

# Tradewinds

Merchandising Company Limited

## TERMS & CONDITIONS

**DEFINITIONS** - 1. In these conditions the following terms shall have the following meanings: "the Company" means Tradewinds Merchandising Company Limited. "Customer" means the customer of the company. "Contract" means any contract for the sale of goods by the company to the customer. "Goods" means any goods forming the subject of a contract

**DEPOSIT** - 2. As each item is custom printed a deposit of 50% of the total order value is required from the customer. The balance is payable on completion.

**DELIVERY AND PAYMENT** - 3. Delivery of goods shall be accepted and payment shall become due on notification that they are ready for delivery notwithstanding the provisions below relating to inspection by the Customer and irrespective of the time of delivery. The company's credit terms are thirty days on approved accounts only subject to the normal trade references. Interest on overdue accounts will be charged at 1.5 per month or 18 per annum.

**TITLE** - 4. Notwithstanding the earlier passing of risk title in the goods shall remain with the company and shall not pass to the customer until the amount due under the invoice for them has been paid in full. The company may maintain an action for the price of the goods or any part of the goods notwithstanding that title in them has not passed to the customer.

**SAMPLES** - 5. Samples are non returnable and will be invoiced.

**COST VARIATION** - 6. Quotations are based on the current cost of production and are subject to amendment by the Company on or any time after acceptance by the Customer to meet any rise or fall in such costs. However such amendments will not be implemented without prior consultation and agreement with the customer.

**V.A.T.** - 7. The company shall be entitled to charge the amount of any Value Added Tax payable whether or not included in the quotation or invoice.

**PRELIMINARY WORK** - 8. Work produced, whether experimentally or otherwise, at the customer's request will remain the property of the company.

**PROOFS** - 9. All work may be submitted for the approval of the Customer and no responsibility will be accepted for any errors in proofs passed by the Customer.

**EXPEDITED DELIVERY** - 10. If expedited delivery is agreed and necessitates overtime or other additional costs then an additional charge may be made. All deliveries are chargeable.

**% VARIATIONS IN QUANTITY** - 11. Every endeavour will be made to deliver the correct quantity ordered but quotations are conditional upon a margin of 5 being allowed for overs or shortage, the same to be charged for or deducted.

**CLAIMS** - 12. Claims arising from damage, delay or partial loss of goods in transit must be made in writing to the company and the carrier so as to reach them within three days of delivery and claims for non-delivery within five days of despatch of the goods. All other claims must be made to the company within five days of receipt of the goods by the Customer and rejects must be returned to the Company within that period of five days. The Company shall be afforded reasonable opportunity and facilities to investigate any claims made hereunder and the Customer shall if so requested in writing by the Company promptly return any of the goods subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.

**LIABILITY** - 13. The company shall not be liable for indirect or consequential loss or for any loss to the Customer arising from third party claims occasioned by errors in carrying out the work or by delay in delivery and the Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition or any negligence breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or failure to perform the contract except for death or personal injury resulting from the Company's negligence and as expressly stated in these conditions.

a) If the Customer establishes that any of the goods have not been delivered or have been delivered damaged or are not of the correct quantity or do not comply with their description the company shall at its option replace with similar goods any of the goods which are missing lost or damaged or do not comply with description and allow the customer credit for their invoice value or repair any damaged goods.

b) If the Customer established that any of the goods are defective the Company shall at its option replace them with similar goods or repair any defective goods and allow the Customer credit for their invoice value.

c) The delivery of any repaired or replacement goods shall be at the company's premises or any other delivery point specified for the original goods.

d) Where the company is liable in accordance with this condition in respect of only some or part of the goods the contract shall remain in full force and effect in respect of the other goods and no set-off or other claim shall be made by the Customer against or in respect of such other goods.

e) No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments alterations or other work has been done to the goods by any person except the company.

f) The company shall not be liable where any of the goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged goods will, if available, be by the Company at the prices ruling at the date of despatch.

g) In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the goods.

