

## **TERMS AND CONDITIONS OF CONTRACT**

1. **PAYMENT:** All invoices are payable in United States dollars. No discount may be taken unless specified on face of contract. On any invoice not paid by maturity date, Buyer shall pay a service charge at the per annum rate specified on face of contract from the maturity date of said invoice, but in no event shall said service charge exceed the maximum lawful interest rate applicable. Any check or remittance received from or for the account of the Buyer may be accepted and applied by Seller or its factor against any indebtedness or obligation owing by Buyer, as shown by the books and records of Seller or its factor, without prejudice to or the discharge of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement legend or notation appearing on, referring to or accompanying such check or remittance.

2. **CREDIT AND DEFAULT:** Seller or its factor may, at any time and from time to time, in its sole discretion, limit or cancel the credit of the Buyer as to time and amount, and as a consequence, may require anticipation or demand payment in cash before delivery of any unfilled portion of this contract. Upon failure of Buyer to make such payment within ten (10) days after demand, or in the event of any default, breach or repudiation by Buyer of any contract with Seller, or if Buyer shall become insolvent, call a meeting of its creditors, or make any assignment for the benefit of creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Buyer, Seller may cancel this and any other contracts with Buyer (Buyer remaining liable for damages), defer any shipments hereunder, declare forthwith due and payable all outstanding bills of Buyer under this or any other contract, sell all or any part of the undelivered goods, without notice, at public or private sale, the Buyer to be responsible for the costs and expenses of such sale and for any deficiency, Seller to account to the Buyer for any excess (the Seller having the right to become the buyer of such goods at any such sale), and bill all or any part of the undelivered goods to the Buyer as a contract dates of delivery. Approval of credit for one or more deliveries under contract shall not be deemed a waiver of the provisions of this paragraph. Any property of Buyer, including but not limited to merchandise billed and held (whether paid or not) at any time in Seller's possession, or the possession of any parent, subsidiary, or affiliate company of seller, either as principal or agent, shall be deemed held as security for Seller, and may at Seller's option be set-off against any and all of Buyer's obligations to Seller, or to any parent, subsidiary, affiliate, principal, or agent of Seller.

3. **CASULTY AND AVAILABILITY OF RAW MATERIALS:** Seller shall not be liable for any delay in delivery of any part of the merchandise due to accidents, strikes, fires, floods, war, government regulations, delay or inability to obtain, material, or services through Seller's usual and regular sources, casualty, accident act of God, or any other conditions or causes of like or unlike nature beyond the control of Seller. In any such event Seller may, in its discretion, without notice to Buyer, at any time and from time to time, postpone the delivery dates under this contract for a time which is reasonable under all the circumstances or make partial delivery or cancel all or any portion of this and any other contracts with Buyer.

4. **DELIVERIES:** (a) Any delivery dates noted on the copy hereof signed by the Buyer are subject to adjustment and the precise delivery dates of the merchandise sold hereunder will be supplied on Seller's confirmation of this order. Delivery or tender of delivery of any installment within fifteen (15) days after date specified on Seller's confirmation of this order shall be deemed timely delivery. Thereafter, shipment or tender of delivery prior to receipt of written cancellation shall constitute good delivery.

(b) The acceptance of shipment by a common carrier or licensed public truckman, the allocation of merchandise to the Buyer, or the mailing of an invoice by Seller to Buyer shall constitute a delivery. Thereupon, title shall pass to the Buyer, subject to the Seller's right of stoppage in transit. On merchandise for which payment is to be made on or before delivery, title passes only upon receipt of full payment.



In the instance of merchandise held subject to the Buyer's instructions, or for which the Buyer has failed to supply shipping instructions, or in any case where Seller, in its sole discretion, determines that any part of the merchandise purchased by Buyer should be held for Buyer's account, Seller may invoice the merchandise invoiced and held at any location, for whatever reason, shall be at Buyer's risk and Seller may charge for insurance and storage at prevailing rates.

