

## Terms & Conditions of Sale for Trade Customers

### 1 DEFINITIONS

1.1 'Buyer' means the organisation, partnership, firm, company, person or any other body who buys or agrees to buy the Goods from the Seller;

1.2 'Buyer's Purchase Order' or 'Order' means an order or other form of order e.g. web order, email etc. for Goods by the Buyer given in accordance with clause 2.2;

1.3 'Contract' means any contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these Terms and Conditions;

1.4 'Delivery Date' means the date estimated by the Seller when the Goods are to be delivered, being such date or dates as soon as reasonable after the date the Buyer's Purchase Order is accepted by the Seller;

1.5 'Goods' means the articles and items of stock for sale e.g. mirrors that the Buyer agrees to buy from the Seller;

1.6 'Intellectual Property Rights' means patents, rights to inventions, copyright, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

'List Price' means the list of Prices of the Goods maintained by the Seller as amended from time to time;

1.7 'Price' means the price of the Goods excluding VAT (if applicable) or any analogous sales tax, carriage, freight, postage, small order surcharge or insurance costs, all of which the Seller shall pay in addition unless otherwise agreed in writing by the Seller;

1.8 'Seller' means Dreamworks Beds Limited of 7, Brook Lane Industrial Estate, Brook La Ind Est, Westbury BA13 4EP (Co Reg No 04773416);

1.9 'Terms and Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in advance and in writing by the Seller. These terms and conditions of sale are the only terms and conditions of sale that the Seller will allow its Goods to be sold to the Buyer;

1.10 'VAT' means the sales tax as constituted by the Value Added Tax Act 1994 in England and Wales and/or equivalent sales tax imposed in any other jurisdiction;

1.11 It is expressly understood that neither the Buyer nor the Seller are consumers, as defined by the Unfair Contract Terms Act 1977;

1.12 Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.13 'Working Day' is a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

## **2 CONDITIONS**

2.1 These Terms and Conditions shall apply to all Contracts for the sale of Goods by the Seller to the Buyer in any jurisdiction to the exclusion of all other terms and conditions, including any terms and conditions that the Buyer may purport to apply under the Buyer's Purchase Order or any other purchase order, confirmation of order or similar document.

2.2 Each Buyer's Purchase Order shall be deemed to be an offer to buy the Goods according to the Seller's current List Price and order form pursuant to these Terms and Conditions.

2.3 The Buyer's Purchase Order shall only be deemed to be accepted on the date when the Seller either issues a written acceptance of the Order, or the Seller advises the Buyer of the date of delivery, whichever is earlier, at which point the Contract shall come into existence.

2.4 Any variations to these Terms and Conditions (including any special terms and Conditions agreed between the parties) shall be ineffective unless agreed in advance and in writing by the Seller.

## **3 TRADE ACCOUNT**

3.1 The Seller supplies to trade customers only and requires evidence of the Buyer being a genuine business which is trading prior to any agreement to supply. The Buyer must provide valid documentation i.e. VAT Certificate, Business invoices, etc. Trade account opening forms can be found on the Seller's website.

3.2 The Seller requires the Buyer to spend a minimum of £2,500 per annum per trade account ('Minimum Spend Requirement'). If a new trade account is opened partway through the year, the minimum spend requirement will be adjusted according to the number of months remaining in that calendar year. The Seller reserves the right to close any trade account that does not fulfil the Minimum Spend Requirement. The Seller will not open any trade account on a 'sale or return' basis.

3.3 The Seller reserves the right to reject any application that they feel is not a 'bona fide' and relevant trade enquiry. The Seller reserves the right to cancel trade accounts without notice and without liability.

3.4 Any action taken by the Buyer which the Seller may reasonably believe has had or may have a negative impact on the reputation or image of the Seller may result in the termination of the Buyer's

account with the Seller. The Seller recognises that its business success and reputation is linked very much to the success and reputation of its Buyers. In order to protect the reputation of the Seller, the Seller requires the Buyer to operate their businesses in compliance with all laws and customs relevant to the Buyer based on the legal jurisdiction in which the Seller and the Buyer reside and operate.

