

MARCIN RUSAK STUDIO LIMITED

Standard Terms & Conditions

1. Introduction

Marcin Rusak Studio Limited, a company registered in England and Wales under company No. 10307737, registered office, trading and service address Unit 7D, High Cross Centre, Fountayne Road, N154QL, London, United Kingdom ("Marcin Rusak") (including, where applicable, its directors, employees, servants, agents, representatives, assignees and licensees) aims to conduct business straightforwardly. The purpose of any Marcin Rusak "Contract Order" including any schedules (which may in Marcin Rusak's determination override anything set out below) and these terms & conditions (all together "the Agreement") is to set out clearly the terms and conditions governing the products including materials Marcin Rusak supplies and any additional services Marcin Rusak may provide. Any dealings with Marcin Rusak will be governed by and subject to the Agreement. Additional or alternative written conditions referencing the Agreement may be required to cover the specific requirements of particular projects from time to time. Please ask for clarification or seek independent advice if you are uncertain about any aspect of the Agreement and please note that in the absence of signed and dated written confirmation from Marcin Rusak the Agreement will take precedence over any other purported agreement, terms or provisions, or other document (including any care recommendations or technical data) and that unless acknowledged by Marcin Rusak clearly and unequivocally in writing Marcin Rusak does not accept any other purported standard terms and conditions of any other party. On no account will Marcin Rusak be subject to any terms and conditions of purchase of any party. The Agreement will not affect any statutory rights of a consumer properly and effectively of overriding effect, subject always to the particular aspects of made-to-order products and the use of natural components with particular features and variations.

2. Application of Terms and Conditions and the Agreement

The Agreement will apply to all products and materials supplied and occasionally services rendered or work carried out by Marcin Rusak as suppliers of products, materials and services except to the extent otherwise agreed by Marcin Rusak in writing. Any party obtaining products, materials or services from Marcin Rusak is "the Customer" (including the Customer's directors, employees, servants, agents, representatives, assignees and licensees). In the event that any one or more of the terms of the Agreement is or are determined to be unenforceable the remaining terms shall continue to have full force and effect. No previous statement, representation, information, comment or remark and in each and any case emanating from Marcin Rusak or other possible source of reliance by the Customer and whether oral or in writing shall be of any effect or consequence unless expressly provided for and allowed by the Agreement.

3. Preliminaries, Product Features & Contract Orders

Marcin Rusak supplies distinctive and singular products and materials in the following categories:

- a) materials / composites, including its own conception and design branded 'Flora Material';
- b) glass;
- c) furniture/objects from its furniture product range from time to time (see current marketing materials), including its own conception and design branded 'Flora' and 'perishable' items;
- d) furniture/objects, included of branded materials, to the Customer's specification;
- e) such other items, materials and products, including one-off art or design pieces as offered from time to time by Marcin Rusak.

A Contract Order may arise in any manner as between Marcin Rusak and a given Customer but shall be confirmed as valid and effective only by Marcin Rusak's written confirmation of the Contract Order by issue of a sales confirmation or invoice. In the absence of such confirmation no Contract Order shall take effect. No offer, estimate or quotation shall be of binding effect unless and until a Contract Order is confirmed and any proposal or offer from Marcin Rusak in respect of a prospective Contract Order shall in any event lapse after 30 (thirty) days.

As a supplier of products to the Customer's specification and order Marcin Rusak relies entirely on the Customer or any party acting on the Customer's behalf accurately and competently placing any Contract Order and Marcin Rusak shall be entitled to assume that information supplied by the Customer is correct. The contents of Marcin Rusak's website, social media, marketing brochures and other printed or digital materials promoting or advising on (including in respect of care and maintenance) Marcin Rusak's products from time to time (including any errors in printing, layout or typesetting) shall not be binding on Marcin Rusak in relation to any Contract Order unless this has been expressly stipulated in the Contract Order or otherwise in the Agreement. The Customer shall be deemed to have read, fully considered and understood the Agreement and all product guidelines and care instructions issued by Marcin Rusak from time to time.

