

01/2022

TERMS AND CONDITIONS OF THE SALE OF GOODS AND PROVISION OF SERVICES

1. Interpretation

1.1 In these Conditions:

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Design East Ltd;

“Contract” means the contract between the Customer and Design East Ltd for the supply of Goods and/or Services in accordance with these Conditions;

“Customer” means the person whose order for Goods and/or Services is accepted by Design East Ltd;

“Goods” means the goods which Design East Ltd sells to the Customer under these Conditions;

“Order Confirmation” means the acknowledgement of the Quotation provided by Design East Ltd to the Customer whether written or oral;

“Quotation” means the quotation for the Goods and Services provided to the Customer by Design East Ltd whether written or oral;

“Services” means any services provided to the Customer (including all of them or any part of them) under a Contract; and

“Design East Ltd” means the Design East Ltd business selling the Goods and/or Services, details of which are given in the Quotation and/or whose details have been provided to the Customer either in writing or orally.

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

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

2. Making the Contract

2.1 Each Quotation will be deemed to be an offer by the Customer to buy the Goods and/or Services in accordance with these Conditions. The Contract is made when the Quotation is accepted by Design East Ltd by the issue to the Customer of an Order Confirmation. The Contract will not be made until an Order Confirmation has been issued by Design East Ltd or Design East Ltd commences provision of the Goods and/or Services.

2.2 The Contract is subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions and all previous oral or written representations made by Design East Ltd, but subject to the provisions of Condition 2.3.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Design East Ltd.

2.4 The Customer must ensure that the terms of the Quotation and any applicable specification are complete and accurate. If the Customer wishes to amend any aspect of the information the Customer has given it must contact Design East Ltd immediately. Although Design East Ltd will use reasonable endeavours to implement any such amendment which the Customer requests, Design East Ltd cannot guarantee that it will be able to do so after the Order Confirmation has been issued. If such amendment changes any other aspect of the Quotation (for example the price) and Design East Ltd is able and willing to amend it, then Lime Signs Ltd will send the Customer a new Order Confirmation.

2.5 All Quotations are, unless agreed otherwise in writing, valid for 30 days only or until earlier acceptance by the Customer after which time they may be altered by Design East Ltd without giving notice to the Customer.

2.6 Any advice or recommendation given by Design East Ltd or its employees or agents to the Customer or its employees or agents as to the storage, application, suitability or fitness for purpose for use of the Goods which is not confirmed in writing by Design East Ltd is followed or acted upon entirely at the Customer's own risk, and accordingly Design East Ltd shall not be liable for any such advice or recommendations which is not so confirmed.

3. Provision of the Goods and Services

3.1 The quantity, quality and description of and any specification for the Goods and Services shall be those set out in the Quotation. It is the obligation of the Customer to check the structure to which the Goods are to be affixed, and to prepare surfaces to which the Goods may be applied, so that in each case they are suitable for such affixing and application. The Customer acknowledges that following installation it is responsible for the inspection, maintenance and repair of Goods supplied under the Contract.

