

CONDITIONS OF SALE

1. General

- (1) All contracts for the supply of goods (including any part, parts or parts of them) ("the Goods") by Mediterraneo Limited trading as Baroncelli ("the Company") to any person, firm or company ("the Customer") shall be subject to these terms and conditions which shall apply to the exclusion of any terms and conditions of the Customer unless otherwise expressly agreed in writing by a duly authorised representative of the Company.
- (2) Unless previously withdrawn by the Company, a quotation of the Company is open for a period of 30 days after the date of the quotation. No quotation shall constitute an offer or tender but shall be deemed to be an invitation to treat.

2. Order and Deposit

- (1) All Goods supplied by the Company are bespoke and supplied on a made to order basis. Customers are required to pay a 50% deposit ("the Deposit") to the Company in respect of each order for Goods.
- (2) A contract shall be created only when the Company:
 - (a) has received the Deposit in cleared funds; and
 - (b) through a duly authorised representative, has accepted either in writing or orally an offer from the Customer to purchase Goods such receipt and acceptance shall thereupon create a contract to be governed by these terms and conditions in accordance with Clause 1(1).
- (3) The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate. The Company shall comply with such specifications provided by the Customer only in so far as it is reasonably practicable to do so and shall be entitled to follow any trade practice in the interpretation of the Customer's specifications.
- (4) Subject to receipt of the Deposit in accordance with sub-clauses (1) and (2) hereof the Company shall endeavour to ensure work commences on each order for Goods within 3 days after acceptance in accordance with sub-clause 2(b). The Customer accepts that once the Company has processed the order for the Goods the Deposit shall become non-refundable unless otherwise agreed in writing by a duly authorised representative on behalf of the Company.

3. Description

- (1) The quantity and description of the Goods shall be as set out in the Company's pro-forma invoice.
- (2) All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract and this is not a sale by sample.

4. Prices

- (1) All prices quoted are exclusive of Value Added Tax, and (unless otherwise expressly stated in writing by the Company) exclusive of excise duties, import levies, landing charges, freight carriages, insurance and other charges of whatever nature, all of which will be paid by the Customer.
- (2) The prices charged by the Company will be those ruling at the date of despatch. The Company reserves the right in its unfettered discretion to vary the price from that quoted or from that prevailing at the contract date in the event of any rise or fall in, without limitation, the cost of the materials, third party manufacturer charges, labour services, interest rates, transport and statutory charges between the date of contract and the date of despatch. Further, the Company reserves the right at its sole discretion to increase any price if the Customer requests the Company to vary, modify or amend the contract.

5. Payment

- (1) Unless otherwise agreed in writing between the Company and the Customer, payment for the Goods supplied by the Company shall be made on or before collection by or dispatch to the Customer. Time for payment shall be of the essence. Payments shall be made in pounds sterling unless otherwise agreed in writing by a duly authorised representative of the Company. No payment shall be deemed to have been received until the Company has received cleared funds.
- (2) The Customer shall make all payments due under the contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- (3) The Customer shall pay interest on overdue accounts or so much thereof as shall be overdue at the rate of 4% over the Company's bank's base lending rate from time to time in force until the date of payment.
- (4) If the Customer fails to make any payment when due in accordance with this Clause 5, then without prejudice to any other right or remedy available to the Company, the Company may demand payment of the entire amount of invoices issued to the Customer (including invoices that would otherwise be within the credit terms save for operation of this sub-clause (4)), and such invoices shall then automatically fall due for immediate payment.
- (5) All sums payable to the Company under the contract shall become due immediately on termination of the contract despite any other provision.

