

The Cotton Textile Company Limited – Terms and Conditions

1 Application of these Terms and Conditions

- 1.1 These Terms and Conditions apply to and form part of the Contract between The Cotton Textile Company Limited (the “**Supplier**”) and the buyer (the “**Customer**”). They supersede any previously issued terms and Terms and Conditions of purchase or supply.
- 1.2 No terms or Terms and Conditions endorsed on, delivered with, or contained in the Customer's purchase Terms and Conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 1.3 No variation of these Terms and Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing by both parties and executed by a duly authorised signatory on behalf of the Customer.
- 1.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods and/or Services as applicable (the “**Deliverables**”) subject to these Terms and Conditions.
- 1.5 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 7 Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 1.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
 - 1.6.1 the Supplier sending its order acknowledgement (the “**Order Acknowledgement**”); or
 - 1.6.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 1.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 1.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 1.9 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract and colours shown in promotional material and the actual Deliverables may vary.
- 1.10 Bespoke care labels and swing tickets are an additional cost.
- 1.11 Any changes in the quantity ordered must be made in writing by the Customer prior to commencement of processing the Order. Any increase in the Order must be regarded as a separate contract unless written notification is received before work commences on the original Order.
- 1.12 Sampling of goods, where available, can take approximately 2 to 4 weeks and, depending on the product, is chargeable.

2 Price

- 2.1 The Price for the Deliverables shall be as set out in the Order Acknowledgment or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier to the Customer (the “**Price**”).
- 2.2 The Prices are exclusive of:
 - 2.2.1 packaging, delivery (for which it may not be able to quote accurately until the point of shipment), insurance, or elements of the services which are not included in the standard price which shall be charged in addition at the Supplier's standard rates, and
 - 2.2.2 VAT.
- 2.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice. VAT and local taxes are charged at the prevailing rates.
- 2.4 The Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the cost to the Supplier of supplying the relevant Deliverables after the confirmation or accepted Contract and which is due to any factor beyond the control of the Supplier.
- 2.5 All prices are guaranteed for 30 days from date of quotation.
- 2.6 Bespoke orders require a 30% deposit at the time of placing the Order.

3 Payments

- 3.1 The Supplier shall invoice the Customer for the Deliverables at any time and time of payment is of the essence.

3.2 Unless the Customer has set up a credit account with the Supplier and has been approved by the Supplier in writing, the Customer shall pay the deposit within the payment date specified in the Order Acknowledgement or within 14 days of the Order Acknowledgement being sent to the Customer (whichever is sooner). Payment shall be made to the bank account nominated in writing by the Supplier.

3.3 The Customer shall pay the balance of the Price in full and in cleared funds within the payment date specified in the Order Acknowledgement or 14 days of notification of the goods being shipped by the Supplier (or affiliates) to the Customer (whichever is sooner). Payment shall be made to the bank account nominated in writing by the Supplier.

4 Delivery and performance

4.1 The Goods shall be delivered by the Supplier to the location as specified in the Order.

4.2 The Services shall be performed by the Supplier at the location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the location.

4.3 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.

4.3.1 The Supplier shall not be liable for any delay in or failure of performance caused force majeure or by the Customer's failure to: (i) make the location available, (ii) prepare the location or (iii) provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables.

5 Risk

Risk in the Goods shall pass to the Customer on delivery.

6 Title

6.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.

6.2 Until title to the Goods has passed to the Customer, the Customer shall:

6.2.1 hold the Goods as bailee for the Supplier;

6.2.2 store the Goods separately from all other material in the Customer's possession;

6.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

6.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;

6.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;

6.2.6 not remove or alter any mark on or packaging of the Goods; and

6.2.7 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

6.3 If the Customer resells the goods, title to the goods shall pass to the Customer immediately prior to the resale.

6.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer is not able to pay for the Deliverables, the Supplier may:

6.4.1 store the Goods separately from all other and require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and

6.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

7 Artwork

7.1 All artwork submitted by the Customer (the "**Customer's Artwork**") must be approved in writing by the Supplier and the Supplier reserves the right to reformat or otherwise alter the Customer's Artwork to enable the manufacture of the Deliverables at additional cost and subject always to the Customer's final approval. Any Customer's Artwork is deemed to be the full responsibility of the Customer and the Supplier shall not be liable for any errors, omissions or otherwise in any the Customer's Artwork.

