

LITTLE SHOP OF LIMITED – TERMS AND CONDITIONS

The customer's attention is drawn in particular to the provisions of condition 10.

1. Definitions and Interpretation

1.1 **Definitions** In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England 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 condition 12.3;

Contract: the contract between Little Shop Of and the Customer for the sale and purchase of the Goods which incorporates these Conditions;

Customer: the person or firm who purchases the Goods from Little Shop Of;

Force Majeure Event: has the meaning given in condition 11;

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

Insolvency Event: has the meaning given in conditions 9.1(a) and 9.1(b);

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Little Shop Of: Little Shop Of Limited (registered in England and Wales with company number 8029482);

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, or the Customer's written acceptance of Little Shop Of's quotation, as the case may be;

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Little Shop Of.

1.2 **Interpretation** In these Conditions, the following rules apply:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

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

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 Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Little Shop Of issues a written acceptance of the Order, at which point the Contract shall come into existence. Little Shop Of reserves the right to charge the Customer reasonable cancellation charges and/or a restocking fee of 5% in the event of any such cancellation after dispatch of the Goods.

- 2.4 Any samples, drawings, descriptive matter or advertising produced by Little Shop Of and any descriptions or illustrations contained in Little Shop Of's catalogues, website or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 A quotation for the Goods given by Little Shop Of shall not constitute an offer. A quotation shall only be valid for a period of 60 day from its date of issue.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.
3. **Goods**
- 3.1 The Goods are described on Little Shop Of's website and in its catalogue.
- 3.2 Little Shop Of reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
4. **Delivery**
- 4.1 Little Shop Of shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Little Shop Of reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any).
- 4.2 Little Shop Of shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Little Shop Of notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Little Shop Of 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 Little Shop Of with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Little Shop Of 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 Little Shop Of with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within 5 Business Days of Little Shop Of notifying the Customer that the Goods are ready or Little Shop Of is unable to deliver them due to the Customer's breach of these terms then, except where such failure or delay is caused by a Force Majeure Event or Little Shop Of's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 09:00 on the 5 Business Day after the day on which Little Shop Of notified the Customer that the Goods were ready; and
- (b) Little Shop Of shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 5 Business Days after the day on which Little Shop Of notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Little Shop Of may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Little Shop Of may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **Quality**
- 5.1 Little Shop Of warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;

- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by Little Shop Of.

5.2 Subject to condition 5.3, if:

- (a) the Customer gives notice in writing to Little Shop Of within 1 (one) month of discovery that some or all of the Goods do not comply with the warranty set out in condition 5.1;
- (b) Little Shop Of is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Little Shop Of) returns such Goods to Little Shop Of's place of business at Little Shop Of's cost,

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

5.3 Little Shop Of shall not be liable for any Goods' failure to comply with the warranty set out in condition 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;
- (b) the defect arises because the Customer failed to follow Little Shop Of's oral or 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 Little Shop Of following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Little Shop Of;
- (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 their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this condition 5, Little Shop Of shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 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 Little Shop Of.

6. Title and risk

6.1 Risk in the Goods shall pass to the Customer on completion of delivery of such Goods.

6.2 Title to the Goods shall pass to the Customer upon Little Shop Of receiving payment in full (in cash or cleared funds) for the Goods.

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

- (a) store the Goods for which it has not paid separately from all other goods held by the Customer so that they remain readily identifiable as Little Shop Of'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) obtain an endorsement of Little Shop Of's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement, and on request allow Little Shop Of to inspect the insurance policy;
- (e) notify Little Shop Of immediately if it becomes subject to an Insolvency Event;
- (f) give Little Shop Of such information relating to the Goods as Little Shop Of may require from time to time; and
- (g) permit or procure permission for Little Shop Of, its agents and authorised representatives to enter

any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this condition 6.3 and/or recover the Goods.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event (as defined in condition 9.1, then, without limiting any other right or remedy Little Shop Of may have:

- (a) the Customer must immediately notify Little Shop Of of the event;
- (b) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (c) Little Shop Of may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which 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 in order to recover them.