6. Delivery

- (1) Unless otherwise agreed in writing by a duly authorised representative of the Company, delivery of the Goods shall take place at the Company's place of business.
- (2) The Customer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- (3) If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations or paid the appropriate excise duties or import levies:

- (a) risk in the Goods shall pass to the Customer (including without limitation for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered;
- (c) the Company may at its discretion store the Goods until delivery, whereupon the Customer shall (unless otherwise agreed in writing by an authorised representative of the Company) be liable for all related costs and expenses (including, without limitation, storage and insurance). If the Company exercises its discretion to store the Goods then it may charge a storage fee of no less than £15.00 per week for each box, crate and/or package containing the Goods comprised in the Customer's order until such Goods are collected. The Customer acknowledges and accepts that the Goods may be packaged in separate parts and accepts that the storage fee shall be applied to each such package accordingly; and
- (d) the Company shall invoice the Customer for the value of the Goods.

- (4) Any time quoted or given for delivery of the Goods is intended as an approximate estimate only and time for delivery shall not be made of the essence by notice. The Company shall not be liable for any loss or damage of any kind whatsoever (including but not limited to costs, damages, charges or expenses) arising directly, indirectly or consequentially (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), out of any delay (even if caused by the Company's negligence) or failure to deliver the Goods on the estimated delivery date, nor shall any delay entitle the Customer to terminate or rescind the contract.
- (5) The Customer shall provide at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.
- (6) The Company may dispatch and invoice any part of an order as and when the Goods become available.
- (7) Each instalment of an order for the Goods shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.
- (8) The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

7. Damage or loss in transit/defective goods

- (1) The Company shall not be liable in respect of any damage to Goods in transit or for any non delivery of Goods howsoever caused unless notice in writing is given to the carrier and to the Company within the period specified in the contract of carriage (if any) or within 5 days of the date when the Goods were received or would in the ordinary course of events have been received, whichever is the earlier.
- (2) Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
- (3) Subject to sub-clauses (4) and (6) hereof, in the event that any Goods supplied by the Company or any part thereof are found to be defective owing to faulty workmanship or materials and not arising from the Customer's default, neglect or misuse, the Company will either (at its option), refund the price paid for or replace any Goods (or any part(s) thereof) supplied provided that the Company is notified in writing (and photographic evidence of the defect is provided to the Company) within 5 days of discovery of any such defects or (if earlier) within 5 days of when such defects ought to have been discovered and in any event not later than 1 month. from the date of delivery and that such Goods are returned, carriage paid, together with the original packaging, to such place as the Company shall direct.
- (4) Each piece of glass comprised in the Goods is hand blown. Due to the bespoke nature of the Goods, there may be slight variations between (a) each of the Goods and (b) the Goods and any of the information specified in Clause 3(2). Such variations may include (without limitation): air bubbles within the glasswork, inclusions, minor variations to colour, shape and size and minor variations to the finish of antique silver mirrors. Such variations are the unique nature and beauty of authentic hand blown glass Goods and are not defects. Accordingly, the Company will not be liable under sub-clauses (2) or (3) hereof as a result of such variations. The Company may vary fittings and elements of the Goods at its discretion provided that such variations do not materially alter the overall design of the Goods.
- (5) Customers shall inspect Goods on delivery. Subject to sub-clause (3) hereof, the Customer shall notify the Company within 5 days after delivery if the Goods do not conform to the terms of the contract and provide photographic evidence of such nonconformity. If the Customer fails to notify the Company in accordance with this sub-clause (5) he shall be deemed to have accepted the Goods.
- (6) The Company shall not be liable under sub-clauses (1) and (5) hereof if:
 - (a) the Customer continues to use the Goods after giving such notification; or
 - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods of (if there were no such instructions) good trade practice for goods primarily of a decorative nature.
- (7) Goods purchased from the Company's showroom ("Showroom Goods") are sold on an "as is" basis and Customers are required to inspect such Goods prior to purchase. The Company shall not be liable for any defects that are apparent (or would have been apparent upon proper inspection by the Customer) at the time such Showroom Goods were displayed at the Company's showroom. The Showroom Goods may not be returned unless otherwise agreed by a duly authorised representative of the Company.

