

TERMS AND CONDITIONS OF SALE OF GOODS

1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:

- “the Buyer”** means the person(s), firm or company who purchases the Goods from the Supplier;
- “Conditions”** means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Supplier;
- “Contract”** means any contract between the Supplier and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
- “Event of Default”** means any of the events referred to in Clause 9.5;
- “Goods”** means any goods agreed in the Contract to be supplied to the Buyer by the Supplier (including any part or parts of them);
- “Purchase Order”** means the Supplier’s official purchase order to which a summary of these Conditions is annexed;
- “Supplier”** means 1927 Limited (with registered number 3691568) or any of its associated companies;
- “Writing”** and any similar expression includes facsimile transmissions and comparable means of communications, but not electronic mail.

1.2 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.3 In these Conditions headings are used for convenience only and will not affect the construction of these conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under Clause 2.2, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms which the Buyer purports to apply under any purchase order, confirmation of order or other document).

2.2 These Conditions apply to all the Supplier’s sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in Writing.

2.3 Each Purchase Order for the Goods by the Buyer, shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

2.4 NO PURCHASE ORDER PLACED BY THE BUYER SHALL BE DEEMED TO BE ACCEPTED UNTIL A WRITTEN CONFIRMATION OF ORDER IS ISSUED BY THE SUPPLIER’S HEAD OFFICE IN LONDON OR (IF EARLIER) THE SUPPLIER DELIVERS THE GOODS TO THE BUYER.

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3 ORDERS, VARIATION AND CANCELLATION

- 3.1 The Buyer must ensure that the terms of its Purchase Order and any applicable specification are complete and accurate.
- 3.2 The Supplier cannot accept any responsibility for errors or omissions resulting from verbal or telephoned orders and any variation to such orders unless the Buyer has confirmed the order or the variation in Writing.
- 3.3 The Buyer may cancel or amend an order by giving the Supplier notice in Writing, which must reach the Supplier before the date of the written confirmation of order issued by the Supplier.
- 3.4 If an order is cancelled or amended by the Buyer after the date of the written confirmation of order issued by the Supplier, the Supplier will be entitled to withhold all or part of any monies paid and/or charge the Buyer for all costs, expenses, or losses incurred by the Supplier as a result of such cancellation (including loss of profit).

4 SAMPLES AND SPECIFICATIONS

- 4.1 All specifications, drawings and particulars supplied by the Supplier or contained in the Supplier's leaflet or catalogue are merely intended to present a general idea of the Goods described therein and shall not form part of the Contract.
- 4.2 Samples may be provided for the sole purpose of giving an approximate idea of the colour and finish of the relevant Goods. Due to the inherent nature of fabric, the Supplier cannot guarantee that the colour, shade and finish of any fabric supplied will exactly match any samples.

5 PRICE

- 5.1 The price for the Goods shall be calculated by reference to the unit price set out in the Supplier's price list for the time being in force at the date of delivery.
- 5.2 The Supplier reserves the right to revise the price on account of:
 - 5.2.1 any variation of the order requested by the Buyer;
 - 5.2.2 increased material, transport or labour costs;
 - 5.2.3 fluctuation in the exchange rate;
 - 5.2.4 any change in the costs charged to the Supplier by the manufacturer;
 - 5.2.5 changes in the duty or taxes charged on the import of Goods.
- 5.3 The price shall be exclusive of any value added tax for which the Buyer shall be additionally liable to the Supplier at the prevailing rate.

6 DELIVERY

- 6.1 Unless otherwise agreed in Writing by the Supplier, delivery of the Goods shall take place at the Buyer's place of business.

