

# Lanai Outdoor Commercial Limited - Standard Terms and Conditions for the Supply of Good and Services

## 1. DEFINITIONS

- 1.1 When the following words with capital letters are used in these Terms, this is what they will mean:
  - Assembled Product**; the product Lanai will make for you with the Goods as a result of the Services, as set out in the Order;
  - Completion**; completion of the provision of Services;
  - Contract**; the contract between Lanai and you for the supply of Goods in accordance with these Terms;
  - Delivery and Delivery Address**; as defined in clause 4.1;
  - Event Outside Lanai's Control**; as defined in clause 11.2;
  - Goods**; the goods that Lanai is selling to you as set out in the Order;
  - Order**; your order for the Goods and/or Services as set out overleaf;
  - Post-Completion Alterations**; any alterations to the Goods and/or the Assembled Product requested by you after Completion which are not covered by Lanai's guarantee as set out in clause 5;
  - Price**; the price of the Goods as set out in the Order;
  - Services**; the services to be provided by Lanai to you in installing, erecting, constructing, repairing or maintaining the Assembled Product;
  - Stages**; has the meaning as set out in clause 9.5;
  - Survey**; a survey commissioned by Lanai in relation to the site at the Delivery Address where the Assembled Product is to be installed;
  - Surveyor**; a surveyor appointed by Lanai to carry out a Survey;
  - Third Party Consents**; consents from any local government for planning permission and/or building regulation consent;
  - Terms**; the terms and conditions set out in this document; and
  - Lanai**; Lanai Outdoor Commercial Limited registered in England and Wales with company number 10578933.

- 1.2 A reference to "writing" or "written" includes faxes and e-mail.
- 1.3 The headings to these Terms are for convenience only and do not affect interpretation. Words denoting natural persons include corporations and firms and vice versa.
- 1.4 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.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## 2. YOUR CONTRACT WITH LANAI

- 2.1 These are the Terms on which Lanai supply Goods and/or Services to you.
- 2.2 Please ensure that you read these Terms carefully, and check that the details on the Order and these Terms are complete and accurate, before you sign the Order. If you think that there is a mistake, please contact Lanai to discuss. Lanai will confirm any changes in writing to avoid any confusion between you and Lanai.
- 2.3 The Order constitutes an offer by Lanai to sell the Goods to you in accordance with these Terms.
- 2.4 The Order shall be deemed to be accepted by you when you sign the Order at which point and on which date the Contract shall come into existence and these Terms will become binding on you and Lanai.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Lanai and any descriptions or illustrations contained in Lanai's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 For the avoidance of doubt, any information contained in the "additional information" section on the Order is for information purposes only and shall not form part of the Contract or have any contractual force.
- 2.7 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Lanai which is not set out in the Contract.

## 3. CHANGES TO ORDER OR TERMS

- 3.1 Lanai may revise these Terms from time to time to reflect changes in relevant laws and regulatory requirements.
- 3.2 If you wish to cancel an Order before the Surveyor attends the Delivery Address to carry out a Survey, please see your right to do so in clause 12.1(a).
- 3.3 If you cancel an Order after the Survey has been completed, because the Goods are made to your specific requirements, you may still be required to pay the full Price in accordance with clause 12.1(b).

## 4. DELIVERY OF GOODS

- 4.1 Lanai will contact you to arrange a date for Delivery of the Goods. Any Delivery dates quoted or agreed are approximate only, and the time of Delivery is not of the essence. Lanai shall not be liable for any delay in Delivery whether such delay is caused by an Event Outside Lanai's Control, your failure to provide Lanai with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or for any other reason.
- 4.2 The Delivery payment becomes due as soon as Lanai receives written confirmation from the manufacturer that the goods are manufactured and ready to be shipped.
- 4.3 If no one is available at your address to take Delivery, Lanai will leave you a note that the Goods have been returned to Lanai's premises, in which case, please contact Lanai to rearrange delivery. In the event that Lanai is unable to complete Delivery for the above reason then Lanai reserves the right to charge you for any additional delivery costs that it incurs and for storage of the Goods until Delivery is complete.
- 4.4 You own the Goods once Lanai has received payment of the Price in full.

## 5. LANAI'S GUARANTEE OF GOODS

- 5.1 Except in the circumstances described in clause 5.2, Lanai guarantees that upon Completion:
  - (a) and for a period of 10 years from Completion, the Goods and the Assembled Product shall be free from material defects; and
  - (b) and for a period of 5 years from Completion, any motors forming part of the Goods shall be free from material defects.
- (c) any remedial work can only be completed if the full contract balance has been paid to Lanai.
- 5.2 The guarantees set out in Clause 5.1 do not apply to any defect in any Goods or Assembled Product arising from:
  - (a) fair wear and tear;

- (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party; repairers.
  - (c) the formation of condensation;
  - (d) if you fail to operate or use the Goods and/or Assembled Product in accordance with any user instructions; or
  - (e) any alteration or repair by you or by a third party who is not one of Lanai's authorised repairers.
- 5.3 For the avoidance of doubt, any rippling or waffling around the joins of any awning fabric shall not be considered defect for the purposes of clause 5.1 or otherwise (such waffling is an unavoidable symptom of the manufacturing process).
  - 5.4 This guarantee is in addition to, and does not affect, your legal rights in relation to Goods

