



## Trade Terms and Conditions of Sale

These Terms and Conditions govern the supply of all Goods and Services provided by us to you.

### 1. Definitions

- 1.1. "Agreement" is a reference to these Terms and Conditions, any quotation, order form and payment instructions provided to you; "Buyer", "you", "your" and "yours" means the business or person who buys or agrees to buy Goods from the Seller;
- 1.3. "Goods" means the garden furniture goods and products (including any instalment of the goods or any parts for them) and motorised canopies which the Seller is to supply in accordance with these Terms and Conditions;
- 1.4. "Intellectual Property Rights" or "IPR" means patents, rights to inventions, copyright and related rights, topography rights, trademarks, trade names and domain names, rights in get-up, rights in good will or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights of a similar nature. In each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
- 1.5. "Seller", "we", "us" and "our" means The Modern Garden Company Limited of 1 Martins Farm, Bridge End, Newport, Saffron Walden, Essex CB11 3TL, UK.
- 1.6. "Services" mean the installation of the Goods that you have requested us to provide to you;
- 1.7. "Terms and Conditions" means the Terms and Conditions of Sale set out in this document and any special conditions agreed in writing by the Seller; and
- 1.8. "Trade Buyer" means a Buyer who is purchasing Goods and Services in the course of a trade.

### 2. Ordering

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Terms and Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.
- 2.3. When ordering any Goods and Services from us you do so in accordance with this Agreement. You are deemed to have accepted the prices of the Goods and Services quoted to you and other terms such as delivery which may have been quoted to you at the time of placing your order.
- 2.4. Any contract for the supply of Goods and Services is between you and The Modern Garden Company Limited.
- 2.5. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
- 2.6. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation.
- 2.7. Due to the nature of the Goods, they are not sold by sample. Any descriptions, samples, drawings, specifications and colours are illustrative only, are intended as a guide only to the final product and do not form part of this Agreement. We cannot be held liable if the final product does not conform to the original description. We reserve the right to substitute the Goods ordered with a suitable alternative which is substantially the same as the original Goods.
- 2.8. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification provided by the Buyer or the Buyer's agent, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual



property rights of any other person which results from the Seller's use of the Buyer's specification. The Buyer must take all reasonable steps to ensure that the specification supplied by the Buyer or the Buyer's agent is accurate as we cannot be held liable for any costs incurred as a result of an inaccurate specification provided to us.

- 2.9. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 2.10. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.11. FIRE REGULATIONS: Exterior furniture supplied in the UK complies with the Furniture and Furnishings (Fire Safety) Regulations 1988 and the General Product Safety Regulations 2005 which meets domestic standards. If additional compliance is required this must be made known to us prior to us providing you with a quote as additional charges may apply and there may be longer lead times for delivery.

### 3. Price

- 3.1. The price for the Goods and Services shall be the price set out in the quotation or our current price list plus any other charges (including delivery charges) that we are entitled to make under this Agreement.
- 3.2. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer. We reserve the right to alter our quoted prices to you after this time.
- 3.3. In order to qualify for a trade discount which shall be deducted from the VAT exclusive price of the Goods, the Buyer must be a Trade Buyer. By accepting a trade discount, the Buyer accepts responsibility for the specifications and measurements provided to the Seller in relation to Goods ordered, (irrespective of whether the end customer settles the invoice with us direct).
- 3.4. Prices are exclusive of value added tax and delivery charges which shall be added to your order or quotation at the time of ordering.
- 3.5. All prices are subject to change without notice and should always be confirmed at the time of placing an order.
- 3.6. A non-refundable deposit of 50% of the total order value must be paid by you at the time of placing your order. We will not accept and process your order until the deposit is received by us. The balance of your order must be paid before the delivery date is confirmed.
- 3.7. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. You will be notified of any increase should this arise.
- 3.8. Please note that the Buyer is liable for all foreign charges including bank charges that may be imposed on the Seller relating to the sale or delivery of the Goods to the Buyer. Any such charges will either be added to the original sales invoice for the Goods ordered or shall be the subject of a separate invoice to the Buyer which must be paid upon receipt.

