

TERMS & CONDITIONS

1. Prices

All prices quoted herewith for Specialist Adult and Children's chairs, Kirton H2O, Endura products, Sensory and Soft Play products, Kirton DBO products do not include carriage.

2. Prices are in the currency indicated in the current price list excluding VAT that will automatically be added to invoices unless a VAT exemption form accompanies the order.

3. Orders from private individuals will only be accepted if payment in full accompanies the order.

4. If colour is not specified on the order, stock colours may be sent at our choice.

5. Application

These Conditions apply to all sales of goods by The Kirton Healthcare Group Ltd ("the Seller") to any purchaser ("the Buyer") and shall prevail over and apply to the exclusion of any terms or conditions contained or referred to in the Buyer's order, or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by a director or other authorised representative of the Seller. Any purported provisions to the contrary are hereby excluded.

6. Quotations and Acceptance

Quotations given by the Seller may be withdrawn or revised at any time prior to the Seller's acceptance of the Buyer's order.

7. Prices

(a) The prices payable for the goods shall be those contained in the Seller's list prices current at the time of despatch. The Seller may at any time revise its prices to take into account changes in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rates.

(b) Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price.

8. Terms of Payment

(a) Payment of invoices shall unless otherwise agreed in writing be made in full without any deduction or set-off within 30 days of the date of invoice.

(b) Any extension of credit allowed to the Buyer may be changed or withdrawn by the Seller at any time.

(c) Interest shall be payable on overdue accounts at the rate of 2% per month to run from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement.

9. Delivery

(a) Whilst every effort will be made to meet delivery dates mentioned in any quotation, acknowledgement of order or elsewhere, such dates are approximate only and not of any contractual effect and the Seller shall not incur any liability by reason of failure to deliver on any particular date or dates.

(b) If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract, the Seller shall be entitled to immediate payment in full for the goods so tendered. The Seller shall be entitled to store at the risk of the Buyer any goods of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. The Seller shall without prejudice to its other rights be entitled after the expiration of 3 months from the date upon which the price became payable to dispose of the goods in such a manner as the Seller may determine.

(c) Where the Buyer requires goods to be installed and the Seller is unable to proceed on the dates agreed by the Buyer and Seller due to the Buyer's default or delay then in addition to the price will be a surcharge of 10% of the Contract price.

10. Risk

Risk shall pass on delivery.

11. Title

(a) Full and complete title to the goods shall remain the Seller until payment in full of the price therefore. Until such payment the Buyer shall have possession of the goods as bailee for the Seller and shall store the goods in such a way as to enable them to be identified as the property of the Seller, provided that if the Buyer is purchasing the goods for resale the Buyer may in the ordinary course of its business sell and deliver the goods to a third party on condition that until such payment as aforesaid the Buyer shall hold all proceeds of such sales in trust for the Seller and in a separate account. The Buyer hereby also undertakes in any such case forthwith upon being so requested by the Seller to assign to the Seller all rights and claims which the Buyer may have against its customers arising from such sales until payment is made in full as aforesaid.

(b) The Seller reserves the right to repossess any goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to the Seller's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

12. Variations

The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to 10% more or less than the quantity specified in the contract and in such event the Buyer shall pay for the actual quantity delivered.

13. Third Party Rights

The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

14. Specifications

Unless expressly agreed in writing by the Seller, all drawings, designs, specifications and particulars of weights and dimensions submitted by the Seller are approximate only and the Seller shall have no liability in respect of reasonable deviations therefrom. The Seller accepts no responsibility for any errors, omissions or other defect in any drawings, designs or specifications not prepared by or on behalf of the Seller and the Seller shall be indemnified by the Buyer against any and all liabilities and expenses incurred by the Seller arising therefrom.

15. Copyright

Copyright in all designs or specifications remains the property of the Seller.

16. Warranty and Liability

(a)(i) Save where the Seller offers an express written warranty for specific goods on alternative terms the Seller warrants that the goods will be free from defects of workmanship, design, or materials for a period of twelve months from the date of delivery.

(ii) Metal frames for dynamic seating products (Delta, Encora, Omega, Duo, Florian, Suffolk, Mini and Midi Ultima) will be warranted for a period of five years to the Buyer who enters into the Seller's Chargeable Annual Maintenance Visit by the Seller's Technical Support Team.