3.5 The Seller provides high quality products and requires them to maintain the highest standards of retailing, merchandising and technical competence, all of which reflect the premium nature of the Seller's goods. Where, in the Seller's opinion, the Buyer has not maintained such standards, the Seller may terminate the Buyer's account immediately.

3.6 Where the Seller has agreed to open a trade account with a Buyer, the Seller may restrict the Buyer from purchasing some of its Goods either individually, in full or in part ranges. This may happen for example if the Seller is not reasonably satisfied that the Buyer is capable to credibly promote, retail or advise technically, on any particular Goods. Where the Seller does allow the Buyer to purchase Goods then, in accordance with current law, the Buyer is allowed to retail these Goods either in a physical store or online on its own website but taking into consideration all other clauses of contained within these Terms and Conditions.

3.7 Any action that the Seller may take in pursuance of its rights under this clause 3 or these Terms and Conditions, may be done without recourse by the Buyer against the Seller. By accepting these Terms and Conditions, the Buyer acknowledges and accepts the Seller's rights stated herein.

#### **4 PRODUCT MARKETING**

4.1 All Intellectual Property Rights (including the Sellers Images) in or arising out of or in connection with the supply of the Goods, or otherwise made available to the Buyer by the Seller relating to the Seller's business, shall be owned by the Seller.

4.2 The Seller does not permit any Buyer to sell, advertise or promote any of the Seller's Goods on eBay, Amazon, Etsy and other Multi Retailer selling websites without the prior written consent of the Seller. Buyers found to be selling, advertising or promoting the Sellers Goods on eBay, Amazon, Etsy and other Multi Retailer selling websites or using the Seller's imagery on Social Media will have their account closed.

4.3 The Buyer is not permitted to encourage the sale of the Seller's Goods in a manner that could be considered to negatively impact or damage the reputation of the Seller, or its Goods.

4.4 All Buyers selling returned, damaged or imperfect Goods of the Seller, whether via a clearance section of their retail store or website or other any other section, must clearly state the Goods are returned, damaged or imperfect on the product category page as well as the individual product page or other advertising and marketing media.

4.5 The extent to which the Seller's Goods are presented in the Buyer's retail store or on the website of the Buyer must be proportional to the current and reasonably predicted business volumes between the Buyer and the Seller.

4.6 If the Seller does not reasonably believe that a Buyer can properly market, merchandise or retail some or all Goods then the Seller may decide to not sell some or all Goods to the Buyer. Similarly, the Seller requires the Buyer to invest time, effort and money in promoting, merchandising and advertising the Sellers products either in store or online or both. During the process of opening a new trade account or at the time of reviewing an existing trade account the Seller may require some reasonable information and data on planned marketing spend and reserves the right to follow this review up at a later date to verify such planned spend has occurred as planned.

4.7 The Seller utilises a range of photographic images to promote its Goods to its Buyers. The Seller owns and retains the images and the copyright in all of its images including product images, lifestyle images and other images featuring the Seller's Goods. The Seller may enter into a separate written image contract with a Buyer to allow that Buyer to retail a specific range of Goods for a specific length of time using certain of the Seller's photographic images provided always that such image contract must be in writing and be signed and dated by the Seller and the Buyer.

## **5 PRICING AND PAYMENT**

5.1 The Price that the Buyer agrees to pay the Seller for the Goods shall be that in the Seller's current List Price, or such other Price as the parties may agree in writing. The Seller reserves the right to change prices at any time;

5.2 Credit accounts: Payment of the Price and VAT and any other applicable costs shall be due and payable by the Buyer to the Seller within 30 days of the date of invoice supplied by the Seller, unless otherwise confirmed in writing to the Buyer by the Seller.

5.3 Proforma accounts: Payment of the Price and VAT and any other applicable costs shall be due and payable by the Buyer to the Seller at time of order submission. Any items not paid for within a 5 working day period may be subject to cancellation without notification to the Buyer.