## 6. PROVISION OF SERVICES

- 6.1 Lanai will make reasonable efforts to complete the Services in a reasonable time from the date of Order. However, time is not of the essence in the provision of any Services. Lanai shall not be liable for any delay in the provision of any Services whether such delay is caused by an Event Outside Lanai's Control or for any other reason.
- 6.2 Lanai may have to suspend the Services if Lanai has to deal with technical problems. Lanai will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency.
- 6.3 If you do not pay Lanai for any Goods or Assembled Product when you are supposed to as set out in clause 9.5, Lanai may suspend the Services with immediate effect until you have paid Lanai the outstanding amounts. Lanai will contact you to tell you this. This does not affect Lanai's right to charge you interest under clause 9.8.
- 6.4 Lanai will, as between Lanai and you, own the copyright, design right and all other intellectual property rights in the Assembled Product and any drafts, drawings or illustrations Lanai makes in connection with the Assembled Product.
- 6.5 Lanai reserve the right to change suppliers of their products at any time.
- 6.6 Lanai is not responsible for the removal of packaging once the installation is complete.

## 7. IF THERE IS A PROBLEM WITH THE GOODS OR ASSEMBLED PRODUCT

- 7.1 Because the Goods and Assembled Product are made to your specific requirements and are not suitable for resale, Lanai cannot accept the return of any Goods or Assembled Product at any time unless they are faulty or not as described. Advice about your legal rights is available at your local Citizen's Advice Bureau or Trading Standards office.
- 7.2 In the unlikely event that there is any defect with the Goods or Assembled Product:
  - (a) please contact Lanai in writing regarding any suspected defects as soon as reasonably possible;
  - (b) please give Lanai a reasonable opportunity to inspect any defect;
  - (c) Lanai will use every effort to repair or fix the defect as soon as reasonably practicable and, in any event, within a month from the time the defect is reported to Lanai by you in writing; and
  - (d) you will not have to pay for Lanai to repair or fix a defect with the Goods or Assembled Product under this clause 7.1.

## 8. TITLE AND RISK

- 8.1 The risk in the Goods shall pass to you on Delivery or on each individual Delivery for Goods which arrive in instalments.
- 8.2 Title to the Goods and Assembled Product shall not pass to you until Lanai receives payment in full (in cash or cleared funds) for the Goods and Assembled Product in respect of which payment has become due, in which case title to the Goods and Assembled Product shall pass at the time of payment of all such sums.
- 8.3 If before title to the Goods and Assembled Product passes to you and payment is not made, without limiting any other right or remedy, Lanai may enter your address or of any third party where the Goods and/or Assembled Product are stored or kept in order to recover them at any time.

## 9. PRICE AND PAYMENT

- 9.1 The prices of Goods may change at any time, but price changes will not affect an Order that you have already placed.
- 9.2 All Prices include the provision of the relevant Services, Delivery and VAT but exclude any charges for payment by credit card in accordance with clause 9.7.
- 9.3 If the rate of VAT changes between the date of the Order and the date of Delivery or Completion, Lanai will adjust the rate of VAT that you pay, unless you have already paid for the Goods and/or Services in full before the change in the rate of VAT takes effect.
- 9.4 The Price does not include Post-Completion Alterations which you will be charged for separately at Lanai's prevailing rates.
- 9.5 The Price shall be paid by credit or debit card, cheque or bank transfer in instalments on completion of each of the payment stages as set out on the Order (Stages).
- 9.6 Lanai accepts payment with all major credit and debit cards. Lanai will not charge your credit or debit card until completion of the relevant Stage.
- 9.7 If you pay the Price by credit card Lanai will charge you an additional 0% of the Price which will be added to your final payment.
- 9.8 If you do not make any payment due to Lanai by the due date for payment, Lanai may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of Barclays Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Lanai interest together with any overdue amount.
- 9.9 If trims are required to be measured once the installation is complete, the final balance must still be paid on practical completion. Lanai will order the trims and return to install them at a future date to be agreed with the customer.

## 10. LANAI'S LIABILITY TO YOU

- 10.1 Subject to the remaining provisions of this clause 10, Lanai is responsible for loss or damage you suffer that is a foreseeable result of Lanai breaching the Terms or Lanai's negligence.
- 10.2 Lanai shall in no way be responsible for:
  - (a) any loss or damage that you suffer that is not foreseeable (loss or damage is foreseeable if it is an obvious consequence of Lanai's breach or if it was contemplated by you and Lanai at the time Lanai entered into this contract);
  - (b) any loss or damage that you suffer arising from any failure to get any Third Party Consents which is your sole responsibility unless the Order states otherwise; or
  - (c) any indirect or consequential loss or damage that you suffer.
- 10.3 Lanai does not exclude or limit in any way Lanai's liability for:
  - (a) death or personal injury caused by Lanai's negligence or the negligence of Lanai's employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by

- section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples); and
- (e) defective products under the Consumer Protection Act 1987.

