

## 1. Interpretation

### 1.1. In these Conditions:

“**Buyer**” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller, the details of which are set out in the Contract.

“**Contractual Documents**” has the meaning set out in Condition 4.1.1.

“**Conditions**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“**Contract**” means the contract for the purchase and sale of the Goods consisting in these Conditions and any Credit Application Form, written quotation of the Seller, Order Acknowledgement and Sales Contract.

“**Goods**” means the goods (including any instalment of the goods or any part for them) which the Seller is to supply in accordance with these Conditions.

“**Price**” means the price of the Goods payable by the Buyer to the Seller.

“**Reasonable Time**” has the meaning set out in Condition 9.1.

“**Seller**” means Industrial Textiles & Plastics Limited Registered under Number 2382352 of Registered Address Stillington Road, Easingwold, York, YO61 3FA, United Kingdom.

“**Specification**” means any specification for the Goods that is agreed in Writing by the Seller and the Buyer.

“**Writing**” includes e-mail, cable, facsimile transmission and comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the Sale

2.1. These Conditions shall govern the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or other course of dealing.

2.2. The Contract shall come into existence either when:

2.2.1. the Seller issues a written acceptance of an order placed by the Buyer; or

2.2.2. a written quotation of the Seller is accepted by the Buyer.

2.3. A quotation shall only be valid for a period of 30 days from its issue.

2.4. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

## 3. Orders and Specification

3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms including, where delivery is to be by carrier to the Buyer's premises, accurate details of the Buyer's address including its postcode.

3.2. The quantity, quality and description of and any Specification shall, subject to the provisions of Condition 7, be those set out in the Contract.

3.3. The Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's manufacture of the Goods in accordance with the Specification, where the Specification includes intellectual property supplied by the Buyer.

3.4. The Seller reserves the right to make any changes to the Specification which are required to conform with any applicable statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. Warranties and liability

4.1. The parties agree that:

4.1.1. the Contract together with any other documents referred to in the Contract (together the “**Contractual Documents**”) constitutes the entire agreement between the parties;

4.1.2. the Buyer has not been induced to enter into any Contractual Document in reliance upon, nor been given any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contractual Documents and, to the extent that the Buyer has been, the Buyer unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto; and

4.1.3. the only remedies available to the Buyer in respect of the Contractual Documents are damages for breach of contract and, for the avoidance of doubt, the Buyer shall not have any right to rescind or terminate the Contract either for breach of contract or for negligent or innocent misrepresentation or otherwise;

PROVIDED THAT this Condition 4 shall not exclude any liability which the Seller would otherwise have to the Buyer or any right which the Buyer may have to rescind the Contract in respect of any statements made fraudulently by the Seller prior to the Buyer entering into the Contract or any rights which the Buyer may have in respect of fraudulent concealment by the Seller.

4.2. Subject to the following provisions, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.

4.3. The above warranty is given by the Seller subject to the following conditions:

4.3.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

4.3.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval; and

4.3.3. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

4.4. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

4.5. A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to

reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 4.6. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller may replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 4.7. Subject to Condition 4.8, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 4.8. Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - 4.8.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 4.8.2. fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 4.8.3. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 4.9. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - 4.9.1. act of God, explosion, flood, tempest, fire or accident;
  - 4.9.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 4.9.3. acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 4.9.4. import or export regulations or embargoes;
  - 4.9.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 4.9.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery; or
  - 4.9.7. power failure or breakdown in machinery.

## 5. Price of the Goods

- 5.1. The Price shall be the price set out in the Contract or, where no price has been included in the Contract, the price listed in the Seller's published price list which is current at the date the Contract is formed in accordance with Condition 2.2.
- 5.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.3. Except as otherwise stated in the Contract or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller to include the cost of delivery to the Buyer's address including the cost of transport, packaging and insurance.
- 5.4. The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

## 6. Terms of Payment

- 6.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after collection by the carrier for delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2. The Buyer shall pay the price of the Goods without any deduction by the end of the month following the month in which the Seller's invoice date falls and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 6.3.1. cancel the Contract or suspend any further deliveries to the Buyer;
  - 6.3.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 6.3.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum over the official dealing rate of the Bank of England from time to time, in force, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 7. Delivery, Quantities and Specification

