

Terms & Conditions of Sale

The Customer's attention is drawn in particular to the provisions of clauses 8, 10 and 11 below.

1. FORMATION OF THE CONTRACT

- 1.1 The terms & conditions set out below (the "**Conditions**") apply to the Customer's order for the products (the "**Products**") set out in the Customer's purchase order form (the "**Order**"), to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 1.2 The Order and these Conditions together form the "**Contract**" between PL Visual Ltd ("**PL**") and the Customer (each a "**Party**" and together the "**Parties**").
- 1.3 A quotation for the price of the Products given by PL to the Customer shall not constitute an offer from PL and such quotation shall only be valid for a period of thirty (30) calendar days from its date of issue.
- 1.4 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Order shall only be deemed to be accepted when PL issues a written acceptance of the Order to the Customer ("**Acceptance Notice**"), at which point the Contract shall come into existence.
- 1.5 The Customer may amend the Order at any time within the Amendment Window stated in the Order by giving notice to PL in writing. Any amendment to the Order shall take effect when PL issues a written acceptance of the amendment to the Customer. The Contract may not be amended by the Customer once the amendment Window has expired, other than in accordance with the terms of the Contract or with PL's prior written approval. Once accepted by PL the order cannot be cancelled

2. DELIVERY AND RISK

- 2.1 PL shall endeavour to deliver the Products on the delivery date specified in the Order (the "**Requested Delivery Date**"). Any dates quoted for delivery however are approximate only, and the time of delivery is not of the essence. PL shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide PL with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 2.2 **If PL is delivering the Products to the Customer:** PL shall deliver the Products to the delivery address set out in the Order or such other location as the Parties may agree (the "**Delivery Location**"). Delivery is completed on the completion of unloading of the Products at the Delivery Location.
If the Customer is collecting the Products from PL: The Customer shall collect the Products from the collection address set out in the Order or such other location as may be advised by PL prior to delivery (the "**Delivery Location**") within three (3) Business Days of PL notifying the Customer that the Products are ready. Delivery is completed on the completion of loading of the Products at the Delivery Location.
- 2.3 If PL fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. PL shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide PL with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 2.4 The price quoted does not include delivery to the address specified in the Order, unless otherwise stated in the Order.
- 2.5 Risk in the goods shall pass to the Customer upon completion of delivery.

3. COMPLAINTS

PL aims to provide a high level of service to its customers at all times. If the Customer has an enquiry or complaint regarding the Products provided by PL the Customer should address them in writing to the Managing Director, PL Visual Ltd, 16 Hickman Avenue, London, E4 9JG.

4. ACCEPTANCE

- 4.1 **If PL is delivering the Products to the Customer:** If the Customer refuses or fails to accept delivery of the Products within three (3) Business Days of PL delivering the Products to the Delivery Location, then, except where such failure or delay is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract delivery of the Products shall be deemed to have been completed at 0900 GMT on the third Business Day after the day on which PL delivered the Products to the Delivery Location. If the Customer refuses or fails to accept delivery at the Delivery Location then, except where such refusal is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract, PL shall be entitled to invoice the Customer for the costs incurred by PL in arranging and undertaking any further delivery of the Products.
If the Customer is collecting the Products from PL: If the Customer refuses or fails to accept delivery of the Products within three (3) Business Days of PL notifying the Customer that the Products are ready for collection from the Delivery Location, then, except where such failure or delay is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract:
(a) delivery of the Products shall be deemed to have been completed at 0900 GMT on the third Business Day after the day on which PL notified the Customer that the Products were ready for collection from the Delivery Location;
(b) PL shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
(c) PL shall be entitled to invoice the Customer for the costs incurred by PL in arranging and undertaking any further delivery of the Products.
(d) PL shall be entitled to invoice the customer for the goods
If the Customer fails to accept delivery of the Products within ten (10) Business Days of PL notifying the Customer that the Products are ready for collection from the Delivery Location, PL may resell or otherwise dispose of part or all of the Products
- 4.2 If PL delivers up to and including five per cent (5%) more or less than the quantity of Products ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Products was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.3 PL may deliver the Products 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. QUALITY AND SPECIFICATION

- 5.1 All goods supplied by PL shall be in accordance with the Order and any further specifications or descriptions agreed in writing between the Parties or otherwise expressly stated in the Order ("**Specifications**"). The Customer is responsible for ensuring that the terms of the Order and any applicable Specifications submitted by the Customer are complete and accurate.
- 5.2 PL warrants that on delivery the Products shall:

- (a) conform in all material respects with their description and any applicable Specifications;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- (d) Notwithstanding the above, the customer acknowledges that products produced by PL are handmade and therefore have natural variation as would be expected in an artisan product

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to PL within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.2;
- (b) PL is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if asked to do so by PL) returns such Products to PL's place of business at the Customer's cost, PL shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

5.4 PL shall not be liable for the Products' failure to comply with the warranty set out in clause 5.2 in any of the following events:

- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow PL's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of PL following any drawing, design or Specifications supplied by the Customer;
- (d) the Customer alters or repairs such Products without the written consent of PL;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Products differ from their description or the Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, PL shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.2.

5.6 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.

5.7 These Conditions shall apply to any repaired or replacement Products supplied by PL.

6. SCOPE OF PL'S ENGAGEMENT

6.1 PL specialises in the design and manufacture of mannequins, bust forms and visual merchandising related equipment. It does not have expertise or experience in the installation, fitting or fixing of such products and makes no claim to have such expertise or experience.

