

The Customer's attention is drawn in particular to the provisions of clause 11.

## 1. INTERPRETATION

### 1.1 Definitions:

<b>"Bespoke Goods"</b>	means bespoke or custom-made goods supplied or manufactured by the Company specifically for the Customer to the Customer Specification.
<b>"Business Day"</b>	a day (other than a Saturday, Sunday or public holiday) when UK clearing banks in the city of London are open for general business.
<b>"Company"</b>	The Canopy Company Ltd (registered in England and Wales with company number 04655063).
<b>"Conditions"</b>	the terms and conditions set out in this document as amended from time to time in accordance with Clause 13.4.
<b>"Contract"</b>	the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>"Customer"</b>	the person or firm who purchases the Goods from the Company.
<b>"Customer Artwork"</b>	has the meaning given in clause 10.1.
<b>"Customer Specification"</b>	any specification for the Bespoke Goods including any related plans and drawings, which are agreed in writing by the Customer and the Company.
<b>"Force Majeure Event"</b>	an event or circumstance beyond a party's reasonable control.
<b>"Goods"</b>	the goods (including Bespoke Goods) (or any part of them) set out in the Order.
<b>"Order"</b>	the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Company's quotation as the case may be.

### 1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes emails but **excludes** fax.

## 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is

responsible for ensuring that the terms of the Order submitted by the Customer are complete and accurate.

- 2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings or advertising produced by the Company and any illustrations contained in the Company's catalogues or brochures or on its website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

## 3. GOODS

- 3.1 The Goods are described in the Company's brochure and on its website (as modified by any applicable Customer Specification.)
- 3.2 The Customer shall at its own cost provide to the Company such measurements and information as are necessary to enable the Company to manufacture the Goods in accordance with the Customer Specification.
- 3.3 The Company reserves the right to modify or amend the specification (including any Customer Specification), design and material of the Goods:
  - (a) provided that such modifications or amendments do not materially affect the quality or functionality of the Goods; or
  - (b) if required by any applicable statutory or regulatory requirements.
- 3.4 The Customer 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with 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 Customer Specification and/ or an Customer Artwork. This clause 3.4 shall survive termination of the Contract.
- 3.5 As the Company does not provide installation services, the Customer accepts, acknowledges and agrees that installation of the Goods requires appropriately skilled and qualified persons and the Customer shall be responsible for ensuring that all directions and instructions relating to the installation of the Goods and all applicable laws and regulatory requirements are met.
- 3.6 Any guidelines on health and safety within the workplace provided by the Company are for information purposes only and the Customer must satisfy itself as to its legal and regulatory requirements.

## 4. DELIVERY

- 4.1 The Company shall ensure that:
  - (a) each delivery of the Goods is accompanied by a delivery note that shows the despatch date, Order

## Terms and Conditions of Sale



Number, reference number, method of delivery, the type and quantity of the Goods (including the specification of the Goods, where applicable), and delivery address; and

- (b) if the Company requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- 4.2 The Company shall deliver the Goods to the location set out in the Order or such other location in the United Kingdom as the parties may agree ("**Delivery Location**") at any time after the Company notifies the Customer that the Goods are ready. Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 All deliveries outside of the UK shall be subject to express written agreement and shall be delivered FOB (Incoterms 2010) and the Customer shall be responsible for all necessary import licences, clearances and other consents necessary for the purchase of the Goods and to ensure that the Goods comply with all local legislative or legal obligations and shall be responsible for any customs duties, clearance charges, taxes, broker's fees and other amounts payable in connection with the exportation and importation of the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and
- (b) the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If five Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 The Customer shall inspect the Goods and notify the Company of any apparent defects or deficiencies within 24 hours of

delivery. The Customer shall be deemed to accept any Goods (save in the case of non-apparent defects or deficiencies) should it not notify the Company within this timescale.

### 5. CANCELLATION

- 5.1 Without prejudice to Clause 6, the Company shall not be obliged to accept cancelled Orders or returns unless expressly agreed otherwise. The Customer should contact the Company's Service Desk on 01706 221012 to obtain a Goods Return Authorisation, and the Company shall not be obliged to accept any returns without such Goods Return Authorisation.
- 5.2 Any returned Goods must be unused, in the original packaging and include all manuals or other documentation supplied with the Goods. The Customer must provide proof of purchase and delivery. The Customer may be liable for a restocking fee equal to 25% of the price of the Goods.
- 5.3 Where the Company authorises the return of Goods that are in transit but have not yet been delivered, the Customer shall be responsible for an abortive delivery charge.
- 5.4 The Customer accepts, acknowledges and agrees that (unless otherwise agreed by the Company in writing) it shall be liable to pay the full price of the Bespoke Goods in the event that it cancels or terminates the Order at any point following acceptance of the Order by the Company.