### 4. Terms of Payment

- 4.1. All Goods (including delivery charges and value added tax) must be paid for in full prior to delivery to the Buyer unless otherwise agreed in writing by the Seller. Any variations to the payment terms will be stipulated on our written quotation. A non-refundable deposit of 50% of the total order value must be paid by you at the time of placing your order. We will not accept and process your order until the deposit is received by us. The balance of your order must be paid before the order is delivered.
- 4.2. The time of payment of the price shall be of the essence of the contract.
- 4.3. An invoice will be issued to you upon delivery of the Goods or completion of the Services, as applicable. Value added tax will be added to the invoice which is payable by you.



- 4.4. In the event of a query or dispute with an invoice you must notify us of your query or the nature of your dispute within 7 days of the date of the invoice. Failure to notify within this time will mean that you are deemed to have accepted the invoice in full and the full amount is due and payable. In the case of valid queries or disputes, you must pay us the undisputed amount by the due date. You are not entitled to set off any sum owing by you under this Agreement against any sum that we may owe you.
- 4.5. Failure to pay on time may result in late payment charges which shall be calculated in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 (as amended) from the date the payment was originally due until the date of actual payment.
- 4.6. We reserve the right to charge an administration fee for any late payment notices which we send to you in the event of your late payment. We also reserve the right to cancel any discount that we may have offered to you, to alter your payment terms and/or to suspend or cancel future deliveries in the case of late payment.
- 4.7. Notwithstanding the provisions of Clause 11 if we are not paid on time we may instruct a debt collection agency or law firm to collect our payment (including any interest and/or late payment charges) on our behalf. In such circumstances you will be liable to pay an additional sum to us which will not exceed the reasonable costs that we may have to pay the debt collection agency or law firm, who will add the sum to your outstanding debt on our behalf.

## 5. Export Terms

- 5.1. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 5.2. Goods may be subject to inspection by your local customs office where delivery is outside the UK.
- 5.3. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be ex works and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 5.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 5.5. The Buyer undertakes not to offer the Goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

## 6. Our Obligations

- 6.1. Where we have agreed to provide Services to you under this Agreement we will do so with reasonable skill and care in accordance with accepted industry practice and standards. We will provide the Services and deliver the Goods, as far as possible, in a timely manner in accordance with the lead times quoted to you however time is not of the essence of this Agreement other than with respect to your obligation to make payment.
- 6.2. You must notify us immediately if you find the Services or the Goods supplied to be defective in any way (which must be no later than 7 days of completion of the work) and allow us an opportunity to investigate and remedy the defect.
- 6.3. Where we have agreed that the Goods are defective then we will supply suitable replacement Goods free of charge provided you have notified us of the defect within the required period. In no circumstances will we reimburse you for any rework or repairs which have been carried out by a third party without our express consent.

## 7. On Site Requirements

If we have agreed to attend the site to provide our Services to you, it shall be your responsibility to ensure that the site is suitable for the purpose, that there is an adequate power and water supply (which shall be provided at your cost), that toilet facilities are made available to us and that the work area is clear of all clutter and is well lit. We cannot accept any liability for any costs, damages or losses incurred by you or any third party as a result of your failure to disclose risks that you knew or ought to have known of.

## 8. Cancellation and Returns



### **8.1. Cancellations:**

8.1.1. You have no right to cancel any order placed with us. We may at our absolute discretion accept cancellations on orders though this is not possible for bespoke or made to order pieces. We will notify you if we agree to the cancellation of your order. We reserve the right to charge for any costs that we may incur in accepting any cancelled order and to charge a re-stocking charge of 25% of the value of the Goods to be returned. Any deposit which may have been paid at the time of placing an Order will not be refunded in cases of cancellation.

### **8.2. Cancellations by Us:**

8.2.1. We reserve the right to cancel your order at any time if

8.2.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) is declared bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

8.2.1.2. an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Buyer; or

8.2.1.3. the Buyer ceases, or threatens to cease, to carry on business; or

8.2.1.4. if, in our reasonable opinion, one of the aforementioned events is likely to occur; or

8.2.1.5. if you have acted in material breach of this Agreement.

8.2.2. In the case of cancellation of an order by us in one of the circumstances described above we shall be entitled to cancel any orders or suspend any further deliveries under this Agreement without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **8.3. Returns**

8.3.1. You are entitled to return Goods ordered from us within 30 days of receipt of the Goods if the Goods are faulty or damaged. You will be entitled to have the Goods repaired or replaced provided we agree that the Goods are faulty or were delivered to you in a damaged condition and have not been used. Replacement Goods will be charged at the full price.

8.3.2. In order to return Goods which are faulty or damaged, you must contact us to obtain a Return Number and this must be clearly shown by you on all returned items.

