

DECOR IRELAND TERMS AND CONDITIONS OF SALE

“**Applicable Law**” means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

“**Business Day**” means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Northern Ireland;

“**Buyer**” means the person or company and, where relevant, its partners, directors, employees officers, agents or sub-contractors (or any person holding themselves out as such), who makes an Order which is accepted by the Seller;

“**Conditions of Sale**” means the standard terms and conditions of sale set out in this document, as may be modified and updated by the Seller from time to time;

“**Contract**” means the agreement between the Buyer and Seller for the sale and purchase of the Goods incorporating these Conditions of Sale and the Order;

“**Goods**” means all those products, which the Seller agrees to supply to the Buyer and which the Buyer agrees to purchase from the Seller, which are the subject of the Contract;

“**Manufacturer**” means the person or company who produced the Goods;

“**Order**” means an order placed by the Buyer with the Seller for the supply of Goods;

“**Seller**” means Decor Ireland Ltd. Registered in Northern Ireland at 9 Rathdown Close, Lissue Industrial Estate West, Lisburn, BT28 2RB, Registered Company no. NI607376 trading as Relay Global, 9 Rathdown Close, Lissue Industrial Estate West, Lisburn, BT28 2RB.

1. GENERAL

- 1.1 These Conditions of Sale shall exclusively govern the Contract and shall supersede, override and exclude the Buyer’s purported terms of business or any other terms of business wherever stipulated or incorporated or referred to, whether in the Buyer’s Order or in any negotiations or course of dealing established between the Seller and Buyer, including any purported acceptance thereof by the Seller’s servants or agents.
- 1.2 Each Order shall be deemed to be an offer by the Buyer to purchase Goods solely on the terms and conditions of these Conditions of Sale.

2. DESCRIPTION

Any description given or applied to these Goods has been given by way of identification only and the use of such description shall not constitute a sale by description. No such descriptions shall form any part of the Contract. For the avoidance of doubt, the Buyer hereby affirms that he did not in any way rely on any description when entering into the Contract.

3. SAMPLE

Notwithstanding that a sample of the Goods might have been shown to and inspected by the Buyer, the parties hereto accept that such sample was so shown and inspected for the sole purpose of enabling the Buyer to judge for himself the quality of the bulk, and not so as to constitute a sale by sample.

4. EXTENT OF LIABILITY

- 4.1 The extent of the parties’ liabilities under or in connection with the Contract (regardless of whether such liability arises in tort, contract or any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 4.
- 4.2 Subject to clause 4.4, the Seller shall not be liable for consequential, indirect or special losses or damage of any nature.
- 4.3 Subject to clause 4.4, the Seller shall not be liable for loss of actual or anticipated profit, loss of business, loss of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of actual or anticipated savings, discount or rebate (whether actual or anticipated), harm to reputation or depletion of goodwill.
- 4.4 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 4.4.1 Death or personal injury caused by negligence;
- 4.4.2 Fraud or fraudulent misrepresentation;
- 4.4.3 Any losses which cannot be excluded or limited by Applicable Law;
- 4.4.4 Any losses caused by wilful misconduct
- 4.5 The parties agree that the exclusions and limitation of liability contained in this clause 4 are fair and reasonable in light of the Goods to be provided and the prices payable by the Buyer.
- 4.6 Subject to clause 4.4, the Seller shall not be under any liability howsoever arising in respect of any claim, action or proceedings brought by the Buyer later than 1 year following the date the cause of action arose.

- 4.7 Except as expressly stated in these Conditions of Sale, the Seller does not give any representation, warranties or undertakings in relation to the Goods. Any representation, condition or warranty which might be implied or incorporated into these Conditions of Sale by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Seller will not be responsible for ensuring that the Goods are suitable for the Buyer’s purposes. Moreover, it is the Buyer’s absolute obligation to specify clearly the product being ordered and the specification required. The Seller accept no liability for the failure of the Buyer to order the correct products or specification.

- 4.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or other information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

- 4.9 Subject to clause 4.4, the liability of the Seller shall not exceed the invoice value of the Goods.

- 4.10 Where the Seller is liable in accordance with this clause in respect of only some or part of the Goods the contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Buyer against or in respect of such other or other parts of the Goods.

- 4.11 For the avoidance of doubt, the Seller shall be under no liability in respect of any defect arising from failure to follow the manufacturer’s instructions, wear and tear, failure to store the Goods in appropriate conditions or use of Goods in abnormal working conditions.

- 4.12 A number of goods supplied by the Seller can be dangerous and it is the Buyer’s responsibility to ensure all safety and protective guidelines in relation to the Goods are followed.