- 10.4 Lanai's total liability to you for damage to property caused by the negligence of its employees, agents or sub-contractors in connection with these Terms shall be limited to the Price for any one event or series of connected events; and
- 10.5 Lanai's total liability to you in respect of all other loss or damage arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price.

## 11. EVENTS OUTSIDE LANAI'S CONTROL

- 11.1 Lanai will not be liable or responsible for any failure to perform, or delay in performance of, any of Lanai's obligations under these Terms that is caused by an Event Outside Lanai's Control.
- 11.2 An Event Outside Lanai's Control means any act or event beyond Lanai's reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 11.3 If an Event Outside Lanai's Control takes place that affects the performance of Lanai's obligations under these Terms:
  - (a) Lanai will contact you as soon as reasonably possible to notify you; and
  - (b) Lanai's obligations under these Terms will be suspended and the time for performance of Lanai's obligations will be extended for the duration of the Event Outside Lanai's Control. Where the Event Outside Lanai's Control affects Lanai's delivery of Goods to you, Lanai will arrange a new delivery date with you after the Event Outside Lanai's Control is over. Where the Event Outside Lanai's Control affects Lanai's performance of Services to you, Lanai will restart the Services as soon as reasonably possible after the Event Outside Lanai's Control is over.
- 11.4 You may cancel the contract if an Event Outside Lanai's Control takes place and you no longer wish Lanai to provide the Goods and/or Services. Please see your cancellation rights under clause 12. Lanai will only cancel the contract if the Event Outside Lanai's Control continues for longer than 6 weeks in accordance with Lanai's cancellation rights in clause 12.

## 12. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND

- 12.1 Goods are made to your specific requirements and, therefore:
  - (a) if you cancel your Order anytime before the Surveyor attends the Delivery Address to carry out the Survey, Lanai will refund you any payments that you have made except for the first Stage payment (as set out in the Order) which is not refundable; and
  - (b) if you cancel your Order anytime after the Surveyor attends the Delivery Address to carry out the Survey, Lanai reserves the right to charge you the full Price and you will not be eligible for a refund on any payments already made to Lanai.

## 13. LANAI'S RIGHTS TO CANCEL AND APPLICABLE REFUND

- 13.1 If Lanai have to cancel an Order any time due to an Event Outside Lanai's Control or the unavailability of Goods or (in the case of Services) key personnel or key materials without which Lanai cannot provide the Services or on the advice of either the Surveyor or the manufacturer of the Goods:
  - (a) Lanai will promptly contact you to let you know; and
  - (b) if you have made any payment(s) in advance for Goods that have not been delivered to you, Lanai will refund these amounts to you.
- 13.2 Lanai may cancel the Services at any time with immediate effect by giving you written notice if:
  - (a) you do not pay Lanai when you are supposed to as set out in clause 9.5. This does not affect Lanai's right to charge you interest under clause 9.8; or
  - (b) you break the Contract in any other material way and you do not correct or fix the situation within 3 days of Lanai asking you to in writing.

## 14. INFORMATION ABOUT HOW TO CONTACT LANAI

- 14.1 14.1 If you have any questions or if you have any complaints, please contact Lanai. You can contact Lanai by telephoning Lanai's customer service team on 01223 915822, by e-mailing info@lanai-outdoor.co.uk or by writing to them at Office 37, Regis House, 23 King Street, Cambridge, CB1 1AH.
- 14.2 14.2 If any clause in these Terms requires you to give Lanai notice in writing, you can send this to Lanai by e-mail to info@lanai-outdoor.co.uk or by hand or by pre-paid post to Lanai Outdoor Commercial Limited at Office 37, Regis House, 23 King Street, Cambridge, CB1 1AH. Lanai will confirm receipt of this by contacting you in writing. If Lanai has to contact you or give you notice in writing, Lanai will do so by e-mail, by hand, or by pre-paid post to the address you provide to Lanai in the Order.

## 15. HOW LANAI MAY USE YOUR PERSONAL INFORMATION

- 15.1 Lanai will use the personal information you provide to Lanai to:
  - (a) provide the Goods and/or Services;
  - (b) process your payment for the Goods and Assembled Product; and
  - (c) inform you about similar products or services that Lanai provides, but you may stop receiving these at any time by contacting Lanai.

## 16. OTHER IMPORTANT TERMS

- 16.1 Lanai may transfer its rights and obligations under these Terms to another organisation, and Lanai will always notify you in writing if this happens, but this will not affect your rights or Lanai's obligations under these Terms.
- 16.2 Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 16.3 If Lanai fail to insist that you perform any of your obligations under these Terms, or if Lanai do not enforce its rights against you, or if Lanai delays in doing so, that will not mean that Lanai have waived its rights against you and will not mean that you do not have to comply with those obligations. If Lanai does waive a default by you, Lanai will only do so in writing, and that will not mean that Lanai will automatically waive any later default by you.
- 16.4 These Terms are governed by English law. You and Lanai both agree to submit to the non-exclusive jurisdiction of the English courts.