- 3.2 If the Goods are manufactured or any process is applied to the Goods by Design East Ltd in accordance with a specification submitted by the Customer whether in writing or otherwise the Customer shall indemnify Design East Ltd against all loss damages costs and expenses awarded against or incurred by Design East Ltd in connection with or paid or agreed to be paid by Design East Ltd in settlement of any claim for infringement of any patent, copyright, design, trademark (whether registered or not), or other industrial or intellectual property rights of any third party which results from Design East Ltd's use of any or all of the Customer's specification.
- 3.3 Design East Ltd reserves the right to make any changes in the specification of the Goods and/or Services which are required to confirm with any applicable legal or regulatory requirements (including but not limited to safety requirements) or which do not materially affect their quality or performance.
- 3.4 No order which has been accepted by Design East Ltd may be cancelled by the Customer except with the agreement in writing of Design East Ltd and on terms that the Customer shall indemnify Lime Signs Ltd in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damage charges and expenses incurred by Design East Ltd as a result of cancellation.
- 3.5 Where a Quotation is based upon information supplied by the Customer, the Customer is responsible for its accuracy and any increased costs of supply resulting in any inaccuracy are the Customer's responsibility.
- 3.6 All samples, drawings, descriptions, specifications, illustrations and advertising issued by Design East Ltd or contained in any of Design East Ltd's catalogues or brochures or on any website connected with Design East Ltd (together "Samples") are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. Samples do not form part of the Contract and the Contract is not a sale by sample.
- 3.7 At the request of the Customer and at its cost, and at the sole discretion of Design East Ltd, Design East Ltd may remove materials (including but not limited to old signage) from the premises of the Customer.
- 3.8 Design East Ltd requires the Customer, prior to the provision of the Goods and/or Services, to obtain any necessary consents and approval to:
- 3.8.1 the installation and/or application of the Goods, including but not limited to any planning and/or landlord consents; and
- 3.8.2 the use of any logo, trade mark or design required for the Goods (including but not limited to the right to use the copyright and any other intellectual property rights in such logo, trade marks and design).
- 3.9 All intellectual property rights (including but not limited to copyright) arising from the creation of Goods by Design East Ltd shall remain the property of Design East Ltd and the Customer shall not copy or reproduce the Goods without the prior written consent of Design East Ltd. (Copyright is retained by Design East Ltd on all design work including words, pictures, ideas, visuals, layouts, and illustrations unless specifically released in writing and after all costs have been settled. If a choice of design is presented, only one solution is deemed to be given by Design East Ltd as fulfilling the contract. All other designs remain the property of Design East, unless agreed in writing that this arrangement has been changed).
- 3.9.1 Design East Ltd reserves the right to feature the work in its portfolio and its own self promotional material. If Design East's work is featured elsewhere, such as within the scope of another design or artwork, they would expect to be credited.
4. Price of the Goods
- 4.1 The price of the Goods and Services shall be the price set out in the Order Confirmation or (where the price is not referred to in the Order Confirmation) as set out in the Quotation, or (where no price has been quoted or a quoted price is no longer valid) the price calculated by Design East Ltd from its normal price list from time to time.
- 4.2 Design East Ltd reserves the right to increase the price of the Goods and/or Services to cover:
- 4.2.1 any increase in the cost to Design East Ltd which is due to any factor beyond the control of Design East Ltd (such as without limitation any foreign exchange fluctuation currency regulation, alteration of duties, significant increases in the costs of labour, materials, or other costs of manufacture);
- 4.2.2 any change in delivery dates quantities or specification of the Goods and Services which are requested by the Customer;
- 4.2.3 any delay caused by any instruction of the Customer or failure of the Customer to give Design East Ltd adequate information or instructions;
- 4.2.4 the costs of additional work carried out by Design East Ltd to be able to perform the Services (including but not limited to the preparation of surfaces to which Goods are to be applied and the disposal of materials at the request of the Customer); or
- 4.2.5 to comply with any requirements referred to in Conditions 2.4, 3.5 and 3.7.
- 4.3 Except as otherwise expressly set out in the Contract all prices are given by Design East Ltd exclusive of:
- 4.3.1 packaging and delivery of the Goods to the Customer's premises; and
- 4.3.2 any applicable value added tax or other applicable sales tax or duty and such sums shall be added to the price.