Samples supplied by Marcin Rusak shall be used only for the purposes of assessment and consideration of the specification for a proposed Contract Order and may on no account be used in any installation or setting whether by the Customer or otherwise. Samples serve only to give a general idea of the products and therefore have no binding value and are subject to no warranties or assurances by Marcin Rusak. All samples are held strictly to Marcin Rusak's order and must be returned on demand at the Customer's cost.

Furniture items and objects are carefully hand-crafted work of master artisans. Owing to organic, stone/fossil resemblance of 'Flora Material' and other Marcin Rusak composites, there are natural irregularities, for example, in veins, figure, or cavities in the surface, and in tone and finish, which are valuable and unique characteristics of the skill and craft involved in its production. Whilst effort is made to achieve reasonable consistency between samples, presentations and delivered products, no liability arises in respect of any variance; in particular, inconsistencies and variations in figure, pattern, colour, tone of finish, and structure in natural products are part of their characteristics (and the Customer should note that these variances may occur as part of the natural characteristics or, in certain limited cases, ageing of the product and accordingly give the Customer no right to cancellation, refund or other remedy.

It should be noted in particular that:

1. 'Flora Material' is offered in different composite structures as follows:

a) "Flora Temporaria", which will vary in appearance and physical properties over time, by natural ageing of its natural embedded components, which will, for example, introduce subtle "aura"-type features around them and show subtle changes in colour and tone.

b) "Flora Perma" which is a permanent casting, which will show only minimal change in properties over time and only in natural embedded components.

2. 'Perishable' objects may over time perish to lack of aesthetics or serviceability. These products are sold on that basis and intended to have only temporary lifespans (mirroring features occurring in nature). The period of degradation will vary according to the physical context and ambient environment.

Once a Contract Order is effective and has been actioned by Marcin Rusak for production, any changes then requested by the Customer may have material impact on production, timetable and delivery. Marcin Rusak reserves the right to amend pricing and delivery schedules as a result of any changes specified by the Customer after the point of confirmed Contract Order. A Contract Order may only be cancelled by notice from the Customer received by Marcin Rusak within 2 (two) working days after first invoice.

Marcin Rusak's expectation is that the Customer will have the Customer's own project management personnel (e.g. architect, designer, consultant). Unless Marcin Rusak specifically agrees otherwise in writing a Contract Order will never require any services on the part of Marcin Rusak. Marcin Rusak may provide levels of advice and assistance to a Customer in the process of assessment and selection of Marcin Rusak-supplied products but such advice and assistance will be entirely without liability and the Customer must rely on the Customer's own professional staff and/or service providers to satisfy the Customer as to the suitability of the Customer's intended application. The existence of a confirmed Contract Order will include the Customer's warranty and undertaking to Marcin Rusak that it has taken all necessary, appropriate and professional steps in such regard.

4. Fees and Costs

In preparation for a Contract Order Marcin Rusak will usually submit a written quotation or range of quotation options to the Customer, which the Customer will be deemed to have selected (if applicable), approved and accepted along with this Agreement on confirmation of the Contract Order. The Contract Order will then be final, subject to provisions as to variation set out above.

If the Customer and Marcin Rusak mutually wish that Marcin Rusak will provide certain services, then any such services will be the subject of separate negotiation and written agreement as to, e.g. fees, studio and design materials, travel, deliveries, taxis, subsistence and out of pocket expenses (a "Service Contract"). In the absence of such a Service Contract, no agreement for services shall be implied and Marcin Rusak's performance shall be limited to the supply of products and as otherwise specified in accordance with the Contract Order and the Agreement.

All sums are exclusive of Value Added Tax where applicable at the prevailing rate.

5. Customer Responsibilities

Without prejudice to other terms imposing sole obligation for specification on the Customer, it will generally be useful if at the earliest stage the Customer provides a sufficiently clear and detailed explanation and appropriate drawings or other guidance as to the intended application of the products to be the subject of a Contract Order. It is the Customer's sole responsibility to obtain all necessary surveys and permissions, including planning approval and other building consents and Marcin Rusak shall at all times be free of any obligation or liability in respect of such matters and to ensure that the subject of a Contract Order is appropriate to the proposed use and installation site.

