

TERMS OF SALE



1 Interpretation

1.1 In these Terms:

“Buyer” means the person who accepts the seller’s written quotation for the sale of the Goods and/or Services or whose Written order for the Goods and/or Services is accepted by the Seller;

“Document” includes in addition to a document in Writing, any map, plan, graph, drawing or photograph, any film negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data;

“Goods and/or Services” means the Goods and/or Services (including any instalment of the Goods and/or Services or any parts for them) which the Seller is to supply in accordance with these Terms;

“Input Material” means any Documents or other materials, and any data or other information provided by the Buyer relating to the Goods and/or Services;

“Output Material” means any Documents or other materials, and any data and other information provided by the Seller relating to the Goods and/or Services;

“Seller” means Tapper Interiors Ltd (registered in England and Wales under number 795137);

“Services” means the services (if any) which the Seller is to supply in accordance with these conditions;

“Contract” means the contract for the sale and purchase of the Goods and/or the supply of the Services;

“Terms” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Writing” and any similar expression, includes electronic mail and comparable means of communication.

1.2 Any reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer. It is a condition of the Contract that Goods supplied by the Seller must not in any circumstances be used where their failure could directly endanger life.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Goods and/or Services and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods and/or Services are to be manufactured or any process is to be applied to the Goods and/or Services by the Seller in accordance with a specification submitted by the Buyer, or utilising tooling, software or other goods or equipment supplied by the Buyer, or if Services are to be performed in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification or tooling, software or other goods or equipment.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 The Buyer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Seller shall have no liability for any such loss or damage to the Input Material, however caused. All Output Material shall be at the sole risk of the Buyer from the time of delivery to or to the order of the Buyer.
- 3.7 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

4 Price of the Goods and/or Services

- 4.1 The price of the Goods and/or Services shall be as per the Seller's purchase acknowledgement plus any additional sums which are agreed between the parties for the provision of the Goods and/or Services. All prices quoted are valid for 30 days after which time they may be altered by the Seller on giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is

requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 4.3 Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods and/or Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5 Terms of payment

- 5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods and/or Services within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods and/or Services has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request. The Buyer shall not make any deductions, set-offs or counterclaims against the invoice price.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Goods and/or Services (or the Goods and/or Services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum above the Bank of England base rate, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery

- 6.1 Delivery of the Goods and/or Services shall be made by the Buyer collecting the Goods and/or Services at the Seller's premises at any time after the Seller has notified the Buyer that the Goods and/or Services are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods and/or Services to that place. Delivery of the Services shall be deemed to have been made once the Seller reasonably determines that the Services have been performed.
- 6.2 Any dates quoted for delivery of the Goods and/or Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and/or Services however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods and/or Services may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where the Goods and/or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods and/or Services (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the

Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods and/or Services to replace those not delivered over the price of the Goods and/or Services.

- 6.5 If the Buyer fails to take delivery of the Goods and/or Services or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods and/or Services until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods and/or Services at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods and/or Services shall pass to the Buyer:
- 7.1.1 in the case of Goods and/or Services to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods and/or Services are available for collection; or
 - 7.1.2 in the case of Goods and/or Services to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods and/or Services, the time when the Seller has tendered delivery of the Goods and/or Services.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods and/or Services, or any other provision of these Terms, the property in the Goods and/or Services shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and/or Services and all other Goods and/or Services agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods and/or Services passes to the Buyer, the Buyer shall hold the Goods and/or Services as the Seller's fiduciary agent and bailee, and shall keep the Goods and/or Services separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods and/or Services in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods and/or Services passes to the Buyer (and provided the Goods and/or Services are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods and/or Services to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods and/or Services are stored and repossess the Goods and/or Services.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods and/or Services which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 Save as otherwise stated therein, the provision of this clause 7 shall survive the termination of any contract made pursuant to these conditions for whatever reason and in particular but without limitations by the Seller by the acceptance or repudiation of this contract by the Buyer.