(c) All freight, express and delivery charges shall be paid as a separate item by the Buyer and shall not be subject to discount.

(d) Delivery of a quantity which does not vary more than ten percent (10%) greater or less than that contracted for shall constitute compliance under this contract.

(e) Partial deliveries shall be accepted by the Buyer and paid for at contract prices and terms. All sample requirements furnished on this order shall be charged by the Seller and paid by the buyer at contract price. Delay in delivering samples or other sample requirements shall not constitute a breach of this agreement. Any defect in quality or delays in delivery shall not affect the balance of this contract. Any delivery not in dispute shall be paid for on the due date, as provided in this contract, without offset, defense or counterclaim and regardless of controversies relating to other delivered and undelivered merchandise. Where the Buyer has declared or manifested an intention that it will not accept delivery in accordance with the provisions of this contract, no tender shall be necessary, but Seller may, at its option, give notice in writing to the Buyer that the Seller is ready and willing to deliver in accordance with the provisions of the contract and such notice shall constitute a valid tender of delivery.

5. WARRANTIES: (a) BUYER AGREES THAT THERE IS NOT WARRANTY BY SELLER, IN FACT OR IN LAW, THAT THE MERCHANDISE WHICH IS THE SUBJECT OF THIS SALE IS SUITABLE FOR ANY PARTICULAR USE OR PURPOSE. WARRANTY OF MERCHANTABILITY IS LIMITED ONLY TO GOODS SOLD AS FIRST QUALITY. SELLER SHALL NOT BE LIABLE FOR NORMAL MANUFACTURING DEFECTS NOR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. THE PHYSICAL OR CHEMICAL CHARACTERISTICS OR QUALITIES ARE NOT GUARANTEED UNLESS AND EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED FOR HEREIN.

(b) Any merchandise made in part or wholly of rayon or other synthetic fibers is sold subject to the inherent imperfections in such fibers, including without limitation, their potential for piling. With respect to all products, fabrics or related materials delivered under this contract, and for which flammability standards have been issued, amended, or continued in effect under the Flammable Fabrics Act, as amended, reasonable and representative tests as prescribed by the Consumer Product Safety Commission have been performed, which show that the products, fabrics, or related materials conform to the above mentioned flammability standards as are applicable thereto. Under the circumstances, Seller disclaims and other warranty whatsoever, whether express or implied, with respect to the flammability of the goods specified in this contract and will be liable in no event unless said fabrics shall be classified as dangerous under test procedures authorized by the Federal Flammable Act.

6. CLAIMS: All claims of any kind or nature are barred unless made in writing by the Buyer to the Seller within fifteen (15) days after invoice date for patent defects and sixty (60) days after invoice date for latent defects. Notwithstanding the foregoing, the cutting or the processing in any manner of any merchandise delivered under this contract constitutes acceptance of the same and a waiver of any claim for defect. Buyer shall, together with its notice of claim; offer Seller in writing prompt opportunity to examine the merchandise and Seller may replace defective merchandise within a reasonable time. If not so replaced, the limit of liability of Seller for defective merchandise shall be the difference in value on the contract date of delivery between the merchandise specified and the merchandise actually delivered and the liability of Seller for late delivery or non-delivery shall be the difference, if any, between the contract price and the fair market price on the contract date of delivery of the merchandise to be delivered, provided Buyer actually purchases the same merchandise elsewhere at said fair market price. In no event shall Buyer be entitled to consequential, indirect and/or special damages of any nature for defective merchandise or late delivery or non-delivery or otherwise, and in no instance may damages include loss of profit on contemplated use or profit of any description.

7. SELLER'S DAMAGES AS TO UNDELIVERED GOODS: In the case of undelivered merchandise, Seller's damages shall be the difference between the market prices of said merchandise at the date of breach (or the net proceeds of resale, if sold for the account at the Buyer) and the contract price thereof, plus fifteen percent (15%) of the contract price to cover Seller's cost of resell, including additional overhead. Nothing herein contained, however, shall prevent the Seller from requiring the Buyer to specifically perform the contract by taking in and paying for any undelivered merchandise.

