warrant that on delivery, the Goods shall conform in all material respects with their description, and be free from material defects in design, material and workmanship.
- 4.2 All Goods are covered by a minimum 12 month manufacturer's warranty.
- 4.3 Subject to clause 4.4, if you give us notice in writing within 48 hours of delivery that some or all of the Goods do not comply with the standards set out in clause 4.1 above and we are given a reasonable opportunity of examining such Goods, we may, at our option, repair or replace the faulty Goods.
- 4.4 We will not be liable for the Goods' failure to comply with the standards set out in clause 4.1 above if:
 - a) you make any further use of such Goods after giving a notice in accordance with clause 4.3; or
 - b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - c) the defect arises as a result of us following any drawing, design or specification you supplied to us; or
 - d) you alter or repair such Goods without our written consent of the Supplier; or
 - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - f) the Goods are ordered in error or are no longer required,and you will be charged for any costs associated with the replacement of any Goods where it is later found that one of the situations in this clause 4.4 applies..

5. Returns

- 5.1 It is your responsibility to check that the Goods are suitable for the intended use, space and position, can fit into the premises they are to be located in, and through any areas required to be passed in order to deliver the Goods to the desired location (doorways, lifts etc.). It is your responsibility to check colours and finishes of Goods and we accept no responsibility where colours of computer images, or sizes and measurements are not an exact match to the actual Goods ordered. We can provide colour swatches on request.
- 5.2 Subject to clause 4 above, we may, at our complete discretion, accept or reject the return of Goods, and if you wish to return Goods, you must contact us prior to delivering the item back to us and obtain confirmation in writing from us that the Goods can be returned. We reserve the right to charge a cancellation fee of 25% of the price paid for the Goods where we agree that those Goods can be returned, and this will be deducted from any refund given.
- 5.3 For the avoidance of doubt, any Goods which have been made 'to order' cannot be returned, unless cancelled within 24 hours of an Order having been made, and where such Goods have not yet been manufactured, and subject always to our discretion.
- 5.4 Where we authorise the return of Goods, these must be returned by you only, you shall be responsible for the cost of the return delivery and the risk of the Goods shall rest with you until we have received the Goods.

- 5.5 We will refund the price of the Goods (if a refund is applicable) to you once the Goods have been examined and within 30 days of receipt of the Goods by us, or persons assigned by us. The cost of any damage caused in transit of the Goods back to us will be deducted from such refund.
- 5.6 We may not be able to match previous Goods purchased by you in the event that manufacturers discontinue or change a product line, and we cannot except responsibility in such circumstances or accept the return of Goods as a result. We will attempt to find alternative similar products to help offer some continuity in future product lines and will advise you of any items you order, which we believe are being changed or discontinued in the future.

6. Title and Risk

- 6.1 The risk in the Goods shall pass to you on completion of delivery.
- 6.2 Title to the Goods shall not pass to you until we have received payment in full and cleared funds for the Goods.
- 6.3 Until title in the Goods passes, you will:
- (a) hold the Goods on a fiduciary basis as our bailee;
 - (b) store the Goods separately from all other goods you hold so that they remain readily identifiable as our property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
 - (e) notify us immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(e); and
 - (f) give us such information relating to the Goods as we may require from time to time, but you may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to you, you become subject to any of the events listed in clause 12.1(b) to clause 12.1(e), or we reasonably believe that any such event is about to happen and we notify you accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter yours or any third party premises where the Goods are stored in order to recover them.

7. Services

We warrant that we will provide any Services using reasonable care and skill, but we do reserve the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, by notifying you in such an event.

8. Your Obligations

- 8.1 In order to assist us with the provision of the Goods and Services, you will ensure that the terms of the Order, any specification you provide for the Goods and other information you provide to us, is complete and accurate, and provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us to provide the Services.
- 8.2 If we fail to deliver the Services as a result of your failure to comply with any obligations under these Conditions, such failure shall relieve us of our obligations to the extent that such failure prevents us from delivering Goods or performing the Services.

9. Price

- 9.1 All prices quoted are exclusive of VAT at the prevailing rate, and in respect of the Goods in particular, any costs and charges of packaging, insurance and transportation of the Goods.
- 9.2 We accept payment by way of credit or debit card, cheque or BACS. American Express payments shall carry a 3.5% surcharge.
- 9.3 Credit facilities are available for all government funded bodies. We may, at our discretion, allow credit facilities to others.
- 9.4 We will invoice you for Goods on or at any time after delivery, and for Services, once the Services have been completed. Our payment terms for account customers are strictly 30 days from the invoice date and time shall be of the essence.
- 9.5 Without limiting any other right or remedy we may have, if you fail to make any payment due to us under the Contract by the due date for payment (**Due Date**), we shall have the right to charge interest on the overdue amount at the rate of 8% per annum above the then current Bank of England's base lending rate accruing on a daily basis from the Invoice Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. In the case when legal action is taken to recover the debt, you shall be liable for the costs incurred as the direct result of such action.
- 9.6 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

10. Limitation of Liability

- 10.1 Nothing in these Conditions shall limit or exclude our liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1:
- (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by us, our employees, agents or subcontractors); and
 - (b) our total liability to you 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, including losses caused by a deliberate breach of the Contract by us, our employees, agents or subcontractors shall not exceed the sums paid for the Goods (and Services if applicable).
- 10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

11. Distance Selling Regulations

For the purpose of The Consumer Protection (Distance Selling) Regulations 2000 (**Regulations**), if you are a 'consumer' (as defined in the Regulations) you have the right to cancel the Contract within 7 working days after the Contract comes into effect commencing on the day after the day on which the Contract comes into force (in accordance with clause 2.1 above). During this time, we shall provide a full refund of any sums paid by you to us for the Goods.

12. Termination

12.1 We may terminate the Contract forthwith by notice in writing to you if:

- (a) you commit a material breach of your obligations under this Contract, and (if such breach is remediable), fail to remedy it within 14 calendar days of receipt of written notice of the breach;
- (b) you suspend, or threatens to suspend, payment of your debts or are unable to pay your debts as they fall due;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made against you, for or in connection with your winding up, administration or receivership (being a company);
- (d) you (being an individual) are the subject of a bankruptcy petition or order; or
- (e) you suspend, threaten to suspend, cease or threaten to cease to carry on, all or substantially the whole of your business.

12.2 On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall return all Goods which have not been fully paid for. If you fail to do so, we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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 or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Force Majeure

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, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services (**Force Majeure Event**), and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

14. Assignment

You shall not be entitled to assign, transfer, charge subcontract or deal in any other manner with all or any of your rights or obligations under the Contract without our prior written consent.

15. Severability

If any provision of these Conditions 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 herein shall continue in full force and effect as if these Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

16. Waiver

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

17. Notices

Any notice to be given by either party to the other may be served by email, fax, personal service or by first class post to the address of the other party given in the Order or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

18. Entire Agreement

These Conditions contain the entire agreement between the parties and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Any variation, including the introduction of any additional terms and conditions to the Contract, shall only be binding when agreed in writing and signed by us.

19. No Third Parties

No party who is not a party to the Contract shall have any rights under or in connection with it.

20. Governing Law and Jurisdiction

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.