

TERMS & CONDITIONS

1. DEFINITIONS

1. For the purpose of these Terms and Conditions, these words shall have the following meanings: - “Seller” shall mean The Original Bedstead Company. “Customer” shall mean any individual, company or person contracting with the Seller for the supply of Goods and Services by the Seller. “Acknowledgement of Order” means the Seller’s acknowledgement of the Customer’s order. “Additional Items” means the following where incurred:
 - i. packaging costs under condition 5.3;
 - ii. any taxes (including Value Added Tax), duties or other charges levied by any governmental or other authority in respect of or by reason of the sale, delivery, export or import of the Goods or any part thereof, but excluding taxes assessed on profits or gains;
 - iii. services (if any);
 - iv. transportation costs where arranged at the request of the Customer;
 - v. storage costs under Condition 5.2.1;
 - vi. the provision of fabric materials at the request of the Customer;
 - vii. Third party costs for the treatment of fabric materials.

“The Contract” means the quotation, these Terms and Conditions of Sale, the Acknowledgement of Order and any other document incorporated in a contract between the Seller and the Customer. “A Consumer Sale” means where the customer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12). “Goods” means the standard products as listed in the current catalogue of the Seller (including any installment of the Goods or any parts for them), which the Seller is to supply in accordance with these Conditions, and where the context so permits shall include Specials. “Conditions” means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Seller and the Customer. “Credit Customer” means a Customer with an account with the Seller. “Services” means any works and services provided by the Seller in conjunction with the sale of Goods or Specials. “Specials” means any order for Goods that are manufactured specifically for the Customer and are not available from the Seller’s current catalogue. “Writing” includes facsimile transmission, electronic mail message and comparable means of communication.

2. Any reference in these conditions to any provision of any statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
3. The headings in these conditions are for convenience only and shall not affect their interpretation.

2. APPLICATION

1. The Seller’s Terms and Conditions shall apply to any Contract for the sale of Goods or the supply of Services to the Customer.
2. The Seller’s catalogue and price list forms part of the Contract. However, the Customer should note that due to manufacturing requirements product specifications set out in the catalogue might be liable to change.

3. OTHER TERMS OR REPRESENTATIONS

1. No other standard conditions or terms shall apply to the Contract.
2. The Customer shall not rely upon any oral term or representation unless confirmed by the Seller in its Acknowledgement of Order.
3. Any terms specified or referred to by the Seller in its Acknowledgement of Order shall override any of the Conditions with which it is inconsistent.

4. AGREEMENT

1. The Seller shall be bound by the Contract only on dispatch of the Acknowledgement of Order signed by a duly authorised signatory of the Seller. A quotation given by the Seller is not an offer capable of acceptance to make a binding contract.
2. The Customer shall immediately notify the Seller of any material error in the Acknowledgement of Order.
3. If any term put forward by the Customer is inconsistent with these Conditions or with any other term specified by the Seller, the Acknowledgement of Order shall be deemed a counter-offer capable of acceptance by any conduct by the customer indicating intention to proceed with the transaction.

5. DELIVERY

1. Unless otherwise specified in the Acknowledgement of Order, the Seller shall, by such transport and in such installments as the Seller shall determine, deliver the Goods to the location mentioned in the Seller’s Acknowledgement of Order.
2. If the Customer 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 the Seller’s fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

0. Store the Goods until actual deliver and charge the Customer for the reasonable costs (including insurance) of storage; or
1. Serve written Notice on the Customer requiring him to accept delivery of the Goods within twenty-one days from the date of Notice (without prejudice to any other right or remedy the Seller may have). In the event that the Customer fails to comply with the Notice the Seller may 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: or
2. The exercise by the Seller of its right of termination under this clause shall be without prejudice to any rights or damages or other remedy, which the Seller may have. The Seller's foregoing right of termination shall not be affected by any previous waiver of its rights.
3. Where the Goods are despatched and packaged for delivery at the request of the Customer, the cost shall be charged as an Additional item. The carrier shall be deemed to be the Customer's Agent.

