

Ergonomic Seating Solutions Ltd Terms & Conditions

1. DEFINITIONS

Customer: means the person or organisation that buys or agrees to buy the goods from the Company.

Conditions: means the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Company.

Goods: means the articles which the Customer agrees to buy from the Company.

Price: means the price for the Goods, excluding VAT and any carriage, packaging and insurance costs.

Company: means Ergonomic Seating Solutions Ltd, Unit 6 Centurion Industrial Estate, Centurion Way, Leyland, Lancashire, PR25 4GU

2. CONDITIONS

2.1 These Conditions shall form the basis of the contract between the Company and the Customer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Customers standard conditions of purchase or any other conditions which the Customer may purport to apply under any purchase order or confirmation of order or any other document.

2.2 Each order for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.

2.3 Each order placed by the Customer shall be deemed to be accepted by the Company unless the Company notifies the Customer within 7 days that it does not accept the order.

2.4 When requested, the Company shall submit to the Customer a document which shall specify the goods and services to be supplied and the price payable. If the Customer does not agree with any of the contents of this Document the Customer shall notify the Company immediately.

2.5 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

2.6 These Conditions represent the whole of the agreement between the Company and the Customer. They supersede any other conditions previously issued.

2.7 The Company shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

3. PRICE AND PAYMENT

3.1 The price shall be the price agreed between the Company and the Customer. These prices are found on the Companies price list and website but are subject to change without notice.

3.2 The Prices shown in the Company's catalogue and website are exclusive of VAT and carriage, VAT shall be due at the rate in force on the date of the Companies invoice.

3.3 We will endeavor to maintain prices quoted, but we reserve the right to increase prices between acceptance and delivery of an order to take into account any increased costs incurred to the Company.

3.4 If the Customer's procedures require that an invoice be submitted against a purchase order to permit payment, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied.

3.5 The Company shall invoice the Customer at the time the Goods are dispatched or the Services are provided. Payment of the Price and VAT shall be due within 30 days of the date of the Companies invoice.

3.6 The Customer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Company.

3.7 Interest on late payments will be charged at 4% above the base rate of Lloyds bank.

4. GOODS

4.1 The quantity and description of the Goods shall be as set out in the Company's confirmation of order which is available on request.

4.2 All illustrations, drawings etc accompanying our quotation or contained in our catalogues, literature, price lists, web site, e-mails, newsletters or advertisements must be regarded as approximate representations only and are not binding in detail unless stated so to be in our quotation.

4.3 All weights, measurements, capacities and other particulars of the goods offered by us are stated in good faith as being approximately correct, but small deviations there from shall not invalidate the contract or be made the basis of any claim against us. Errors and omissions are subject to correction.

4.4 The Company reserves the right to deliver a suitable alternative if the goods ordered are no longer available to the Company and reserve the right to amend without notice the specification of materials used in the manufacture of our products as a result of changes in the supply position, and to improve or change the specification.

4.5 Whilst every effort is made to ensure parity of colour, we do not guarantee an exact colour match to any description or picture on the web site, in our literature, within the same manufactured batch or to match a previous delivery.

5. WARRANTIES

5.1 The Company warrants that the Goods will at the time of delivery correspond to the description given by the Company in the confirmation of order.

5.2 All Opera models are guaranteed for a period of five years at 8 hour use / day and 18 months at 24/7 usage. This covers structural components and moving parts, with fair wear and tear on upholstery.

5.3 This guarantee applies to normal usage under office environment conditions. The guarantee does not cover chairs that are used outside the United Kingdom and excludes damage caused by impact or misuse.

5.4 Should any fault develop in goods that we manufactured which in our opinion is due to faulty materials or workmanship, we undertake to renew or replace the defective parts without charge, providing the article is returned to our factory carriage paid.

6 DELIVERY OF GOODS OR SERVICES

6.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Company for delivery. The Company will deliver to the ground floor entrance of the Customer's premises and unless agreed otherwise shall not assemble the Goods.

