

1. DEFINITIONS

- 1.1. The following expressions in these terms shall mean respectively: -
- 1.2. "the Company" Textile Enterprises Limited (registered in Northern Ireland number NI 29772) whose registered office is at 26 The Square Moy, Dungannon, County Tyrone, BT71 7SG.
- 1.3. "Goods" materials, products and/or services contracted for and/or supplied by the Company from time to time
- 1.4. "the Purchaser" the person, company or body buying or offering to purchase Goods.

2. GENERAL

- 2.1. The following terms are the Company's standard terms and conditions of sale. The Company contracts for the supply of Goods only on these terms. The Purchaser accepts that these terms shall govern all contracts between itself and the Company whether confirmed in writing or otherwise to the exclusion of any other terms including conditions, warranties and representations written or oral, express or implied even if contained in any of the Purchaser's documents which purport to provide that the Purchaser's own term shall prevail.

3. QUOTATIONS AND ORDERS

- 3.1. Quotations are tendered without engagement and are subject to confirmation upon receipt of order. Quotations remain valid for a period of 30 days.
- 3.2. A contract becomes binding between the Company and the Purchaser when the Company accepts verbally or in writing the Purchaser's order.
- 3.3. Contracts, once accepted, cannot be varied or cancelled except with the written consent of both parties and then only on terms that fully indemnify the Company against any loss caused directly or indirectly by the variation or cancellation. The Company's consent may only be given by a director thereof.
- 3.4. Without prejudice to the generality of clause 3.3 above, the Purchaser shall not be entitled to cancel or vary any contracts for the supply of Goods made to or in accordance with the Purchaser's specification or requirements.
- 3.5. Representations concerning the Goods made by the Company's employees and agents are not valid unless confirmed by the Company in writing. The Purchaser acknowledges that it does not rely on, and waives any claim for breach of any such representations that are not so confirmed.
- 3.6. 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 Company shall be subject to correction without any liability on the part of the Company.

- 3.7. The Company shall not be liable for any advice or recommendation given by it or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods. The same is followed or acted upon entirely at the Purchaser's own risk and the Purchaser acknowledges that it must satisfy itself as the suitability or fitness for any purpose for which it intends to use the Goods.
- 3.8. The Company reserves the right to modify any of the Goods without prior notice provided that such modification shall not materially affect the nature or quality of the relevant Goods.
- 3.9. Goods offered "ex-stock" are subject to prior sales.

4. PRICES

- 4.1. Unless otherwise stipulated by the Company all prices are inclusive of the cost of delivery to the address stipulated by the Purchaser in its order, and (unless expressly so stated) exclude VAT or other sales tax or any import duty or tax which the Purchaser shall be additionally liable to pay to the Company.
- 4.2. The Company reserves the right to amend the price of a contract between the date of acceptance of an order and final delivery of Goods if the Company considers such a course is necessary due to any factor beyond the control of the Company (such as but without limitation any foreign exchange, fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other cost of manufacture) or any change in delivery dates, qualities, quantities or specifications of the Goods which is requested by the Purchaser or any failure of the Purchaser to give the Company adequate information or instructions.

5. DELIVERY

- 5.1. Unless otherwise agreed in writing between by the Company, the Company shall deliver the Goods to the place stipulated by the Purchaser in its order or (where the Purchaser fails to stipulate an address) to any address where the Purchaser resides or carries on business.
- 5.2. Any times stated for delivery are estimates only and time shall not be of the essence of the contract save where the Company specifically so agrees in writing under the hand of a director. If the Company is for any reason whatsoever not ready to make delivery within the time specified the Company shall not be liable for any loss or damage whatsoever sustained by the Purchaser.
- 5.3. The Company may deliver the Goods before the due delivery date upon giving reasonable notice to the Purchaser. The Company reserves the right to deliver up to Ten per cent more or less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 5.4. When it is necessary for the Purchaser to supply any instructions or do any other act to enable the Company to effect delivery of the Goods the same must be furnished or performed within such time as is reasonably necessary to enable the Company to deliver the Goods in accordance with the Contract.

- 5.5.** Where the Goods are to be delivered by instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the contract as a whole as repudiated.
- 5.6.** If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (including but not limited to where the Purchaser purports to cancel any contract in breach of clause 3.3 or 3.4 above) the Company may (without prejudice to any other right or remedy available to the Company): -
- 5.6.1** charge the Purchaser for any additional expenditure incurred in delivering or attempting to deliver the Goods on an alternative date;
- 5.6.2** store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or
- 5.6.3** sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the contract or charge the Purchaser for any shortfall below the price under the contract.

