

RACE FURNITURE LTD - TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1. **Definitions.** In these Conditions, the following definitions apply:

- a.) **Business Day** means a day (other than a Saturday, Sunday or public holiday in England), between the hours of 08:00 and 17:00
- b.) **Change** means a change to the Specifications, the programme plan, timetables or any other component of the Order.
- c.) **Conditions** means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.
- d.) **Contract** means the contract between Race and the Customer for the sale and purchase of the Goods, consisting of the Order Confirmation (including all documents referred to in it), the Specification and these Conditions.
- e.) **Customer** means the person or firm who purchases the Goods from Race, as set out in the Order Confirmation.
- f.) **Force Majeure Event** has the meaning given in clause 13.
- g.) **Goods** means the goods (or any part of them) set out in the Order Confirmation.
- h.) **Race** means Race Furniture Limited registered in England and Wales under company number 02454179 and whose registered address is Design House, Caswell Road, Brackmills Industrial Estate, Northampton, NN4 7PW
- i.) **Intellectual Property Right(s)** means all patents, design rights (whether registered or unregistered), trademarks, service marks, utility marks, domain names, trade and business names, publicly available and registered applications for any of the foregoing, copyrights, inventions, confidential information, trade secrets, know-how and registered database rights including all applications for the same, all extensions and renewals to any of them and publicly available and registered applications for any of them and any right or form of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.
- j.) **Order** means the Customer's order for the Goods, as set out in the Order Confirmation.
- k.) **Specification** means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Race.

1.2. **Construction.** In these Conditions, the following rules apply:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether 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**, 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 letters and e-mails.

2. Basis of contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms and warranties, express or implied, that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. A quotation for the Goods given by Race shall not constitute an offer.
- 2.3. An Order Confirmation issued by Race constitutes an offer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order Confirmation and any applicable Specification submitted by the Customer and/or prepared by Race are complete and accurate.
- 2.4. The Contract shall come into existence when the Customer does any of the following:
 - 2.4.1. confirm the Order Confirmation by email or otherwise in writing; or
 - 2.4.2. make payments of a deposit or any other amount due as specified in the Order Confirmation; or



- 2.4.3.** accept delivery or installation of Goods; or
- 2.4.4.** anything else that indicates acceptance or performance of the terms of the Contract.
- 2.5.** All Orders are accepted subject to Race obtaining credit cover and/or satisfactory trade references in relation to the Customer. If the credit cover or references are not satisfactory in the opinion of Race, then Race shall have the right to terminate the Contract and Race will notify the Customer in writing, within 28 days of acceptance of the Order.
- 2.6.** If the Customer either cancels an Order or fails to accept delivery or installation of Goods in accordance with the dates or timelines set out in the Order Confirmation, then the Customer will be liable to pay Race the sum of either:
- 2.6.1.** All damages, costs, losses and expenses incurred by Race in connection with the cancellation or delay of the Order, including any loss of profit; or
- 2.6.2.** 20% of the total gross Order value, whichever sum is greater.
- 2.7.** The Contract 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 Race which is not set out in the Contract.
- 2.8.** Any samples, drawings, descriptive matter, or advertising produced by Race and any descriptions or illustrations contained in Race's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.9.** Race will not be liable for any advice or recommendation given by Race or its employees or agents in relation to the storage, application or use of the Goods which is not confirmed in writing by a Director of Race. Additionally, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any representations which are not confirmed in writing by a Director of Race.
- 2.10.** Race will seek approval from the Customer of designs, drawings, specifications and instructions. Where the Customer fails to provide such approvals in accordance with the dates and timelines agreed in the Order Confirmation, then the Customer will be liable for any consequential delay in accordance with clause 2.6. If the Customer wishes to change any designs, drawings, specifications or instructions, this shall be dealt with in accordance with clauses 2.12 to 2.15..
- 2.11.** Product/Conformity: Race makes every effort to ensure that its products and proposed layouts meet with the local regulatory requirements, however Race cannot be held responsible for:
- (a) gaining approvals from public authorities, regulatory institutions or industry bodies; and/or
- (b) compliance of project with building regulations and or any other regulatory requirements.
- 2.12.** Either party may submit a written request for a Change to the other party in accordance with clauses 2.12 to 2.15, but no Change will come into effect until it has been agreed in writing by the authorised representatives of both parties.
- 2.13.** If the Customer requests a Change:
- 2.13.1.** the Customer shall submit a written request to Race containing as much information as is necessary to enable Race to prepare a change assessment; and
- 2.13.2.** Race will respond with a proposal outlining the terms on which it can implement the Change, e.g. impact on pricing and timetables.
- 2.14.** If Race requests a Change, it will send to the Customer sufficient information to enable the Customer to assess the Change,
- 2.15.** If either party does not agree to any term of the Change, then the change will not take effect.

