

SOFTBOX TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 Definitions:

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 13.3.

Contract: the contract between SBS 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 SBS.

Force Majeure Event: event / circumstance beyond a party's reasonable control.

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

Order: the Customer's order for the Goods.

Order Acknowledgement: SBS's written acknowledgement of an Order.

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

SBS: Softbox Systems Limited (registered in England and Wales with company number 03112875) whose registered office is at Unit 1 Ridge Way, Drake's Drive, Long Crendon, Aylesbury, Bucks, HP18 9BF.

1.2 Interpretation:

A reference to **writing** or **written** includes emails.

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 Order shall only be deemed to be accepted when SBS issues an Order Acknowledgement, at which point the Contract shall come into existence.

2.3 Any samples, drawings or advertising produced by SBS and any descriptions or illustrations contained in SBS's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.4 A quotation for Goods given by SBS shall not constitute an offer. A quotation shall only be valid for [20] Business Days from its date of issue.

3. Goods

3.1 Test results for the Goods shown in SBS documents, marketing materials or other communications (**Results**) illustrate the performance of the Goods under precisely controlled packing and testing conditions in an environmental chamber. The temperature profiles used for testing are designed to simulate fluctuations in ambient temperature experienced during live shipping. However, as SBS has no control for what may happen during a live shipment, no liability will be accepted for any temperature excursions, resultant loss of Goods or compensation claim that may result from the failure of the Goods to perform in line with the Results.

3.2 SBS shall have no liability in respect of any variation in the dimensions of the Goods where such variation comes within the bounds of agreed tolerances.

3.3 The colour of the Goods is subject to reasonable variation.

3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify SBS 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 professional costs and expenses) suffered or incurred by SBS in connection with any claim made against SBS for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with SBS's use of the Specification. This clause 3.4 shall survive termination of the Contract.

3.5 SBS reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1 The Goods will be delivered in accordance with the Incoterms® 2010 rule stated in the Order Acknowledgement, which is incorporated into the Contract.

4.2 Any dates or periods of time quoted for delivery are approximate only, and the time of delivery is not of the essence. Any stipulated period of time for delivery shall date from the issue of the Order Acknowledgement. SBS shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide SBS with adequate delivery instructions or any other instructions relevant to the supply of the Goods.

4.3 If SBS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. SBS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide SBS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If SBS delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from

the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

4.5 SBS may 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 the Customer to cancel any other instalment.

5. Quality

5.1 SBS warrants that on delivery the Goods shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to SBS within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) SBS is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by SBS) returns such Goods to SBS's place of business at the Customer's cost,

SBS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 SBS shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow SBS's oral / written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of SBS following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without written consent of SBS;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, SBS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty per 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by SBS.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer in accordance with the relevant Incoterms® 2010 rule.

6.2 Title to Goods shall not pass to the Customer until SBS receives payment in full (in cash / cleared funds) for the Goods and any other goods that SBS has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as SBS's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify SBS immediately if it becomes subject to any of the events listed in clause 10.1; and

(e) give SBS such information relating to the Goods as SBS may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before SBS receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as SBS's agent; and

(b) title to the Goods shall pass from SBS to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy SBS may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) SBS may at any time:

(i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to recover them.

7. Intellectual Property Rights

7.1 If the Goods are to be manufactured or any process is to be applied to the Goods by SBS in accordance with a specification or design submitted by the Customer, the Customer shall (without prejudice to the other rights and remedies of SBS) indemnify SBS in full against any loss, costs, damages, charges, expenses and other liabilities suffered by SBS as a result of or in connection with:

(a) any allegation relating to infringement of any patents, copyright, trademarks and service marks, rights in designs, database rights, rights to use or

any other intellectual property rights of any kind of any person, firm or company and/or passing off and/or unauthorised use of confidential information which results from SBS's use of the Customer's specification or design; and/or

(b) any other liability of any kind to any third party including without limitation for defective goods, personal injury or death to the extent that it arises from the Customer's specification or design.

8. Price and payment

8.1 The price of the Goods shall be the price set out in the Order Acknowledgement (**Price**). The Price applies solely to the quantity of Goods ordered and must not be taken to apply to any subsequent order for any lesser quantity of the Goods.

8.2 SBS 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 SBS'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 SBS adequate or accurate information or instructions.

8.3 The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to SBS at the prevailing rate, subject to the receipt of a valid VAT invoice.

8.4 SBS may invoice the Customer for the Goods on or at any time after the completion of delivery.

8.5 The Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms and to the bank account stated in the Order Acknowledgement. Time for payment is of the essence.

8.6 If the Customer fails to make any payment due to SBS under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). SBS 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 SBS to the Customer.

9. Cancellation

9.1 Except as provided in these Conditions, no Order shall be cancelled except by mutual consent. SBS will not consent to cancellation if processing of the Goods has commenced, special stock has been purchased or manufactured for the Order, Goods have been assembled for loading, loading has commenced or the Goods are in transit.

10. Termination

10.1 Without limiting its other rights or remedies, SBS may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in SBS's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without limiting its other rights or remedies, SBS may suspend provision of the Goods under the Contract or any other contract between the Customer and SBS if the Customer becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(d), or SBS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, SBS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to SBS all of SBS's outstanding unpaid invoices and interest.

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in force.

11. Limitation of liability

11.1 Nothing in these Conditions shall limit or exclude SBS'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; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

11.2 Subject to clause 11.1:

(a) SBS shall under no circumstances whatsoever 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) SBS'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 in no circumstances exceed the price of the Goods.

12. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for more than three months, SBS may terminate this Contract with immediate effect by giving written notice to the affected party.

13. General

13.1 Assignment and other dealings.

(a) SBS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its contractual rights or obligations.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its contractual rights or obligations without the prior written consent of SBS.

13.2 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.4 **Waiver.** 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.6 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 or other next working day delivery service, commercial courier, or email.

(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 13.6(a); if sent by pre-paid first class post or other next working day delivery service, 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 email, 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.

13.7 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

13.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.