

TERMS AND CONDITIONS OF CAREWJONES.CO.UK LTD FOR TRADE CUSTOMERS

These terms and conditions are for use with customers dealing in the course of a trade or business only. In the event that you are a consumer acting outside of the course of your trade or business please contact us immediately. If you are a consumer these terms and conditions will not in any way affect any statutory rights to which you are entitled.

Between:

- (1) **Carewjones.co.uk Ltd** (Company Number 07848755) whose trading address is Studio 1 Fairbank Studios, Lots Road, Chelsea, London SW10 0NS (the "**Company**" or "**we, us or our**"); and
- (2) The "**Customer**" or "**you/your**" as specified in the Offer.

YOUR ATTENTION IS DRAWN IN PARTICULAR TO CLAUSE 8 (LIMITATION OF LIABILITY)

1. Interpretation

1.1 In these Terms, the following definitions apply:

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

"Terms" means these terms and conditions as amended from time to time in accordance with clause 12.7.

"Contract" means the contract between us for the supply of Goods (and any Services, if applicable) in accordance with the Specification the Offer and these Terms;

"Offer" has the meaning given to it in clause 2.3;

"Contract Price" has the meaning given to it in clause 7.1;

"Force Majeure Event" has the meaning given to it in clause 12.1.1;

"Goods" means the goods specified on the Specification or any other goods supplied by us to you;

"Specification" means the specification of the Goods (and Services, if applicable) including any relevant plans or drawings and quotation prepared by us, and where more than one Specification has been prepared, shall mean the final Specification sent to you;

"Services" means, if applicable, any measuring, design or other services specified on the Specification or any other services performed by us for you.

1.2 In these Terms, the following rules of construction apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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;

1.2.4 any phrase introduced by the terms include, including, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes faxes and e-mails.

2. Basis of Contract

2.1 We will issue you with the Specification, which is valid for a period of 3 months from its date of issue.

2.2 In the event that you wish to vary your order following our issue to you of the Specification, we will provide you with an amended Specification. No variations will be accepted by us or form part of the Offer unless they are expressly set out in the Specification.

2.3 When you confirm that you wish to proceed with your order, we will issue a deposit invoice to you. The issue of the deposit invoice shall amount to an offer on the terms of the final Specification issued by us in accordance with these Terms ("**Offer**").

2.4 The Offer shall only be deemed to be accepted when you send and we receive in cleared funds payment of the deposit due as specified in the deposit invoice issued to you at which point and on which date the Contract shall come into existence.

2.5 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter or advertising issued by the

Company and any descriptions or illustrations of Goods or descriptions of the Services contained in our catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract or have any contractual force.

2.7 These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

3.1 Following your acceptance of the Offer, we will arrange for the manufacture of the Goods in accordance with the description of the Goods contained in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a plan or design supplied by or on your behalf, you warrant that our use of said plan or design will in no way infringe any third party's intellectual property rights.

3.3 We reserve the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Collection or Delivery of Goods

4.1 You or your agent may collect the Goods from us after we notify you that the Goods are ready for collection/delivery at a time agreed between you and us. If you require delivery of the Goods we will arrange for the Goods to be delivered to such location as the parties may agree ("**Delivery Location**") at any time after we notify you that the Goods are ready.

4.2 Delivery of the Goods shall be completed on collection of the Goods by you or your agent or on the Goods' arrival at the Delivery Location.

4.3 Any dates for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 Failure to attend delivery may result in delays and Goods being returned to us. We may charge you for any return visits made as a result of failure to take delivery of the Goods.

4.5 If you fail to collect the Goods or accept or take delivery of the Goods within 30 days of us notifying you that the Goods are ready, then except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Goods:

4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 30th day following the day on which we notified you that the Goods were ready; and

4.5.2 we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).

4.6 If 60 days after we notified you that the Goods were ready for collection/delivery you have not collected the Goods or accepted or taken delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.

4.7 We may arrange collection of or deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

4.8 Due to the nature of the Goods you should inspect them on delivery or collection and we accept no liability whatsoever for any loss of or damage to the Goods whilst in transit unless we are notified with details of the damage within 24 hours of delivery and this is confirmed in writing within 7 days of delivery.

