

## Terms and Conditions for the Supply of Goods

### 1. Interpretation

- 1.1 Within these terms and conditions for the supply of goods the following definitions shall apply

**"Agreement"** means the agreement between Lisle Design and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**"Conditions"** means the terms and conditions set out in this document or as amended from time to time.

**"Customer"** means the party whose details appear on the Order and Order Confirmation, who is contracting with Lisle Design.

**"Customisation"** means any customisation of the Goods, including any related plans and drawings, which are agreed in writing by the Customer and Lisle Design.

**"Delivery Location"** means the locations set out in the Order Confirmation or such other location as the parties may agree and in the event that it has been agreed that the Customer will collect the goods, it shall be Lisle Design's goods outwards department.

**"Force Majeure Event"** means an event or circumstance which is beyond the reasonable control of a party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable.

**"Goods"** means the goods (or any part of them) set out in the Order Confirmation.

**"Intellectual Property"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Lisle Design"** means Lisle Design Limited, a company incorporated in Scotland (Registered Number: SC312548) whose registered office is at Kinburn Castle, St Andrews, Fife, KY16 9DR.

**"Order"** means the Customer's order for the Goods, as set out in the Customer's purchase order form.

**"Order Confirmation"** means the confirmation issued by Lisle Design to the Customer in respect of the Goods.

**"VAT"** means value added tax chargeable for the time being and any similar additional tax.

## 1.2 **Construction**

In these Conditions, the following rules apply:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 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.
- 1.2.4 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.
- 1.2.5 A reference to writing or written includes faxes and e-mails.

Any Scottish legal term for any action, remedies, method of judicial proceedings, legal status, court, official or any concept or thing shall in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish legal term and reference to any statute, order or regulation shall be construed so as to include equivalent or analogous laws, order or regulation of any other jurisdiction.

## 2. **Basis of Agreement**

- 2.1 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate.
- 2.2 The Order placed by the Customer constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the details of the Order, along with any applicable Customisation are complete and accurate.
- 2.3 There shall be no contract until such time as Lisle Design sends out an Order Confirmation and this offer is deemed to have been accepted unless the Customer explicitly indicates otherwise within 24 hours of receipt of the Order Confirmation.
- 2.4 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Lisle Design which is not set out in the Agreement.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Lisle Design and any descriptions or illustrations provided to the Customer are produced for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Agreement.
- 2.6 A quotation for the Goods given by Lisle Design shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

## 3. **Maintenance of Webserver**

- 3.1 For relevant products Lisle Design shall host a webserver for the Customer's use. The Customer can make use of such webserver for as long as Lisle Design

continues to operate it. In any event, Lisle Design shall only be obliged to provide webserver support to the Customer for as long as the related Goods are available by Lisle Design for sale and for a period of three years thereafter.

- 3.2 Lisle Design shall make all reasonable efforts to maintain the webserver so as to ensure it is operational for the Customer's use. However, the Customer shall have no claim against Lisle Design for any liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses) which may arise in the event that the Lisle Design webserver is not operational for up to three working days. In the event that the webserver is not operational for a period beyond three days, the limitations set out in clause 10 shall apply.

#### **4. Intellectual Property**

- 4.1 All Intellectual Property made available by Lisle Design for the Customer's use is, as between Lisle Design and the Customer, owned by Lisle Design and the Customer shall have no right to license or profit from the Intellectual Property in any way.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Customisation supplied by the Customer, the Customer shall indemnify Lisle Design 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 professional costs and expenses) suffered or incurred by Lisle Design in connection with any claim made against Lisle Design for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Lisle Design's use of the Customisation.
- 4.3 In the event that the Customer makes any Intellectual Property available to Lisle Design as part of the Customisation, Lisle Design shall only be entitled to use the Intellectual Property for the Customisation of the Goods and for no other reason.

