

1. Construction of Contract

These Conditions shall apply to all Contracts between Pax Ardel Limited (hereinafter referred to as "the Seller") and any person firm or company (hereinafter called "the Buyer") for the supply of goods. The Sellers Contract upon the terms of these Conditions only and any printed or other Standard Terms emanating from the Buyer shall not apply. These Conditions shall not be modified without the written Agreement of the Sellers and in order that the Contract shall be a complete statement of the Agreement between the parties with regard to the supply of the goods by the Sellers the Buyer must ensure that any representation or instructions on which it wishes to rely has been accepted by the Seller in writing.

2. Risk and property

2.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

2.1.1 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

2.1.2 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.

2.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, 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 all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

2.3 Until such time as the property in the Goods passes to the Buyer, 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, but the Buyer may resell or use the Goods in the Ordinary course of its business.

2.4 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 may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

2.5 The Buyer 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

3. Delivery

3.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

3.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

3.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

3.4 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 Terms 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.

3.5 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.

3.6 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 limiting any other right or remedy available to the Seller, the Seller may:

3.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

3.6.2 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 over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract".

4. Price

4.1 All prices quoted by the Sellers exclude all taxes (including Value Added Tax) duties or charges imposed or payable in respect of the Goods sold hereunder, all of which shall be borne by the Buyer. Where insurance of Goods during carriage has been arranged by the Sellers, prices quoted inclusive of insurance charges do not include insurance against war risks.

5. Payment

5.1 All sums due to the Sellers under this or any other contract between the Sellers and the Buyer shall be paid on the due date and the date for payment shall be of the essence of this Contract. If the Buyer is in default as regards payment under this or any contract with the Sellers, the Sellers may without incurring any liability whatsoever to the Buyer:-

5.1.1 Suspend deliveries under this Contract so long as the default continues; and/or

5.1.2 Serve notice on the Buyer requiring him to pay to the Sellers under this Contract and any other contract with the Sellers within fourteen days of the date of such notice, failing which the Sellers may by notice in writing to the Buyer forthwith treat this Contract as repudiated and determined and recover damages accordingly.

5.2 The due date for payment shall be the date agreed between the parties or as specified on the face of the Sellers Order Acknowledgement but in the absence of such statement then:-

5.2.1 The due date for payment hereunder is the 25th day of the month following that in which the Goods are invoiced.

5.2.2 Without prejudice to their other rights hereunder the Sellers may charge interest on overdue accounts at the rate of two per cent per month over the Base Rate from time to time of Barclays Bank Plc or one and a half per cent, per month, which ever is the greater, such interest to accrue on a daily basis and to be payable both before and after any judgment obtained and to recover from the Buyer the cost of collecting and recovering overdue accounts.

6. The Seller's Liability

6.1 The Sellers liability in any respect of the Contract shall be limited to the Contract price for the particular goods to be supplied in respect of which the liability arises. In no circumstances whatsoever shall the Sellers be liable in damages to the Buyer for any loss of profit, consequential loss, loss of anticipated savings or profits or damage or loss of anticipated profits of any Third Party claimed against the Buyer.

6.2 The Sellers shall be entitled without any liability of whatsoever nature to cancel any Contract with the Buyer at any time should the Sellers not be able to obtain a credit reference in respect of the Buyer which in the option of the Sellers, in their sole absolute and unfettered discretion it regards as an acceptable credit reference. Following such cancellation the Sellers shall be entitled to payment for all goods supplied or works carried out by the Sellers to the date of such cancellation and if such goods supplied or works only compromise a part of the Contract then a proportionate part of the Contract price as reflects their worth.

6.3 Any complaint or claim whatsoever by the Buyer 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 not so made shall be absolutely barred. The complaint or claim must be accompanied by

all 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 Sellers shall be entitled to suspend any further deliveries due under the Contract until the nature of the complaint or claim has been determined and/or to cancel the Contract without any liability whatsoever attaching to the Sellers.

6.4 It is the Buyer's responsibility and duty to establish that the goods delivered are in accordance with the contractual terms and fit for their purpose. No claims of whatsoever nature will be accepted by the Sellers in respect of any fabric which has undergone cutting.

6.5 Subject as herein provided all warranties, conditions and representations express or implied statutory or otherwise in respect of any defect in the quality or condition of the Goods or their conformity with any description or (in the case of a sale by sample) any sample hereby excluded and without prejudice to the generality of the foregoing, no warranty, condition or representation shall be implied and no express term or description is given or made so as to impose on the Sellers any liability whatsoever if the quality of the Goods sold is not in accordance with the sample (in the case of sale by sample) or description or is not the same or similar to the quality of any other Goods or sample that may at any time have been sold or delivered or agreed to be sold or delivered by the Sellers to the Buyer hereunder.

6.6 No claim by the Buyer against the Sellers hereunder shall be a ground for the Buyer withholding payment of any sum due to the Sellers under this or any contract with the Sellers or give any right of set-off against payment due from the Buyers to the Sellers.