5. Terms of Payment
 - 5.1 Subject to any special terms agreed in writing between the Customer and Design East Ltd, Design East Ltd shall be entitled to invoice the Customer for the price of the Goods and the Services on or at any time after delivery of the Goods and/or performance of the Services unless the Goods are to be collected by the Customer or the Customer fails to take delivery of the Goods and/or accept performance of the Services after Design East Ltd has notified the Customer that the Goods are ready for collection and/or the Services are to be provided in which event Design East Ltd shall be entitled to invoice the Customer for the price at any time after such notification or (as the case may be) Design East Ltd has tendered delivery of the Goods and the Customer has failed to take delivery.
 - 5.2 Subject to Condition 5.3 below the Customer shall pay the price of the Goods and/or the Services within no more than 30 days of the date of delivery of the Goods and/or performance of the Services notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be the essence of the Contract. Receipts for payment will only be issued on request by the Customer.
 - 5.3 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to Design East Ltd, Design East Ltd shall be entitled to:
 - 5.3.1 cancel the Contract or suspend further deliveries of Goods and/or provision of Services to the Customer;
 - 5.3.2 appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any Contract between the Customer and Design East Ltd) as Design East Ltd think fit (notwithstanding any purported appropriation by the Customer); and
 - 5.3.3 charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of four per cent per annum above Natwest plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
6. Delivery
 - 6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at Design East Ltd's premises at any time after Design East Ltd has notified the Customer that the Goods are ready for collection or if some other place for delivery is agreed by Design East Ltd by Design East Ltd delivering the Goods to that place subject to Condition 4.3. Provision of the Services shall be made at the location notified by the Customer at any time after Design East Ltd has notified the Customer that the Services are ready to be provided.
 - 6.2 Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only and Design East Ltd shall not be liable for any delay in delivery of the Goods and/or provision of the Services howsoever caused. Time for delivery and/or provisions shall not be of the essence unless previously agreed in writing by Design East Ltd. The Goods may be delivered and/or the Services provided to the Customer in advance of the quoted date upon giving reasonable notice to the Customer.
 - 6.3 If the Customer fails to take delivery of the Goods or accept provision of the Services or fails to give Design East Ltd adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Design East Ltd's fault) then without prejudice to any other right or remedy available to Design East Ltd, Design East Ltd may:
 - 6.3.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
 - 6.4 Design East Ltd may deliver the Goods by separate instalments and perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract.
 - 6.5 Each instalment or stage will be a separate Contract and, unless specifically set out in these Conditions, no cancellation or termination of any one Contract relating to an instalment or stage will entitle the Customer to repudiate or cancel any other Contract or instalment or stage.
7. Risk and Property
 - 7.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - 7.1.1 in the case of Goods to be delivered at Design East Ltd's premises at the time when Design East Ltd notifies the Customer that the Goods are available for collection; or
 - 7.1.2 in the case of the Goods to be delivered otherwise than at Design East Ltd's premises at the time of delivery to such premises or, if the Customer fails to take delivery of the Goods, from the time when Design East Ltd has tendered delivery of the Goods.

- 7.2 Not with standing delivery and the passing of risk in the Goods or any other provision of these Conditions ownership of the Goods shall not pass to the Customer until Design East Ltd has received in cash or cleared funds payment in full of the price of the Goods and all other Goods and Services for which payment is due from Design East Ltd.
- 7.3 Until such time as ownership of the Goods passes to the Customer the Customer shall hold the Goods as Design East Ltd's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored protected and insured and identified as Design East Ltd's property.
- 7.4 The Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to Design East Ltd for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored protected and insured.
- 7.5 Until such time as ownership in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) Design East Ltd shall be entitled at any time to require the Customer to deliver up the Goods to Design East Ltd and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Design East Ltd but if the Customer does so all monies owing by the Customer to Design East Ltd shall (without prejudice to any other right or remedy of Design East Ltd) forthwith become due and payable.
8. Warranties, liabilities and indemnity
- 8.1 Design East Ltd will within a period of 6 months from the date of delivery of Goods and from the date of provision of Services, in respect of Goods and/or Services which are proved to the reasonable satisfaction of both parties to be damaged or defective, or not to comply with the agreed specification due to defects in material, workmanship or design (other than a design made, furnished or specified by the Customer), repair, or at its option replace, such Goods, and/or re-perform or at its option refund the price of such Services. This obligation will not apply where:
- 8.1.1 the Customer has improperly used the Goods in any way whatsoever, or the Goods have been subjected to misuse, unauthorised repair, damage, negligence, adverse weather conditions and/or alteration;
- 8.1.2 the Customer has not complied with any instructions relating to preparation of the surfaces and areas to which the Goods are applied, and/or such surfaces or areas have been subjected to previous workmanship by third parties and/or contain latent defects;
- 8.1.3 damage, discolouration or failure to painted surfaces has occurred through no fault of Design East Ltd;
- 8.1.4 Design East Ltd carries out work which is not provided for in the Order Confirmation, and is beyond the scope of the Services;
- 8.1.5 the Customer has not complied with any instructions as to use and care of the Goods in all respects; or
- 8.1.6 the Customer has failed to notify Design East Ltd of any problem or suspected problem within 2 days of the provision of the Services and/or supply of the Goods.
- 8.2 Any repaired or replacement Goods or re-performed Services will be liable to repair or replacement (or re-provision or, at Design East Ltd's option, refund) under the terms specified in Condition 8.1 for the unexpired portion of the 6 month period from the original date of delivery of the replaced Goods or from the original date of provision of the re-performed Services.
- 8.3 The above warranty does not extend to parts materials or equipment not manufactured by Design East Ltd in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Design East Ltd.
- 8.4 Design East Ltd accepts liability for personal injury or death caused by the negligence of Design East Ltd or its employees (acting within the course of their employment or duties and the scope of their authority) and for any other matter for which it would be illegal to exclude or attempt to limit or exclude its liability.
- 8.5 Except as provided in Condition 8.4, Design East Ltd will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or for any direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 8.5.1 any breach by Design East Ltd of any of the express or implied terms of the Contract;
- 8.5.2 any of the Goods and/or Services (including but not limited to any use made by the Customer of any Goods, or of any product incorporating any of the Goods), or the manufacture or sale or supply, or failure or delay in supply, of the Goods and/or Services by Design East Ltd or on the part of Design East Ltd's employees, agents or sub-contractors; or
- 8.5.3 any non-fraudulent statement made or not made, or advice given or not given, by or on behalf of Design East Ltd.