#### **5. Delivery**

- 5.1 Lisle Design shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order Confirmation, all relevant Customer and Lisle Design reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 Lisle Design shall deliver the Goods to the Delivery Location and delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Lisle Design 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 Lisle Design with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 If Lisle Design fails to deliver the Goods, it shall replace the Goods which ought to have been delivered in accordance with the Customer Order within a reasonable time. The Customer shall have the option of cancelling the order which is the subject of non-delivery within a reasonable time and shall, in such event, receive a pro rata credit note to the value of the undelivered Goods.
- 5.5 For Goods being delivered by Lisle Design and sent by tracked service the delivery time shall be deemed to be the earlier of the time when the Goods were recorded as delivered or 5 days after the first delivery attempt. For Goods sent by a non-

tracked service the delivery time shall be deemed to be 9.00am on the third working day after sending.

5.6. For Goods being collected by the Customer, if the Customer fails to collect the Goods within five days of being notified that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Lisle Design's failure to comply with its obligations under the Agreement:

5.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth day after the day on which Lisle Design notified the Customer that the Goods were ready; and

5.6.2. Lisle Design shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.6.3. If 10 days after the day on which Lisle Design notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Lisle Design may resell or otherwise dispose of part or all of the Goods.

5.7. Lisle Design may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 6. **Quality**

6.1 Lisle Design warrants that on delivery the Goods shall:

6.1.1 conform to the Customisation, subject to the right to amend the Customisation if required by any applicable statutory or regulatory requirements; and

6.1.2 be free from material defects in design, material and workmanship;

6.2 Notwithstanding the terms of clause 6.1, Lisle Design reserves the right to amend the Customisation if required by any applicable statutory or regulatory requirements.

6.3 Subject to clause 6.4, if:

6.3.1 the Customer gives notice in writing to Lisle Design within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;

6.3.2 Lisle Design is given a reasonable opportunity of examining such Goods; and

6.3.3 the Customer (if asked to do so by Lisle Design) returns such Goods to Lisle Design's place of business at the Customer's cost,

Lisle Design shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.4 Lisle Design shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

6.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.3;

- 6.4.2 the defect arises because the Customer failed to follow Lisle Design's oral or written instructions as to the storage, commissioning, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 6.4.3 the defect arises as a result of the Goods being installed or incorporated into another product by the Customer or a third party;
  - 6.4.4 the defect arises as a result of Lisle Design following any drawing, design or Customisation supplied by the Customer;
  - 6.4.5 the Customer alters or repairs such Goods without the written consent of Lisle Design;
  - 6.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - 6.4.7 the Goods differ from the Customisation as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
  - 6.4.8 the Goods were acquired other than direct from Lisle Design.
- 6.5 Except as provided in this clause 6, Lisle Design shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.6 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 Agreement.
- 6.7 Lisle Design makes no warranty that the Goods are suitable for the specific requirements of the Customer and it is the responsibility of the Customer to order products which are appropriate for the Customer's specific needs.
- 6.8 These Conditions shall apply to any repaired or replacement Goods supplied by Lisle Design.
- 6.9 The warranty contained in this clause 6 does not apply to Goods which are supplied at pre-production status. Products supplied at pre-production status are provided by Lisle Design 'AS IS', with no warranty, either express or implied. Goods at pre-production status, for the purposes of these Conditions are defined as Goods which have not been fully tested or characterised.