8. LIMITATION OF RIGHT TO ARBITRATE: Any claim by Buyer of any kind, nature or description is barred and waived unless Buyer institutes arbitration proceedings within one (1) year after the claimed breach occurs. The failure to institute arbitration proceedings within this period shall constitute an absolute bar to the institution of any arbitration or other proceedings by Buyer and a waiver of all claims on Buyer's part.

9. ASSORTMENTS: Assortments shall be made against Seller's current running lines in colors and/or patterns available at the time Buyer shall assort. As to any quantity not assorted on time, Seller may at its option (1) invoice the Buyer for the contract price of the unassorted quantity, Buyer to pay said invoice in accordance with its terms, and either hold the goods unassorted, make assortments for Buyer, or permit Buyer to assort in patterns and colors available at the time the assortment is given, or (2) cancel all or any part of the unassorted portion, or (3) sell off said goods for Buyer's account either unassorted or after making assortment for buyer, Buyer to be responsible for any losses on such resale.

10. VARIATIONS IN FINISH OR SHADE: Seller does not guarantee shade or fastness of color unless a sample shall have been submitted by Seller and approved by Buyer prior to first shipment in which case Seller guarantees only that shade and fastness of color which corresponds as nearly as commercially practicable to such sample, making due allowance for any variation in yarns. Seller shall not be responsible for normal variations in finish or shade.

11. CHANGES: This contract contains all of the terms and conditions of the contract between Buyer and Seller. It may not be altered nor modified by the Buyer except in writing, signed by the Seller. No waiver by either party of any default shall be deemed a waiver of any subsequent default. There are no options, warranties or conditions, express or implied, statutory or otherwise, except those herein specifically contained.

12. DESIGN PROTECTION; CONFINED PATTERNS: No rights in patterns and designs of goods covered by this contract pass to the Buyer except as an integral part of the goods, and the Buyer, as a special inducement to the Seller, agrees not to copy or cause to be copied or reproduced, either directly or indirectly, any such patterns or designs. If Seller agrees to confine any of the goods sold herewith, it shall be responsible only for ordinary and reasonable care in confining such goods to the specified purpose; and unless otherwise expressly provided in writing, goods in patterns confined to Buyer may be sold by Seller to the export trade, and to domestic customers who do not compete with Buyer.

13. PRICES: Prices on this contract are based on production at the present costs for supplies, labor and services. Prices on any undelivered portion of this contract are subject to increase to the extent of added costs to the Seller in the event of any increase in costs for supplies, labor and services, or governmental action or legislation. The amount of any such increase as computed by the Seller pursuant to this paragraph shall be binding upon the Buyer, except for clerical or mathematical errors.

14. ASSIGNMENT: No rights of Buyer hereunder or arising out of this contract may be assigned without the express written consent of Seller.

15. ARBITRATION: Any controversy arising out of or relating to this contract shall be settled by arbitration in the City of New York in accordance with the Rules then obtaining of the General Arbitration Council of the Textile Industry. The arbitrators sitting in any such controversy shall have no power to alter or modify any express provision of this contract, including without limitation, the provisions of Paragraph 6 applicable to claims, or to render any award which by its terms effects any such alteration or modifications. The parties consent to the jurisdiction of the Supreme Court of the State of New York and the United States District Court for, the Southern District of New York, and this sales being in interstate commerce, to jurisdiction under the Federal Arbitration Act as well as the arbitration statutes of the State of New York, for all purposes in connection with said arbitration. Judgment upon the award rendered may be entered by any Court having jurisdiction. The parties further consent that any process or notice of motion or other application to either of said Courts or a Judge thereof may be served inside or outside the State or Southern District of New York by registered or certified mail return receipt requested or by personal service provided a reasonable time for appearance is allowed, or in such other manner as may be permissible under the rules of said Court.

Seller shall have all rights to provisional remedies which it would have at law, notwithstanding the existence of this agreement to arbitrate.