- 8.6 Except as set out in Condition 8.4, Design East Ltd hereby excludes to the fullest extent permissible in law, all express (other than those set out in the Contract) or implied, statutory, customary clauses, warranties and stipulations or otherwise which, but for such exclusion, would or might subsist in favour of the Customer, including (but not limited to) the terms implied by sections 13 to 15 of the Sales of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982.
- 8.7 The Customer acknowledges that the above provisions of this Condition 8 are reasonable and reflected in the price which may be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.
- 8.8 Design East Ltd shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Design East Ltd's obligations in relation to the Goods and/or Services if the delay or failure was due to any cause beyond Design East Ltd's reasonable control. Without prejudice to the generality of the foregoing, causes beyond Design East Ltd's reasonable control shall include (but not be limited to) the following:
- 8.8.1 act of God, storm, explosion, flood, tempest, fire or accident;
- 8.8.2 war (or threat of war), riot, civil commotion or malicious damage;
- 8.8.3 compliance with any law or governmental order, rule, regulation or direction;
- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strike, lock-out or other industrial actions or trade dispute (whether involving employees or Design East Ltd or a third party);
- 8.8.6 failure of a utility service or transport network;
- 8.8.7 difficulties in obtaining raw materials labour fuel parts or machinery;
- 8.8.7 power failure or breakdown of plant or machinery; and
- 8.8.8 default of suppliers or sub-contractors.
- 8.9 The Customer agrees to indemnify, keep indemnified and hold harmless Design East Ltd from and against all direct, indirect or consequential loss (all three of which terms include, but are not limited to, loss of profits, loss of business, depletion of goodwill and like loss), costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgements which Design East Ltd incurs or suffers as a consequence of direct or indirect breach or negligent performance or failure in performance by the Customer of any of the terms of the Contract, including in particular (but not limited to) the Customer's ongoing obligations under Condition 3.1.
9. Data Protection
- By placing a Quotation, the Customer allows Design East Ltd to use the Customer's personal details for the purposes of supplying the Goods and performing the Services (including passing the Customer's details on to subcontractors) and for the marketing to it by Design East Ltd. Design East Ltd may share the Customer's information with Design East Ltd and/or other franchisees in the Design East Ltd network, but will not use the Customer's details for other purposes without seeking the Customer's consent.
10. General
- 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision giving the notice.
- 10.2 Design East Ltd may transfer, assign, hold on trust, licence or sub-contract all or any part of its rights or obligations under any Contract.
- 10.3 Each and every Contract is personal to the Customer and the Customer may not transfer all or any of its rights or obligations under any Contract without the prior written consent of Design East Ltd.
- 10.4 Neither party intends that any of the terms of any Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it, save that Design East Ltd shall be entitled to enforce any provision of the Contract.
- 10.5 No waiver by Design East Ltd of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any provisions.
- 10.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.7 Any dispute arising under or in connection with these Conditions and any Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.