### 6. QUALITY

- 6.1 **Standard Warranty**
- (a) The Company warrants that on delivery, the Goods shall:
- (i) conform in all material respects with their description and any applicable Customer Specification;
- (ii) be free from material defects in design, material and workmanship;
- (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (iv) be fit for any purpose held out by the Company.
- (b) If:
- (i) the Customer gives notice in writing to the Company within 24 hours of delivery (or in the case of non-apparent defects within 24 hours of discovery) that some or all of the Goods do not comply with the warranty set out in Clause 6.1(a); and
- (ii) the Company is given a reasonable opportunity of examining such Goods; and
- (iii) the Customer (if asked to do so by the Company) returns such Goods to the Company place of business at the Customer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.2 The Company shall not be liable for the Goods' failure to comply with the warranties set out in Clauses 6.1(a) in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.1(b);
- (b) the defect arises as a result of the Company following the Customer's instructions as to the manufacture of the Goods and /or the provision of the Installation Services (including any details included in the

- Customer Specification and any measurements or other information provided by the Customer for the purposes of the Installation Services);
- (c) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (d) the Customer alters or repairs such Goods without the written consent of the Company;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.3 Where the Company has attended the Customer's premises to repair or replace the Goods and it is found, in the Company's reasonable opinion, that any of the events listed in Clauses 6.2(a) to 6.2(e) has occurred, the Customer shall be responsible for the costs of any repairs or replacement and may be subject to an administrative charge in respect of any aborted visit.
- 6.4 Except as provided in this Clause 6, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in Clause 6.1(a)
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 Clause 6 shall apply to any repaired or replacement Goods supplied by the Company.

### 7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery. If required, the Customer shall endorse any such insurance policy with the Company's interest;
  - (d) notify the Company immediately if it becomes subject to any of the events listed in Clause 9.1; and
  - (e) give the Company such information relating to the Goods as the Company may require from time to time.

- 7.4 Subject to Clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Company's agent; and
  - (b) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 9.1, then, without limiting any other right or remedy the Company may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Company may at any time:
    - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### 8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Order, or as otherwise agreed in writing by the parties.
- 8.2 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 8.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer
- 8.4 Where the Customer requests a credit account, the Company may take references (including from credit reference agencies) to assess the creditworthiness of the Customer. The Company shall be under no obligation to provide credit facilities, and may place such conditions or limits on any such credit account as it may see fit. The Company reserves the right to revoke, suspend or alter credit limits from time to time as it sees fit. For details of how the Company uses this information please see our Privacy and Cookies Policy available at [www.thecanopycompany.co.uk](http://www.thecanopycompany.co.uk).
- 8.5 Where the Customer has been granted a credit account, the Company may invoice the Customer for the Goods on or at any time after delivery of the Goods and the Customer shall pay the

## Terms and Conditions of Sale



invoice in full and in cleared funds within 30 days of the date of invoice.

- 8.6 Where the Customer has not requested, or been declined, a credit account then the Company may invoice the Customer for the Goods on or at any time after acceptance of the Order and the Company shall not be obliged to deliver the Goods until payment in full has been received.
- 8.7 Payment shall be made to the bank account nominated in writing by the Company. Time for payment is of the essence.
- 8.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time (subject to a minimum rate of 4%). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9 The Customer agrees to indemnify the Company against all costs, losses, expenses and fees (including but not limited to legal and other professional fees) suffered or incurred by the Company in recovering any overdue amounts from the Customer.
- 8.10 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.

### 9. TERMINATION

- 9.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
  - the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Company may suspend or cancel provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in Clause 9.1(a) to Clause 9.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 9.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all the Company's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### 10. INTELLECTUAL PROPERTY

- 10.1 Where the Customer has specified any artwork, logo, device, brand or company names, or other mark (whether registered or unregistered) for inclusion or incorporation into the Goods ("**Customer Artwork**"), the Customer grants the Company a licence to use the Customer Artwork for such inclusion or incorporation, and further that it may use images or representations of such finished Goods (including the Customer Artwork) for use in promotional or advertising material in respect of the Company's goods and services.
- 10.2 The Customer warrants and represents that it has the authority and capacity to grant the licence contained in Clause 10.1 and agrees to fully and effectively indemnify, and keep indemnified, the Company against any and all claims, losses, expenses (including legal and professional fees) suffered or incurred by the Company arising out of or in connection with the Company's use of the Customer Artwork.

### 11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation;
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - defective products under the Consumer Protection Act 1987; or
  - any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - the Company's total liability to the Customer 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, shall in no circumstances exceed the price of the Goods.

### 12. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the

## Terms and Conditions of Sale



Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

13.4

**Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5

**Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.6

**Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.7

**Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 13.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

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

13.8

**Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

13.9

**Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.10

**Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

### 13. GENERAL

#### 13.1 Assignment and other dealings.

- (a) 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.
- (b) 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 Company.

#### 13.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 13.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 13.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### 13.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

I/We acknowledge receipt of these Terms and Conditions of Sale:

**Terms and Conditions of Sale**



Customer:	
Authorised Signatory:	
Print Name:	
Title:	
Date:	

