Conditions of Sale - Evertaut Ltd

DEFINITIONS
In these conditions the following expression shall have the following definition:
Evertaut – Evertaut Ltd and/or its successors.
The Contract – The Contract between Evertaut and the customer to which these conditions apply.
The Customer – The party in whose name the order is placed and whose name appears on the Sales Order Acknowledgement issued by Evertaut.
The Goods – Products and/or services to be supplied under the Contract and as described within the Sales Order Acknowledgement issued by Evertaut, including any amendments to the same.

GOVERNING LAW
The Contract shall be governed by the laws of England and the Customer submits to the jurisdiction of the English courts.

GENERAL
1) All orders accepted by Evertaut are subject to these conditions which shall apply to all Contracts for the goods and for any work done by Evertaut to the exclusion of all other conditions and warranties express or implied and which shall override any terms or conditions stipulated or referred to by the customer whether in an order, letter, tender document or in negotiations unless otherwise agreed in writing.
2) No person acting or purporting to act on behalf of Evertaut have any authority to waive any Evertaut rights under the Contract orally, and no such waiver shall have any effect unless it is in writing and signed on behalf of Evertaut.
3) All orders are accepted subject to the obtaining by Evertaut of satisfactory trade references or credit ratings in relation to the Customer. If such trade references or credit ratings shall not, in the opinion of Evertaut, be satisfactory Evertaut shall have the right to cancel the order by notice in writing given within 28 days after its acceptance of order.
4) It is the responsibility of the Customer to check the Sales Order Acknowledgement sent by Evertaut and report of any discrepancies within 2 business days. After which point the order will be classed as *live* and subject to Evertaut's cancellation terms.
5) In the event of the Customer cancelling the order after the Sales Order Confirmation window has lapsed but prior to goods despatched, the Customer shall be liable to pay to Evertaut the total sum of either:
i) all damages, costs, losses and expenses incurred by Evertaut in connection with such cancellation and including any loss of profit, or
ii) 25% of the total gross order value whichever sum is greater.
6) As Evertaut products are custom-made to order, Evertaut is unable to accept returns or offer refunds for products delivered. However, in accordance with the Consumer Rights Act 2015, if the product is faulty, not fit for purpose, or does not match the description Evertaut provided, the Customer is entitled to a repair, replacement, or refund. In such cases, Evertaut must be notified, in writing, within 14 days of receipt of the goods. After return and inspection of the product, any applicable refunds will be processed within 14 days of the item being received by Evertaut.
7) The Contract is not assignable by the Customer without the written consent of Evertaut and is between Evertaut and the Customer as principles.
8) Trade Descriptions Act - At the time of publication of each catalogue leaflet and price list, the information contained therein is correct, but it is advisable to check with the Company as this information is subject to alteration.
As the policy of Evertaut is one of continuous technical improvement it reserves the right from time to time to revise, modify or vary the technical specification (including minor dimensional changes) of the Goods in the contract provided that the quality and finish of the Goods as delivered shall be at least equal to that of the Goods contracted for.
9) Any advice or recommendation given by Evertaut or its employees or agents, to the customer or its employees or agents as to storage, application or the use of the goods and which is not confirmed in writing by a Director of Evertaut will be followed or acted upon entirely at the customer's own risk. Accordingly, Evertaut shall not be liable for any such advice or recommendation which is not so confirmed. Additionally, in entering a Contract with Evertaut the customer acknowledges that it does not rely on, and waives any claim for breach of, any representations which are not confirmed as aforesaid.
10) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by Evertaut and without prejudice to the effect and meaning of any of the other conditions referred to herein.
11) Evertaut will be entitled to assign, sub-contract or sub-let any contract or any part thereof.
12) If for any reason whatsoever the completion of the contract or the delivery of the goods is in Evertaut's opinion rendered impracticable Evertaut may terminate the contract by sending by ordinary post or by delivering to the Purchaser a notice in writing to that effect.
13) Every effort will be made to carry out this Contract, but its due performance is subject to cancellation or to such variations as may be found by Evertaut necessary as a result of the inability to secure labour, materials or supplies, or for any reason whatsoever. Evertaut will be under no liability for any loss, damage or expenses arising from late or otherwise incorrect delivery due to any cause whatsoever.
14) Failure by Evertaut to enforce any of the Contract Terms will not be construed as a waiver of its rights hereunder.
15) Evertaut may use images of products produced for a customer for commercial marketing and/or news publication purposes, provided that the customer grants written consent for such use. Information obtained from the Customer Feedback form, constitutes such permission.