6. PAYMENT

- 6.1.** The Company shall be entitled to issue invoices to the Purchaser at any time after a contract becomes binding between the parties, in the following cases:
- 6.1.1** where the Purchaser had not been granted a credit account with the Company; or
- 6.1.2** where the Company withdraws the Purchaser's credit facilities under clause 6.4 below; or
- 6.1.3** where the Purchaser has reached or exceeded any credit limit granted by the Company under any contract.
- 6.2.** Unless otherwise agreed by the Company in writing, the Purchaser shall pay any invoice issued by the Company under clause 6.1 above prior to delivery of the Goods. Until the Company has received such payment in cleared funds, the Company shall be under no liability to deliver the Goods to the Purchaser.
- 6.3.** Subject to clause 6.1 and/or any special terms agreed in writing between the Company and the Purchaser, the Company may invoice the Purchaser for the price of the Goods on or at any time after the Goods have been made available for collection or delivered to the Purchaser or to any third party on its behalf.

6.4. Credit terms are only granted subject to satisfactory trade references and standard company credit checks and at the Company's sole discretion. Unless otherwise stated by the Company either in its quotation or correspondence where credit terms have been agreed terms of payment are strictly net cash payable on the last day of the month following the month of despatch of all or any Goods pursuant to a contract. Payment on the due date of all sums due by the Purchaser to the Company under any contract shall be of the essence of the contract. The Company reserves the right in its sole discretion at any time to withdraw any credit facility granted to the Purchaser upon written notice to the Purchaser.

6.5. Unless otherwise agreed in writing by the Company all payments shall be made in Pounds Sterling.

6.6. Where the Purchaser: -

6.6.1 is overdue with any payment owed to the Company; or

6.6.2 shall have failed to take delivery of the Goods (including but not limited to where the Purchaser purports to cancel any contract in breach of clause 3.3 and/or clause 3.4 above);
or

6.6.3 makes default in or commits any breach of its obligations to the Company hereunder;
or

6.6.4 becomes bankrupt, insolvent or has a petition presented in respect of an administration order or winding up order in respect of it or has a receiver appointed of its assets or execution or distress levied upon its assets or under the national law of its own country suffers the equivalent of any of them, or takes any step with a view to entering into a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986);
or

6.6.5 ceases or threatens to cease to trade, or if the Company shall reasonably doubt the solvency of the Purchaser;

then (without prejudice to any other right or remedy available to it) the Company reserves the right to stop manufacture, delivery or performance under any contract and performance by the Company will only recommence upon payment in full by the Purchaser of all outstanding amounts due or due completion of the Purchaser's obligations hereunder. If the Company exercises its said rights any Goods to be delivered to a Purchaser following default shall be paid for on pro forma invoice before or at the time of despatch of the Goods and payment will become due on receipt of such pro forma invoice. The Company shall not be liable for loss of any nature suffered by a Purchaser as a result of the application of this condition nor shall it be a reason for the cancellation by the Purchaser of this or any other contract which shall at the Company's option remain in full force and effect.

6.7. The Company may charge interest at a rate of 5 per cent per annum above the base rate from time to time of the Company's bankers or at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) on any overdue payments or in respect of any delivery not taken by the Purchaser.

6.8. Notwithstanding that credit may have been given to the Purchaser under the contract, the Company shall at its discretion be entitled to retain possession of the Goods or any of them until payment has been received from the Purchaser in full. Without prejudice to any other right which the Company may have, the Company shall be entitled to exercise a general lien or right of retention of all Goods in the Company's possession which are or are intended to become the Purchaser's property in regard to all monies (including all debts, damages and/or other sums) due to the Company under any contract whatsoever between the Company and the Purchaser. Pursuant to such lien or right the Company shall be entitled without notice to the Purchaser to sell all or any of such Goods in any manner and to keep the proceeds in diminution of such monies and of all costs and expenses incurred in effecting such sale.

7. PROPERTY AND RISK IN GOODS

7.1. Unless otherwise agreed in writing by the Company risk in the Goods shall pass to the Purchaser upon delivery, which for the purposes of this clause 7.1 shall be deemed to occur:

7.1.1 in the case of delivery of Goods to a location within the European Union – upon actual delivery.

7.1.2 in the case of delivery to a location outside the European Union – upon arrival of the Goods at the destination port.

