

## KIM ROBINSON WILDLIFE ART TERMS AND CONDITIONS

### 1. INTERPRETATION

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

<b>"Business Day"</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>"Commencement Date"</b>	has the meaning set out in clause 2.2.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 14.8.
<b>"Contract"</b>	the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.
<b>"Customer"</b>	the person or firm who purchases the Goods from the Supplier.
<b>"Force Majeure Event"</b>	has the meaning given to it in clause 14.1.1.
<b>"Goods"</b>	the goods set out in the Order.
<b>"Goods Specification"</b>	any specification for the Goods, including any relevant plans, measurements or drawings, that is agreed in writing by the Customer and the Supplier.

**"Intellectual Property Rights"** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Order"** the Customer's order for the supply of Goods, as set out in the Customer's written purchase order, or an order for Goods from the Customer received by telephone.

**"Quotation"** a written quotation provided by the Supplier to the Customer for the supply of Goods or a quotation provided by telephone.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 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; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 The Order (whether in writing or by telephone) constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - 2.2.1 the Supplier issuing written acceptance of the Order; or
  - 2.2.2 the Supplier providing verbal acceptance of the Order if made by telephone; or
  - 2.2.3 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (“**Commencement Date**”). If the Order is accepted by telephone the Supplier will provide written details to the Customer as soon as is reasonably practicable.

- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 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.
- 2.5 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of Goods except where application to one or the other is specified.
- 2.7 The Supplier may agree to permit the Customer to vary the terms of the Contract, agreed in accordance with clause 2.2 if in the absolute discretion of the Supplier the Supplier considers it is appropriate to do so.

### **3. GOODS**

- 3.1 The quality, quantity and specification of the Goods shall be those set out in the Quotation, subject always to the following:
- 3.1.1 all natural materials are subject to their natural markings, veinings, variations in colour, cracks and vents;
- 3.1.2 when samples have been submitted identical resemblance of the products supplied cannot be guaranteed.

3.2 The images on the Supplier's website, catalogue or brochure are for illustrative purposes only and we cannot guarantee that your computer's display of the colours or the printed pictures accurately reflect the colour of the Goods.

#### **4. DELIVERY OF GOODS**

4.1 The Supplier 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 the Supplier notifies the Customer that the Goods are ready.

4.2 The Supplier 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 the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.4 If the Customer fails to accept or take delivery of the Goods within 7 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 8th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.4.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.5 If 14 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier 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.

4.6 Delivery of the Goods shall be made by the Supplier as follows:

4.6.1 upon physical delivery by the Supplier or collection by the Customer or authorised agent from the Customer.

4.6.2 any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of Goods. The Supplier will use all reasonable endeavours to fulfil the agreed delivery and installation date. However, due to the variance of the availability of some materials we may from time to time not be able to meet our delivery times. In this case, we will liaise with you and use all reasonable endeavours to install the Goods as soon as reasonably practicable. Time shall not be of the essence of the Supplier. The Supplier shall not be liable for failure to deliver the Goods if the failure is due to reasons beyond the Supplier's reasonable control.

## 5. **QUALITY OF GOODS**

5.1 Subject to the provisions of clause 3 the Supplier warrants that on delivery, and for a period of 1 month from the date of delivery (**Warranty Period**), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Goods Specification; and

5.1.2 be free from material defects in design, material and workmanship;

5.2 Subject to clause 5.3, if:

- 5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods,
- the Supplier shall, at its option and cost, repair or replace the defective Goods, or refund the price of the defective Goods, and if applicable the cost of the Goods, in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- 5.3.3 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.3.4 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

**6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received 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:

6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12; and

6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.12, or the Supplier reasonably

believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, 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. CUSTOMER'S OBLIGATIONS**

7.1 The Customer shall ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

7.1.1 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods, and ensure that such information is accurate in all material respects.

## **8. CHARGES AND PAYMENT**

8.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.

8.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

8.2.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;

8.2.2 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods; or

- 8.2.3 the measurements are different to those shown in the Quotation and the Supplier has undertaken the templating exercise to record the precise dimensions required for the Goods.
- 8.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 8.4 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Barclays Bank PLC's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 8.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by the Supplier.
- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is

conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

## **10. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

## **11. LIMITATION OF LIABILITY**

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

11.1.5 defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

11.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

11.2.2 the Supplier'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.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 12 shall survive termination of the Contract.

## **12. TERMINATION**

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;

- 12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- 12.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 12.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 12.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 12.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 12.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 12.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 (inclusive);
- 12.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 12.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment providing the Supplier provides 14 days written notice to the Customer requesting payment.
- 12.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 12.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- 12.3.2 the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

### **13. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- 13.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 13.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **14. GENERAL**

##### **14.1 Force majeure:**

- 14.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.1.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 8 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.2 **Assignment and subcontracting:**

14.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

14.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 **Notices:**

14.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

14.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

14.3.3 This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 **Waiver and cumulative remedies:**

14.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

14.5 **Severance:**

14.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 **No partnership:**

14.6.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 **Third parties:**

14.7.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 **Variation:**

14.8.1 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

14.9 **Governing law and jurisdiction:**

14.9.1 This 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.