DELIVERY
1) In the absence of any prior written agreement to the contrary, the Goods shall be delivered when completed. If, for any reason whatsoever the Customer is not able to accept either part or total delivery of the Goods on completion (or any alternative date previously agreed in writing) then the customer shall be liable to pay Evertaut any costs associated with the insurance, storage, additional transport and double handling of the Goods not delivered. Such costs shall be quantified by Evertaut as soon as they are known and shall be invoiced in the normal manner. In addition, Evertaut shall be entitled, upon their completion, to invoice the Customer for the full value of the Goods. The appropriation or despatch of any of the Goods for storage in accordance with this condition shall be deemed to constitute delivery and payment shall become due.
2) Evertaut reserves the right to make partial deliveries in accordance with the terms below. Incomplete delivery shall not be due cause for withholding payment on Goods properly delivered and invoiced.
3) Evertaut reserves the right to make any charges for delivery of goods on orders totalling less than £1000 of invoice value, exclusive of VAT.
4) UK Mainland delivery will be ground floor entrance. The driver delivering will normally be unaccompanied and the Purchaser is required to provide free assistance in unloading. In no event will Evertaut be liable for any action of the Purchaser's employees in so assisting, and the Purchaser will indemnify Evertaut against all claims, proceedings, demands and costs arising therefrom. Delivery shall be deemed completed on acceptance at ground floor entrance.
5) Goods received in a damaged or unsatisfactory condition shall be signed for as such and Evertaut (and the local representative of the Carriers, if other than Evertaut) advised in writing within three days of receipt of the goods. Goods not examined on delivery must be signed for as such and notification of any damage or defects must be sent to Evertaut (and the local representative of the carriers, if not delivered by Evertaut) in writing within three days of the date of delivery.
6) Claims by the purchaser for loss or non-delivery of goods must be made within ten days of the invoice date. Claims made outside this period cannot be accepted.
7) Although Evertaut will use every endeavour to meet Delivery Dates, it shall not be liable for any loss or damage arising from any delay, however caused, in meeting Delivery Dates or failing to deliver by any specified method or by any particular vehicle or vessel.
8) Unless otherwise agreed in writing, Customer export orders shall be ex-works.
9) Where the customer requires eventual delivery outside the United Kingdom, Evertaut shall deliver the Goods on board a ship or aircraft at the nearest convenient port or airport to Evertaut premises. At the Customer's request Evertaut will, as the Customer's agent and at the Customer's expense, endeavour to arrange:
i) to ship the Goods to the destination specified by the Customer and,
ii) to insure the Goods during shipment in accordance with the Institute of London Underwriters Institute Cargo clause (all risks), Institute Ware Clauses, Institute Strikes, Riots and Civil Commotions Clauses. Evertaut shall be under no liability whatsoever for any loss or damage arising through the choice of carrier or any act or omission of the carrier.
10) Where the Goods are to be delivered overseas the Customer shall at its expense:
i) obtain all necessary import exchange control or other licences and shall advise Evertaut of the issue of such licences: and,
ii) give Evertaut written details in English of any regulations or specifications with which the Goods must comply.
11) Evertaut shall be under no liability whatsoever for any loss or damage arising through the choice of carrier or any act or omission of the carrier and for any failure of the Customer to obtain the requisite authorisation.

INSTALLATION
1) Assembly, erection, distribution and installation of Goods is not included in contract prices unless specifically agreed otherwise. Where such installation is agreed it is on the specific condition that free access will be given to open floor areas free from other contractors or trades during normal working hours. The Customer shall in liaison with Evertaut and before the scheduled date prepare the site where the Goods are to be installed and ensure that electrical and other services, including the use of lifts if appropriate, are available. The Customer shall provide suitable protection for the Goods from the time of their arrival on site, provided that where the site has not been properly prepared for the installation of the Goods the Customer will be liable to pay Evertaut any loss suffered by Evertaut due to the delay.
2) Evertaut shall supply such supervision and/or labour as is agreed for the installation and erection of the Goods at the agreed premises. Employees of Evertaut shall not be given or accept instructions from the Customer or third parties.
3) Where installation is agreed, the Customer is to provide accurate and full setting out details and is to ensure the suitability and accuracy of the structure to which the goods are to be installed unless otherwise agreed. Evertaut shall not be liable for any costs associated with the inaccuracy of any information given, nor for any unsuitability of the structure.
4) At the request of a duly authorised representative of Evertaut the Customer shall attend the inspection or testing of the Goods and shall then make known whether he accepts the Goods or not, giving reasons for any rejection. The Goods shall be deemed to have been accepted by the Customer if the Customer neither accepts nor gives reasons in writing for rejection of the goods within seven days of the notified date of inspection or testing. Evertaut shall use its best endeavours to rectify any defect notified pursuant to this Condition provided that such rectification shall be at the Customer's expense unless the defect can be proven to have arisen from Evertaut's default. Where a defect in the Goods is capable of rectification the Customer may not refuse to accept the Goods but will allow Evertaut to rectify the defect within a reasonable time.
5) Evertaut shall not be liable for any loss where installation or commissioning of equipment is delayed for any reason outside Evertaut's control and may charge the Customer for any cost or expense incurred by Evertaut as a result of the delay.
6) Evertaut carries product liability insurance to the sum of £5,000,000. Any costs incurred by Evertaut in increasing this sum at the request of the Customer will be recharged to the Customer.
7) Evertaut will not be required to provide any main contractor with a subcontractor's tax exemption certificate as the activities of Evertaut fall outside the construction operations for which a certificate is required: such activities as defined in Statutory Instrument 1980 No 1171.