8. Passing of risk

Depending on the arrangements for delivery, risk in the Goods shall pass to the Customer on delivery at the Company's place of business, or on delivery to the Customer by the Company or by a carrier engaged by the Company, or on delivery to a carrier not engaged by the Company.

9. Title

- (1) Notwithstanding delivery and passing of the risk in any Goods supplied by the Company to the Customer pursuant to Clause 8, the Company shall remain the owner of the Goods until the contract price has been paid in full and until all monies payable by the Customer to the Company under any other contract made between the Company and the Customer have been paid in full in cash or cleared funds.
- (2) Until the property in the Goods passes to the Customer pursuant to the provisions of sub-clause (1) hereof the Customer shall keep the Goods as bailee of the Company and in this connection shall set aside the Goods separately from other goods in the Customer's possession and shall identify the Goods as the Company's property. The Customer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and shall maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- (3) If at any time before the property in the Goods passes to the Customer pursuant to the provisions of sub-clause (1) hereof the Customer sells the Goods or any part thereof he shall do so as principal.
- (4) The Company shall be at liberty at any time before the property in the Goods passes to the Customer pursuant to the provisions of sub-clause (1) hereof to require the Goods to be returned to it and if the requirement is not immediately complied with by the Customer the Company may retake possession thereof and may enter any premises of the Customer or any other premises where the Goods may be for such purpose. Such return or repossession shall be without prejudice to the rights of the Company to recover all sums owing by the Customer to the Company and to the Company's rights to claim damages against the Customer for breach of any obligations on the part of the Customer arising under the contract. Any expenses incurred in such return and repossession of the Goods or any damage caused to any land by the Company in exercise of its powers hereunder shall be borne by the Customer.
- (5) Until ownership of Goods or items passes to the Customer, the Company or any person nominated by it shall be entitled to enter into the Customer's premises from time to time for the purpose of:
 - (a) ensuring that the Customer has complied with the provisions of sub-clause (2) hereof;
 - (b) inspecting all books, accounts, records, documents and papers of the Customer for the purpose of determining sums due to the Company by virtue of the provisions of sub-clause (4) hereof;
 - (c) for the purpose of exercising its rights of repossession under sub-clause (4) hereof.

10. Limitation of liability

- (1) The Customer must rely on his own skill and judgment when deciding whether to purchase the Goods. Customers must ensure the suitability and size of any piece ordered and that access for delivery is practicable. If the Company has agreed in writing to install the Goods, the Customer shall ensure that he provides accurate instructions as to where the Goods are to be installed and shall ensure that all movable property is moved to allow for such installation to take place and shall provide at the Customer's own expense any materials necessary to protect any furniture, fittings, carpets and adjoining walls. The Customer shall also provide to the Company any information that it may require in relation to the suitability of the place of installation and accepts that he is to rely on his own skill and judgment in this respect. The Company shall not be responsible for any loss (whether direct, indirect or consequential) suffered by the Customer or any third party caused by the Customer's failure to provide accurate instructions as to where the Goods are to be installed, damage caused by the Company or its sub-contractors to any of the Customer's property as a result of the Customer failing to comply with this Clause 10(1) or the suitability of the Customer's choice of place for installation. Save as otherwise expressly provided in Clause 7(3) the Company shall not in any circumstances be under any liability whatsoever to the Customer whether in contract, tort or otherwise for any defect in, failure of or unsuitability for any purpose of the Goods or for any loss of profit, consequential loss (including loss of use or goodwill, or of business or similar financial loss) or damage, claim or any other liability howsoever caused whether or not due to the negligence of the Company or its servants or agents or to faulty design, workmanship or materials. All conditions, representations, warranties or other terms expressed or implied, statutory or otherwise inconsistent with the provisions of this Clause are hereby expressly excluded provided that nothing in these conditions shall exclude or restrict:
 - (a) any liability of the Company for death or personal injury resulting from negligence of the Company or its servants or agents;
 - (b) any liability of the Company for breach of its implied undertakings as to title;
 - (c) any matter which it would not be lawful to exclude or attempt to exclude; and
 - (c) where the Customer deals as consumer within the meaning of the Unfair Contract Terms Act 1977 and the Sale and Supply of Goods to Consumers Regulations 2002, any liability of the Company for breach of its implied undertakings as to conformity of the goods with description or sample or as to their quality or fitness for a particular purpose.