6.7 The Sellers shall not be responsible for any loss of profit or goodwill of the Buyer or any other person arising, whether directly or indirectly from any breach of this Contract by the Sellers nor for any other indirect or consequential loss or damage whatsoever arising from any such breach, and the Seller's liability, whether in contract or tort, shall not in any event exceed the value of the Goods in respect of which such liability arises.

6.8 All containers and packaging (including bobbins, cheeses, cones, tubes, beams, beam lags, barrels, drums, boxes, cases and pallets) supplied by the Seller shall remain the property of the Sellers (unless otherwise agreed or stated) and shall be returned to the Sellers on demand.

6.9 Notwithstanding paragraph 6.8 of this Condition, the risk in such containers and packages shall pass to the Buyer at point of delivery.

6.10 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

6.11 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.

7. Carriage

7.1 When carriage has been arranged by the Sellers no responsibility will be accepted by the Sellers for any loss or damage occurring in transit unless the Buyer:-

7.1.1 In the case of damage, notifies the carrier and the Sellers in writing of the damage within three days of delivery of the Goods and makes a written claim on the carrier and the Sellers within seven days of such delivery.

7.1.2 In the case of loss or non-arrival of the whole or part of the Goods, notifies the carrier and the Sellers in writing of the loss or non-arrival within fourteen days of the date of the Sellers' invoice or advice note, and makes a written claim on the carrier and the Sellers within twenty-eight days of such date.

8. Cancellation and Suspension

8.1 Without prejudice to their other rights and remedies, in the event that the Sellers shall have serious doubts at any time before the due date of payment for the Goods as to the Buyer's ability to pay for the Goods on such date the Sellers may give written notice to the Buyer requiring him to pay within seven days the full price of such Goods as may then have been delivered to the Buyer under this Contract or any other contract between the Buyer and the Sellers.

8.2 If on the expiry of that seven day period the Buyer has failed to pay the whole of the said price, in addition to their various rights hereunder and irrespective of whether this Contract price, in addition to their various rights hereunder and irrespective of whether this Contract be terminated pursuant to paragraph 8.4 below, the Sellers shall be entitled to repossess immediately such other Goods as may have been delivered to the Buyer under any other contract between them (save for any goods the title to which has already passed to the Buyer).

8.3 The Buyer hereby irrevocably authorises the Sellers and their servants to enter upon any of the Buyer's land or buildings upon or in which any goods. Other Products or other aforementioned goods may be situated in connection with the exercise of the Sellers rights under the immediately preceding paragraph and condition 2.

8.4 If the Buyer shall commit any **breach** of the terms of this Contract or **cease** or **threaten to cease** to carry on business or shall become bankrupt or have a receiving order or administration order made against him or over any of his assets or make any composition or arrangement with or conveyance or assignment for the benefit of creditors or shall purport so to do or shall have any application made against him under any Bankruptcy Act or (being a company) if any resolution be passed or any order of the Court be made that the Buyer be wound up or if a receiver or manager be appointed by any creditor or any act shall be done which would cause any of the foregoing to be done, the Sellers may determine this Contract forthwith by written notice to the Buyer and exercise the rights granted to them hereunder and at law.

8.5 The Sellers may by written notice cancel this Contract insofar as it has not been executed:-

8.5.1 If economic conditions in the Country of the Buyer or Sellers are affected by civil war or similar circumstances beyond the control of the Buyer and Sellers.

8.5.2 If by reason of any **events** or circumstances beyond the control of the Buyer or the Sellers the making or transfer of any payments to the Sellers in any Country is impossible or is likely to become impossible or is delayed by more than thirty days.

8.5.3 If material **components** or machinery upon the availability or use with the Sellers depend when making this Contract are not available or cannot be used for the performance of this Contract.

Any such cancellation shall not give rise to any claim for damages or otherwise by the Buyer and shall not affect the Buyer's obligations hereunder with regard to the Goods delivered prior to such notice of cancellation being given.

9. Force Majeure

If owing to war, act of God, civil commotions, government order, strikes, lock-outs or other industrial action, fire, accident, prohibition of exports or inability to obtain any export or other licence, shortage of labour, materials, fuel, power or transport or failures of suppliers or any other cause whatsoever beyond the control of the Sellers, the Sellers are unable to make any delivery by the applicable delivery date, the time for delivery shall be postponed for the duration of such cause or event provided that if such cause or event shall continue for more than six months after the applicable date, the Sellers may cancel this Contract so far as it relates to the delivery in question.

10. Suspension

Without prejudice to any other provision of these Conditions, the Sellers may, if they have serious doubts to the Buyer's insolvency, suspend deliveries hereunder until satisfactory security has been given for the due performance of the Buyer's obligation both present and future hereunder.

11. No Assignment

The Buyer shall not transfer or assign the benefit or burden of this Contract or any part thereof without the prior written consent of the Sellers.

12. Applicable Law

12.1 This Contract shall be governed by and construed in accordance with the laws of England.

12.2 The marginal notes hereto have been inserted for convenience only and shall not affect the construction of these General Conditions of Sale.