7. Intellectual Property

7.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of Little Shop Of or (as the case may be) the third party rights owner.

7.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify, keep indemnified and hold harmless Little Shop Of from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Little Shop Of as a result of or in connection with any claim made against Little Shop Of

for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Little Shop Of's use of the Specification. This condition 7.2 shall survive termination of the Contract.

7.3 Little Shop Of may inform third parties that it provides or has provided the Goods to the Customer. The Customer licenses Little Shop Of to use its name and logo(s) for this sole purpose.

8. Price and payment

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Little Shop Of's published price list in force on the date of delivery.

8.2 Little Shop Of may, by giving notice to the Customer at any time up to 5 Business Days 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 Little Shop Of'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 Little Shop Of adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of:

- (a) the costs and charges of packaging, insurance and transport of the Goods, which the Customer shall pay to Little Shop Of; and
- (b) amounts in respect of value added tax (**VAT**), which the Customer shall pay to Little Shop Of at the prevailing rate, subject to receipt of a valid VAT invoice.

8.4 Little Shop Of may invoice the Customer for the Goods:

- (a) for new customers prior to delivery by pro forma;

- (b) for existing customers after dispatch of the Goods.
- 8.5 The Customer shall pay the invoice in full and in cleared funds within 30 (thirty) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Little Shop Of. Time of payment is of the essence.
- 8.6 Payment shall fall due in accordance with condition 8.5 and Little Shop Of shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.
- 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). Little Shop Of may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Little Shop Of to the Customer.
9. **Termination and suspension**
- 9.1 Without limiting its other rights or remedies, Little Shop Of may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things (an **Insolvency Event**);
- (b) the Customer (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business, (also an **Insolvency Event**)) (or, the Customer being a partnership, has a partner to whom any Insolvency Event applies);
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) there is a change of control of the Customer (within the meaning of S1124 of the Corporation Tax Act 2010).
- 9.2 Without limiting its other rights or remedies, Little Shop Of may suspend provision of the Goods under the Contract or any other contract between the Customer and Little Shop Of if the Customer becomes subject to an Insolvency Event, or Little Shop Of reasonably believes that the Customer is about to become subject to an Insolvency Event, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 On termination of the Contract for any reason the Customer shall immediately pay to Little Shop Of all of Little Shop Of's outstanding unpaid invoices and interest.
- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
10. **Limitation of liability**
- 10.1 Nothing in these Conditions shall limit or exclude Little Shop Of'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;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for Little Shop Of to exclude or restrict liability.
- 10.2 Subject to condition 10.1:

(a) Little Shop Of shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

- (i) any indirect, special, consequential or pure economic loss or damage;
- (ii) any loss of profits, anticipated profits, revenue or business opportunities; or
- (iii) damage to goodwill

(in each case arising as a direct or indirect result of the relevant claim); and

(b) Little Shop Of'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.

11. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events,

natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. General

12.1 Assignment and other dealings

(a) Little Shop Of may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(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 rights or obligations under the Contract without the prior written consent of Little Shop Of.

12.2 **Entire agreement** The Contract (incorporating these Conditions) 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. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Little Shop Of which is not set out in the Contract.

12.3 **Variation** Little Shop Of may at any time by written notice to the Customer alter the Order as to: (i) the quantity of the Goods; (ii) the Specification; (iii) the method of packing and delivery; (iv) the Delivery Location; and/or (v) the date for delivery.

12.4 The Customer shall not vary the Contract or the Goods except as directed in writing by Little Shop Of or with Little Shop Of's prior written consent.

12.5 **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 or 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.

12.6 **Severance** If any 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 shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address; (ii) if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and (iii) if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by email.

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

12.9 **Relationship** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between Little Shop Of and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.10 **Governing law** The 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 the law of England and Wales.

12.11 **Jurisdiction** The Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this condition shall limit Little Shop Of's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.