



## HAMILTON WESTON WALLPAPERS LTD - TERMS AND CONDITIONS: TRADE CUSTOMERS

Please read all these terms and conditions

### Application and entire agreement

1. These Terms and Conditions of trading will apply to the purchase of the goods detailed in our quotation (**Goods**) to the buyer (**you**) from Hamilton Weston Wallpapers Limited (Company registered in England and Wales under number 02063131 whose registered office is 1 The Old Stables, Eridge Park, Tunbridge Wells, Kent, TN3 9JT (**we or us**)).
2. In accordance with the order form we have sent you (the **Customer or you**) and your delivery of the form back to us (**Order**) Hamilton Weston Wallpapers Limited, a company registered in England and Wales under No. 02063131 whose registered office is 1 The Old Stables, Eridge Park, Tunbridge Wells, Kent, TN3 9JT with email address info@hamiltonweston.com; telephone number +44 (0) 20 8940 4850 (**we or us**).
3. Our acceptance of your Order will take place when we write or email to you to accept it, at which point a contract will come into existence between you and us containing these Terms and Conditions for the goods you have ordered (**Goods**). The Order and these Terms and Conditions will constitute the entire agreement between us and you (**Contract**). If you are not sure about anything, please call us on +44 (0) 208 940 4850.
4. These Terms and Conditions and the Order (together, the Contract) apply to the purchase and sale of any Goods between us and you, to the exclusion of any other terms that you may try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### Interpretation

5. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
6. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
7. Words imparting the singular number include the plural and vice-versa.

### Goods

8. The description of the Goods is set out in our sales documentation, unless expressly changed in our quotation. In accepting the quotation you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only and may be subject to slight colour variation within print batches but within industry tolerance. Hamilton Weston Wallpapers Ltd. will not be held liable of the accuracy of the descriptions.
9. We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.
10. We do not accept any liability for quantifying the amount of wallpaper required and all papers should be hung by an experienced and expert professional paperhanger. You have not rights to return and/or receive a refund of any Goods whether the Goods are unused or otherwise not needed.

### Price

11. The price (**Price**) of the Goods is set out in our quotation current at the date of your Order. Quotations and Pro formas remain valid for 30 days from date of issue.
12. If the cost of the goods which form part of the Goods you have ordered to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we may increase the Price prior to delivery.
13. Any increase in the Price under the clause above will only take place after you have been advised by us.
14. The Price is exclusive of fees for packaging, transportation and delivery and are shown separately on your quotation and in your Order.
15. The Price is exclusive of any applicable VAT and/or other taxes or levies which are imposed or charged by any competent authority and you agree to pay in cleared funds the Price and any applicable VAT and/or other taxes so that the full payment is received by us as stated on the Order. You agree to comply with the relevant tax laws which apply to your business and account for any VAT or equivalent sales tax accordingly.



## Cancellation and alteration

16. We may cancel your Order and terminate the Contract immediately if you do not pay on the date when stated on the Order, or our supplier becomes insolvent or we cannot fulfil your Order or in circumstance beyond our reasonable control as set out in clause 62
17. Once payment has been received and the goods have been put into production then orders may not be cancelled without prior agreement.

## Payment

18. We will invoice you for the Price in advance of the goods being manufactured.
19. All goods must be paid for in advance of manufacture unless agreed in writing otherwise.
20. Time for payment will be of the essence of the Contract between us and you.
21. All payments must be made in British Pounds unless otherwise agreed in writing between us.
22. You must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law (in which event you will increase your payment so that we receive the full payment for your order set out in the quotation) and you are not entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
23. Payment for Goods may be made by bank transfer or debit or credit card through Worldpay.

## Delivery

24. We will arrange for the delivery of the Goods to the address specified in the quotation, or your order or to another location we agree in writing.
25. If you do not specify a delivery address or if we both agree, you must collect the Goods from our premises.
26. Subject to the specific terms of any special delivery service, delivery can take place at any time of the day and must be accepted at any time between 8 am to 8 pm.
27. If you do not take delivery of the Goods we may, at our discretion and without prejudice to any other rights:
  - a. store or arrange for the storage of the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
  - b. make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
  - c. after 10 business days, resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the price of the Goods.
28. If a rearranged redelivery is not possible as set out above, you must collect the Goods from our premises and will be notified of this. We can charge you for all associated costs including, but not limited to, storage and insurance.
29. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond our control as set out in clause 62 below or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

## Inspection and acceptance of Goods

30. You must inspect the Goods on delivery or collection from us.
31. If you identify any damages or shortages, you must inform us in writing within 7 days of delivery, providing details.
32. Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and if required, have carried out an inspection.
33. Subject to your compliance with this clause and/or our agreement, you may return the Goods which are defective or not of satisfactory quality within the meaning of the Sale of Goods Act 1979 and we will, as appropriate, repair, or replace, or refund the Goods or part of them. We do not guarantee that the Goods will not fade or discolour due direct sunshine or UV exposure or extreme heat.