8.3.3. The cost of returning the Goods to us must be paid by you unless we agree that the Goods are faulty or damaged upon receipt by you. Any refunds or re-credits will be undertaken within 30 days. Where Goods are placed in storage and shipped onwards to the Buyer at a later date the Buyer must bear the costs of returning the Goods to the original delivery destination in all cases.

8.3.4. Goods which develop a fault or become faulty within the manufacturer's warranty or guarantee period may be repaired or replaced in line with the manufacturer's warranty terms provided that the Goods are used in accordance with the manufacturer's recommendations and guidance.

8.3.5. All Goods returned to us must be sent via a reputable courier adequately packed.

8.3.6. If we decide to accept the return of Goods which are neither faulty nor damaged then we will apply a re-stocking charge of 25% of the value of the Goods to be returned.

8.4. In all cases, the Buyer will be liable for the cost of remedying any damage to the Goods returned where such damage has, in the reasonable opinion of the Seller, been caused by the Goods being inadequately packaged by the Buyer or through the Buyer's fault.

## **9. Delivery**

9.1. Delivery of the Goods shall be made in accordance with the delivery option selected by the Buyer at the time of ordering the Goods. There are three delivery options available: - (i) delivery to a UK warehouse or kerbside delivery (not suitable for residential properties); (ii) assisted delivery to a site to an agreed easily accessible location; or (iii) assisted delivery and installation plus removal of all packaging. In the case of (ii) and (iii) the Buyer or the Buyer's agent must be present at the time of delivery.

9.2. Delivery charges are calculated based on the information supplied by the Buyer at the time of ordering the Goods. Where the Buyer changes the delivery details then the Seller reserves the right to alter the delivery charges where this results in an increase in costs.



- 9.3. It is the responsibility of the Buyer to ensure that all dimensions quoted at the time of ordering are correct and have been checked for accuracy. No allowance has been made for the cost of removing doors, windows or the provision of mechanical equipment required for delivery.
- 9.4. All risk in the Goods shall pass to you upon delivery to the Buyer at the location specified by the Buyer or upon placement of the Goods into storage where this is done at the direction of the Buyer.
- 9.5. In cases where Goods are to be placed in holding storage and released at a later stage for onward delivery to the Buyer it is the Buyer's responsibility to ensure that the Goods are inspected to ensure that the order is correct and the Goods are undamaged prior to onward shipping.
- 9.6. You must ensure that at the time of delivery of the Goods adequate arrangements, including labour and access, are in place for the safe delivery of the Goods. We cannot be held liable for any damage, cost or expense incurred to the Goods or premises where this arises as a result of a failure to provide adequate access or arrangements for delivery. It is important to provide us with all relevant information for delivery such as road access to the site, vehicle restrictions, parking arrangements and provision for large vehicles. The Buyer shall be liable for any costs incurred by the Seller when delivering the Goods as a result of the Buyer's failure to make adequate arrangements for the delivery of the Goods.
- 9.7. Whilst every reasonable effort shall be made to keep any delivery date, time of delivery shall not be of the essence and the Seller shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery date. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 9.8. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 9.9. Incomplete orders must be notified to us as soon as possible following delivery and within 48 hours of delivery. We will either arrange for the missing items to be delivered to you at no extra cost or refund you the original cost of the missing items.
- 9.10. No refunds of the delivery charge are made for late deliveries.
- 9.11. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 9.11.1. invoice for the goods at the time stated for delivery; or
  - 9.11.2. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 9.11.3. sell the Goods at the best price readily obtainable.

## 10. Damage in Transit

- 10.1. You must notify us within 48 hours of delivery if Goods are found to be damaged upon delivery. You must keep the Goods within the original packing and make these available for inspection.
- 10.2. In the case of Goods damaged in transit our total liability to you is limited to providing replacement Goods within a reasonable period. You must follow the procedure set out in Clause 6 for all damaged Goods.

## 11. Title

- 11.1. Full title in all Goods supplied by the Seller shall remain fully vested in us until we receive payment in full for all monies owed to us. We shall be entitled to re-take possession of the Goods in the event of non-payment and you hereby grant us a non-revocable licence to enter your premises for the purposes of recovering the Goods.
- 11.2. Until such time as the property in the Goods passes to you, you shall hold all Goods supplied to you as our fiduciary agent and bailee, and shall keep all of the Goods properly stored, protected and insured (against the risks for which a prudent owner would insure them and hold the policy on trust for us) and clearly identified as our property. You hereby grant us permission to enter any premises where the Goods may be stored at any time to inspect them.
- 11.3. Until such time as the property in the Goods passes to you, we shall be entitled at any time to require you to return the Goods to us at your cost, and if you fail to do so forthwith, to enter upon any of your premises or any third party premises where the Goods are stored and repossess the Goods using reasonable force if necessary.