**CUSTOMER'S PROPERTY AND PROPERTY SUPPLIED** - 14. a) Every care shall be taken to secure the best results where materials or equipment are supplied by the Customer but

responsibility will not be accepted for imperfect work caused by defects in or unsuitability of such materials or equipment

b) Where the Customer supplies materials adequate quantities shall be supplied to cover spoilage

**INSOLVENCY** - 15. If the Customer ceases to pay its debts in the ordinary course of business or cannot pay its debts as they become due or being a company goes into liquidation (whether compulsory or voluntary) and not being a voluntary winding up merely for the amalgamation or reconstruction of the company being a solvent company or if a receiver manager administrative receiver or provisional liquidator is appointed or a petition is presented for an administration order or a proposal is made for a voluntary arrangement or a scheme of arrangement or where the customer is an individual in the event a bankruptcy petition is presented or a proposal is made for a voluntary arrangement or he enters into a Deed of Arrangement or an interim receiver of his property is appointed then in any of such events and without prejudice to other remedies the Company shall:

a) Have the right at its discretion to suspend or terminate the contract or any other work for the customer and shall be entitled to charge for work already carried out (whether completed or not) and materials purchased for the customer such charge to be an immediate debt due to the Company and

b) In respect of all unpaid debts due from the Customer have a general lien on all the goods and any property in the Company's possession (whether worked on or not) and shall be entitled on the expiration of fourteen days notice to use sell or dispose of such goods and property as agents for and at the expense of the Customer and apply the proceeds in and towards payment of such amounts. Any such disposal to be in such manner and at such price as the company thinks fit and, on accounting to the Customer for any balance remaining after payment of any such amounts and the costs of sale or disposal, the Company shall be discharged from any liability in respect of such goods or property.

c) This clause shall be applicable not only in the events or circumstances specified in clause b) above but also where the Company bona fide believes that any of those events or circumstances may occur.

**FORCE MAJEURE** - 16. Every effort will be made by the Company to carry out the contract but the Company shall not be liable for any failure in the performance of any of its obligations caused by factors outside its control and (without prejudice to the generality of the foregoing) the Company shall not be liable in respect of any Act of God, war, strike, lock-out or other labour dispute, fire flood drought legislation or other causes beyond its control. No responsibility can be accepted for late deliveries.

**DESCRIPTION** - 17. Any description of the goods is given by way of identification only and shall not constitute a contract for sale by description nor shall the production or exhibition of a sample prior to the placing of an order be taken to constitute a sale by sample.

**THIRD PARTY RIGHTS** - 18. No warranty is given or is to be implied that goods sold do not infringe patent rights of third parties. If the goods are manufactured to the Customer's design or according to the Customer's instructions then the Customer shall indemnify the Company in respect of all claims damages costs and expenses in respect of any alleged infringement and on discovery of such infringement the Company shall be at liberty to terminate the contract and receive payments for all the goods supplied, made up or allocated to the Customer even if not yet at the agreed place of collection or if it shall have been so agreed, not yet delivered by the Company.

**SCOPE OF CONTRACT** - 19. Under no circumstances shall the company have any liability of whatever kind for:

a) Any defects resulting from wear and tear accident improper use by the Customer or use by the customer except in accordance with the instructions or advice of the Company

b) (Unless specified on the sale documents) as to the quality washing stability colour fastness wearability or making up quality of any of the goods supplied nor as to their fitness for any purpose expressed or implied and the Customer shall in no case be taken to have relied upon the skill or expertise of the Company or its agents.

c) Any substitution by the Company of any materials not forming part of any specification of the goods agreed in writing by the Company.

d) Any technical information recommendations statements or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made.

e) Any variations in the quantities or dimensions of any of the goods or changes of their specifications or substitution of any materials if their variation or substitution does not materially affect the characteristics of the goods and the substituted materials are of a quality equal or superior to those originally specified.

**INSPECTION OF GOODS** - 20. The customer shall where applicable be taken to have made a full inspection of the goods, full facilities and opportunity therefore having been provided and shall in all cases be deemed to take them in the condition and subject to such defects as would have been disclosed by a reasonable examination.

**LAW AND JURISDICTION** - 21. The construction validity and performance of this contract shall be governed by the Law of England and any legal proceedings in relation thereto shall be submitted to the jurisdiction of the English Courts without prejudice to the company's right to bring any such proceedings before the courts having jurisdiction in the customer's place of residence for business.

### TO PARTNERSHIP & SOLE TRADER DEBTORS

We may transfer information about you to our bankers for the purposes of providing services and for the following purposes:

- Obtaining credit insurance
- Making credit reference searches
- Credit control
- Assessment and analysis (including credit sorting, market, product and statistical analysis)
- Securitisation
- Protecting our interests

We are happy to provide details of our bankers and that of any credit reference agencies used on request.