34. We will be under no liability or further obligation in relation to the Goods if:
- a. you fail to provide notice as set above; and/or
  - b. you make any further use of such Goods after giving notice under the clause above relating to damages and shortages; and/or
  - c. the defect arises because you did not follow our oral or written instructions about the storage, commissioning, installation, use and maintenance of the Goods; and/or
  - d. the defect arises from normal wear and tear of the Goods; and/or
  - e. the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by you, your employees, workmen or agents or any third parties.
35. You bear the risk and cost of returning the Goods which must be returned in their original packaging and fully wrapped in the case of unopened full rolls
36. Acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within 7 days after delivery

## Risk and title

37. The risk in the Goods will pass to you on completion of delivery.
38. Title to the Goods will not pass to you until we have received payment in full (in cash or cleared funds) as set out in the Order.
39. Until title to the Goods has passed to you, you must (a) hold the Goods on a fiduciary basis as our bailee; and/or (b) store the goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and/or (c) keep the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
40. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

## Termination

41. We can terminate the sale of Goods under the Contract where:
- a. you commit a material breach of your obligations under these Terms and Conditions including but without limitation not paying for the Goods;
  - b. you are or become or, in our reasonable opinion, are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
  - c. you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
  - d. you convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

## Limitation of liability

42. Our liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this clause.
43. Subject to the clauses above on **Inspection and Acceptance** which set out the remedies we offer you in respect of the Goods you have ordered and **Risk and Title**, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
44. If we do not deliver the Goods or the Goods are defective and we do not replace them under the clauses above on **Inspection and Acceptance**, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
45. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.



46. We will not be liable (whether caused by our employees, agents, suppliers or otherwise) in connection with the Goods, for:
- a. any indirect, special or consequential loss, damage, costs, or expenses and/or other third party claims; and/or
  - b. any loss of:
    - (I) profits;
    - (II) anticipated profits;
    - (III) business;
    - (IV) data;
    - (V) reputation or goodwill;
    - (VI) business continuity ; or
  - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  - d. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  - e. any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
47. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

## Communications

48. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
49. Notices will be deemed to have been duly given:
- a. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - b. when sent, if transmitted by email and a successful return receipt is generated;
  - c. on the fifth business day following mailing, if mailed by national ordinary mail; or
  - d. on the tenth business day following mailing, if mailed by airmail.
50. All notices under these Terms and Conditions must be addressed to the most recent address or email address on the Order or otherwise notified to the other party.

## Data protection

51. When providing the Goods to you, we may gain access to and/or acquire the ability to transfer, store or process personal data of your employees.
52. The parties agree that where such processing of personal data takes place, we shall receive that data and hold and Process it as 'data controller' in accordance with our Data Protection Policy as defined in The General Data Protection Regulation 2018 and the associated UK Data Protection Act 2018 (GDPR) as may be amended, extended and or re-enacted from time to time.
53. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', shall have the same meaning as in the GDPR.
54. We shall only Process Personal Data to the extent reasonably required to enable it to provide the Goods as mentioned in these terms and conditions or as requested by and agreed with you, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
55. We shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
56. We shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by us on behalf of you. Further information about the Seller's approach to data protection are specified in its Data Protection Policy, which can be found [INSERT LINK]. For any enquiries or complaints regarding data privacy, you may contact Company Owner at the following e-mail address: [info@hamiltonweston.com](mailto:info@hamiltonweston.com).



## Confidentiality and Intellectual Property

57. Each party undertakes that it shall not at any time during this agreement and thereafter after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party.
58. Each party may disclose the other party's confidential information:
- a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 5; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
59. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract. You agree that you will not reproduce, copy or duplicate by any method any of the wallpaper designs we provide to you and that these designs are our confidential information and our intellectual property.
60. You must not market, advertise, use the brand name or sell on to other markets without the express permission of Hamilton Weston Wallpapers Ltd. and in particular to anyone who may be considered to have a detrimental brand impact.

## Circumstances beyond the control of either party

61. We shall not be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, war or riot, fire, flood, storms, earthquakes or other natural disaster, acts of terrorism, acts of war, imposition of sanctions, embargo, or breaking off of diplomatic relations, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, customs delays or failing to grant a necessary licence or consent; fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; and/or any non-performance by suppliers or subcontractors and interruption or failure of utility service in any part of the world or any other event that is beyond our control which delays the arrival of any goods which make up your order for your Goods and/or our performance of this Contract.

## 62. Anti-Bribery & Corruption

63. You shall:
- a. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - b. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - c. comply with our Ethics, Anti-bribery and Anti-corruption Policies which will be sent to you from time to time (**Relevant Policies**);
  - d. have and shall maintain in place throughout the term of this Agreement your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 64. b, and will enforce them where appropriate;
  - e. promptly report to you any request or demand for any undue financial or other advantage of any kind received by you or money laundering activity;
  - f. immediately notify you (in writing) if a foreign public official becomes an officer or employee your business or company;
  - g. within 1 month of the date of this Agreement, and annually thereafter, certify to you in writing signed by your officer, compliance with this clause 64 by you and all persons associated with it under clause 65. You shall provide such supporting evidence of compliance as we may reasonably request.
64. You shall ensure that any person associated with you who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this clause 63 (Relevant Terms). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.
65. Breach of this clause 64 shall be deemed a material breach of this Contract.
66. For the purpose of this clause 64, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 64 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.



### **Third Party Rights and No Waiver**

67. No one other than a party to this Contract shall have any right to enforce any of its terms. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

### **Severance**

68. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

### **Law and jurisdiction**

69. This Agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.

October 2019