

## **KYOTO FUTONS - TERMS AND CONDITIONS OF SALE**

### **PAYMENT TERMS**

Payment terms are 30 Days NET from Date of Invoice

### **OVERDUE ACCOUNTS – ORDERS**

Further orders against accounts which exceed our payment terms will not be processed until such time as the account is brought within credit limits. The order will proceed as a new order from that date.

### **DAMAGES & SHORTAGES**

Goods short delivered or damaged MUST BE SIGNED FOR ACCORDINGLY ON RECEIPT, and Kyoto Futons must be notified within 3 working days of delivery, otherwise no responsibility can be accepted by Kyoto Futons Ltd.

Where goods forming part of an order are short delivered or damaged, payment of the balance of the order shall not be withheld.

### **DELIVERY CHARGES**

All orders under £200.00 are subject to a £20.00 carriage charge. Delivery charges are based on UK Mainland only (not including Highlands and Islands); additional geographical charges will be agreed prior to despatch.

### **CANCELLATION CHARGES**

Notification of cancellation of a delivery must be given at least 48 hours prior to the delivery date. Failure to do so will incur a cancellation fee of £50.00. Cancellation of an order will not be authorised where a product has already been manufactured.

### **DELIVERY DATES**

Every endeavour will be made to effect delivery by the date agreed, but dates and period for delivery are only approximate and are not essential terms of the contract. In no circumstances whatsoever shall the customer be entitled to recover loss of profit from sub-sales or any special or consequential loss or damage whatever arising from or in connection with delay in delivery.

### **RETENTION OF TITLE CLAUSE (ROT)**

- A) Title to the goods supplied by the Company to the Customer shall be retained by the Company and shall not pass to the Customer until such time as:
  - i) the Customer has paid in full for those goods and, for any other goods supplied by the Company to the Customer under any arrangement under which title in those goods is retained by the Company until payment has been paid in full.
  
- B1) The Customer is a fiduciary in relation to the goods supplied and subject to sub-clause (c):
  - i) if the goods are sold by the Customer prior to payment (and for the avoidance of doubt the Customer shall at no time sell the goods as agent for the Company) the proceeds of sale shall be the property of the Company and shall be identified accordingly.
  - ii) the goods shall be kept separate from other goods of a similar kind so that the Company can readily identify its property: and
  - iii) shall permit the Company to inspect the goods in storage at any time during normal business hours and after the Company has given the Customer reasonable notice of its intention to do so.
  
- B2) The Customer agrees to insure the goods with a reputable insurance company so long as they remain in the legal ownership of the Company.
  
- C) If the Customer:
  - i) has a bankruptcy petition issued against the Customer, or
  - ii) goes into liquidation whether voluntary or compulsory, or
  - iii) makes an arrangement or composition with the Customer's creditors, or
  - iv) has an administrator or administrative receiver appointed over any of the Customer's assets, or
  - v) enters into voluntary arrangement approved by the Courts, or

- vi) fails to observe or perform any of these terms and conditions or the terms and condition of any other arrangement between the Customer and the Company under which the title in any goods supplied under the arrangement is retained by the Company.
- vii) being a company ceases or threatens to cease to carry on business, or an order is made or an effective resolution is passed for the winding up of the Customer, or if in the opinion of the Company the Customer is unable to pay it's debts or is likely to go into liquidation, administration or receivership

then: the Customer's consent from the Company to do the acts referred to in sub-clause (B) shall terminate and be deemed to have terminated forthwith and the Customer shall not thereafter sell or use goods belonging to the Company (save with the consent in writing of the Company) until the Company has been paid in full in accordance with sub-clause (A) and all amounts owing to the Company shall be deemed immediately due and payable.

- D) The Company may recover and dispose of any goods in which the Company has retained title under sub-clause (A) and upon the happening of any of the events referred to in sub-clause (C) the Company or persons authorised by the Company are permitted for that purpose to enter upon and remain on premises which the Company believes such goods may be located, and the Company shall not as a result be liable for any claims, actions, indictments or any proceedings whatsoever brought by the Customer or anyone claiming under the Customer.
- E) The Customer agrees to store all goods that are the property of the Company in such a way that they are kept separate and readily identifiable as such and to make a note in its accounting records that the goods are the property of the Company.
- F) All costs, charges, and expenses incurred by the Company in:
  - i) regaining possession of it's goods: and
  - ii) collecting any monies owed by the Customer to the Company will be borne by the Customer and included as part of the monies owed by the Customer.

## **INSOLVENCY**

Upon the happening of any of the following events:

If the Customer shall:

- i) make any default in paying any sum under any Contract with the Company as and when it becomes due, or
- ii) have distress or execution levied on any of its goods or property, or
- iii) make or offer to make any arrangements or composition with creditors, or
- iv) make any voluntary arrangement by the Court, or
- v) pass any resolution or have any petition to wind up the Customer presented (other than for the purpose of reconstruction or amalgamation without insolvency) or have a Receiver appointed over the whole or any part of the Customer's business, or
- vi) commit any act of bankruptcy or have a petition presented against him

then all sums owing by the Customer to the Company shall become immediately due and payable (with interest thereon at a daily rate of four per cent above Barclays Bank plc base lending rate for the time being) and the Company shall have the right forthwith to suspend all further manufacturing or other work carried out for the Customer and to withhold all further deliveries of goods or to determine any Contract then subsisting between the Company and the Customer. Such determination shall give rise to no liability whatsoever on the Company's part but shall be without prejudice to the Company's rights to payment in respect of manufacturing or other work already carried out or goods already delivered.

The Supplier reserves the right to refer any overdue amount to a third party agency or firm for collection and to add all and any costs associated with such referral to the overdue amount. This clause shall not apply to payments that the Customer disputes in good faith.