6. EXPORT TERMS

1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expressing which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 6 shall (subject to any special terms agreed in writing between the Customer and the Seller) apply notwithstanding any other provisions of these Conditions.
3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country or destination and for the payment of any Additional Items. The Customer should specify in writing any specific design modifications required by safety, consumer or product law and/or regulations applicable to the Goods.
4. Unless otherwise agreed in writing between the Customer and the Seller, the Goods shall be delivered ex works.
5. The Customer 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
6. Unless otherwise agreed between the Seller and the Customer and confirmed in the Acknowledgement of Order, payment of all amounts due to the Seller shall be made in pounds sterling and shall be made (at the option of the Seller) by means of a credit transfer cheque or bankers draft payable to the Seller and drawn upon a London Clearing Bank. The Customer shall be responsible for all Banking charges incurred.
7. At the option of the Seller payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Customer in favour of the Seller and confirmed by a Clearing House Bank in England acceptable to the Seller.

7. TIME FOR DELIVERY AND INSTALLATION

1. Any delivery or installation time or date mentioned by the Seller in its Acknowledgement of Order or otherwise is an estimate only and not a term of the Contract.
2. If delivery is delayed by any circumstances outside the Seller's reasonable control (including, without limitation, war, civil disorder, natural disaster, fire, flood, theft, industrial dispute, delay by suppliers carriers or other sub-contractors, inability to obtain materials, layout or manufacturing services from usual sources, manufacturing faults, or acts or omissions of the Customer) the time for delivery shall be extended until a reasonable time after such circumstances have ended.
3. The Customer's acceptance of delivery of the Goods shall constitute a waiver of any claim by the customer in respect of delay.

8. ACCEPTANCE

Subject to the Customer's rights of examination under the Sale of Goods Act 1979 Section 35(2) and except in a Consumer Sale, the Goods shall be deemed accepted by the Customer and in all respects in accordance with the Contract on signature by the Customer or his agent of the Seller's delivery note.

9. PRICE

1. The price payable under the Contract is ex-works unless otherwise specified in the Acknowledgment of Order together with any Additional Items chargeable in respect of the Goods or the Services supplied under the Contract. Unless otherwise specified in the Seller's Acknowledgement of Order the price specified is net, and no deduction for early settlement or for any set-off or counterclaim may be made.
2. The Seller shall be entitled to make a reasonable additional charge in respect of extra costs incurred because of a delay, suspension or variation at the Customer's request of delivery of the Goods or of performance of the Services.
3. The prices do not include packaging unless otherwise specified in the Acknowledgement of Order as an Additional Item.
4. Any Additional Items shall be added to the price payable in accordance with 10.1 unless otherwise agreed.

10. PAYMENT

1. Unless otherwise specified in the Acknowledgement of Order, the following terms of payment shall apply:
 0. Unless otherwise agreed in writing between the Seller and the Customer, a deposit of 100% of the price specified in the Acknowledgment of Order, shall be payable immediately on receipt of the Acknowledgement of Order and before delivery shall commence.
2. Time of payment shall be the essence of the Contract.

11. RISK

Risk in respect of any item of the Goods shall pass to the Customer on delivery of such item to the exterior of the premises at the delivery location. The Customer is responsible for arrangement of insurance.

12. RESERVATION OF TITLE

1. Property in the Goods shall pass to the Customer upon payment (meaning, in relation to a cheque or other bill of exchange or promissory note, honouring of the cheque bill or note) of all amounts due to the Seller and for which payment is then due.
2. Until payment as specified under 12.1 above (but subject to 12.3 below):
 0. property in the Goods shall remain with the Seller
 1. the Customer shall keep the Goods in its possession as bailee and take all reasonable care of it and keep it properly maintained and identifiable as the Seller's property
 2. the Customer shall keep the Goods fully insured with a reputable insurer
 3. Failure to pay the full amount when due shall give the Seller or its employees or agents the right to repossess the Goods (and enter the Customer's premises for that purpose if necessary) with or without notice and without liability and, at its option, to avail itself of any other legal remedy.
3. Whilst the Customer retains possession of the Goods and the Seller has not given notice of intention to recover possession, the Customer may (acting on its own behalf and not as agent for the Seller) sell the Goods in the ordinary course of its business.
4. If before payments as specified under 12.1 above the Customer sells or installs the Goods, the Seller shall be entitled absolutely to the proceeds of the sale notwithstanding that such proceeds may exceed the amount due under the Contract, and the Customer shall pay such proceeds or proportion into a separate bank deposit account and shall hold the same as trustee for the Seller and pay the same to the Seller on demand.
5. The rights accruing to the seller pursuant to this Clause shall be binding upon the Customer or any Receiver, Administrative Receiver, Liquidator, Supervisor or Nominee appointed in respect of its estate (notwithstanding the prior termination of these conditions for any reason) and their possession of the Goods shall be subject to those rights.
6. Where the Goods are attached to either buildings or plant or machinery of the Customer, the Customer agrees that it is not its intention that the Goods thereby become fixtures and fittings or part of the plant or machinery, but the Goods shall remain as chattels and be severable from the buildings or plant or machinery.