3. Goods

- 3.1.** The Goods are described in the Specification.
- 3.2.** To the extent that the Goods are to be manufactured in accordance with information, materials or specifications supplied by the Customer, the Customer shall indemnify Race 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 reasonable professional costs and expenses) suffered or incurred by Race in connection with any claim made against Race for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Race's use of the information, materials or specifications provided by the Customer or produced in accordance with Customer's instructions. This clause 3.2 shall survive termination of the Contract.

4. Programme

- 4.1. Race reserves the right to maintain dialogue with all appointed parties within the project to ensure design, production & installation can be executed in accordance with the project programme.
- 4.2. Race require a minimum of 5 Business Days response time to any requests for information (RFI).
- 4.3. After receipt of an Order, Race may (if applicable) submit drawings for the Order to the Customer. The Customer must verify all dimensions, sign and stamp (status A or B) of the drawings as approved and return said drawings back to Race in accordance with the dates and timelines set out in the Order Confirmation.
- 4.4. A minimum 12 weeks manufacturing period is required from date of sign-off (unless agreed otherwise in writing).
- 4.5. Race shall not be liable for any delay in delivering or installation of the Goods insofar as such delay is caused by the Customer, its other suppliers, their respective agents, contractors or employees or by any other third party. The Customer will be liable for such delay in accordance with clause 2.6.

5. Delivery

- 5.1. Goods shall be delivered when completed, in the absence of any prior written agreement to the contrary. Race shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree in writing at any time (**Delivery Location**).
- 5.2. A charge may be made for delivery costs where the total Order is less than £1,000 exclusive of value added tax (VAT).
- 5.3. The Customer shall aid, at no charge, in unloading the Goods. No liability will be accepted by Race for the actions of the Customer's employees, agents or contractors in doing so. The Customer shall indemnify Race against all claims, proceedings, demands and costs arising there from such assistance in the unloading.
- 5.4. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.5. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Race 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 Race with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6. If Race fails to deliver the Goods, its liability shall be limited to (a) a refund of amounts paid by the Customer in advance for the affected parts of the Order (b) the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods not delivered.
- 5.7. If the Customer fails to accept an attempted delivery of the Goods on the agreed delivery date, then, except where such failure or delay is caused by a Force Majeure Event or Race 's failure to comply with its obligations under the Contract:
 - 5.7.1. delivery of the Goods shall be deemed to have been completed on the day attempted delivery took place;
 - 5.7.2. Race shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - 5.7.3. The costs incurred under this clause 5.7 shall be invoiced in the normal manner along with the full value of the Goods.
- 5.8. If 20 Business Days after the day on which Race notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Race may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.9. Race may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.10. Any damage caused to the Goods in transit must be notified to Race within 48 hours after delivery or Race will not be liable for it
- 5.11. All export Orders shall be Ex Works (as defined in Incoterms 2020) except where otherwise agreed in writing.
- 5.12. Where the Customer requires delivery outside of the United Kingdom, at the Customers request and cost, Race shall;
 - 5.12.1. Arrange shipping of the Goods on the Customers behalf; and
 - 5.12.2. Arrange insurance of the Goods on the Customers behalf.