- 11.4. You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property, but if you do so all moneys owing by you to us shall (without prejudice to any other right or remedy we may have) forthwith become due and payable.
- 11.5. Until such time as you have paid us all monies owing to us, if you become bankrupt or insolvent, enter into any arrangement with your creditors, or being a company, go into liquidation or are wound-up, or being a partnership, are dissolved or if, in our reasonable opinion, one of the aforementioned events is likely to occur and we notify you of such belief in writing you will no longer be entitled to use and sell any of our Goods and these must be returned to us immediately at your cost or we shall be entitled to re-take possession in accordance with Clause 11.3.

## 12. Limitation of Liability

- 12.1. We disclaim any and all liability to you for the supply of the Goods and Services to the fullest extent permissible under applicable law. If we are found liable for any loss or damage to you such liability is limited to the amount you have paid for the relevant Goods and Services. We cannot accept any liability for any loss, damage or expense, including any direct or indirect loss such as loss of profits, to you howsoever arising. This limitation of liability does not apply to personal injury or death arising as a direct result of our negligence.
- 12.2. We shall not be held liable for any failure or delay in delivering Goods or providing the Services where such failure arises as a result of any act or omission which is outside our reasonable control such as an act of God or those of third parties which shall include, but is not limited to, any labour strikes, bad weather conditions, fires, governmental actions, war or terrorist acts.
- 12.3. We do not accept liability for any indirect loss, consequential loss, loss of data, loss of income or profit, loss or damage to property and/or loss from claims of third parties arising out of the use of the Goods purchased from us.
- 12.4. We shall not be held liable for any misrepresentations other than fraudulent misrepresentations.
- 12.5. We recommend that all of the Goods sold by us are maintained in accordance with the manufacturer's recommendations. In the case of motorised canopies manufactured and sold by us we cannot accept liability for the cost of repairing or replacing the Goods if the canopy has not been used and maintained in accordance with our instructions which accompany the product upon delivery. Please refer to The Modern Garden Company Ltd for maintenance and cleaning instructions.

## 13. Complaints

We hope that you will not have any complaints about our service however if you do have an issue please contact us at [info@moderngarden.co.uk](mailto:info@moderngarden.co.uk) and we will do our best to respond within 5 business days.

## 14. Intellectual Property Rights

- 14.1. The IPR in all designs, drawings, specifications and concepts designed by The Modern Garden Company on behalf of the Buyer shall vest in The Modern Garden Company absolutely.
- 14.2. The Buyer must apply to The Modern Garden Company for a non-exclusive, non-transferable licence to use any design, drawing, specification or concept produced by The Modern Garden Company for its own internal re-use only.
- 14.3. It shall be at The Modern Garden Company's discretion as to whether to grant such a licence and a fee may be payable for the grant of such a licence.

## 15. General

- 15.1. Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.2. We may assign, subcontract or novate any part or parts of our rights and obligations under these Terms and Conditions and this Agreement without your consent or any requirement to notify you. You may not assign or subcontract your rights and obligations under this Agreement without our prior written consent.
- 15.3. The Terms and Conditions, any order form and payment instructions constitute the entire agreement between you and us. No other terms, representations, promises or statements whether expressed or implied shall form part of this

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contract including for the avoidance of doubt, any terms and conditions which the Buyer tries to apply in any purchase order, confirmation of order, specification or other document or communication. In the event of any conflict between this Agreement and any other term or provision, this Agreement shall prevail.

- 15.4. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.5. If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of our Agreement and the remainder of the provision in question shall not be affected.
- 15.6. We may alter or vary the Terms and Conditions at any time. Any variation will not affect existing orders placed with us. Variations or updates to our Terms and Conditions will be published on our Website. Any error or omission in any information, or document issued by us shall be subject to correction provided that the correction does not materially affect the contract.
- 15.7. It is not intended that the undertakings and obligations of the parties set out in this Agreement shall be for the benefit of and capable of being enforced by any other person by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 15.8. This Agreement shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

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