

**Rollo Whately Ltd**  
**Terms and Conditions of Business**

**1 Definitions**

In these conditions, unless the context requires otherwise

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods and/or Services from the Seller;
- 1.2 'Borrower' means the person who borrows a Frame from the Seller;
- 1.3 'Conditions' means the terms and conditions of business set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.4 'Contract' means any contract between the Seller and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these Conditions;
- 1.5 'Delivery' means when the Goods and/or Services are received by the Buyer;
- 1.6 'Delivery Date' means the date specified by the Seller when the Goods and/or Services are to be delivered;
- 1.7 'Delivery Point' means the place where delivery of the Goods and/or Services is to take place under Condition 7;
- 1.8 'Fitting' means adding any additional object to the Goods, altering the nature of the Goods, including installation of any form of artwork, glazing, hangings or fixtures and fittings;
- 1.9 'Frame' means any object used to surround a picture or mirror;
- 1.10 'Goods' means the articles which the Buyer agrees to buy from the Seller;
- 1.11 'Local Taxes' means local import taxes and duties, and local sales and use taxes, including VAT where applicable;
- 1.12 'Loan' means any Frame loaned to a Borrower;
- 1.13 'Price' means the price for the Goods and/or Services excluding Fitting, carriage, packing, insurance and VAT;
- 1.14 'Seller' means Rollo Whately Limited of 41 St James's Place, London SW1A 1NS;
- 1.15 'Services' means the services which the Buyer agrees to buy from the Seller;
- 1.16 'VAT' means value added tax or any other tax of a similar nature;
- 1.17 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.18 Words in the singular include the plural and in the plural include the singular;
- 1.19 A reference to one gender includes a reference to the other gender;
- 1.20 Condition headings do not affect the interpretation of these conditions.

**2 Application of Conditions**

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

- 2.3 These conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods and Services subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Company delivers the Goods and/or Services to the Buyer.
- 2.6 Acceptance of Delivery of the Goods and/or Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an acknowledgement of order to the Buyer. This can be in writing, verbally or through a course of dealings. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it. Quotations are made in good faith and the Seller cannot be bound by such. Any increase in a quotation will be notified to the Buyer in advance of the continuance of work on the item in question.

### **3 Price and payment**

- 3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of the Seller's invoice, charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts, unless otherwise agreed by the Seller, the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.
- 3.2 Subject to condition 3.3, payment of the Price and VAT shall be due 30 days of the date of the invoice. Time for payment shall be of the essence.
- 3.3 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- 3.4 Payment of the Price should be made, stating the invoice reference number, either by cheque payable to Rollo Whately Limited or by direct transfer to the Seller's bank whose details are:

**Bank:** Messrs. C. Hoare & Co.

**Address:** 37 Fleet Street, London EC4P 4DQ

**Sort Code:** 15-99-00

**A/C Name:** Rollo Whately Limited

**A/C Number:** 78325080

**Swift Code:** H0ABGB2L

- 3.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 3.6 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 3.7 Until full title to the Goods has passed the Buyer shall not sell, dispose of, or part with possession of the Goods or any object which is subject to the Services.

3.8 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2.5% above Messrs. Hoare and Co.'s base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

#### **4 The Goods**

4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.

4.2 The utmost due diligence is undertaken to ensure that the Goods are not infected with woodworm. If the Seller discovers that the Goods are infected with woodworm, the Goods will be treated at the Buyers cost.

#### **5 Warranties and liability**

5.1 All representations made by the Seller as to the authenticity, attribution, description, date, age, provenance, title or condition of the Goods are given in good faith, constitute the Seller's opinion only and are not warranted by the Seller. Seller accepts no liability as a result of any changes in expert opinion or scholarship, which may take place subsequent to entry into a Contract under these Conditions.

5.2 Buyer agrees that all liability of Seller and all rights of the Buyer against the Seller in relation to the Goods howsoever arising and of whatever nature shall cease after the expiry of five years from Delivery. This paragraph does not prejudice the Buyer's statutory rights.

5.3 Subject to condition 4, condition 5 and condition 10, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

5.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

5.5 Nothing in these conditions excludes or limits the liability of the Seller:

(a) for death or personal injury caused by the Seller's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

5.6 Subject to condition 5.4 and 5.5:

(a) the Seller's total liability in contract, tort including negligence or breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

(b) the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation howsoever caused which arise out of or in connection with the Contract.