For the avoidance of doubt, post-Contract Order, changes or alterations requested by the Customer will inevitably involve material impact on both price and timetable for delivery of relevant products. All revisions shall require appropriate written verification of the amendment of the Contract Order as specified by Marcin Rusak.

6. Invoicing and Payment / Default

Contract Orders are payable as to 50% on confirmation of the Contract Order and 50% upon completion pre-shipment. Marcin Rusak invoices are payable forthwith on invoice unless otherwise agreed with the Customer in which case the agreed alternative payment date shall apply. Invoices shall be paid without deduction or any claim of set-off. Marcin Rusak may charge interest on late payment in accordance with the Late Payment of Commercial Debts Act 1998 allowing a charge of 8% over the bank base rate or as otherwise provided by statute.

The Customer shall be responsible for all costs, charges and expenses incurred by Marcin Rusak in recovery of any debt owed by the Customer.

Payments made by the Customer shall be applied firstly against all costs, charges and expenses payable, secondly against all interest payable, and thirdly against invoices, oldest due date first. The Customer shall have no entitlement to specify the application of any payment.

It is the Customer's responsibility to ensure proper administration of its purchasing procedures and the absence of any process or element in these shall not negate the requirement to pay Marcin Rusak's invoices or extend the time for payment.

Marcin Rusak reserves the right not to supply or continue supply of products or services where the Customer is in default of invoice payment or the other terms of this Agreement. Marcin Rusak reserves the rights to run credit references on the Customer or any prospective customer who shall provide all information and assistance reasonably required by Marcin Rusak to carry them out. Marcin Rusak reserves the right to require advance payment during the performance of the Agreement. During the performance of the Agreement,

Marcin Rusak may require suitable (which means convenient for Marcin Rusak) security. This will inevitably arise where any Customer has paid late in relation to prior Marcin Rusak invoices.

All payments shall be in pounds sterling and made by transfer direct to Marcin Rusak's bank account and the cost of transmission and/or currency conversion shall be at the sole expense of the Customer. Where fees and costs have been agreed in any currency other than sterling, payments shall be calculated by taking the closing spot rate in London for buying sterling quoted by Barclays Bank PC on the second working day preceding the date of actual payment.

7. Exceptional Costs

In the event that any Contract Order or later request of the Customer requires products, materials or services to be provided by third parties for which the cost is significant (in Marcin Rusak's sole discretion) Marcin Rusak may require payment in full by the Customer of such costs in advance of the products, material or service being secured. Exceptional costs may also arise where delivery fluctuations arise as a result of act, omission or request of the Customer or as a result of circumstances outside Marcin Rusak's control.

8. Delivery, Title, Complaints & Returns,

Marcin Rusak shall deliver products strictly ex-works unless the Contract Order or Agreement otherwise specifies. This means that subject to Marcin Rusak's appropriate protection and packaging of the relevant Contract Order supply ready for the shipment, the Customer shall be responsible for the costs of shipping and insurance, even if Marcin Rusak agrees to make arrangements on behalf of the Customer. Owing to varied nature of materials e.g. glass components as opposed to composite, items may require separate packaging and dispatch as itemised parcels of a consignment. Marcin Rusak highly recommends the use of professional artwork transportation specialists with appropriate accreditation. Photographs of items ready for shipment will be provided for the Customer's insurance requirements as requested. It should be noted that Customs and Excise and other local agencies may open and inspect shipments and that this possibility should be understood and addressed by the Customer in making shipping and insurance arrangements.

Fulfilment periods and delivery times where specified shall be approximate and shall not be binding or of the essence unless the subject of express written agreement. No liability shall otherwise arise for late delivery. Variations in delivery schedule or arrangements may result in Exceptional costs.

The Customer must immediately inspect the products for visible defects at the time of delivery, and must also check the products thoroughly against the Contract Order. If the Customer takes delivery of the products and raises no written objection or complaint within 3 (three) working days of delivery, then the Customer shall be deemed to have accepted the products completely and without reservation and shall have no remedy.