(iii) Metal-framed Suites and Moduform frames will be warranted for three years.

(iv) The Kirton DBO Commode stainless steel frame is warranted for a period of two years

(b) The Seller shall not be liable to the Buyer:

(i) for shortages in quantity delivered unless the Buyer notifies in writing the Seller of any claim for short delivery within 7 days of receipt of the goods.

(ii) for damage to or loss of the goods or any part thereof in transit (where the goods are carried by the Seller's own transport or by a carrier on behalf of the Seller), unless the Buyer shall notify the Seller of any such claim within 7 days of receipt of the goods or the receipt of advice note or invoice whichever shall be the earlier.

(iii) for defects in the goods caused by any act, neglect or default of the Buyer or of any third party including non-compliance with the guidance notes for interpretation of Kirton's warranty and liability provisions clause 3 (a), (b), (c), (d), (e) and (f).

(iv) where the specification and/or material has been specifically requested by the Buyer and against the recommendations of the Seller.

(c) Where the Seller is found to be liable under warranty in paragraph (a), or for the shortages, damage or loss referred to in paragraph (b) above, the sole responsibility of the Seller shall be at its option to make good any shortage or non-delivery and/or as appropriate replace or repair any goods found to be damaged or defective and/or refund the purchase price of the damaged, defective or undelivered goods.

(d) The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the cost of the defective, damaged or undelivered goods determined by net price invoiced to the Buyer in respect of any occurrence or series of occurrences. In no case will the Seller have any liability for indirect or consequential loss or loss of profit.

(e) The Seller's prices are determined on the basis of the limits of liability set out in this Condition.

The Buyer may by written notice to the Seller request the Seller to agree a higher limit of liability provided insurance cover can be obtained therefore. (The Seller shall effect insurance up to such limit and the Buyer shall pay upon demand the amount of any and all premiums. The Buyer shall disclose such information as the insurers shall require. In no case shall the Buyer be entitled to recover from the Seller more than the amount received from the insurers.)

(f) Subject to the foregoing, all conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the goods are hereby excluded and the Seller shall be under no liability to the Buyer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship or otherwise, howsoever arising and whether or not caused by the negligence of the Seller, its employees or agents SAVE THAT the Seller shall accept liability for death or personal injury caused by the negligence of the Seller.

17. Packaging

(a) The Buyer shall meet the cost of any special packaging requested by the Buyer or any packaging rendered necessary by delivery by any means other than the Seller's normal means of delivery.

(b) The Seller shall be entitled to invoice the Buyer for the cost of all pallets and other returnable packaging materials unless the same are returned to the Seller in good condition carriage paid within 30 days of the date of delivery.

18. Licences and Consents

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods by the Buyer, the Buyer shall obtain the same at its own expense and if necessary produce evidence of the same to the Seller on demand. Failure to do so shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

19. Force Majeure

(a) The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances, or events beyond the Seller's reasonable control including but not limited to Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the goods, or of raw material therefore by the Seller's normal source of supply, or the manufacture of the goods by the Seller's normal means, or the delivery of the goods by the Seller's normal route, or means of delivery.

(b) If due to such events or circumstances the Seller has insufficient stocks to meet all its commitments, the Seller may apportion available stocks between its customers at its sole discretion.

20. Insolvency and Default

If the Buyer enters into a deed of arrangement, or becomes bankrupt, or compounds with his creditors, or if a receiving order is made against him, or if (being a company) an order is made or a resolution is passed for the winding up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction), or if a receiver is appointed of or any application is made to the Court for the appointment of an administrator in respect of any of the Buyer's assets, or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or if the Buyer takes or suffers any similar action in consequence of debt or commits any breach of this or any other contract between the Seller and the Buyer, the Seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries and/or determine the rights of the Buyer under Condition 7 and/or by notice in writing to the Buyer determine the contract.

21. General

(a) Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

(b) Notices shall be deemed to have been duly given if sent by prepaid first class post or fax to the party concerned at its last known address. Notices sent by post shall be deemed to have been given three days after despatch and notices sent by fax on the date of despatch.

(c) This contract shall be governed by and construed in all respects in accordance with the Laws of England and the parties agree to submit to the jurisdiction of the English Courts.