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- 6.2 ANY DATES SPECIFIED FOR DELIVERY IN THE CONFIRMATION OF ORDER ARE APPROXIMATE ONLY AND INTENDED TO BE AN ESTIMATE AND TIME FOR DELIVERY WILL NOT BE OF THE ESSENCE, NOR WILL IT BE MADE OF THE ESSENCE BY NOTICE.
- 6.3 SUBJECT TO THE OTHER PROVISIONS OF THESE CONDITIONS, THE SUPPLIER WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSS (WHICH TERMS SHALL INCLUDE LOSS OF PROFITS, LOSS OF BUSINESS AND LIKE LOSS) DAMAGES, CHARGES OR EXPENSES CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN DELIVERY OF THE GOODS (OR ANY PART THEREOF) HOWSOEVER CAUSED NOR WILL ANY DELAY ENTITLE THE BUYER TO TERMINATE THE CONTRACT.
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract subject to these Conditions.
- 6.5 Where delivery is charged, it will be based upon the cost of normal road, rail, air or sea rates as appropriate.
- 6.6 If the Buyer fails to provide adequate delivery instructions or changes such instructions, or for any reason will not accept delivery of the Goods (other than by reason of the Supplier's fault) the Buyer will be liable for all related costs and expenses incurred by the Supplier (including, without limitation, storage and insurance).
- 6.7 The Supplier is not responsible for off-loading the Goods which is at all times the responsibility of the Buyer.

7 PAYMENT TERMS

- 7.1 Unless the Buyer is a credit approved Buyer, the Supplier shall be under no obligation to deliver the Goods until the price of the Goods has been received in cleared funds.
- 7.2 Unless otherwise agreed in Writing, the Buyer shall pay the price of the Goods (without any set off, counterclaim or other deduction) within 30 days of the Supplier's invoice and time for payment shall be of the essence.
- 7.3 If the Buyer fails to make payment of any sum due on or before the due date the Supplier may:-
- 7.3.1 suspend all deliveries to the Buyer (who shall not be entitled to object to or reject the Goods or any of them by reason of the subsequent delay); and/or
- 7.3.2 charge the Buyer interest (both before and after judgement) on the amount unpaid at the rate of [3%] per annum above the base rate from time to time of [Barclays Bank] Plc accruing monthly from the date of the invoice until payment is received in full.
- 7.4 The Buyer acknowledges that the Supplier shall be entitled to set off any sums it is owed by the Buyer against any sums owed to the Buyer by the Supplier.

8 RISK AND TITLE

- 8.1 Risk in the Goods shall pass to the Buyer at the time of delivery, or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery.

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- 8.2 Notwithstanding the passing of risk in the Goods, the title to the Goods shall not pass to the Buyer until the Supplier has received in full all sums due to it in respect of:
- 8.2.1 the Goods together with any interest;
 - 8.2.2 all other sums which are or which become due to the Supplier from the Buyer in any account.
- 8.3 Until such time as property in the Goods has passed to the Buyer:
- 8.3.1 the Buyer must hold the Goods on a fiduciary basis as the Supplier's bailee and keep the Goods separate from those of third parties properly protected, stored, insured and identified as the property of the Supplier;
 - 8.3.2 the Buyer may resell the Goods in the ordinary course of its business for full market value and shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Supplier as agent for the Supplier and shall account to the Supplier accordingly;
 - 8.3.3 the Supplier may at any time after payment has become due require the Buyer to deliver up the Goods to the Supplier and if the Buyer fails to do so, the Supplier its servants or agents may enter upon any premises where the Goods are stored and repossess the Goods.
- 8.4 The Supplier shall be entitled to recover payment for the Goods notwithstanding that property in any of the Goods has not passed from the Supplier.

