

TERMS AND CONDITIONS

1. DEFINITIONS

In these terms:

"Europlan" means Europlan Limited.

"Customer" means the purchaser of the Products.

"Products" means the physical product supplied by Europlan being office furniture, fittings and accessories (including but not limited to desks, workstations, chairs, storage, screens, soft seating and accessories) and services directly associated with the delivery and installation of the Products as collectively described in the quotation (but excluding all design services relating to those items or their location at the Site).

"Quote" means the quotation for the Products setting out the detail of what is to be delivered by Europlan to the Customer. A Quote does not give rise to a binding contract for the supply of the Products until the Customer places an order which is accepted.

"Site" means the physical premises to which the Products are to be delivered and installed.

2. ORDERS AND SECURITY FOR PAYMENT

2.1 All orders are subject to the Quote and acceptance by Europlan. Any order accepted by Europlan from 1 July 2017 is only on these terms. They are paramount and take precedence over any terms (oral or written) which may be offered by the Customer or any previous terms of Europlan. If Europlan fails to enforce any of these terms or exercise its rights under them it is not deemed to have waived those terms or rights.

2.2 Europlan and the Customer may agree upon special orders and quotations which must be in writing. They are subject to these terms unless specifically provided otherwise or they are obviously inapplicable to the special order or quotation.

2.3 Before Europlan accepts an order from the Customer, Europlan may require the Customer to pay a deposit, pay for offsite materials, make progress payments or, at the Customer's expense, provide a bond or guarantee on such terms as Europlan may reasonably require in order to secure payment under clause 5. Any deposit paid is non-refundable unless otherwise specified in writing.

3. CANCELLATION OF ORDER

3.1 No order that is accepted by Europlan can be cancelled without its written consent. If cancellation is agreed the Customer must pay Europlan all costs and expenses incurred by Europlan in fulfilling the order to the date of cancellation together with its sales margin.

4. PRICES

4.1 The price of the Products is the price in the Quote or as otherwise agreed in writing.

4.2 The price of the Products excludes goods and services tax ("GST") and (subject to the Quote) excludes all insurance, transport and packaging costs to delivery to the Site unless otherwise agreed in writing between Europlan and the Customer.

5. PAYMENT

5.1 All invoices are due and payable within fourteen (14) days of the date of Europlan's invoices or unless otherwise agreed to in writing by Europlan.

5.2 The Customer may not deduct or withhold any amount (whether by way of setoff, counterclaim or otherwise) from any money owing to Europlan or in respect of any security for payment given under clause 2.3.

5.3 If full payment for the Products is not made to Europlan by the due date for payment (without affecting any other rights it may have) Europlan may at its discretion require the Customer to pay, on demand, default interest on any amount outstanding at the rate of 2.5% per month.

5.4 Default interest will accrue on a daily basis from the date when payment is due until the date when payment is actually received in full (both prior to and following any judgement obtained). The Customer will also be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with Europlan recovering or attempting to recover any overdue amount from the Customer.

5.5 Europlan may also at its option suspend the manufacture or delivery of the unpaid or any undelivered Products in its possession and retain them until the overdue amounts are paid in full.

6. ACCOUNT SUSPENSION AND CLOSURE

a. Without prejudice to any other rights that Europlan may have, Europlan may suspend a Customer's account if payment for the Products is not made on the due date. An account suspension may cause all unfulfilled orders from the Customer to be cancelled.

b. Europlan may close a Customer's account at any time for any reason whatsoever including, without limitation, where:

- (a) any of these terms is not observed; or
- (b) the Customer has on more than three previous occasions in any 12-month period failed to make payments required in accordance with these terms notwithstanding that the most recent invoice was paid on the due date

and Europlan will not be liable to the Customer for any loss or damage which results directly or indirectly from the closure of such account.

7. DELIVERY AND INSTALLATION

7.1 Europlan will arrange the delivery of the Products to the Site and installation in accordance with the Quote.

7.2 Unless otherwise agreed in writing delivery and installation will be undertaken between 7 am and 5 pm from Monday to Friday.

7.3 Europlan will in no event be liable for any late or non-delivery.

7.4 Delivery will be made or deemed to have been made when the Products arrive at the Site agreed with the Customer and, if no such agreement has been made, delivery will occur when the Products are despatched from Europlan's premises.