## 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 Lisle Design has received payment in full (in cash or cleared funds) for:
- 7.2.1 the Goods; and
  - 7.2.2 any other goods or services that Lisle Design has supplied to the Customer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 hold the Goods on a fiduciary basis as Lisle Design's bailee;

- 7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Lisle Design's property;
  - 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 7.3.5 notify Lisle Design immediately if it becomes subject to any of the events listed in clause 9.2; and
  - 7.3.6 give Lisle Design such information relating to the Goods as Lisle Design may require from time to time.
- 7.4 Notwithstanding the terms of clause 7.3, the Customer may resell or use the Goods in the ordinary course of its business until such time as title to the Goods passes to the Customer.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or Lisle Design reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy, Lisle Design may at any time require the Customer to deliver up the Goods and, 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 Confirmation.
- 8.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance, transport and delivery of the Goods, all of which shall be invoiced to the Customer, unless otherwise agreed between the parties, and set out in the Order Confirmation.
- 8.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Lisle Design, pay to it such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.4 Lisle Design may, by giving notice to the Customer at any time up to 3 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.4.1 any factor beyond Lisle Design's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 8.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Customisation; or
  - 8.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give Lisle Design adequate or accurate information or instructions.
- 8.5 Lisle Design may invoice the Customer for the Goods on or at any time after the completion of delivery.

- 8.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date the invoice is delivered. Payment shall be made to the bank account nominated in writing by Lisle Design unless otherwise agreed. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to Lisle Design under the Agreement within the time set out in clause 8.6, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above The Royal Bank of Scotland's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.8 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Lisle Design in order to justify withholding payment of any such amount in whole or in part. Lisle Design 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 Lisle Design to the Customer.

## 9. **Customer's Insolvency or Incapacity**

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or Lisle Design reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Lisle Design, Lisle Design may cancel or suspend all further deliveries under the Agreement or under any other agreement between the Customer and Lisle Design without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

- 9.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 9.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Customer;
  - 9.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 9.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.8 (inclusive);
  - 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - 9.2.11 the Customer's financial position deteriorates to such an extent that in Lisle Design's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; and
  - 9.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

## 10. **Limitation of Liability**

- 10.1 Nothing in these Conditions shall limit or exclude Lisle Design's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees or agents (as applicable);
  - 10.1.2 fraud or fraudulent misrepresentation;
  - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 10.1.4 defective products under the Consumer Protection Act 1987;
- 10.2 Subject to clause 10.1:
- 10.2.1 Lisle Design shall not be liable to the Customer, whether in agreement, delict (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 Agreement; and
  - 10.2.2 Lisle Design's total liability to the Customer in respect of all other losses arising under or in connection with these Conditions, whether in agreement, delict (including negligence), breach of statutory duty, or otherwise, shall be equal to the lesser of:



- 10.2.2.1 the price of the defective Goods; and
- 10.2.2.2 the aggregate amount which has been invoiced by Lisle Design and paid by the Customer in the 12 month period immediately preceding the relevant losses.

## 11. **Export Control**

The Customer shall be wholly responsible for complying with any and all applicable export laws, regulations and orders and shall not by any means or method export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped, or diverted, directly or indirectly, any Goods from Lisle Design except as permitted by and in accordance with applicable laws and regulations. This provision shall survive the expiration or termination of these Conditions.

## 12. **General**

12.1 Force Majeure Event: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Agreement if and to the extent such delay or failure is caused by a Force Majeure Event. If such event or circumstances prevent Lisle Design from providing any of the Services for more than six weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Agreement with immediate effect by giving written notice to Lisle Design.

12.2 Assignment and subcontracting:

12.2.1 The Customer shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of Lisle Design.

12.2.2 Lisle Design may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

12.3 Notices:

12.3.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, to its principal place of business or as otherwise agreed between the parties, or sent by fax or e-mail to the other party's main fax number or e-mail address.

12.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second day after posting, or 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 e-mail, on the next day after transmission.

12.3.3 This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action and under such circumstances, communication ought to be sent to the other party's registered office.

12.4 Waiver and cumulative remedies:

12.4.1 A waiver of any right under these terms and conditions 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 Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.4.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

12.5 Severance:

12.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

12.5.2 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 No partnership: Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 Third parties: A person who is not a party to the Agreement shall not have any rights under or in connection with it.

12.8 Variation: Any variation, including any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by both Lisle Design and the Customer.

12.9 Governing law and jurisdiction: The Agreement, 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, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.