

THE MODERN GARDEN COMPANY

furnishing the outdoors



Terms and Conditions of Sale

These Terms and Conditions govern the supply of all Goods provided by us to you.

1. Definitions

- 1.1. "Buyer", "you", "your" and "yours" means the business or person who buys or agrees to buy Goods from the Seller.
- 1.2. "Consumer" means an individual who purchases Goods from us which are not intended for use in a business or trade;
- 1.3. "Goods" means the garden furniture goods and products (including any instalment of the goods or any parts for them) and motorised canopies which the Seller is to supply in accordance with these Terms and Conditions.
- 1.4. "Seller", "we", "us" and "our" means The Modern Garden Company Limited of Millars 3, Southmill Road, Bishop's Stortford, Hertfordshire CM23 3DH.
- 1.5. "Terms and Conditions" means the Terms and Conditions of Sale set out in this document and any special conditions agreed in writing by the Seller.

2. Ordering

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Terms and Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.
- 2.3. When ordering any Goods from us you do so in accordance with this agreement. You are deemed to have accepted the prices of the Goods quoted to you and other terms such as delivery which may have been quoted to you at the time of placing your order.
- 2.4. Any contract for the supply of Goods is between you and The Modern Garden Company Limited.
- 2.5. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
- 2.6. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation.
- 2.7. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification provided by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 2.8. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 2.9. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Price

- 3.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), by reference to the Seller's quoted price at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer. We reserve the right to alter our quoted prices to you after this time.
- 3.2. Prices are exclusive of value added tax and delivery charges which shall be added to your order or quotation at the time of ordering.



- 3.3. All prices are subject to change without notice and should always be confirmed at the time of placing an order.
- 3.4. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4. Terms of Payment

- 4.1. All Goods (including delivery charges and value added tax) must be paid for in full prior to delivery to the Buyer unless otherwise agreed in writing by the Seller. Any variations to the payment terms will be stipulated on our written quotation. In all cases a deposit will be required at the time of placing your order. The amount of the deposit required will be set out in the quotation. The time of payment of the price shall be of the essence of the contract.
- 4.2. Failure to pay on time will result either in the cancellation of your order or late payment charges equivalent to interest on the late payment which shall be calculated on a daily basis at a rate of 5% over our bank's lending rate from the date the payment was originally due until the date of actual payment. We may also instruct a debt collection agency or solicitor to collect payment (including any interest and/or late payment charges) on our behalf. In such circumstances you will be liable to pay an additional sum to us which will not exceed the reasonable costs that we may incur to pay the debt collection agency or solicitor who will add the sum to your outstanding debt on our behalf.

5. Export Terms

- 5.1. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 5.2. Goods may be subject to inspection by your local customs office where delivery is outside the UK.
- 5.3. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be ex works and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 5.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 5.5. The Buyer undertakes not to offer the Goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

6. Cancellation and Returns

6.1. Cancellations if you are a Consumer:

- 6.1.1. You must notify us immediately if you decide to cancel your order preferably by email at info@moderngarden.co.uk and quote your order number. A returns number will be provided for you to use when returning the Goods. The time limit for notification of cancellation is 7 working days following receipt by you of the Goods. We cannot guarantee that we will be able to stop your order once we receive notice of cancellation as the Goods may already have been despatched. In these cases, the Goods will need to be returned to us unused and in good condition.
- 6.1.2. Once we have heard from you that you wish to cancel your order within the stipulated time period we will refund you with the full amount within 30 days which includes the initial delivery charge (where applicable) which you paid for the delivery of the Goods.
- 6.1.3. You must ensure that when returning the Goods they are packed adequately and returned with a reputable courier. The cost of the return must be paid for by you.



- 6.1.4. Goods which are made to your specification may not be cancelled by you. Goods that have been made to order in a specific finish or upholstery colour in accordance with your specifications cannot be returned.
- 6.1.5. A full statement of your legal rights under the Distance Selling Regulations may be obtained in the UK from your local Citizen's Advice Bureau or Trading Standards Office.
- 6.2. **Cancellations by all other Customers:**
- 6.2.1. You have no right to cancel any order placed with us. We may at our absolute discretion accept cancellations on orders. We will notify you if we agree to the cancellation of your order. We reserve the right to charge for any costs that we may incur in accepting any cancelled order.
- 6.3. **Cancellations by Us:**
- 6.3.1. We reserve the right to cancel your order at any time if
- 6.3.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 6.3.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 6.3.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
- 6.3.1.4. if, in our reasonable opinion, one of the aforementioned events is likely to occur; or
- 6.3.1.5. if you have acted in material breach of these Terms and Conditions.
- 6.3.2. In the case of cancellation of an order by us in one of the circumstances described above we shall be entitled to cancel any orders or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 6.4. **Returns**
- 6.4.1. You are entitled to return Goods ordered from us within 30 days of receipt of the Goods if the Goods are faulty or damaged. You will be entitled to have the Goods repaired or replaced provided we agree that the Goods are faulty or were delivered to you in a damaged condition and have not been used. Replacement Goods will be charged at the full price.
- 6.4.2. In order to return Goods which are faulty or damaged, you must contact us to obtain a Return Number and this must be clearly shown by you on all returned items.
- 6.4.3. The cost of returning the Goods to us must be paid by you unless we agree that the Goods are faulty or damaged upon receipt by you. Any refunds or re-credits will be undertaken within 30 days. Where Goods are placed in storage and shipped onwards to the Buyer at a later date the Buyer must bear the costs of returning the Goods to the original delivery destination in all cases.
- 6.4.4. Goods which develop a fault or become faulty within the manufacturer's warranty or guarantee period may be repaired or replaced in line with the manufacturer's warranty terms provided that the Goods are used in accordance with the manufacturer's recommendations and guidance.
- 6.4.5. All Goods returned to us must be sent via a reputable courier adequately.
- 6.4.6. If we decide to accept the return of Goods which are neither faulty nor damaged then we will apply a re-stocking charge of 25% of the value of the Goods to be returned.
- 6.5. In all cases, the Buyer will be liable for the cost of remedying any damage to the Goods returned where such damage has, in the reasonable opinion of the Seller, been caused by the Goods being inadequately packaged by the Buyer or through the Buyer's fault.