5.4 In the event it is deemed necessary to pass overdue accounts onto the Seller's designated collection agent, all related charges and interest will be added to the outstanding debt. Interest on overdue invoices shall accrue from the date when payment for the Goods becomes due until the date of actual payment at a rate of 3.00% per annum above the base rate of National Westminster Bank PLC from time to time in force.

5.5 If payment is made by cheque and returned by the bank unpaid, a £25 administration charge will be added to the outstanding debt and immediate payment will be required by an alternative method. Should this not be available, the Seller reserves the right to cancel the order. If a cheque payment is returned by the bank on 3 or more occasions, the Seller reserves the right to refuse further payments by the same method.

5.6 All overseas orders placed for delivery to a freight forwarding service address will be charged VAT. If the relevant shipping documents are received by the Seller within 3 months of confirmed delivery the VAT amount will be refunded in full.

## **6 THE GOODS**

6.1 The quantity and description of the Goods shall be as set out in the Buyer's Purchase Order.

6.2 The Goods shall be required only to conform in all material respects to the specification on the Buyer's Purchase Order. Every reasonable care has been taken to ensure that reproductions are accurate. Due to the nature of the Goods and their manufacture often being handmade from natural materials, there may be variations in materials, colour, size and finish. Photographs or other descriptions of the Goods issued by the Seller in any form are for illustrative purposes only and do not form part of this Contract.

6.3 Sizes and dimensions provided are approximate only and may vary according to manufacturing tolerances.

6.4 All goods supplied are intended to be used and are tested to UK standards for domestic use, unless otherwise specified and requested. All goods are covered by a standard manufacturers warranty for UK domestic use.

## **7 DELIVERY OF THE GOODS**

7.1 Unless otherwise agreed, delivery of the Goods shall take place at the address specified in the Buyer's Purchase Order on the Delivery Date and the Buyer shall be deemed to have accepted the Goods upon their delivery. The Buyer shall at its own cost make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

7.2 The Seller is able to arrange for delivery of its Goods to the Buyer using a variety of methods and prices. The pricing and terms of these delivery methods are provided on the website of the Seller and are available from the Sellers Customer Care Team. These may be updated from time to time and the prevailing methods are those existing at the date the Buyer's Purchase Order is accepted by the Seller and are defined as the Sellers 'Delivery Terms'. Any Order placed by the Buyer for Goods will be subject to the Seller's Delivery Terms and these will be confirmed prior to the Buyers Order being accepted by the Seller. For deliveries to trade Buyers there is a 'carriage paid' amount which, if exceeded, the Seller will provide for free carriage to the Buyers trade address(es). All Delivery Terms are subject to change without prior notification and are fully explained and detailed on the Seller's Website and are part of these Terms & Conditions.

7.3 The Delivery Date specified by the Seller is an estimate only. Time for delivery shall not be of the essence.

7.4 If the Seller is unable to deliver the Goods at the request of or due to the default of the Buyer, the Seller shall be entitled to place the Goods in storage until such time as the delivery may be effected, and the Buyer shall be liable for any expense associated with such storage and redelivery, if applicable.

7.5 Risk shall pass on delivery of the Goods to the Buyer.

7.6 The Seller 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 Buyer to cancel any other instalment.

7.7 Any defect in the Goods must be notified to the Seller in writing to [sales@dreamworksbeds.com](mailto:sales@dreamworksbeds.com) and accompanied by photographic evidence, within 7 days of delivery;

7.8 All Goods must be returned at the Buyer's cost to the Seller in their original packaging.

7.9 The Seller is unable to accept returns for items that have not been delivered by its own fleet or their appointed third party carrier. The Seller will not be held responsible for any damage incurred via a third party carrier/couriers including the Buyer's own transport. The Buyer must inspect the Goods within 7 days of receipt (including Saturday and Sunday) and before any Goods are delivered to the Buyer's customer(s). It is recommended that the Buyer ensures any transport companies, collecting or delivering on the Buyer's behalf, have the appropriate insurance in place.