13. SPECIAL MANUFACTURE

1. If the Goods are to be manufactured specially for the Customer, the Customer shall provide the Seller with all technical specifications, drawings and information that may be reasonably required by the Seller for the manufacture of the Specials. The Customer shall be responsible for ensuring the accuracy of such technical specifications etc and providing the Seller with this within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
2. The Seller shall be obliged to comply with the specifications provided by the Customer only as far as it is reasonably practicable to do so. In the absence of any direction to the contrary by the Customer, the Seller shall be entitled to rely upon the usual trade interpretation of any terms employed by the Customer.
3. The Customer warrants that any specification, design article or other material supplied by the Customer does not infringe any patent registered design, copyright design, right trademark, trade name or other intellectual or industrial property right of a third party and may lawfully be used, reproduced and supplied by the Seller. The customer shall indemnify the Seller against all damages and costs for which the Seller may be liable and against all costs that the Seller may incur in relation to any proceedings in respect of any allegation of such infringement, use, reproduction or supply.
4. The Customer shall not be entitled to cancel the order for the Specials except with the agreement in writing of the Seller and on terms that the Customer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses of whatever nature incurred by the Seller as a result of the cancellation.

14. FABRIC MATERIALS

1. When cover fabric material is supplied as specified by the Customer the Seller will always apply the selvedge edge of the material to the side of the Goods. If the Customer requires a different application of the material it is essential the Customer specifies the requirement prior to the Acknowledgement of Order. The Seller will not otherwise alter the position of the material without payment of an Additional charge.
2. Where the Customer supplies the fabric material to the Seller, it shall be responsible for ensuring the material meets all relevant and current safety legislation (and without limitation, but particularly as to flammability) and shall produce all documentation certification as requested by the Seller to establish compliance with such legislation.
3. Where the Customer requests the Seller to provide fabric material and/or a certain treatment, finish or modification to the material by a Third Party, the costs of the fabric material and/or the Third Party shall be an Additional Item

4. The Seller shall not be responsible for any delay in the time or date for delivery or installation because of any changes in the specification of the fabric as requested by the Customer or any delay caused by the Third party.

15. WARRANTIES

THE TERMS SET OUT IN CLAUSES 15 AND 16 DEFINE THE CUSTOMER'S RIGHTS IN RESPECT OF ANY LOSS OR DAMAGE CAUSED BY THE GOODS. CUSTOMERS ARE ADVISED TO READ THESE CLAUSES CAREFULLY. PROVIDED THAT NOTHING IN THIS CONTRACT SHALL RESTRICT OR EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF THE SELLER OR EFFECT THE STATUTORY RIGHTS OF THE CUSTOMER IN THE CASE OF A CONSUMER SALE.

1. If on delivery there is any damage, defect or shortage in the Goods, the Seller shall as soon as reasonably practicable replace or repair the damaged or defect or missing items.
2. If within 12 months after manufacture, any defect (other than normal wear and tear, or corrosion) appears in the materials or workmanships of the Goods the Seller shall at its option make good the defect, replace the same or issue a credit note.
3. The Seller shall be obliged under 15.2 above only if:
 0. The Goods have been used and maintained properly and in accordance with accepted practice and with any recommendations made by the Seller and have not been modified or misused; and
 1. No attempt has been made by the Customer to rectify, dismantle or alter the Goods in any way; and
 2. The Customer has given notice to the Seller within 48 hours after the appearance of the defect
4. The description of the Goods in the Seller's catalogue, Acknowledgement of Order or elsewhere which denote the principal exterior wood and/or veneer and/or finish, shall not be taken to mean that no other material has been used by the Seller in the production of the Goods
5. The Seller cannot ensure due to the nature of specified material used in manufacture that highly figured woods, inlays and bandings such as Rosewood, Kingwood, Burr Veneers, Satinwood, Flame Mahogany and Tulipwood (and without limitation as to such material) which are subject to minor movement when exposed to different atmospheric conditions such as central heating, air conditioning and humidity that such material will not manifest checking and minor cracking at any time.
6. Whilst the Seller cannot ensure the production of exact matching finishes in the Goods due to the extensive use of natural materials and individual finishing processes, nevertheless the Seller will take such reasonable steps as can be taken to achieve a matching finish.