6.2 The Company undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. The date of the delivery specified by the Company is an estimate only. Time of delivery shall not be of the essence of the contract.

6.3 The Company shall not be liable to the Customer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Customer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.

6.4 If the Customer fails to take delivery of the Goods on the agreed delivery date the Company reserves the right to charge £30 for each failed delivery. If the Customer cancels delivery giving less than 24 hours' notice this is classed as a failure to take delivery. If the Customer fails to take delivery of the Goods and if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Company shall be entitled to store and insure the Goods and to charge the Customer the reasonable costs of so doing.

6.5 It is the responsibility of the Customer to carefully check that all items have been delivered in the correct quantity and to the required specification. Any errors, omissions or damage to items must be notified by the Customer to the Company in writing, within 24 hours of receipt of your delivery, or by the end of the next working day. Any damages, errors or omissions notified to us after this period will not be considered.

6.6 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

6.7 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 30 days of the date when the Goods would in the ordinary course of events have been received.

6.8 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. COPYRIGHT

7.1 The design and construction of the Company's chairs and accessories are protected by patents and copyright. The name "Opera" and "Ergonomic Seating Solutions Ltd" are our registered Trade Marks.

7.2 Material from the Company's website may only be used and/or downloaded for private, non-commercial use. Copying, duplicating, transferring, selling, forwarding, storing or in any other way distributing material from our website for publication or commercial purposes is prohibited without written approval from the Company.

7.3 Unauthorised use of website content is prohibited in accordance with applicable legislation and may constitute a punishable offence and economic liability. Any material reproduced with the Company's consent must be acknowledged and referenced in print or online.

7.4 All third party trademarks and copyrights are duly acknowledged and reserved.

8. TITLE AND RISK

8.1 Risk shall pass on delivery of the Goods to the Customer's address.

8.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.

8.3 Until title passes the Customer shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

8.4 The Company may at any time before title passes and without any liability to the Customer repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and for that purpose (or determining what if any Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

8.5 The Company may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.

9. CANCELLATION

9.1 For all purchases the Company at their discretion may allow the Customer to cancel an order; however the Company reserves the right to apply a cancellation / restocking charge. This would typically be 15% of the invoice total for cancellations where the goods have not yet been delivered or 25% of the invoice total for cancellations after the goods have been delivered (excluding carriage which is non-refundable) providing the article is returned to our factory carriage paid.

9.2 In every case where the Customer has specified a product not illustrated in the Company's catalogue and specified tailor-made or personalised goods, the Customer may not cancel the order at any time.

10 TERMINATION OF AGREEMENT

Either party may terminate this Agreement forthwith by notice in writing to the other if:

10.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

10.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances.

10.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

10.4 the other party ceases to carry on its business or substantially the whole of its business; or

10.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

11 INDEMNIFICATIONS

11.1 The Customer shall indemnify the Company against all claims, costs and expenses which the Company may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Company alleging that any goods and/or services provided by the Company in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

12 LIMITATION OF LIABILITY

12.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Company to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

12.2 In no event shall the Company be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Company had been made aware of the possibility of the Customer incurring such a loss.

12.3 Nothing in these Terms and Conditions shall exclude or limit the Company's liability for death or personal injury resulting from the Company's negligence or that of its employees, agents or sub-contractors.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Company, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Company by the execution of appropriate instruments or the making of agreements with third parties.

14 FORCE MAJEURE

14.1 The Company shall not be liable to the Customer if the performance of any of its obligations is delayed or prevented by any matter outside the Company's reasonable control. Such matters include, but are not limited to, fire, flood, lightening, extreme weather conditions, acts of terrorism or vandalism, industrial disputes of any kind, actions of local or national government, war, power surges. The Company shall be entitled to a reasonable extension of its obligations after notifying the Customer of the nature and extent of such events.

15 INDEPENDENT CONTRACTORS

15.1 The Company and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Company may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Company of its obligations under this Agreement or any applicable Specification Document.

16 NO THIRD PARTIES

16.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17 GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.