7.1.3 in the case of ex works Goods (where agreed in writing by the Company) – upon collection of the Goods from the Company's premises by or on behalf of the Purchaser.

7.2. Notwithstanding delivery, the Goods shall remain the absolute property of the Company (which reserves the right to dispose of them) until the Company has received the full price for the Goods and the full price for any other Goods for which payment is due from the Purchaser on or before payment of the price of the Goods.

7.3. Until property in the Goods passes to the Purchaser the relationship between the Company and the Purchaser shall be that of bailor and bailee and the Purchaser shall store the Goods in such a way that they are readily identifiable as the property of the Company.

7.4. If before the property in the Goods passes to the Purchaser: -

7.4.1 the Goods are altered or other goods become attached to the Goods or if any part of the Goods is incorporated into any other goods such other goods shall accede to and form part of the Goods and such attachment and incorporation shall not affect the Company's title as absolute owner of the Goods;

7.4.2 the Goods are sold by the Purchaser, such sale or sales shall be deemed to be on behalf of the Company, but without imposing any liability on the Company to the sub-purchaser, and the Purchaser shall hold such part of the proceeds of sale or rights arising there from against the sub-purchaser as represents the sum due to the Company for such Goods as trustee for the Company and the Purchaser shall keep such part of the proceeds of such sale separate from its other monies and account to the Company accordingly.

7.5. If payment of the price of the Goods or any part of it is overdue or if it appears to the Company that the Purchaser is or may be insolvent, the Company may require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, the Purchaser shall permit the Company to recover and resell the Goods and by its servants or agents enter upon the Purchaser's premises (or such other the premises where the Goods are stored or situated) with or without vehicles for that purpose.

7.6. The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Purchaser does so or purports to do so, all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. DAMAGE IN TRANSIT

8.1. The Company only accepts liability under this clause 8 where it has agreed to deliver the Goods.

8.2. The Company will only accept liability for: -

8.2.1 damage to the Goods caused in transit if the same is externally visible and is notified to the Company and the carrier (if not delivered by the Company) within three days of receipt of Goods by the Purchaser;

8.2.2 damage to the Goods caused in transit which is not externally visible or any actual or apparent discrepancy between any delivery note and items delivered, if the same is notified to the Company and the carrier (if not delivered by the Company) within three days of receipt of the Goods by the Purchaser;

8.2.3 the non arrival of the Goods, if the same is notified to the Company within a reasonable period from the day that the Company informed the Purchaser that the Goods or the relevant consignment thereof were due to arrive.

8.2.4 Where the Company accepts responsibility under this clause, it may replace those of the Goods that are proved to the Company's satisfaction to have been lost or damaged prior to delivery to the Purchaser.

9. FORCE MAJEURE

9.1. The Company shall be relieved of its obligations under any contract to the extent to which fulfilment of such obligations is prevented, frustrated or impeded as a consequence wholly or partially by any cause beyond the Company's control including Act of God, war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or any such event or by any statute rules, regulations, orders or requisitions issued by any government, council or duly constituted authority or from strikes, lock outs or breakdown of plant.

10. LIMITATION OF LIABILITY

- 10.1.** The Company gives no warranty as to the fitness of the Goods for any purpose to which they will be put by the Purchaser, including without limitation any dyeing or knitting processes. The Purchaser must satisfy itself as to the quality and nature of the Goods and the suitability for the use for which the Purchaser intends to put the Goods.
- 10.2.** Any complaint or claim by the purchaser shall be made in writing within forty-five days of the date of delivery or the date of invoice whichever shall be the earlier. Any complaint or claim will not be accepted after this period. The complaint or claim must be accompanied by all relevant documentary evidence relevant to the nature of the complaint or claim (production labels, number of packages, samples etc) in the buyer's possession or power. In the event of such claim being made the company shall be entitled to suspend any further deliveries due under the contract until the nature of the complaint has been determined and/or to cancel the contract without any liability whatsoever attaching to the company.
- 10.3.** The Company shall at its sole option and discretion replace free of charge or credit the Purchaser for any Goods which are found to be defective due to defective design or manufacture and (where applicable) shall deliver the replacement Goods to the original point of delivery (but otherwise in accordance with and subject to these conditions of sale).
- 10.4.** The Company's liability in contract, tort (including negligence) or otherwise arising by reason of or in connection with any contract between the Company and the Purchaser shall be limited to the consideration payable by the Purchaser to the Company under the relevant contract (exclusive of VAT).
- 10.5.** The Company accepts no responsibility for defective Goods where such defects are due to materials supplied by the Purchaser or through its offices or from sources dictated by the Purchaser being defective or in any unsatisfactory condition and the Purchaser shall indemnify the Company against any loss suffered by the Company as a result of such defects or condition.
- 10.6.** The Company shall in no circumstances be liable for any indirect or consequential losses of the Purchaser.
- 10.7.** The Company shall in no circumstances be liable for any loss of profits or loss of contracts of the Purchaser.
- 10.8.** Nothing in these terms excludes or limits or is intended to exclude or limit the Company's liability for death or personal injury caused by its negligence.
- 10.9.** These terms state the full extent of the Company's liability to the Purchaser and the Company hereby excludes all other liabilities and warranties whether implied, express or statutory, to the extent permitted by law.

