

TERMS & CONDITIONS

The Customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

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

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

Contract: the contract between Origin and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Origin.

Deposit: 30% of the total price of the Goods as set out in the Order.

End-User: the ultimate consumer who purchases the Goods from the Customer.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods as set out in Origin's written order confirmation and signed by the Customer.

Origin: Origin Frames Ltd (registered in England and Wales with company number 4449292).

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Origin.

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

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) 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.
- (e) A reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted by the earliest of (a) when Origin issues a written acceptance of the Order or (b) when Origin sends drawings to the Customer for approval at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Origin which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Origin and any descriptions or illustrations contained in Origin's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by Origin shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in Origin's catalogue as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Origin against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Origin in connection with any claim made against Origin for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Origin's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Origin reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or in order to conform with any manufacturing, product improvement or development plans or any safety requirements.
- 3.4 The Customer shall give Origin advanced notice before placing an Order if the Goods are going to be fitted in a property which is in close proximity to the sea. The Customer acknowledges and agrees that if this is the case then special finishes and hardwearing components must be used on the Goods.

4. DELIVERY

- 4.1 Origin shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Origin reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is

being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if Origin requires the Customer to return any packaging materials to Origin, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Origin shall reasonably request. Returns of packaging materials shall be at Origin's expense.

4.2 Origin shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Origin notifies the Customer that the Goods are ready. Origin shall give the Customer not less than 1 days notice of the actual delivery date of the Goods.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Client shall grant Origin access to the Delivery Location in order to effect delivery of the Goods and the Client shall be responsible for off-loading the Goods.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Origin shall not be liable for any delay in delivery of the Goods.

4.5 If the Customer fails to take delivery of the Goods within three Business Days of Origin notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Origin's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Origin notified the Customer that the Goods were ready; and

- (b) Origin shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If 10 Business Days after the day on which Origin notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Origin may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 Origin may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **WARRANTY**

5.1 Origin may in its sole discretion offer a 20 year warranty (**Warranty Period**) on the Goods to an End-User on terms that it shall decide and only on Goods that are clearly marked as Origin Goods and carry an Origin serial number.

5.2 Origin makes no warranty or representation that condensation will not occur or will be eliminated by the Goods and Origin shall not be liable for any condensation.

5.3 The Customer acknowledges that whilst every attempt is made to match paint colours on the Goods, slight variations may occur and during the Warranty Period such paint finishes may dull due to weathering. Origin shall not be responsible or liable for any such dulling to the paint finishes on the Goods.

- 5.4 Glass shall not be included as part of the Goods and Origin shall not have liability to the Customer in respect of any glass fitted or installed in the Goods.
- 5.5 The Customer acknowledges that the installation instructions are provided with delivery of the Goods and show the correct installation method and usage. An operational guide is also supplied with the Goods which must be passed to the End-User of the Goods. It is the responsibility of the Customer to ensure receipt of these documents by the End-User and that the operational manual is passed to the End-User.
- 5.6 The Customer may (with the prior written consent of Origin) delegate its "Origin approved installer status" to a third party installer (Third Party Installer) provided that the Third Party Installer ensures that all its staff who install the Goods complete the relevant training as agreed with Origin.
- 5.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Origin has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods or services that Origin has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as Origin's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Origin's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify Origin immediately if it becomes subject to any of the events listed in clause 8.3; and
 - (f) give Origin such information relating to the Goods as Origin may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.3, or Origin reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Origin may have, Origin may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Origin's suggested retail price list in force as at the date of delivery.

7.2 Origin may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Origin's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Origin adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The Customer shall pay the Deposit upon placing the Order.

7.5 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Origin, pay to Origin such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.6 Origin may invoice the Customer for the price of the Goods (less the Deposit) on or at any time prior to the delivery of the Goods.

7.7 The Customer shall pay the invoice in full and in cleared funds before the delivery of the Goods and in any event before 2 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Origin. Time of payment is of the essence.

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

7.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Origin in order to justify withholding payment of any such amount in whole or in part. Origin 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 Origin to the Customer.

8. CANCELLATION AND CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If at any time after the Order has been placed the Customer cancels the Order in respect of all or part only of the Goods the Customer shall pay to Origin the total price of the Order.

8.2 If the Customer becomes subject to any of the events listed in clause 8.3, or Origin reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Origin, Origin may cancel or suspend all further deliveries under the

Contract or under any other contract between the Customer and Origin without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

- 8.3 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - (c) the Customer ceases, or threatens to cease, to carry on business; or
 - (d) Origin reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. **LIMITATION OF LIABILITY**

- 9.1 Nothing in these Conditions shall limit or exclude Origin'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;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for Origin to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) Origin shall not 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) Origin'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 not exceed the price of the Goods

10. **FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether

involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and subcontracting.

- (a) Origin may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Origin.

11.2 Notices.

- (a) 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, recorded delivery, commercial courier, fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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

single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised representative of Origin.
- 11.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.