7.5 If the Customer (or its contractors, agents or employees) fails or refuses or indicates to Europlan that it will fail or refuse to take delivery, whether because the Site is not available, is not ready for Product delivery, has insufficient access or delivery cannot occur for any other reason beyond Europlan's control, then the

Products will be deemed to have been delivered when Europlan was willing to deliver them.

7.6 In that event, on written request by Europlan the Customer agrees to pay:

- (a) from the date of deemed delivery Europlan's reasonable storage, insurance and other costs relating to Europlan's inability to deliver the Products; or
- (b) after a period of seven days from the deemed date of delivery (including the date of deemed delivery and the seventh day thereafter) all Europlan's work in progress, offsite materials and labour costs and margin as if the Product had been delivered to the Site on their due date

7.7 Europlan may deliver the Products in instalments. Each instalment is deemed to be a separate contract subject to these terms. If Europlan fails to deliver or makes defective or short delivery of one or more instalments (or any part of them) the Customer is not entitled to repudiate or cancel the main contract.

8. RISK AND OWNERSHIP

8.1 The Products are at the Customer's risk from the earlier of delivery to the Site (notwithstanding that Europlan may not have completed their installation) or delivery to the Customer's agent or carrier for the purposes of transmission of the Products to the Customer. The Customer will insure the Products at full replacement value until legal and beneficial ownership of them has passed to the Customer.

8.2 If the Products are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for Europlan and subject to its rights as a secured party under clause 12.

8.3 Europlan retains title to all Products until payment has been made by the Customer in full. The Customer acknowledges that until full payment is made for the Products it retains possession of them solely as Europlan's bailee. The Customer agrees that Europlan, its agents or employees (on written notice) may enter onto the Site or any premises under the Customer's ownership or control for the purpose of inspecting and/or repossessing any Products not paid for in full.

8.4 The Customer indemnifies Europlan (and its employees and agents) against liability incurred in connection with repossession (including liability to third parties such as a landlord).

9. WARRANTY AND LIABILITY

9.1 By accepting these terms the Customer represents that it acquires the Products for business purposes so that the Consumer Guarantees Act 1993 does not apply to the Products and the sale is not a consumer sale.

9.2 Subject to clause 9.1:

- (a) Europlan gives to the Customer the Products warranty attached to these terms as the Schedule and gives no other warranties whether express or implied by law (including the Sale of Goods Act 1908). To the fullest extent permissible by law all warranties, conditions or any other terms implied by law are excluded. These terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.

- (b) Europlan will accept no liability for any damages or losses (including loss of profits) arising as a consequence of any act, default or negligence on the part of Europlan or of an employee, agent or contractor of Europlan including negligence.

- (c) Notwithstanding clause 9.2 (b), insofar as Europlan may be liable for any loss, damage or injury arising directly or indirectly from any defect in the Products, the total liability of Europlan, whether in tort (including negligence), contract or under any other legal rule or principle, is limited to the lesser of the price of the Products complained of and the cost of replacing the Products to the required standard.

- (d) Europlan will not be liable in any event for any consequential losses or damages, indirect loss or any economic loss or loss of profits of any kind suffered by the Customer.

- (e) The parties agree that the Products are being supplied by Europlan, and acquired by the Customer, in trade and that sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply between the parties and that it is fair and reasonable to exclude their application.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Europlan retains all rights in the copyright, patents, trademarks, designs and other intellectual property rights to the Products and the Customer acknowledges that it has no claim to them. The Customer agrees to treat all information concerning the pricing in the Quote and manufacture of the Products as strictly confidential.

10.2 Europlan is not liable for Products manufactured under the Customer's directions / specifications and the Customer agrees to indemnify Europlan in relation to any claims for infringement of the intellectual property rights of third parties that might result.

11. FORCE MAJEURE

11.1 Notwithstanding any other provisions of these terms (but subject to the other provisions of this clause), if either party fails to observe or perform any of the provisions of these terms other than an obligation to pay money, and such failure is caused by or in connection with or in consequence of force majeure, the failure will not be a breach of such terms whose operation will be suspended except for any obligation to pay money.

11.2 For the purposes of these terms "Force Majeure" means any act of God, weather conditions, medical or health risks, fire, accident or emergency of any kind, failures or delays in utilities supplies or in communications, software or information technology or any other similar cause beyond the reasonable control of Europlan or the Customer as the case may be which prevents, hinders or interferes with the performance by either of them of their obligations under these terms.

