

Drop Shipment

Terms & Conditions for Sale of Goods 2018

1. DEFINITIONS

- a. In this agreement (the "Agreement") the terms and conditions (the "Terms and Conditions") shall include the following words defined as:
 - i. "Goods" means the articles to be supplied to the Buyer by the Seller;
 - ii. "Seller" means Malulu Ltd, Lintot House, 20 Fairbank Road, Southwater, Horsham, West Sussex, UK – company number 07003490;
 - iii. " Buyer" means the organisation or person who buys the Goods at drop shipment value;
 - iv. "Buyer's Purchaser" means the organisation or person who buys the Goods from the Buyer at retail value;
 - v. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.

2. GENERAL

- a. These Terms and Conditions of this Agreement shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- b. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. ORDER PLACEMENT

- a. The Buyer must place an order with the Seller by emailing the Seller with a delivery note to include the following details:
 - i. item description and quantity;
 - ii. delivery address.
- b. The Seller shall respond to the Buyer's order by emailing written acknowledgment within 2 (two) working days to the Buyer's email address.
- c. The Seller's acceptance of the Buyer's order shall be effective on written confirmation of the Good's being in stock.
- d. In the event Goods are out of stock, the Seller will notify the Buyer within 2 (two) working days and give the Buyer the option to delay delivery until Goods back in stock, amend the order to a different Good, or cancel the order.

4. PRICE AND PAYMENT

- a. The drop shipment price paid by the Buyer to the Seller shall be 20% (twenty per cent) of the retail value for Goods as set by the Seller, which includes delivery, unless otherwise stated in writing by the Seller.
- b. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller, and an invoice will be provided by the Seller to the Buyer at the end of each calendar month.
- c. Where credit is offered payment of the price and any other applicable costs shall be due within 14 days of the date of the sales invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered, payment will be required before release of Goods by the Seller.
- d. The Seller shall be entitled to charge interest on overdue sale invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2% (two per cent) per annum above the base rate of the Barclays Bank Plc.
- e. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - i. require payment in advance of delivery in relation to any Goods not previously delivered;
 - ii. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery.

5. DESCRIPTION

- a. Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

6. SALES AND DISTRIBUTION BY BUYER

- a. The price of the Goods sold by the Buyer to a third party shall not be less than the Seller's quoted retail price as set by the Seller.
- b. The Buyer shall only sell the Goods at locations agreed in writing by the Seller and shall not sell Goods on the Internet except with prior written consent from the Seller.

7. SAMPLE

- a. Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

8. DELIVERY

- a. The Seller shall dispatch orders placed by the Buyer, provided the Goods are in stock, to arrive within 5 (five) working days of the order being received by the Seller.

- b. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer's delivery note. The Buyer's Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- c. In the event that Goods are out of stock, following the written notification by the Seller to the Buyer, it will be the responsibility of the Buyer to email the Seller on the required course of action. The Seller will not dispatch the order until confirmation from the Buyer, nor will the Seller be liable for any additional costs as a result of Goods being out of stock.
- d. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer's Purchaser, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer and or the Buyer's Purchaser shall be liable for any expense associated with such storage.
- e. Any damages, shortages, over deliveries and duplicated orders should be reported by the Buyer to the Seller within 7 (seven) working days of receipt, along with photographic evidence as necessary, to enable replacement or refund.

9. RISK

- a. Risk in the Goods shall pass to the Buyer upon receipt of the Goods by the Buyer's Purchaser.

10. TITLE

- a. Title in the Goods shall not pass to the Buyer's until the Seller has been paid in full for the Goods.

11. RETURN OF UNUSED GOODS

- a. All Goods are sold on a firm sale basis, i.e. the Seller will not take back any Goods not required or sold by the Buyer to the Buyer's Purchaser, unless otherwise agreed in writing, in which case the following terms apply.
- b. In the event the Buyer's Purchaser wishes to return Goods for exchange or refund, or they have not received the Goods they must:
 - i. notify the Buyer in writing with photographic evidence within 10 (ten) working days of taking delivery of any damage to Goods (and not caused post-delivery), of any error in quantity or description of Goods;
 - ii. notify the Buyer in writing within 10 (ten) working days if the Buyer's Purchaser wishes to exchange a Good for a different size, pattern or collection.
 - iii. notify the Buyer in writing within 10 (ten) working days from the date of delivery if Goods has not been received by the Buyer's Purchaser.
- c. The Buyer has 2 (two) working days to notify the Seller of the Buyer's Purchaser written request to return Goods for exchange or refund, or they have not received the

- Goods. Failure to make any notification in accordance with paragraphs 11.b.i, 11.b.ii or 11.b.iii of this condition, shall constitute waiver by the Buyer of all claims.
- d. The Seller will not be held responsible for Goods damaged or lost once they have been dispatched or whilst they are in transit.
 - e. The Buyer or the Buyer's Purchaser will be responsible for the cost of carriage for undamaged Goods returned for exchange or refund, and will ensure that Goods are carefully packaged to avoid damage in transit.
 - f. The Seller will be responsible for the cost of carriage for damaged Goods returned where the damage was not as a result of delivery, and the Seller will reimburse the Buyer or the Buyer's Purchaser.
 - g. Any returns must be authorised by the Seller before any credit will be given.
 - h. Where the Seller agrees to accept the return of Goods that are not damaged, the Buyer or the Buyer's Purchaser will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not be obliged to accept any Goods that are damaged in any way following dispatch by the Seller. The Seller will only accept returns that were sold by the Seller to the Buyer.
 - i. Credit of amounts due or paid in will only be given for Goods that are in saleable condition.

12. LIMITATION OF LIABILITY

- a. The Seller shall not be liable for any all loss or damage suffered by the Buyer in excess of the total drop shipment price for each individual order.
- b. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

13. INTELLECTUAL PROPERTY RIGHTS

- a. All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
- b. The Buyer may not reproduce, publish, transmit, distribute, display, modify, sell, or exploit in anyway, in whole or in part, any contents of the Seller's website, or any related software, catalogue, advertising or images for any purpose without the prior permission of Seller.

14. FORCE MAJEURE

- a. The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable

control, including but not limited to acts of God, strikes, lock outs, accidents, war, terrorism, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

15. RELATIONSHIP OF PARTIES

- a. Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

16. ASSIGNMENT AND SUB-CONTRACTING

- a. The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

17. WAIVER

- a. The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

18. SEVERABILITY

- a. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19. GOVERNING LAW AND JURISDICTION

- a. This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.