8 Rights in input and output material

- 8.1 The title to and any copyright or other intellectual property rights in:
- 8.1.1 any Input Material shall belong to the Buyer

8.1.2 any Output Material shall, unless otherwise agreed in Writing between the Buyer and a direction of the Seller, belong to the Seller, subject only to the right of the buyer to use the Output Material for the purposes of utilising the Goods and Services which right shall automatically terminate if the Buyer fails to settle any invoice rendered by the Seller in accordance with Clause 5; and

8.1.3 the Goods shall remain vested in the Seller.

8.2 Any Input Material or other information provided by the Buyer which is so designated by the Buyer and any Output Material shall be kept confidential by the Seller, and all Output Material or other information provided by the Seller which is so designated by the Seller shall be kept confidential by the Buyer; but this shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

8.3 The Buyer warrants that any Input Material and its use by the Seller for the purpose of providing the Goods and/or Services will not infringe the intellectual property rights or other rights of any third party, and the Buyer shall indemnify the Seller against any loss, damages, costs, expenses or other claims arising from any such infringement.

8.4 Subject to the Buyer complying with Clause 8.3, the Seller warrants that any Output Material and its use by the Buyer for the purposes of using the Goods and/or Services will not infringe the intellectual property rights or other rights of any third party, and the Seller shall indemnify the Buyer against any loss, damages, costs, expenses or other claims arising from any such infringement.

9 Warranties and liability

The price of Goods and/or Services are based, in part, on the limits of the Seller's liability in these Conditions. The Buyer's attention is drawn in particular to the conditions 9.2 to 9.9 (inclusive). In setting these limits the Seller has had regard to its insurance cover, copies of which are available on request. The Buyer should make its own insurance arrangements for risks falling outside the scope of this cover.

9.1 Subject to the following provisions, the Seller warrants that the Goods and/or Services will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of one month from the date of their initial use or one month from delivery, whichever is the first to expire.

9.2 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Purchase Acknowledgement and at the intervals and within the times referred to in the Purchase Acknowledgement.

9.3 The above warranty is given by the Seller subject to the following conditions:

9.3.1 the Seller shall be under no liability in respect of any defect in the Goods and/or Services arising from any Input Material or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival, or where the Goods have been used, in circumstances where their failure could directly endanger life in breach of Clause 2;

9.3.2 the Seller shall be under no liability for the Goods and/or Services in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods and/or Services without the Seller's approval;

9.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment;

- 9.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller to the extent that the Seller is able to pass to the Buyer.
- 9.4 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall (whether or not, in the case of goods, delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery of the Goods and/or Services or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly of the defect or failure in the Goods and/or Services, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure in the Goods and/or Services, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 9.6 A claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and/or Services and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 9.7 Where a valid claim in respect of any of the Goods and/or Services which is based on a defect in the quality or condition of the Goods and/or Services or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods and/or Services (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 9.8 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Terms.
- 9.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.9.4 import or export regulations or embargoes;
- 9.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.9.7 power failure or breakdown in machinery.

10 Indemnity

- 10.1 If a claim is made against the Buyer that the Goods and/or Services infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 10.1.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;
 - 10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 10.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - 10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
 - 10.1.6 without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11 Insolvency of buyer

- 11.1 This clause 11 applies if:
- 11.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
 - 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause applies then, notwithstanding any other rights available to the Seller, the Seller may be entitled to cancel the Contract or suspend any deliveries and/or the provision of the Services without any liability to the Buyer, and if the Goods and/or Services have been delivered but not paid for the price shall become immediately payable regardless of any previous agreement or arrangement to the contrary.

12 Termination

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so.

13 General

- 13.1 Any notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 13.4 Any dispute arising under or in connection with the Contract or the sale of the Goods and/or Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 13.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 13.6 These Conditions, and the documents referred to in them, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract. Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in the contract. The only remedy available to it for breach of any warranty shall be for breach of contract under the terms of this agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.
- 13.7 The Buyer shall not without the prior written consent of the Seller assign, transfer, charge, declare a trust over, or deal with this Agreement or its rights under it or part of it, or purport to do any of the same.