- 7.1. Unless otherwise agreed delivery shall:
  - 7.1.1. be by carrier engaged at the Seller's expense; and
  - 7.1.2. take place when the carrier delivers or tenders delivery at the Buyer's premises or specified delivery address or, if earlier, when the Buyer or the Buyer's agent collects the Goods.
- 7.2. Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. Goods sold as stock items may be delivered 5 working days later or earlier than the quoted delivery date. Non-stock items may be delivered up to 4 weeks later or earlier than the quoted delivery date.
- 7.3. The Seller reserves the right to deliver up to 10 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.
- 7.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.5. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

- 7.6. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 7.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 7.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess of over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 7.7. Where Goods are sold by description specifications quoted by the Seller are approximate only and subject to tolerance of plus or minus 20% whether in relation to colour, dimensions, strength, durability or otherwise.
- 7.8. Specifications of samples are approximate only and where Goods are sold by sample the specification of the Goods may deviate from the specification of the sample subject to a tolerance of plus or minus 20% whether in relation to colour, dimensions, strength, durability or otherwise.
- 7.9. Any government or carrier-imposed surcharges (BAF, CAF, War Risk) implemented after the date of quotation will be for the buyer's account.

## 8. Risk and Property

- 8.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 8.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the goods are available for collection; or
  - 8.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 8.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and of any other monies due from the Buyer to the Seller on any account. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller. The Seller may, at any time, appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- 8.3. Until such time as the property in the Goods passes to the Buyer in accordance with Condition 8.2, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 8.4. The Buyer shall be entitled to resell or use the Goods before ownership has passed to it solely on the condition that any sale be effected in the ordinary course of its business and at full market value and any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale. If the Buyer does sell the Goods whether in the ordinary course of business or not it shall hold the proceeds on trust for the Seller in a separate designated bank account identified as such.
- 8.5. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## 9. Acceptance and notification of defects

- 9.1. The Seller and the Buyer agree that a reasonable time for the Buyer to examine any Goods is the period of seven days starting either on the day on which the Goods are delivered to the Buyer by the carrier engaged by the Seller or the day on which the Buyer takes delivery of them at the Seller's place of business (the "**Reasonable Time**").
- 9.2. The Buyer undertakes to examine the Goods at the latest before the end of the Reasonable Time or before the Goods are changed from the state in which they were delivered or installed in a building or in other Goods and to notify the Seller within that time if the Goods are found on examination by the Buyer to be faulty or if the Buyer alleges that the Seller has delivered the wrong quantity of Goods.
- 9.3. The Buyer shall be deemed to have accepted the Goods including the quantity of them if the Buyer retains them without rejection beyond the end of the Reasonable Time or if after delivery the Goods are either changed from the state in which they were delivered or installed in a building.
- 9.4. For the purpose of this condition Goods are faulty if they have any material defect of design, materials or workmanship which makes them not of satisfactory quality save for defects in design or materials specified by the Buyer or otherwise conform with their description.
- 9.5. Where goods are received by the Buyer and there is a dispute regarding the date or quantities to the delivered, the Buyer will be responsible for highlighting any concerns within 48 hours of delivery. Proof of deliveries are maintained for a maximum of 30 days after receipt, after which the Seller accepts no responsibility for any losses.

## 10. Insolvency of buyer and consequences of exceeding credit limit

- 10.1. This clause applies if:
  - 10.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order, or goes into administration, or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 10.1.2. an encumbrancer takes possession, or a receiver or an administrative receiver is appointed, of any of the property or assets of the Buyer; or
  - 10.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
  - 10.1.4. any process analogous to the foregoing occurs under the laws of any other jurisdiction; or
  - 10.1.5. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10.3. The Seller's right to suspend delivery without liability to the Buyer shall also arise if the Buyer had already exceeded any credit limit agreed with the Seller or if price of any Goods otherwise to be delivered would when added to the aggregate price of Goods already delivered to the Buyer by the Seller but unpaid for would cause that limit to be exceeded.

## 11. Consequences of termination

- 11.1. On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 11.2. The Buyer's right to possession of the Goods including the right to resell the Goods in the ordinary course of business shall terminate immediately.

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- 11.3. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.4. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**12. General**

- 12.1. The Seller may, but the Buyer may not, at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.5. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

PLEASE RETAIN FOR YOUR RECORDS

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