- 5.13.** Where the parties have agreed that the Customer will contract with the carrier directly and in its own name, Race shall take no liability for any loss or damage arising through the choice of carrier or any act or omission of the carrier. Where Race contracts with the carrier, Race's liability to the Customer for acts or omissions of the carrier shall be subject to the limits and exclusions of liability in the contract between Race and the carrier. Under no circumstances shall Race be liable for any failure of the Customer to secure any authorisation and/or licenses that may be required for importing or exporting.
- 5.14.** In the case of overseas delivery, the Customer shall provide to Race:
- 5.14.1.** the necessary export exchange control or licenses; and
 - 5.14.2.** the written details of all regulations or specifications with which the Goods must be in English language.

6. Installation

- 6.1.** The assembly, erection, distribution and installation of the Goods is not included in the price unless specifically agreed in writing. Where installation is agreed in writing, exclusive free access shall be given by the Customer to open floor areas during normal working hours, to allow installation to take place.
- 6.2.** Outside of Race's standard Business Day Hours, work will incur the relevant additional costs and must be agreed between Race and the Client before they can commence.
- 6.3.** The Customer shall ensure that the installation site is prepared and access to electricity and any other services that may be required by Race are available. The Customer shall provide suitable protection for the Goods from the date of delivery at the Delivery Location. The Customer shall be liable for any loss of, or damage to Goods, after delivery, unless caused by Race or its employees or contractors.
- 6.4.** Where the site has not been correctly prepared for Race, the Customer shall be liable to pay Race for any loss suffered due to any delay caused by this.
- 6.5.** The Customer shall not give instructions to employees of Race other than to the agreed point of contact at Race mentioned in the Order Confirmation. Other employees of Race are not authorised by Race to accept instructions from the Customer, agree changes to the Contract or make any representations or other legally binding statements.
- 6.6.** The Customer shall provide such supervision or labour as agreed for the installation.
- 6.7.** Race shall not be liable for any inaccuracy in the information given to Race by or on behalf of the Customer prior to installation being agreed and any associated costs incurred due to this inaccuracy or unsuitability of the structure.
- 6.8.** Race shall not be liable for any loss or delay which is outside of Race's control whilst installing or commissioning equipment and may charge the Customer for any costs incurred by Race as a result of any such delay.
- 6.9.** Race's liability insurance is £5,000,000. Any costs in increasing this cover at the request of the Customer are to be borne by the Customer.
- 6.10.** Race will not be required to provide any main contractor with a sub-contractor's tax exemption certificate as the activities of Race fall outside the construction operations for which a certificate is required as defined in the Statutory Instruments 1980 No 1171.
- 6.11.** The Customer shall inspect the installation of the Goods after the installation has been completed by Race. Should the installation not meet the written specification for installation agreed by Race and the Customer, Race's sole liability will be to rectify the installation so that it meets the written specification for installation agreed by Race and the Customer.

7. Warranty Service Agreement

- 7.1.** Race warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- 7.1.1.** conform in all material respects with the Specification;
 - 7.1.2.** be free from material defects in design, material and workmanship;
 - 7.1.3.** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 7.2.** Subject to clause 7.3, if:
- 7.2.1.** the Customer gives notice in writing to Race during the warranty period within a reasonable time after discovery that some or all the Goods do not comply with the warranty set out in clause 7.1; and
 - 7.2.2.** Race is given a reasonable opportunity to examine such Goods and verify the defect; and

- 7.2.3.** the Customer (if asked to do so by Race) returns such Goods to Race's place of business at the Customer's cost, Race shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3.** Race shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- 7.3.1.** the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;
- 7.3.2.** the Race inspection marking ticket is removed from the underside of any product;
- 7.3.3.** the defect arises because the Customer failed to follow Race's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 7.3.4.** the defect arises as a result of Race following any information, drawing, design or Specification supplied by the Customer;
- 7.3.5.** the Customer alters or repairs such Goods without the written consent of Race;
- 7.3.6.** the Goods have not been properly maintained, or have been subject to misuse, unauthorised repair, replacement modification or alteration;
- 7.3.7.** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 7.3.8.** the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4.** Except as provided in this clause 7, Race shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5.** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6.** These Conditions shall apply to any repaired or replacement Goods supplied by Race.