16. EXCLUSION OF LIABILITY

THE SELLER'S PRICES ARE KEPT AS COMPETITIVE AS POSSIBLE. CUSTOMERS HOWEVER SHOULD NOTE THE EXCLUSION OF CONSEQUENTIAL LOSS AND THE LIMITATION OF LIABILITY. ACCORDINGLY CUSTOMERS SHOULD CHECK THEIR OWN INSURANCE COVER FOR LOSS OR DAMAGE THEY MAY SUSTAIN. THESE DO NOT AFFECT A CUSTOMER'S STATUTORY RIGHTS IN THE CASE OF A CONSUMER SALE.

1. To the extent permitted by statute, the Seller's obligations under these Conditions shall be in substitution for and the Customer waives any claim in respect of any other conditions, warranties or terms (whether express implied pursuant to statute or otherwise and in particular but without limitation, any conditions as to satisfactory quality and fitness for purpose under Section 14(2) and (3) of the Sale of Goods Act 1979 or Section 4(2) and (5) of the Supply of Goods and Services Act 1982 and any term as to care and skill under Section 13 of the Supply of Goods and Services Act 1982) and any other obligations or duties whatsoever (whether in contract or negligence or pursuant to statute or otherwise) of the Seller, its employees and subcontractors.
2. The Seller shall not be liable to the Customer for any consequential loss or damage of whatever nature (including without limitation, loss of use, production, profits, custom or goodwill and increased operating expenses) and however arising (whether from breach of contract or negligence or otherwise) save for personal injury or death caused by a defect in the Goods.

17. LIMITATION OF LIABILITY

The Seller's total liability for any claims of whatever nature and however arising (whether from breach of contract or negligence or otherwise) against the Seller its employees and sub-contractors shall be limited to £1,000 (one thousand pounds or cost of goods (whichever is less)).

18. CUSTOMER'S DEFAULT

If the Customer shall fail to observe or perform any of these Conditions or pay any stage payments as specified in the Acknowledgement of Order or if any distress or execution shall be levied on the Customer's property or if the Customer shall make or offer to make any arrangement with creditors or (where the customer is an individual or firm) if any petition in bankruptcy is presented against the Customer or (where the Customer is a company) if any receiver or administrative receiver of the Customer's assets shall be appointed or if any resolution or petition to wind up the Customer shall be passed or presented, the Seller shall be entitled (in addition to any other rights or remedies) immediately to suspend performance of the seller's obligations under the Contract, or to terminate the Contract without notice (and without prejudice to any other rights of the Seller), or to suspend and later terminate.

19. CANCELLATION

1. The Customer may only cancel its Order for Goods provided goods are items in stock:

0. it is not to be made to order;
 1. the Seller has agreed in writing;
 2. The cancellation is at least 30 days before the date specified for delivery in the Acknowledgement of Order
 3. The Seller retains from the deposit a reasonable amount to cover such costs and expenses it has incurred and/or for which a commitment has been made prior to the cancellation.
2. The cancellation of the Order shall be without prejudice to all other rights and remedies of the Seller
 3. In the case of delivery by installments or stage payments, the Customer shall not be entitled to cancel the Order except as provided for by this Clause 19.

20. SUB-CONTRACTING

The Seller may sub-contract the performance of all or any of its obligations under the Contract.

21. ASSIGNMENT

Neither party may assign or transfer any rights under the Contract without the prior written consent of the other party.

22. VARIATION

The Customer shall not rely on any variation of the Contract or waiver of any of its terms unless contained in or evidenced by a letter or facsimile transmission sent by or on behalf of the Seller.

23. NOTICE

Any notice to be given hereunder shall be given by delivering the same personally or by sending the same by registered post or by facsimile transmission or electronic mail message to the address of the relevant party set out in this Agreement or to such other address as may be notified to the other party for such purpose. Such notice shall be deemed when sent by registered post and in the absence of evidence of earlier receipt to be delivered 7 days after despatch and shall be deemed when sent by telefaxed transmission or electronic mail message provided that the party giving the notice proves that the registered envelop containing the notice was correctly addressed or proves the date and time of the facsimile transmission or electronic mail message. Any communication by electronic mail shall be deemed to have been made on the day on which the communication is first stored in the other party's electronic mailbox.

24. LAW AND JURISDICTION

The Contract shall be subject to and construed in accordance with English law, and any dispute arising out of the Contract shall be subject to the exclusive jurisdiction of the English Courts.