6.2 The Parties acknowledge and agree that PL has only been engaged by the Customer to supply the Customer with the Products under this Contract. PL is not in a position to give, and shall not be deemed to have given, any advice or instructions to the Customer on how the Products should be installed, fitted or fixed at the Customer's intended location and, accordingly, PL has no, and accepts no, responsibility in that respect.

6.3 PL recommends that the Customer seeks independent advice concerning the installation, fitting or fixing of any Products which the Customer considers require installing, fitting or fixing at the Customer's intended location.

7. TITLE

7.1 Title to the Products shall not pass to the Customer until PL receives payment in full (in cash or cleared funds) for the Products.

7.2 Until title to the Products has passed to the Customer, the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Products and shall maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

8. INTELLECTUAL PROPERTY

8.1 The Customer hereby expressly acknowledges that all Intellectual Property Rights in the Products and any drawings, plans, specifications, sketches, models, photos, images, templates, designs, samples or related materials received from PL (together with the Products, the "Creations") belong and shall belong to PL, whether supplied free of charge or paid for. The Customer further acknowledges that the receipt of any Creations from PL pursuant to this Contract shall not transfer, nor otherwise give the Customer any licence of, any rights whatsoever in respect of any part of such Creations including the Intellectual Property Rights therein.

8.2 The Customer undertakes that at no point, whether during the term of this Contract or any time thereafter, shall it do anything to prejudice or damage PL's ownership of or interest in the Intellectual Property Rights in the Creations. The Customer undertakes and agrees that it has no right to and shall not (nor directly or indirectly allow, permit or enable any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or use any Creations in whole or in part other than in accordance with this Contract or PL's express prior written consent.

8.3 For the purposes of this clause "Intellectual Property Rights" means: (a) patents, inventions, designs, copyright and related rights, database rights, know how, trademarks and related goodwill and trade names (all whether registered or unregistered) and rights to apply for registration; (b) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future; and (c) all applications, extensions and renewals in relation to any such rights.

9. PRICE AND PAYMENT

9.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in PL's published price list in force as at the date of delivery.

9.2 PL may, by giving notice to the Customer at any time up to twenty (20) Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- (a) any factor beyond PL's control;
- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Specifications; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give PL adequate or accurate information or instructions.

9.3 The price of the Products excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to PL at the prevailing rate, subject to the receipt of a valid VAT invoice and excludes the costs and charges of packaging, insurance, any applicable taxes and duties and associated paperwork and transport of the Products, which shall be invoiced to the Customer.

9.4 PL may invoice the Customer for the Products and any additional charges due in accordance with the Contract on or at any time after the completion of delivery.

9.5 The Customer shall pay each invoice received from PL in full and in cleared funds within thirty (30) calendar days of the date of the invoice. Payment shall be made to the bank account nominated in writing by PL. Time of payment is of the essence.

9.6 If the Customer fails to make any payment due to PL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.7 PL reserves its statutory right to claim interest and compensation for debt recovery costs under this clause and under the Late Payments Commercial Debts (Interest) Act 1998 for the price once payment becomes due notwithstanding that title may not have passed.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PL 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 PL to the Customer.

9.9 In the event any fees, payments and/or expenses paid to PL by the Customer are subject to any deduction or withholding in respect of tax, PL reserves the right to charge the Customer an additional amount which will, after any deduction or withholding has been made, leave PL with the same amount PL would have received in the absence of any such deduction or withholding.

10. TERMINATION

10.1 Without limiting its other rights or remedies, PL may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of being notified in writing to do so;
- (b) the Customer 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
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

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

10.3 On termination of the Contract for any reason the Customer shall immediately pay to PL all of PL's outstanding unpaid invoices and interest.

10.4 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. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination (including clauses 8, 9, 10, 11 and 12) shall remain in full force and effect.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude PL's liability for (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) any matter in respect of which it would be unlawful for PL to exclude or restrict liability. Subject to clause 11.1:

- (a) PL shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) PL'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 one hundred per cent (100%) of the price paid by the Customer to PL for the Products.

12. GENERAL

12.1 **Force Majeure.** Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (each a "**Force Majeure Event**"). In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six (6) months, the Party not affected by the Force Majeure Event may terminate this Contract by giving thirty (30) days' written notice to the affected party.

12.2 **Assignment and other dealings.** PL 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 the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of PL.

12.3 **Entire agreement.** This 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. 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 the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

12.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (a) waive that or any other right or remedy; nor (b) prevent or restrict the further exercise of that or any other right or remedy.

12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 **Notices.** 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 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 or other next working day delivery service. A notice or other communication shall be deemed to have been received: (a) if delivered personally, when left at the address referred to above; or (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am (GMT) on the second Business Day after posting. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 **Third party rights.** No one other than a Party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.9 **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation. Notwithstanding the foregoing, PL shall nevertheless still have the right to apply at any time for injunctive, other interlocutory or emergency relief to any court of competent jurisdiction.

12.10 **Definitions.** For the purposes of this Contract a "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are ordinarily open for business.

12.11 **Interpretation:** For the purposes of this Contract:

- (a) a reference to a statute or statutory provision is a reference to such status or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provisions, as amended or re-enacted;
- (b) a number of days will be calculated as exclusive of the first day and inclusive of the last day unless the last day falls on a day which is not a Business Day in which case the last day will be the next succeeding Business Day;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(d) an obligation on a Party not to do something includes an obligation on that Party not to allow that thing to be done.