5. Quality of Goods

5.1 We endeavour to source all Goods we supply to you from reputable manufacturers. Where the manufacturer of the Goods has provided us with any warranty or guarantee we will endeavour to transfer to you the benefit of such warranty or guarantee.

5.2 Subject to the rest of this clause 5 and clause 8 (Limitation of Liability) we agree (in our discretion) to repair (if possible), replace free of charge

- or refund any sums paid by you for any Goods which in our reasonable opinion are defective but only if:
- 5.2.1 such fault is notified to us within 24 hours of you or your agent collecting the Goods or the delivery of the Goods and this is confirmed in writing within 7 days of collection or delivery; and
 - 5.2.2 we (or our representatives) are given a reasonable opportunity after receiving the notice of examining the Goods in situ or you (if asked to do so by us) return the Goods to us, at such address specified by us, for the examination to take place there.
- 5.3 We shall not be liable under clause 5.2 if:
- 5.3.1 you make any further use of such Goods after giving notice of a defect;
 - 5.3.2 the defect arises because you failed to follow our or our manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no such instructions) good trade practice; or
 - 5.3.3 you alter or repair (or procure the alteration or repair of) the Goods without our prior written consent.
- 5.4 Any defective Goods or parts thereof that we replace in accordance with this clause 5 or otherwise shall become, or remain, our property.
- 5.5 The terms of this clause 5 will apply to any repaired or replacement Goods we supply to you.
- 5.6 Any refunds paid in accordance with this clause 5 will normally be paid by the same method as you paid for your original order and we will make every effort to refund your money promptly.
- 6. Title and Risk**
- 6.1 The risk in the Goods shall pass to you on collection of the Goods by you or your agent or completion of delivery or deemed delivery.
- 6.2 Title to the Goods shall not pass to you until you or your agent has collected the Goods or you have taken delivery of them and we have received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods and any Services; and
 - 6.2.2 any other goods or services that we have supplied to you in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to you, you shall:
- 6.3.1 hold the Goods on a fiduciary basis as our bailee;
 - 6.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
 - 6.3.3 notify us immediately if you become subject to any of the events listed in clause 9.1.2 to 9.1.10; and
 - 6.3.4 give us such information relating to the Goods as we may require from time to time,
- but you may resell or use the Goods in the ordinary course of your business.
- 6.4 If, before title to the Goods passes to you, you become subject to any of the events listed in clause 9.1.2 to clause 9.1.10, or we reasonably believe that any such event is about to happen and we notify you accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.
- 7. Prices and Payment**
- 7.1 The price for the Goods and any Services shall be the price set out in the Specification or as otherwise notified in writing by us to you ("**Contract Price**"). We may need to vary the price in accordance with the rest of this clause 7. Delivery costs (if applicable) shall not be included within the Contract Price and you will be notified of such costs in writing by us to you.
- 7.2 In the event that you wish to vary the Specification after we have entered into the Contract, we reserve the right to increase the Contract Price or make additional charges by giving notice to you.
- 7.3 You shall pay a proportion of the Contract Price (usually 50%) at the time you accept the Offer and we will invoice you at this time and payment will be due immediately.
- 7.4 The balance of the Contract Price (usually 50%) plus delivery charges (if applicable) (the "**Final Instalment**"), shall be payable by you when we notify you that the Goods will be ready to collect or deliver in approximately 14 days time. We will invoice you at this time and payment is due immediately. Any delay in paying the Final Instalment shall cause a corresponding delay in any collection or delivery date.
- 7.5 We accept payment by BACS, cheque, cash and most credit and debit cards. Unfortunately we do not currently accept American Express. You shall pay each invoice submitted by us in full and in cleared funds and time for payment shall be of the essence of the Contract.
- 7.6 Unless otherwise stated, all amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 7.7 Without limiting any of our other rights or remedies, if you fail to make any payment due to us under the Contract by the due date for payment ("**Due Date**"), we shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Lloyds TSB Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.8 All amounts due under the Contract shall be paid in full without any deduction or withholding except as required by law and we shall be entitled to assert any credit, set-off or counterclaim against you in order to justify withholding payment of any such amount in whole or in part.
- 8. Limitation of Liability – Your attention is particularly drawn to this clause**
- 8.1 Subject to clause 8.5 we will not be liable to you in the following circumstances:
- 8.1.1 Any defect in the Goods arising from fair wear and tear, wilful damage, accident or negligence, by you or a third party;
 - 8.1.2 If you use the Goods in a way that we do not recommend, you fail to follow our instructions, or you undertake any alteration or repair without our prior written approval;
 - 8.1.3 If you fail to adhere to any care and maintenance instructions provided with the Goods either by us or the manufacturer;
 - 8.1.4 Any imperfection inherent in the manufacturing process relevant to the Goods;
 - 8.1.5 Any errors or omissions arising from measurements and dimensions supplied by you or your agent.
- 8.2 Subject to clauses 8.3 to 8.5, if we fail to comply with the Contract, we shall only be liable to you for any direct losses that you suffer as a result of our failure to comply (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise) that are a foreseeable consequence of such failure.
- 8.3 Subject to clause 8.5, we will not be liable (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) for any indirect or consequential losses that result from our failure to comply with the Contract or in connection with the Contract nor for any losses that fall into the following categories:
- 8.3.1 loss of income or revenue;
 - 8.3.2 loss of business or goodwill;
 - 8.3.3 loss of profits;
 - 8.3.4 loss of anticipated savings;
 - 8.3.5 loss of data; or
 - 8.3.6 waste of management or office time.
- 8.4 Subject to clause 8.5, in no event shall our total liability for all and any claims or losses arising out of or in connection with this Contract (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) exceed the price you paid for the Goods.
- 8.5 Nothing in this Contract excludes or limits in any way our liability for:
- 8.5.1 death or personal injury caused by our negligence;
 - 8.5.2 fraud or fraudulent misrepresentation;
 - 8.5.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 8.5.4 defective products under the Consumer Protection Act 1987;
 - 8.5.5 any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.
- 8.6 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9. Termination**
- 9.1 Without limiting its other rights or remedies, each party may terminate the