Title to products shall not pass to the customer until Marcin Rusak shall have been paid in full in respect of applicable Contract Order invoices, any costs, charges, expenses and interest arising on late payment and otherwise as required by the Agreement. The products shall be at the Customer's risk from the point of dispatch, but the Customer shall make no use of the products in any context until all of Marcin Rusak's claims to payment in respect of the relevant Contract Order/s have been fully satisfied. In the event that any such claims of Marcin Rusak remain unsatisfied 28 days following delivery then, without prejudice to Marcin Rusak's other remedies, Marcin Rusak may, by notice to the Customer, demand the immediate return of the products at the Customer's cost and in such event the Customer undertakes to arrange such return forthwith.

In the event of outstanding claims of Marcin Rusak at the point of delivery, the Customer must keep the products which are delivered subject to retention of title with due care and clearly identified as the legal and beneficial property of Marcin Rusak and must grant Marcin Rusak (or its appointed representative) free access at all times to its grounds and/or buildings for the purposes of inspecting the products and/or exercising its rights.

In the case of hidden defects complaints must be formally notified within 10 (ten) working days of the defect being discovered, failing which the Customer's remedies shall lapse in their entirety.

Complaints about products delivered shall not be accepted if the products have been treated and/or processed or otherwise used by the Customer after any defect has or should have become apparent (in the latter case, had the Customer been acting competently and reasonably) nor where the Customer has failed to adhere to Marcin Rusak's care recommendations including by reference to technical data.

For the avoidance of doubt, deviations in size, and shade, which fall within the usual tolerances of the composites, natural materials and glass shall give rise to no right of complaint or other remedy.

With respect to all complaints, Marcin Rusak shall promptly be afforded access to inspect, assess and determine the validity (or not) of complaint. If a complaint is determined by Marcin Rusak to be valid, Marcin Rusak shall have the choice in its determination of taking back the products, exchanging the products, giving an appropriate price reduction or of offering such other redress as it determines to be appropriate in its discretion.

Products that are otherwise to be returned shall be subject to Marcin Rusak's prior written approval and acceptance of such return and on condition that the return of the products is in the like condition to that in which they were consigned and in their original packaging. Products returned, which meet these requirements, shall be credited at the original purchase price less 25% (twenty-five per cent) for fixed administration costs incurred by Marcin Rusak. The Customer must return the products to Marcin Rusak at its own expense and risk, with full value insurance. If material damage arises during transportation, Marcin Rusak shall not be obliged to credit the purchase price.

9. Intellectual Property Rights

All intellectual property rights relating to Marcin Rusak's products and their design, its brochures and software, and to products, which Marcin Rusak develops and/or uses during the performance of the Agreement, shall belong to Marcin Rusak, insofar as they do not already belong to third parties, and unless agreed otherwise in writing.

The Customer shall not remove or change any indication or labels as to copyright, trademarks, trade names or other intellectual property rights on the products, brochures, software and/ or other products belonging to Marcin Rusak.

If a Contract Order involves a specification based on the Customer's designs, drawings or other instructions, then the Customer warrants and guarantees that this shall not entail any infringement of intellectual property rights or other third-party rights. The Customer party shall indemnify Marcin Rusak against all third-party claims on account of an infringement of their intellectual property rights, whether or not such claims are for compensation, and shall also indemnify Marcin Rusak against all costs which Marcin Rusak incurs in connection with third-party claims, including the costs of legal assistance and representation.

Subject to the pre-existing rights of the client in its own intellectual property Marcin Rusak is the absolute legal and beneficial owner of the entire copyright and all other right title and interest of whatsoever nature throughout the world in all products produced and supplied by Marcin Rusak and in the product of any its services and those of its staff, agents, servants and representatives including without limitation all plans, rough designs, patterns, sketches, proofs, finished designs in all media, computer-generated material, models, reports, artwork and presentation visuals and any reproductions in whole or in part ("IPR").