5. WARRANTY

- 5.1 All Goods supplied are covered by the Manufacturer’s warranty only.

- 5.2 Warranty claims are to be made directly with the Manufacturer of the Goods.

- 5.3 The Buyer should consult the Manufacturer’s website or contact the Manufacturer directly to obtain details of the Manufacturer’s terms and conditions.

- 5.4 In the event that the Manufacturer is no longer trading, the honouring of any warranty does not pass to the Seller.

6. INDEMNITY AND INSURANCE

- 6.1 The Buyer shall indemnify the Seller from and against any losses, damages, liability, costs (including legal fees) and expenses which the Seller may suffer or incur directly or indirectly from the Buyer’s breach of any of its obligations under the Contract.

- 6.2 The Buyer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom (or Ireland if applicable) or such other country by agreement in writing with the Seller, to cover its obligations under the Contract. On request, the Buyer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

7. DELIVERY

- 7.1 The Seller shall determine the method, date and time of any delivery.

- 7.2 Any delivery dates given by the Seller are estimates only. The Buyer may cancel any item not delivered two weeks after the estimated delivery date.

- 7.3 The time of delivery shall not be of the essence of any Contract. In no circumstances shall the Seller be liable to compensate the Buyer for non-delivery, early delivery or late delivery of the Goods or for any loss or damage arising therefrom or for any failure to deliver the Goods promptly or at all.

- 7.4 The Goods are deemed to be delivered to the Buyer when the Seller makes them available to the Buyer or any agent of the Buyer or any carrier (who shall be the Buyer’s agent whoever pays its charges) at the Seller’s premises or the delivery point agreed by the parties.

- 7.5 Accepting delivery of Goods is deemed to be acceptance of these Conditions of Sale.

- 7.6 The Goods may be delivered in instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

- 7.7 If the Buyer has not taken delivery of the Goods 5 Business Days following the due date for delivery, the Seller may (at its sole discretion):

- 7.7.1 Store the Goods until actual delivery and charge the Buyer for reasonable costs (including insurance) of storage and any additional costs of carriage incurred; and/or

- 7.7.2 Sell the Goods at the best price readily available and charge the Buyer for any shortfall below the price achieved and the price under the Contract together with all storage and sale related expenses (less any payment made by the Buyer).

8. INSPECTION OF GOODS

- 8.1 The Buyer shall inspect the Goods immediately on receipt thereof and shall within 3 Business Days notify the Seller of any immediate apparent defect, damage to or shortage of Goods.

- 8.2 If the Buyer fails to give notice as above the Buyer shall be deemed to have accepted the Goods accordingly and the Goods shall be presumed to be in all respects in accordance with the relevant Order.

- 8.3 If the Buyer establishes to the Seller’s reasonable satisfaction that the Goods are defective, or not all accounted for, the Seller may at its sole discretion:

- 8.3.1 replace with similar Goods;

- 8.3.2 repair any defective Goods;

- 8.3.3 accept the return of the Goods and allow the Buyer credit for their invoice value; or

- 8.3.4 to the extent that the Goods are not of the Seller’s manufacture, assign to the Buyer (so far as the Seller is able to do so) any warranties given by the manufacturer of the Goods to the Seller.

- 8.4 The delivery of any repaired or replacement Goods shall be at the Seller’s premises or other delivery point specified in the Order for the original Goods.

- 8.5 No claim against the Seller shall be entertained for any defect arising from any design or specification provided to or made by the Buyer or if any adjustments or alterations have been made or other work done to the Goods by any person other than the Seller.

9. PRICE & PAYMENT

- 9.1 The Seller reserves the right, at any time, to change the price of Goods offered for sale.

- 9.2 Payment for Goods supplied is due in cash upon delivery of the Goods unless the Seller has previously allowed the Buyer Credit Account facilities in which case payment for Goods supplied is due 30 days after the end of the month of the invoice date.

- 9.3 If payment of the price of or any part thereof is not made by the due date, the Seller shall be entitled to:

- (i) Charge interest on the outstanding amount at the rate of 5% per annum above the Bank of England’s base rate, accruing daily;

- (ii) Require payment in advance of delivery in relation to any Goods not previously delivered;

- (iii) Refuse to make delivery of any undelivered Goods whether ordered under the Contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

- (iv) Terminate the Contract.

10. RISK

The risk in the Goods will pass to the Buyer at the moment the goods are dispatched from the Seller’s premises. Where the Buyer chooses to collect the Goods himself, risk will pass when the Goods are entrusted to him or set aside for his collection, whichever happens first.