7. Delivery

THE MODERN GARDEN COMPANY

furnishing the outdoors



- 7.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 7.2. All risk in the Goods shall pass to you upon delivery or upon placement of the Goods into storage where this is done at the direction of the Buyer.
- 7.3. In cases where Goods are to be placed in holding storage and released at a later stage for onward delivery to the Buyer it is the Buyer's responsibility to ensure that the Goods are inspected to ensure that the order is correct and the Goods are undamaged prior to onward shipping.
- 7.4. You must ensure that at the time of delivery of the Goods adequate arrangements, including labour and access, are in place for the safe delivery of the Goods. We cannot be held liable for any damage, cost or expense incurred to the Goods or premises where this arises as a result of a failure to provide adequate access or arrangements for delivery.
- 7.5. Whilst every reasonable effort shall be made to keep any delivery date, time of delivery shall not be of the essence and the Seller shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery date. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 7.6. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.7. Incomplete orders must be notified to us as soon as possible following delivery and within 48 hours of delivery. We will either arrange for the missing items to be delivered to you at no extra cost or refund you the original cost of the missing items.
- 7.8. No refunds of the delivery charge are made for late deliveries.
- 7.9. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 7.9.1. invoice for the goods at the time stated for delivery; or
 - 7.9.2. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 7.9.3. sell the Goods at the best price readily obtainable.

8. Damage in Transit

- 8.1. You must notify us within 48 hours of delivery if Goods are found to be damaged upon delivery. You must keep the Goods within the original packing and make these available for inspection.
- 8.2. In the case of Goods damaged in transit our total liability to you is limited to providing replacement Goods within a reasonable period. You must follow the procedure set out in Clause 6 for all damaged Goods.

9. Title

- 9.1. Full title in the Goods shall remain fully vested in us until we receive payment in full for the Goods. We shall be entitled to re-take possession of the Goods in the event of non-payment and you hereby grant us a non-revocable licence to enter your premises for the purposes of recovering the Goods.
- 9.2. Title to Goods which have been returned to us under Clause 6 and in respect of which we have provided a substitute or paid a refund will transfer to us upon despatch of a replacement or the date of the refund as appropriate.



10. Limitation of Liability

- 10.1. We disclaim any and all liability to you for the supply of the Goods to the fullest extent permissible under applicable law. This does not affect your statutory rights as a Consumer. If we are found liable for any loss or damage to you such liability is limited to the amount you have paid for the relevant Goods. We cannot accept any liability for any loss, damage or expense, including any direct or indirect loss such as loss of profits, to you howsoever arising. This limitation of liability does not apply to personal injury or death arising as a direct result of our negligence.
- 10.2. We shall not be held liable for any failure or delay in delivering Goods where such failure arises as a result of any act or omission which is outside our reasonable control such as an act of God or those of third parties which shall include, but is not limited to, any labour strikes, bad weather conditions, fires, governmental actions, war or terrorist acts.
- 10.3. We do not accept liability for any indirect loss, consequential loss, loss of data, loss of income or profit, loss or damage to property and/or loss from claims of third parties arising out of the use of the Goods purchased from us.
- 10.4. We shall not be held liable for any misrepresentations other than fraudulent misrepresentations.
- 10.5. We recommend that all of the Goods sold by us are maintained in accordance with the manufacturer's recommendations. In the case of motorised canopies manufactured and sold by us we cannot accept liability for the cost of repairing or replacing the Goods if the canopy has not been used and maintained in accordance with our instructions which accompany the product upon delivery. Please refer to www.moderngarden.co.uk for maintenance and cleaning instructions.

11. Complaints

We hope that you will not have any complaints about our service however if you do have an issue please contact us at info@moderngarden.co.uk and we will do our best to respond within 5 business days.

12. General

- 12.1. Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2. We may assign, subcontract or novate any part or parts of our rights and obligations under these Terms and Conditions and this contract without your consent or any requirement to notify you. You may not assign or subcontract your rights and obligations under this contract without our prior written consent.
- 12.3. The Terms and Conditions, any order form and payment instructions constitute the entire agreement between you and us. No other terms, representations, promises or statements whether expressed or implied shall form part of this contract including for the avoidance of doubt, any terms and conditions which the Buyer tries to apply in any purchase order, confirmation of order, specification or other document or communication. In the event of any conflict between these Terms and Conditions and any other term or provision, these Terms and Conditions shall prevail.
- 12.4. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5. If any provision of these Terms Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.
- 12.6. No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

THE MODERN GARDEN COMPANY

furnishing the outdoors



12.7. It is not intended that the undertakings and obligations of the parties set out in this Agreement shall be for the benefit of and capable of being enforced by any other person by virtue of the Contracts (Rights of Third Parties) Act 1999.

12.8. This contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.