7.10 Failed deliveries due to the fault of the Buyer shall incur a collection and 25% restocking fee which shall be deducted from any sum due to the Buyer from the Seller or otherwise payable by the Buyer within 14 days of the date of the Seller's invoice for such fee.

7.11 The Seller the right to charge for "re-delivery" to cover additional costs incurred.

## **8 TITLE**

8.1 The Seller warrants that it has good title to the Goods;

8.2 The risk in the Goods shall pass from the Seller to the Buyer upon delivery of the Goods to the Buyer. However, title of the Goods shall not pass to the Buyer until the Seller has received cash or cleared funds in full for all Goods delivered to the Buyer under this and all other contracts between the Seller and the Buyer for which payment of the Goods has not been paid.

8.3 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 the other goods of any third party in such a way as they remain 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 and, on request from the Seller, produce the policy of insurance to the Seller.

8.4 The Buyer's right to possession of the Goods shall terminate automatically and immediately if the Buyer ceases to trade, becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party, or shall enter into liquidation, whether voluntarily or compulsorily (other than for the purposes of a reconstruction or amalgamation), or shall make any

arrangement or composition with its creditors, or shall suffer the making of an administration order in respect of all or part of its assets, or suffers any similar action in consequence of a debt. In the case of any such event, the Buyer acknowledges that the Seller shall have the right to recover the Goods or any proceeds from the sale of the Goods forthwith and pending such recovery, but notwithstanding that the terms of clause 8.2 shall continue to apply, any proceeds from the sale of the Goods (whether received before or after the relevant event) shall be placed in a separate account which is identified as for the exclusive benefit of the Seller.

## **9 MADE TO ORDER PRODUCTS**

Any 'Made to Order' Goods specified in the Buyer's Purchase Order will be confirmed in writing by the Seller. If the Seller does not receive a written response from the Buyer within 2 working days of receipt of the order confirmation stating that the order is incorrect, the Buyer shall be liable for payment of the Goods, unless otherwise specified by the Seller.

## **10 TERMINATION**

10.1 Without limiting its other rights or remedies, the Seller may terminate a Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so.
- (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
- (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- (d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;  
or
- (e) the Buyer's actions or behaviour is deemed abusive or threatening in any communication with the Seller or in a manner which causes offence.

10.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(e), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under any Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

10.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 The Seller reserves the right to impose a cancellation fee of up to 25% of the total order value of any items expressly reserved or ordered at the Buyers request.

10.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10.8 All Orders must be cancelled in writing via email to [sales@dreamworksbeds.com](mailto:sales@dreamworksbeds.com) 72 hours prior to the agreed delivery date. Re-stocking fees may apply.

10.9 The Buyer may incur a collection and restocking fee for any items returned to stock at the Buyer's request, such fee calculated in accordance with clause 10.8 above.

## **11 LIMITATION OF LIABILITY**

11.1 Subject to clause 12, the remedies of the Buyer for any breach of these Terms and Conditions by the Seller; for any use made or resale by the Buyer of any of the Goods; or for any representation, statement or tortious act or omission including negligence arising under or in connection with a Contract shall be limited to a quantum of damages which shall in no circumstances exceed the Price of the Goods;

11.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

11.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for breach of the warranty contained in clause 8.1 or for breach of warranty as to title implied by the Sale of Goods Act 1979 so far as such Act applies to the Contract.

11.4 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller or any party, whether in writing or at any time prior to the date of the Contract which is not set out in this Contract.

11.5 The Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, loss of goodwill or otherwise, in each case whether direct, indirect or consequential, or any

claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **12 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, shipping delays, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## **13 SEVERANCE**

If any term or provision of these Terms and Condition is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **14 ASSIGNMENT**

The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions.

## **15 ENTIRE AGREEMENT**

15.1 These Terms and Conditions and any Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **16 THIRD PARTY RIGHTS**

No one other than the Seller and the Buyer and the Seller's permitted assignees shall have any right to enforce any of these Terms and Conditions.

## **17 GOVERNING LAW AND JURISDICTION**

These Terms and Conditions shall be governed by and construed in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.