Contract with immediate effect by giving notice in writing to the other party if:

- 9.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing of the breach;
 - 9.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 9.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 9.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 9.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 9.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 9.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 9.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 9.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 9.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.2 to clause 9.1.9 (inclusive);
 - 9.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 9.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting our other rights or remedies, we may terminate the Contract:
- 9.2.1 by giving you 30 days' written notice;
 - 9.2.2 with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment
 - 9.2.3 where we are subject to a Force Majeure Event, in accordance with clause 12.1.3.
- 9.3 Without limiting our other rights or remedies, we shall have the right to cease manufacture of the Goods, suspend all further collections or deliveries of Goods (or, if relevant the Supply of Services) under the Contract or any other contract between us and you if:
- 9.3.1 you fail to pay any amount due under this Contract on the due date for payment; or
 - 9.3.2 you become subject to any of the events listed in clause 9.1.2 to 9.1.10 or we reasonably believe that you are about to become subject to any of them.

10. Consequences of Termination

- 10.1 On termination of the Contract for any reason:
 - 10.1.1 you shall immediately pay to us all of our outstanding unpaid

invoices and interest and, in respect of any Goods or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;

10.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

10.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. Data Protection

We will comply with our obligations under the Data Protection Act 1998 in respect of your personal data we handle. You agree to us providing your details to third parties (e.g. manufacturers, sub-contractors and delivery agents) in order to supply the Goods (and carry out any Services, if applicable) under the Contract.

12. General

12.1 Force majeure:

12.1.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.1.2 We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event.

12.1.3 If the Force Majeure Event prevents us from providing any of the Goods (and Services if applicable) for more than 30 days, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

12.2 Assignment and subcontracting:

12.2.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party.

12.2.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.

12.3 Notices:

12.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

12.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or email, on the next Business Day after transmission.

12.3.3 This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action.

12.4 Waiver and cumulative remedies:

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

12.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

12.5 Severance:

12.5.1 If a court or any other 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 deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

12.5.2 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.

- 12.6 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 **Variation:** Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by us.
13. **Governing Law and Jurisdiction:** This 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.