11.3 Neither party shall be entitled to the benefit of the provisions of this clause 11 under any or all of the following circumstances:

- (a) to the extent that the failure was caused by the party claiming suspension and such party has failed to remedy the event, and to resume the performance of such terms or obligations, with reasonable promptness; or
- (b) if the failure was caused by lack of funds; or
- (c) unless as soon as possible after the happening of the event relied upon or as soon as possible after

determining that the event was in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its terms, the party claiming suspension has given to the other party notice to the effect that it is unable by reason of a specified event of Force Majeure to perform the particular terms.

- 11.4 The party claiming suspension must also give notice as soon as possible after the Force Majeure is remedied and that such party has resumed, or is then in a position to resume, the performance of terms.
- 11.5 Notwithstanding anything to the contrary expressed or implied in this clause 11, the parties agree that the settlement of strikes, lockouts and other industrial disturbances is entirely within the discretion of the particular party involved and such party may make settlement at such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement will deprive such party of the benefit of this clause 11.
- 11.6 If the event of Force Majeure continues for ten days or more either party may terminate these terms by written notice to the other but any pre-existing rights will not be affected.

PERSONAL PROPERTY SECURITIES ACT

- 12.1 Europlan and the Customer acknowledge that these terms constitute a security agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, in this clause the term "Collateral" includes the Products and their proceeds including insurance payments. The Customer agrees to give Europlan a security interest in all of the Customer's present and after-acquired property that Europlan has supplied as the Products as Collateral and agrees not to allow any person to file a finance statement over any of the Collateral secured by this security agreement without the prior written consent of Europlan.
- 12.2 The Customer agrees to advise its creditors of the terms upon which it buys Products from Europlan and that Europlan may create and register a purchase money security interest under the PPSA for all Products in which Europlan has title.
- 12.3 Upon signing these terms the Customer acknowledges that:
 - (a) these terms are a security agreement for the purposes of section 36 of the PPSA
 - (b) a security interest is taken in all Products previously supplied to the Customer and all Products that will be supplied in the future by Europlan to the Customer during the continuance of the party's relationships
- 12.4 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information which Europlan may reasonably require to register financing statements or financing change statements on the Personal Properties Securities Register
 - (b) give Europlan not less than 14 days' prior written notice of any proposed change to the Customer's name and will use its best endeavours to ensure that a financing change statement is registered disclosing its new name
 - (c) immediately advise Europlan of any material change in its business practices of selling the Products that would

result in a change of the nature of proceeds derived from such sales

- (d) waive the rights listed in section 107 (2) of PPSA, its right to receive the notice referred to in section 114 (1) (a) of the PPSA, its right to reinstate under sections 133 and 134 and its right to receive verification statements under section 148 of the PPSA. The Customer agrees that Europlan may exercise the rights in sections 108, 109, 111 (1) and 120 (1) of the PPSA, whether or not Europlan has priority over all other secured parties, and that Europlan may charge for complying with a demand under section 162 of the PPSA. The Customer will inform any trustee in bankruptcy or liquidator of the Customer or any receiver of the Customer's business or assets of the rights of Europlan and title to the proceeds of sale.
- 12.5 The security agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by Europlan. The security interest granted in the Collateral has the same priority in relation to any Products supplied to the Customer by Europlan at any time.
- 12. TERM
 - 13.1 Either Europlan or the Customer can terminate the trading relationship between them based on these terms within 10 days' written notice to the other unless the notice period is agreed in writing.
 - 13.2 Termination will be without prejudice to any claims that either party may have under the terms and any outstanding but unfulfilled orders will be completed.
 - 13.3 If the Customer breaches any of these terms which is material and the breach (if capable of remedy) remains unremedied after Europlan has given 30 days' written notice of the defect specifying what is required for remedy or if the Customer becomes bankrupt or is put into liquidation, voluntary or otherwise, receivership or voluntary administration or enters into an arrangement or compromise with their creditors then, in any of those cases, Europlan may cancel the supply agreements then in force with the Customer and claim the amounts referred to in clause 7.5 (b) as if that clause applied to those circumstances, without notice.
- 13. NO ASSIGNMENT
 - 14.1 The Customer must not assign or transfer all or any part of its rights or obligations under these terms without Europlan's prior written consent. Europlan may assign any rights or obligations without the Customer's approval as well as subcontract any obligations to third parties.
- 14. CHANGING TERMS

Europlan may change the terms and conditions which shall be notified to the Customer in writing. Should the customer not accept these then the agreement can be terminated under clause 13.1.

Signed by: _____

Name: _____

Position within organisation: _____

Date: _____