No license to the client of any IPR shall be effective until Marcin Rusak has been paid in full in accordance with the Agreement. Marcin Rusak will, subject to these requirements, make limited assignments appropriate to the needs and requirements of the client where Marcin Rusak is requested to do so. Any such assignment will not include preparatory work or designs and proposals as to products or services not accepted or taken forward for implementation by the Customer. Marcin Rusak may at all times use examples of its work for bona fide marketing and portfolio purposes other than where any suitable restriction has been agreed with the Customer in accordance with the Customer's reasonable and appropriate request.

Work commissioned by Marcin Rusak from third parties including without limitation photography, film work, illustration and models will remain the property and copyright of the originator and unless otherwise agreed with the originator may be used only for the purpose commissioned and in the territories stipulated. Where requested by and at the sole cost of the Customer Marcin Rusak may obtain additional rights in such material but this cannot be assumed or guaranteed.

All reports, proposals, working processes, presentations, designs and supporting materials produced by Marcin Rusak shall be included in IPR and are disclosed in confidence for the sole use of the Customer and may not be disclosed to any third party without Marcin Rusak's prior written consent.

10. Credits and Licensed Rights / Integrity of Rights Licensed

The Agreement shall be subject to any reasonable requirements of the Customer in respect of confidentiality specified in negotiating any Contract Order.

Marcin Rusak is entitled to and asserts its moral rights in exclusive authorship of all work created by Marcin Rusak and may use any such work for the purposes of Marcin Rusak's own bona fide publicity and marketing subject to the Agreement.

The Customer will be a licensee of Marcin Rusak in respect of the IPR for all bona fide commercial purposes of the Customer consistent with the Contract Order but not otherwise. All other uses of the IPR shall be subject to Marcin Rusak's prior written approval, which it may decline or withhold in its sole discretion.

In the event that IPR in any of our work is assigned to the Customer any assignment shall be subject to and conditional upon Marcin Rusak's free and irrevocable worldwide licence to use and reproduce the relevant IPR in accordance with the Agreement.

All media releases public announcements and public disclosures by either party relating to this Agreement or its subject matter including promotional or marketing material shall be coordinated with the other party and approved jointly by the parties prior to release.

11. Limitation of Liability

Other than in the case of personal injury and death and to the extent permitted by law under no circumstances will Marcin Rusak be liable to the Customer for any losses or damage including loss of profit or of contracts or for any consequential or economic loss or damage and in any event Marcin Rusak's liability shall never be greater than the relevant invoice amount paid to it (exclusive of expenses and costs and any fee thereon) in respect of the relevant Contract Order.

Marcin Rusak will not have any liability for any delay or for the consequences of any delay in performing any of its obligations to the Customer if such delay results from Force Majeure (including, for example, war, mobilization, civil commotion, flood, closed shipping, transport gridlocks, delays, restrictions or the halt in the supply by public utility companies, lack of means of generating energy, fire, cave-ins/collapse, subsidence, explosions, machine breakdowns and other accidents, strike action, lockouts, trade union action, export restrictions, pan- demics, lightening strikes, other government measures, non-delivery of necessary materials (and/or semi-finished products) and/or services which are necessary for the production, either by the government or by third parties, intentional act or gross negligence on the part of auxiliary persons, and other similar circumstances) or is otherwise due to a cause or circumstances beyond Marcin Rusak's reasonable or effective control .

If, exceptionally, Marcin Rusak has agreed expressly a strict delivery deadline with the Customer, and Marcin Rusak is faced with temporary delays in such delivery as set out herein, then Marcin Rusak shall be entitled to extend the delivery period by the duration of the delay. Such extension shall not constitute any failure in Marcin Rusak's performance, and the contracting party shall have no right to termination or compensation.

Details of Marcin Rusak's public and product liability and professional indemnity insurance cover may be provided as appropriate to a particular Contract Order. It is for the Customer to make appropriate enquiry as to the suitability of Marcin Rusak's extent and levels of indemnity as relevant to the Customer's particular application.