PRICE
1) Unless otherwise indicated, all prices are exclusive of Value Added Tax or any other tax or levy on this supply of Goods. With the exception of those Goods exported from the United Kingdom by Evertaut direct, Value Added Tax shall be added to all invoices at the rate ruling at the date of invoice.
2) Unless otherwise agreed, prices do not include for unique packaging or for export packaging.
3) Unless previously withdrawn, any quotation or tender shall remain open for the period stated therein or where no period is so stated, for twenty-eight (28) days after which time they may be altered by Evertaut without giving notice to the Customer.
4) Unless otherwise agreed in writing, prices are based on the cost of labour, materials, overheads, duties, etc., ruling at the date of quotation, or at the date of issue of the current Evertaut price list.
5) Evertaut reserves the right, by giving the customer at any time before delivery, notice of an increase in the price of their Goods to reflect any increase in the cost of Evertaut, which is due to any factor beyond the control of Evertaut (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duty, significant increases in the cost of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the customer or any delay caused by any instructions of the customer or failure of the customer to give Evertaut adequate information or instructions.
6) Prices quoted are based on the minimum quantity specified on the Customer order and Evertaut reserve the right to increase prices in the event of any significant reduction in quantity.

PAYMENT
1) Unless otherwise agreed, payment is due in full 30 days from the date of our Invoice.
2) If payment is not made on the due date, Evertaut may without giving notice, withdraw any previous agreed discounts or specific terms, and Evertaut is further entitled without giving notice, to charge the Customer interest & compensation on any amount outstanding in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
3) Evertaut requires a 30% deposit on receipt of order to be paid within 7 days, unless otherwise agreed prior and/or under the 30% deposit threshold of £5,000.
4) If the goods and/or services are delivered/completed in instalments, Evertaut shall be entitled to invoice for each instalment as and when each instalment is delivered/completed. Payment shall be due in respect of each instalment delivered/completed notwithstanding non delivery/non completion of other instalments or other default by Evertaut.
5) Where Evertaut shall supply Goods for direct export, or for onward export by a third party, and unless otherwise agreed payment shall be made by the Customer in full prior to export or against a documentary letter of credit issued by an approved bank. In such cases the Customer shall be liable for the Value Added Tax or other levy until the requirements of HM Customs and Excise have been met.

TITLE OF GOODS, RISK AND INSURANCE
1) The risk of loss or deterioration and/or damage to the Goods will be borne by the Customer from the time of delivery and the Customer will insure the Goods for the full replacement value thereof for the benefit of Evertaut until the property therein has passed to the Customer.
2) The ownership of all Goods shall be retained by Evertaut until the Customer shall have paid the full amount in respect thereof and not before. Until that time all Goods shall be stored by the Customer at their own risk separately and in such a way as to be identifiable as the property of Evertaut until full payment has been made there for the Customer shall until payment hold them in a fiduciary capacity for Evertaut. The Condition does not imply any right on behalf of the Customer to return for credit Goods that have been properly ordered and delivered.
3) Despite the preceding Condition the Customer may in the normal course of his business sell the Goods to a third party on condition that this shall not release the Customer from its obligation to pay Evertaut and that if Evertaut so requires, the Customer shall assign to Evertaut any claim which the Customer has against the third party, so long as any payment remains owing to Evertaut. So long as any payment remains owing to Evertaut the proceeds of resale by the Customer shall be placed in a separate account by the Customer so as to be identifiable as being in the beneficial ownership of Evertaut and Evertaut shall be entitled to chase all such proceeds of resale recovered by the Customer through any bank or other account maintained by the Customer.
4) Goods must not in any circumstances be returned to Evertaut except in accordance with the prior consent of Evertaut. Where the property in any Goods so returned shall have passed to the Customer such Goods shall, unless otherwise agreed in writing by Evertaut, remain the property of and at the risk of the Customer.
5) If any sum which is owing to Evertaut remains unpaid after the due date for payment Evertaut may, in addition to any other remedy to which it may be entitled, forthwith rescind any outstanding Contract with the Customer and enter upon any premises where the Goods are situated and retake possession thereof, including if necessary, demounting any Goods which may have been assembled, and the expenses incurred by Evertaut in so doing shall be payable by the Customer in addition to the outstanding debt but after giving credit for the net re-sale value, if any, of the Goods, provided always that this will be without prejudice to any other right or remedy Evertaut may have against the customer.
6) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Evertaut but if the customer does so all monies owing to Evertaut shall (without prejudice to any other right or remedy of Evertaut), forthwith become due and payable.