It shall be the responsibility of the Customer to assume and to cover by insurance, if the Customer so wishes, the risks which fall on the Customer as a result of the incorporation of this Clause in the contract.
- (2) Subject to sub-clause (1) hereof, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price.

11. Cancellation

Orders placed by the Customer cannot be cancelled.

12. Suspension

In the event of the performance of any obligation accepted by the Company being prevented, delayed or in any way interfered with by any other cause beyond its control (including without limitation):

- (a) rules, regulations, requisitions or orders of the Government or Local Authority, war, riot, civil disturbance, strike, industrial action short of a strike, lock out, accident, fire; or
- (b) shortage of labour or materials or non delivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods,

the Company may at its option suspend performance or cancel its obligations under the contract without liability for any damage or loss of any kind whatsoever resulting therefrom, such suspension or cancellation being without prejudice to the Company's right to recover all sums owing to it in respect of Goods delivered at the date thereof.

13. Default of Customer

Should default be made by the Customer in paying any sum due under any contract the Company, at its option, shall be entitled to suspend delivery until the default is made good or treat such default as a repudiation of the contract in which case the Customer shall (without prejudice to any right which the Customer may have for the return of any Goods or the payment of any compensation of damages by the Customer) pay the Company's reasonable charges for any costs incurred in the course of all preparation of any kind made by the Company for the performance of the contract by the Company.

14. Termination

If any distress or execution shall be levied upon the Customer his property or assets or if the Customer shall make or offer to make any arrangement or composition with creditors or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or becomes bankrupt or if any petition or receiving order in bankruptcy shall be presented or made against him or if the Customer shall be a limited company and any resolution or petition to wind-up such company's business shall be passed or presented (otherwise than for a bona fide solvent reconstruction or amalgamation) or a petition is presented for the Customer to go into administration or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the company convenes a meeting of creditors (whether formal or informal) or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed, the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or obtained against him or fails to observe or perform any of his obligations under the Contract or any other contract between the Company and the Customer or is unable to pay his debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases or threatens to cease to trade or the Customer encumbers or in any way charges any of the Goods, the Company shall have the right forthwith to terminate the contract.

15. Customer's Obligations

- (1) The Customer warrants that any specifications provided by the Customer in accordance with Clause 2(3) do not infringe any intellectual property rights of a third party and may lawfully be used, reproduced and supplied to the Company.
- (2) The Customer shall keep the Company indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of Goods made to the Customer's specifications.

16. Compliance

No relaxation, forbearance, delay or indulgence by the Company in enforcing any of the terms and conditions of any contract shall prejudice the Company's rights to insist upon the strict compliance therewith nor shall the same constitute a waiver or an estoppel.

17. Assignment

- (1) The Company may assign the contract or any part of it to any person, firm or company.
- (2) The Customer shall not be entitled to assign the contract or any part of it without the prior written consent of the Company.

18. Communications

All communications between the parties about the contract shall be in writing and delivered by hand or sent by pre-paid first-class post:

- (a) (in the case of communications to the Company) to Mediterraneo Limited, Studio C3, The Imperial Laundry, 71 Warner Gardens, London SW11 4XW or such changed address as shall be notified to the Customer by the Company; and
- (b) (in the case of the communications to the Customer), to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the contract or such other address as shall be notified to the Company by the Customer.

18. Governing Law

These terms and conditions of supply and any contract between the Company and the Customer are governed by and are to be construed in accordance with the laws of England, the non-exclusive jurisdiction of whose courts the Customer agrees to submit to.