Marcin Rusak is a bespoke design house and supplier of specialist products oriented to creative and aesthetic design concepts, elements and continuity. It does not offer services, which properly fall within the qualification remit and expertise of specific professional and other service providers. For this reason it is imperative that the Customer understands and it is a condition of this Agreement that Customer must engage suitable other parties according to the particular needs of the Customer and that Marcin Rusak as a matter of default provides no services other than as a supplier of products. Without limitation, this includes use by the Customer, without limitation, of qualified consultants on regulatory and planning issues and architects, surveyors, structural engineers, quantity surveyors and designers.

12. Warranties and Indemnity

The Customer warrants that material supplied to Marcin Rusak for use in any project will not breach the copyright design right trademark patent other intellectual property or any other rights of any third party and the Customer agrees to indemnify Marcin Rusak against any and all damage harm loss of reputation and goodwill costs claims and expenses (including legal and professional costs on an indemnity basis) incurred by or caused to Marcin Rusak as a result of any claim by any party alleging any abuse or infringement of such rights. The Customer will not engage in any future use of the IPR in further or alternative realizations without the prior written approval of Marcin Rusak and in no circumstances shall any party other than Marcin Rusak either supervise or supply design services in connection with such activities. The commercial terms of Marcin Rusak's participation in future realizations based on completed Customer projects and existing IPR shall be negotiated in good faith on terms reasonably consistent with those applicable to the original Contract Order.

Marcin Rusak warrants on like terms and provisions as to indemnity in respect of its IPR and its supply of products and the product of any services.

13. Content and Materials

Any content and any material (including without limitation illustrations photographs and artwork) delivered or handed over to the Customer or to the Customer's agents or representatives is the responsibility of the Customer and if lost damaged or destroyed may only be replaceable at additional cost to the Customer.

14. Confidentiality

Any information (save information already in the public domain) acquired by any party to the Agreement or necessarily associated with it including any member of staff agent representative of sub-contractor regarding any aspect of the business of any other such party shall be treated as confidential and shall not be disclosed to any other party without the prior written authority of the party owning controlling or otherwise exclusively and privately entitled to the information save where that disclosure is obviously a necessary requirement of any Project subject to the Agreement.

15. Restrictions / Protection of Marcin Rusak

The Customer shall not at any time during a period of 12 months after completion by Marcin Rusak of any Project on its own behalf or on behalf of any third party either directly or indirectly deal with or solicit or procure the employment or engagement of any person or party who is or has been at any time within the period of 24 months before the expiry of that 12 month period employed or engaged by Marcin Rusak in a significant role or relationship in the conduct by Marcin Rusak of its business (as determined in the reasonable commercial view of Marcin Rusak).

16. Termination

The Agreement shall terminate if either party commits a breach of it and fails to remedy the breach within 14 days of receipt of written notification from the other party specifying the breach and requiring its remedy. On termination or other postponement by the Customer of any Contract Order or on termination by Marcin Rusak including as a result of other default by the Customer (i) Marcin Rusak shall be entitled to payment of all payable Contract Order invoices and Additional Charges and all other sums due in accordance with the Agreement (for example, expenses and costs and interest) (ii) no rights in IPR or arising from Marcin Rusak's supply of products or services shall pass to or vest in the Customer unless Marcin Rusak agrees otherwise in writing (iii) Marcin Rusak may by notice to the Customer specify the terms if any upon which reference may be made to Marcin Rusak's services and work or alternatively may require that no further reference is made to Marcin Rusak at all.

17. Notice

This can be given by e-mail to the specified e-mail address of Marcin Rusak and the Customer from time to time. Notice will be deemed given at the time specified in any bona fide and honestly relied on independent verification of delivery.

18. Law

The Agreement and any and all matters arising from or in connection with it shall be exclusively governed by subject to and construed in accordance with the laws of England and Wales the courts of which shall have sole and exclusive jurisdiction. No party to the Agreement shall seek recourse to the law or any formal process including action through legal or professional representatives without first engaging in bona attempts at dispute resolution through mediation under the auspices and guidance of a professional body nominated by Marcin Rusak suitable to the issue/s in question.

Marcin Rusak T&Cs as from November 2017