DETERMINATION
1) Immediately upon the Customer committing any act of bankruptcy calling a meeting (whether formal or informal) of any of his creditors or (where the Customer is a body corporate) having a receiver or manager appointed of his undertaking or any part thereof or on a resolution being passed or on a petition being presented to any Court for the winding up of the Customer or being a partnership is dissolved, or on the happening of any act whatsoever relating to the insolvency or possible insolvency of the customer, then Evertaut may forthwith on written notice to the customer, terminate the contract without incurring liability to the customer and without prejudice to any other rights, of Evertaut which may have occurred up to the date of termination. in the event of termination, the Customer shall be liable to pay to Evertaut all damages, costs, losses and expenses incurred by Evertaut.

PATENTS/REGISTERED DESIGNS
1) All technical data, drawings, reports and any other information or documents whatsoever which Evertaut has submitted to the Customer in the course of or prior to execution of the Contract remain the property and/or copyright of Evertaut and may not be used except in connection with the operation, maintenance and use of the Goods. They may not be disclosed to third parties and are to be returned on demand and it will not be disclosed to employees of the Customer who are not required for the performance of the Contract and with regard to employees of the customer who are required for the proper performance of the Contract to ensure that they are aware of the provisions of this condition.
2) Evertaut will indemnify the Customer against any infringement of letters Patent or Registered Design (published or registered at the date of the Contract) by the use or sale of any of the Goods supplied by Evertaut to the Customer and against all costs and damages the Customer may incur in any action for infringement or for which the Customer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to Evertaut having followed a design or instruction furnished by the Customer or the use of such article or material in a manner, for a purpose, or in any foreign country not specified or disclosed to Evertaut. Also provided that this indemnity is conditional on the Customer giving to Evertaut the earliest possible notice in writing of any claim being made or action threatened or brought against the Customer and on the Customer permitting Evertaut at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Customer warrants that any design or instruction furnished or given by the Customer shall not be such as to cause Evertaut to infringe any Copyright, Letters, Patent, Registered Design or Trade Mark in the execution of any order.

DEFECTIVE GOODS
1) Evertaut cannot accept the responsibility for loss or deterioration or damage to Goods in transit unless full details are given within 48 hours of delivery. All Goods should be unpacked carefully and where appropriate to the instruction of Evertaut and examined immediately upon delivery.
2) In the event of goods proving to the satisfaction of Evertaut to be defective solely as a result of faulty design, materials or workmanship, Evertaut will ,provided it has received a report in writing of the defect relating to the structure of fixed metal chairs excluding upholstery and moving mechanical parts within (five) 5 years of delivery of the Evertaut branded goods or received a written report of the defect relating to any part(including upholstery, mechanical or moving parts or wooden components within (two) 2 years of delivery of Evertaut branded goods, Evertaut will remedy make good or replace the goods concerned. Were any goods supplied are not of Evertaut manufacture Evertaut will, at the customer's request assign to the customer the benefit of any guarantees warranties or any other contractual rights that Evertaut may have against the supplier in respect thereof and that will be the sum total of Evertaut's liability in no circumstances whatsoever will Evertaut be liable for any consequential loss, except as afore said, all conditions warranties and representations whether express or implied statutory or otherwise in relation to the goods are hereby excluded, provided that nothing contained herein shall or shall not be deemed to exclude or restrict any of the items implied by section 12,13,14 and 15 of the sale of goods act 1979m or any rights of the consumer liability of Evertaut in respect thereof.
3) Subject as therein provided, and except where the Goods are sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977 and the Consumer protection Act 1987, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
4) The Customer warrants that any goods or materials supplied by the Customer for use or incorporation in making, installing or erecting the Goods the subject to this Contract are of suitable and adequate quality and strength.
5) Evertaut shall not be liable to repair or replace any item if it has not been properly maintained or has been subject to any misuse, unauthorised repair, replacement, modification or alteration.
6) If the Evertaut inspection marking ticket is removed from the underside of any product the guarantee shall be invalidated.

ARBITRATION
It is agreed that all disputes arising out of or in connection with the Contract shall be referred to a single arbitrator appointed at the instance of either party by the President for the time being of the Law Society of England and Wales whose determination thereof shall be final and binding on the party. The customer hereby agrees to submit to the jurisdiction of the High Court of Justice in England and Wales in connection with all or any matters concerning the conduct of the arbitration or the enforcement of any award.

EVERTAUT