9 WARRANTIES AND LIABILITY

- 9.1 As the Supplier is not the manufacturer of the Goods, the Supplier gives no guarantee as to the quality of the Goods, or their fitness for purpose and the Buyer shall only be entitled to such warranty or guarantee as is given by the manufacturer to the Supplier.
- 9.2 The Buyer acknowledges that the Supplier cannot control the stock lines supplied by the manufacturer to the Supplier. The Supplier shall have no liability to the Buyer in respect of any unavoidable variation to the order which the Supplier is required to make as a result of a change to available stock lines implemented by the manufacturer of the Goods.
- 9.3 The Supplier shall have no liability to the Buyer in respect of any defect in or damage to the Goods, or any shortages in or failure to deliver the Goods unless the Buyer gives written notice of such claim to the Supplier and the carrier within 7 working days of delivery (or in the case of non-delivery within 14 days of the agreed delivery date).
- 9.4 The Supplier shall have no liability to the Buyer in respect of any defect in Goods returned by customers of the Buyer unless the Buyer gives written notice of such claim (including proof of the date of purchase and date of return) to the Supplier within 12 months of delivery.
- 9.5 Where a valid claim is notified to the Supplier by the Buyer in accordance with Clause 9.3 and 9.4, the Supplier may replace the Goods (or the part in question) or, at the Supplier's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part thereof), in which case the Supplier shall have no further liability to the Buyer.
- 9.6 The Buyer shall not be entitled to return any of the Goods (including returns made by customers of the Buyer) after delivery unless:

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- 9.6.1 A Returns Authorisation Number is obtained; and
- 9.6.2 the Supplier has had the opportunity of examining the Goods.
- 9.7 Subject to Clauses 9.3 to 9.5, the following provisions of this Clause 9 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 9.7.1 any breach of its obligations under the Contract; and
 - 9.7.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.8 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 9.9 Nothing in these Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraudulent misrepresentation.
- 9.10 Subject to Clause 9.9, the Supplier's entire liability in respect of any Event of Default shall not exceed an amount equal to price paid by the Buyer under the Contract.
- 9.11 Subject to Clause 9.9, the Supplier shall not be liable to the Buyer in respect of any Event of Default for any type of:-
 - 9.11.1 special, indirect or consequential loss (even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Buyer incurring the same);
 - 9.11.2 loss of profit; and/or
 - 9.11.3 loss of anticipated savings; and/or
 - 9.11.4 loss of business and/or goods; and/or
 - 9.11.5 loss of revenue; and/or
 - 9.11.6 loss of contract; and/or
 - 9.11.7 loss of goodwill.
- 9.12 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.
- 9.13 Nothing in this Clause 9 shall confer any right or remedy upon the Buyer to which it would not otherwise be entitled.

10 INSOLVENCY OF THE BUYER

- 10.1 This Clause applies if:
 - 10.1.1 the Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation;
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer;

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10.1.3 the Buyer ceases, or threatens to cease, to carry on its business.

10.2 If this Clause applies then the Supplier may cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable, notwithstanding Clause 7.2.

11 INTELLECTUAL PROPERTY

All intellectual property rights in all drawings, specifications, leaflets or catalogues submitted to the Buyer remain at all times the property of the Supplier.

12 FORCE MAJEURE

The Supplier 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 failure to perform any of the Supplier's obligations under the Contract if the delay or failure was due to any cause beyond the Supplier's reasonable control including, without limitation, acts of God, governmental actions, war, acts of terrorism, fire, explosion, flood, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining suitable materials, and the time for the performance of that obligation shall be extended accordingly.

13 GENERAL

13.1 Each right of remedy of the Supplier under the Contract is without prejudice to any other right of remedy that the Supplier may have.

13.2 A notice required or permitted to be given by either party to the other under the Contract shall be in Writing, and addressed to the 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.

13.3 No failure or delay by the Supplier in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by the Supplier of any breach of the Contract by the Buyer shall be deemed a waiver of any subsequent breach of the same or any other provision.

13.4 The Contract is personal to the Buyer which shall not assign its rights or obligations hereunder without the prior consent of the Supplier.

13.5 If any provision of these Conditions is held by any court or other 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.

13.6 The parties to the Contract do not intend that any terms of the Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14 GOVERNING LAW

Notwithstanding the location of the Buyer, the Contract shall in all respects be governed by English law and the parties agree to submit any dispute or claim under it to the exclusive jurisdiction of the English Courts.