- 5.7 Unless otherwise agreed in writing by the Seller, the Buyer is responsible for insurance of their property while it is entrusted to the Seller. The Buyer is advised to transfer insurance cover to property entrusted to the Seller. All liability (including any uninsured loss or damage occurring to the Buyer's property whilst it is in the possession of the Seller or any loss occurring as a result of delivery being made to any unauthorised persons claiming to have authority to receive Goods or the Buyer's property on the Buyer's behalf) remains with the Buyer.
- 5.8 The Seller accepts no liability for adapting any Frame to the correct sizes unless the Buyer supplies the Seller with accurate dimensions in writing or provides the Seller with the opportunity to measure the object that is going into the Frame.
- 5.9 Unless otherwise agreed in writing by the Seller, Fitting is not included in the Seller's Services. Any Fitting carried out by the Seller is done so in good faith and the Seller makes no representations that Fitting carried out by them is done so with specialist knowledge and accepts no liability for loss or damage caused as a result howsoever caused.
- 5.10 Unless otherwise agreed in writing by the Seller, all Services carried out by the Seller are at the Seller's address. Any Services the Seller carries out for the Buyer at the Buyer's specified location is done so at the Buyer's own risk and the Seller accepts no liability for any loss or damage caused (including for loss or damage caused by the Seller's negligence) to the Buyer's property caused as a result.

## **6 Force Majeure**

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give 7 days notice in writing to the Company to terminate the Contract.

## **7 Loans of Frames**

- 7.1 The Seller may at their discretion and in good faith loan frames. The Seller will provide the Borrower with a 'Goods on Consignment' note that will contain a price specified by the Seller. The Borrower will sign and return the note to the Seller before the Frame given to them on Loan.
- 7.2 The Loan is at the risk of the Borrower from the time it is entrusted to them. The Loan is entrusted to the Borrower the moment they take physical possession of it. Title and risk of any loan object has the same meaning as that for Goods under condition 10.
- 7.3 Unless otherwise agreed in writing by the Seller, the Borrower is responsible for any minor repairs made to the frame, which the Seller deems necessary, to make it presentable.
- 7.4 The Borrower must return the Loan object to the Seller at a time mutually agreed in advance of the Loan.
- 7.5 The Seller may request the return of the Frame in advance of this agreed term.
- 7.6 All Loan objects are loaned in good faith. The borrower must not breach this by using the loan frame to copy from or otherwise abuse this good faith.

## **8 Delivery of the Goods**

- 8.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the Seller's place of business.

- 8.2 The Buyer shall take delivery of the Goods within 30 days of the Seller giving it notice that the Goods are ready for delivery.
- 8.3 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 8.4 Subject to the other provisions of these Conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods even if caused by the Seller's negligence, nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 8.5 Where the Buyer has agreed delivery by a specified agent, delivery to that agent will constitute delivery to the Buyer.
- 8.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 8.7 Unless otherwise agreed in writing by the Seller, the Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

## **9 Acceptance of the Goods**

- 9.1 The Buyer's acceptance of the Goods means that:
- (a) the buyer is happy that work has been carried out to an acceptable standard and that the Seller has performed his part of the contract; and
  - (b) they have checked the Goods for any signs of a live woodworm infestation and are satisfied that no such infestation exists at the time of acceptance.

## **10 Title and risk**

- 10.1 The Goods are at the risk of the Buyer from the time of delivery.
- 10.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Seller from the Buyer on any account.
- 10.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
  - (b) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

- 10.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his property or obtained against him, or fails to observe or perform any of his obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Goods.
- 10.5 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 10.6 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 10.7 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 10.8 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 10 shall remain in effect.

## **11 Export and Local Taxes**

- 11.1 Items for export outside the EU may be eligible for a VAT refund if the appropriate Proof of Export (C88) is provided by the Buyer within 3 calendar months of date of invoice only. What constitutes Proof of Export is as deemed by [HM Revenue and Customs](#). In the absence of Proof of Export, VAT is payable in all circumstances and will be pursued as a debt. Refunds will not be made for any refund less than £100. A charge of £40 will be levied for all refunds processed.
- 11.2 Unless otherwise agreed in writing by the Seller, Buyer is responsible for arranging shipping and all necessary paperwork via approved shippers. Approved shippers are those can provide the necessary paperwork on request.
- 11.3 Unless otherwise agreed in writing by the Seller, Buyer shall be responsible for all Local Taxes.

## **12 General**

- 12.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

12.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

12.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

12.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**13 Proper law of contract**

This Contract 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 English law, and the parties submit to the exclusive jurisdiction of the English courts.