11. INDEMNITY

- 11.1.** The Purchaser shall forthwith indemnify the Company on a full indemnity basis against all or any liability cost or expense of whatsoever nature incurred by the Company due to an alleged or actual infringement of any intellectual property right or otherwise arising out of Goods manufactured or services provided by the Company to the Purchaser's order and in accordance with any samples, designs, specifications and/or instructions given by the Purchaser to the Company.

12. SUB-CONTRACT

- 12.1.** The Company shall be entitled to sub-contract all or any of its obligations hereunder.

13. PERSONAL DATA

- 13.1.** The Purchaser agrees that any relevant information about the Purchaser and/or its directors and/or proprietors ("Data") may be used by the Company for any purpose in connection with credit checks, the administration and performance of the order and any claims relating to the contract and may be disclosed by the Company to relevant third parties for the aforementioned purposes. In particular, but without prejudice to the generality of the foregoing, the Purchaser agrees that the Company may make a search with a credit reference agency or agencies, which will keep a record of that, search and will share the Data with other businesses. The Purchaser confirms that it has the consent of its directors and/or proprietor to agree to the provisions of this clause.

14. SPECIFICATION AND SAMPLES

- 14.1.** All descriptive and forward specifications, samples, showcards and other particulars submitted by the Company to the Purchaser are approximate only. The descriptions contained in the Company's showcards price lists and other documentation are intended merely to present a general idea of the Goods described therein and none of these shall form part of a contract. Specifications, descriptions, and all samples are private and confidential to the Company and all intellectual property in and relating to the Goods vest in and belong to the Company unless the Company and the Purchaser otherwise agree prior to the date of contract and subject at all times to the overriding rights in any such intellectual property vested in any third party. Specifications, descriptions, showcards and samples are supplied under the express condition that they are not reproduced nor communicated to any other person in whole or part nor may the information contained therein be used directly or indirectly in any way detrimental to the interests of the Company without the written consent of the Company.

15. INVALIDITY

- 15.1.** Each provision of these conditions is independent and severable from the remaining provisions and enforceable accordingly. If any provision of these conditions shall be unenforceable for any reason but would be enforceable if part of the wording thereof were amended or deleted it shall apply with such amendments or deletions as may be necessary to make it enforceable.

16. WAIVER

- 16.1.** Any waiver, forbearance or failure by the Company in insisting in any one or more incidences upon the performance of these conditions shall not be construed as a waiver or relinquishment of the Company's right to future performance of such condition and the Purchaser's obligations in respect of such future performance shall continue in full force and effect.

17. NO SET OFF

- 17.1.** Any payment to be made by the Purchaser to the Company shall be made in full without any set off or deduction there from or any counterclaim or claim to a lien thereover howsoever the same may arise.

18. LAW AND JURISDICTION

- 18.1.** These terms and any contract hereunder shall be governed by and construed under English law and the Company and the Purchaser submit to the exclusive jurisdiction of the English Courts in respect of any dispute claim or matter arising under such a contract or in regard to these terms.

19. NOTICE

- 19.1.** Any notice or document required or permitted to be given to or served on one party hereto by another party shall be in writing and shall be given or served by delivering or despatching the same by one of the methods set out below to its registered office if a company and (if not) to the party's last known address. Provided that where necessary the despatch of such notice or document has been properly pre-paid a notice or document so given or served shall conclusively be deemed to have been received at the time set out alongside the respective manner of service namely: -

19.1.1 by hand on the recipient or an authorised officer thereof – at the time of such service;

19.1.2 by first class post – at the commencement of the second business day after despatch;

19.1.13 by facsimile transmission – at the commencement of the next business day after despatch.