8. Title and Risk

- 8.1.** The risk in the Goods shall pass to the Customer on the delivery date.
- 8.2.** Title to the Goods shall not pass to the Customer until Race has received payment in full (in cash or cleared funds) for:
- 8.2.1.** the Goods; and
- 8.2.2.** any other goods or services that Race has supplied to the Customer in respect of which payment has become due.
- 8.3.** Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1.** hold the Goods on a fiduciary basis on trust as Race's bailee;
- 8.3.2.** store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Race's property;
- 8.3.3.** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.4.** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.5.** notify Race immediately if it becomes subject to any of the events listed in clause 10.2; and
- 8.3.6.** give Race such information relating to the Goods as Race may require from time to time.
- 8.4.** The Customer may resell or use the Goods in the ordinary course of its business before title passes to the Customer. However, where the Goods are being sold, the proceeds of the Goods shall be kept in a separate account identifying Race as the beneficiary.
- 8.5.** If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 10.2, or Race 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 Race may have, Race 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.
- 8.6.** If any sum owed to Race remains unpaid after the due date, Race may enter any of the Customer's premises in

which Goods are stored and seize the Goods. Where the Goods have been assembled then the cost and expense in demounting will be the Customers. This is in addition to any other right or remedy in which Race may have.

- 8.7. Title of Goods can be given to the Customer upon written agreement of an order specific Vesting Certificate. Such Goods can be held at Race's premises or other such premises if agreed upon and specifically detailed within the terms of the Vesting Certificate.

9. Price and Payment

- 9.1. The price of the Goods shall be the price set out in the Order Confirmation, or, if no Order Confirmation was agreed, the price set out in Race's published price list in force as at the date of delivery.
- 9.2. Race may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.2.1. any factor beyond Race's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 9.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give Race adequate or accurate information or instructions.

If any such price increase exceeds 5% of the total price set out in the Order Confirmation (excluding VAT), then the Customer shall have the right to cancel the Contract by written notice to Race. If Race has not received such written notice of cancellation within 5 Business Days after having received a written notification of the price increase from Race, then the Customer's right to cancel shall be deemed forfeited.

- 9.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.4. The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from Race, pay to Race such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.5. The prices provided on each quote is based on the quantity purchased and Race reserve the right to amend the price in the event there is a significant reduction in quantity.
- 9.6. Race may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 9.7. Race retains the right at its sole discretion to decline to provide credit facilities, in such cases the Customer may still be entitled to delivery against a guarantee payable on demand issued by a London Clearing bank or payment in full cleared funds in advance of delivery.
- 9.8. 50% of the price is payable as a deposit on acceptance of the Order by Race. Race will invoice the balance on delivery of the Goods, and such invoice shall be due within 30 days from its date. The Customer shall pay the invoice in full. Payment shall be made to the bank account nominated in writing by Race.
- 9.9. If the Customer fails to make any payment due to Race under the Contract by the due date for payment (**due date**), then:
- 9.9.1. the Customer shall pay interest on the overdue amount at the rate of 5% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue daily 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; and
- 9.9.2. Race may without notice withdraw any previously agreed discounts of specific terms; and
- 9.9.3. Race may suspend delivery of Goods and/or services until full payment has been made.
- 9.10. The Customer shall pay all amounts due under the Contract 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 Race in order to justify withholding payment of any such amount in whole or in part. Race 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 Race to the Customer.
- 9.11. Where the Goods are to be exported, payment of the invoice in full is required prior to export. In such cases the Customer is liable for the VAT or any other levy until the requirements of HMRC have been met.