11. PROPERTY

- 11.1 Notwithstanding delivery and the passing of risk, property and title to the Goods shall remain with the Seller until the Seller has received payment of the full price of (a) all Goods and/or services the subject of the Contract and (b) all other goods and/or services supplied by the Seller to the Buyer under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this Contract and all other contracts between the Seller and the Buyer.

- 11.2 Until such time as title passes to the Buyer, the Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods in which the title remains invested in him.

- 11.3 For the purposes specified above, the Seller or any of his agents or authorised representatives shall be entitled at any reasonable time during normal working hours to enter without notice onto any premises where the Goods or any part of the Goods are installed, stored or kept or are reasonably believed to be.

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- 11.4 The Seller shall also be entitled to issue an injunction to prevent the Buyer from selling, transferring, or otherwise disposing of the Goods.
- 11.5 When the Buyer sells or disposes of the Goods prior to the Seller receiving full payment, the Buyer should pay the proceeds of such sale or disposition into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Seller by the Buyer acting in a fiduciary capacity.
- 12. CERTIFICATES OF SUPPLY**
- 12.1 When deemed appropriate by the Seller, Certificates of Supply of Goods will be issued by the Seller to the end user of the Goods to satisfy Building Regulations requirements upon submission by the end user of a completed application in the form provided by the Seller.
- 12.2 It is the responsibility of the end user to carry out the application of the Goods according to the manufacturer's instructions, using the exact quantities recommended and to complete the Certificate accordingly. No responsibility will be accepted by the Seller for Goods applied otherwise than in accordance with a Certificate of Supply.
- 13. FORCE MAJEURE**
- The Seller shall not be liable for the failure to perform any or all of its obligations under these Conditions of Sale arising from any inability to procure or secure at reasonable costs labour, materials, goods or other supplies of any kind or any Act of God, war, epidemic or pandemic, strike, lock-out or other labour dispute, civil commotion, fire, flood, accident, drought, equipment failure, legislation, the act or order of any governmental or regulatory body, the order of any public or competent authority or any other cause beyond the Seller's reasonable control ("a Force Majeure Event"). If delivery is delayed by a Force Majeure Event, a reasonable extension of time shall be granted to the Seller and the Buyer shall pay such reasonable extra charges as shall have been occasioned by the delay. If the delay persists for such time as the Seller considers unreasonable, he may, without liability on his part, terminate the Contract.
- 14. RELATIONSHIP OF PARTIES**
- 14.1 Nothing in these Conditions of Sale shall be construed as establishing or implying any partnership or joint venture between the parties, and nothing in these Conditions of Sale shall be deemed to constitute either of the parties as the agent of the other or authorise either party:
- 14.1.1 to incur any expense on behalf of the other party;
- 14.1.2 to enter into any engagement or make any representation or warranty on behalf of the other party;
- 14.1.3 to pledge the credit of, or otherwise bind or oblige the other party; or
- 14.1.4 to commit the other party in any way whatsoever, without in each case obtaining the other party's prior written consent.
- 15. ASSIGNMENT AND SUB-CONTRACTING**
- This Contract 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.
- 16. COSTS AND OTHER EXPENSES**
- Except as specifically agreed to the contrary, any costs in relation to the Contract and its subject-matter which are incurred by either of the parties shall be borne in full by that party.
- 17. SEVERABILITY**
- 17.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract, or any clause of these Conditions of Sale, shall not be affected.
- 17.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 18. WAIVER**
- 18.1 No failure, delay or omission by the Seller in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 18.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Seller shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Seller.
- 19. DISPUTE MEDIATION**
- In the event of any dispute or difference arising between the parties which is not resolved by negotiation, either party may refer the matter to the Law Society for Northern Ireland Dispute Resolution Service ("the Service") and if the matter has not been resolved within ten working days of referral to the Service or such longer period as both parties shall agree, then the mediation by the Service shall be deemed to be at an end and each party shall be free to pursue his own remedies in accordance with Clause 20.
- 20. PROPER LAW**
- The Contract shall be governed by and construed in accordance with Northern Ireland law and the Buyer consents to the exclusive jurisdiction of the Northern Ireland Courts in all matters regarding it except to the extent that the Seller invokes the jurisdiction of the Courts of any other country.
- 21. SET OFF**
- The Seller shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract. The Buyer shall pay all sums that it owes to the Seller under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 22. PRESERVATION OF RIGHTS**
- The terms and clauses of these Conditions of Sale, and the rights and remedies of the parties under the Contract, are cumulative and without prejudice and in addition to any right or remedies a party may have at law or in equity; no exercise by a part of any right or remedy under this agreement, or in law or in equity, shall (save to the extent, if any, provided expressly in this agreement or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.
- 23. THIRD PARTY RIGHTS**
- A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.