10. Customer's insolvency or incapacity

- 10.1.** If the Customer becomes subject to any of the events listed in clause 10.2, or Race 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 Race, Race may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Race without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 10.2.** For the purposes of clause 10.1, the relevant events are:
- 10.2.1.** 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;
 - 10.2.2.** 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;
 - 10.2.3.** (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;
 - 10.2.4.** (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 10.2.5.** 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;
 - 10.2.6.** (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 10.2.7.** (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 10.2.8.** a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 10.2.9.** 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 like any of the events mentioned in clause 10.2.1 to clause 10.2.8 (inclusive);
 - 10.2.10.** the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - 10.2.11.** the Customer's financial position deteriorates to such an extent that in Race's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 10.2.12.** (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.
- 10.3.** The Customer may terminate the Contract by serving written notice to Race if Race commits a material breach of the Contract and fails to rectify such breach within 30 days after receipt of a written notice from the Customer requesting rectification.
- 10.4.** Termination of the Contract, 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 Contract shall continue in full force and effect.

11. Intellectual Property Rights

- 11.1.** The Customer agrees that no Intellectual Property Rights expressed or implied shall be assigned and or transferred to the Customer by virtue of this Agreement and all Intellectual Property Rights in the Products shall remain vested

in Race.

- 11.2.** Any documents containing any technical data, drawings, reports and any other information or documentation which may contain intellectual property must be returned on demand.
- 11.3.** Race will indemnify the Customer against any loss or damages suffered or incurred as a result of any claim by a third party that use of any of the Goods by the Customer infringes their intellectual property rights, provided that the infringement does not arise due to:
- (a) Race following a design or instruction of the Customer; or
 - (b) use by the Customer or any of its employees, customers, suppliers or affiliates of such article or material in a manner or for a purpose or in a foreign country which was not disclosed or specified to Race.
- The Customer shall notify Race, in writing, as soon as they become aware of any claim being made or action being threatened or of any other potential infringement. The Customer shall allow Race the sole control of any infringement claim.
- 11.4.** The Customer warrants that any design or instruction provided by the Customer shall not be such as to cause Race or the Goods to infringe any Intellectual Property Rights.

12. Limitation of liability

- 12.1.** Nothing in these Conditions shall limit or exclude Race 's liability for:
- 12.1.1.** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 12.1.2.** fraud or fraudulent misrepresentation;
 - 12.1.3.** breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 12.1.4.** defective products under the Consumer Protection Act 1987; or
 - 12.1.5.** any matter in respect of which it would be unlawful for Race to exclude or restrict liability.
- 12.2.** Subject to clause 12.1:
- 12.2.1.** Race shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, use, anticipated savings, reputation or customers or for any indirect or consequential loss arising under or in connection with the Contract; and
 - 12.2.2.** Race 's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price of the Goods paid by the Customer excluding VAT.

13. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. General

- 14.1. Assignment and subcontracting.**
- 14.1.1.** Race may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - 14.1.2.** The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Race.
- 14.2. Notices.**
- 14.2.1.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in

14.2.2. any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

14.2.3. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by letter or e-mail, one Business Day after transmission.

14.2.4. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3. Severance.

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

14.3.2. 14.3.2 If any invalid, unenforceable or illegal provision of the Contract 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.

14.4. Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

14.5. Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6. Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Race.

14.7. Entire agreement. The Contract constitutes the entire arrangement and understanding between the parties and supersedes and extinguishes all prior agreements, negotiations and discussions relating to the subject matter of the Contract. Each party acknowledges that in entering into and performing the Contract it does not do so on the basis of, and does not rely on any statement or representation (whether innocent or negligent, but excluding fraudulent representations) or warranty or understanding other than as expressly contained in the Contract at the date hereof or subsequently included within the Contract pursuant to clause 14.6.

14.8. Governing law and jurisdiction. The 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 irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.