7.2 The Customer warrants that it owns or is duly licensed to use and retains all such intellectual property rights in any Customer Artwork submitted to the Supplier.

7.3 The Supplier shall retain any designs or other intellectual property rights arising in the Deliverables other than the Customer's Artwork unless otherwise agreed in writing.

- 7.4 Unless the Supplier has specifically stated otherwise, the Supplier shall be entitled to levy additional charges for the Artwork and/or print costs.
- 8 Cancellations**
- 8.1 A charge shall be made on any cancelled orders, including charges and costs for any work carried out up to the date of the receipt of the Customer's written cancellation.
- 9 Overdue accounts**
- 9.1 No Deliverables will be delivered on account, which remain unpaid 14 days after payment is due. If the Customer fails to make any payment due to the Supplier under the Order Acknowledgement and/or Contract by the due date for payment, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue amount at the rate of 4% a year above Barclays Bank Plc's base rate. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 9.1 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 9.2 Without prejudice to the Supplier's right to claim under Clause 9.1 or any costs under the Late Payment of Commercial Debts (Interest) Act 1998, if for any reason any payment is not made when due, the Supplier reserves the right to be paid on an indemnity basis any costs incurred in recovering money due under the Contract (and the costs recovering such costs) including administrative costs and any cost incurred with legal advisers or debt collection agencies. The Supplier's administrative costs may include the cost of employing staff and the overheads attributable to them for the time spent. In calculating the administrative cost credit will be given for any compensation due to the Late Payment of Commercial Debts (Interest) Act 1998.
- 10 Acceptance and Warranty**
- 10.1 The Supplier warrants that, subject to clause 10.3 – 10.6, for the warranty period set out in the customer care guidance note (available on our website) for the relevant Goods (the **Warranty Period**), the Deliverables shall:
- 10.1.1 conform in all material respects to their description or where appropriate to any specification agreed by the Supplier or sample agreed with the Supplier as part of the specification;
- 10.1.2 be free from material defects in design, material and workmanship;
- 10.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 10.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13.
- 10.2 The Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 10.3.1, provided that the Customer:
- 10.2.1 serves a written notice on Supplier: (a) in the case of defects discoverable by a physical inspection not later than five Business Days from delivery; (b) or in the case of latent defects within a reasonable period of time from delivery or performance provided always that such notice must be served within the Warranty Period;
- 10.2.2 such notice specifies that some or all of the Deliverables do not comply with clause 10.1 and identifying in sufficient detail the nature and extent of the defects; and
- 10.2.3 gives the Supplier a reasonable opportunity in the manner the Supplier thinks fit to examine the claim of the defective Deliverables.
- 10.3 If the Customer does not serve any notice in accordance with clause 10.2. then the Deliverables are deemed to be accepted.
- 10.4 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 10.1 if: the defect arises because the Customer failed to follow instructions or care labels as to the storage use and cleaning of the Goods; the Customer alters or repairs such Goods without the written consent of the Supplier; the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer; or the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 10.5 There may be a 10% + or - variance of the original Order quantity on all bespoke products.
- 10.6 Bespoke products could generate up to 10% b-grade quality. These will be delivered separately with a 10% discount.

- 10.7 In cases where the Customer has approved drawings and samples with the Supplier as part of an approvals process leading to a finished product that are the Goods being purchased then, after approval by the Customer, the Customer is not entitled to reject any Goods where they have been produced in accordance with Customer approved specifications.
- 10.8 The provisions of these Terms and Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 10.9 Except as set out in this clause 10:
- 10.9.1 the Supplier gives no warranty and makes no representations in relation to the Deliverables; and
- 10.9.2 shall have no liability for their failure to comply with the warranty in clause 10.1, and all warranties and Terms and Conditions (including the Terms and Conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.
- 11 Indemnity and insurance**
- 11.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of the provisions of clause 7.2 (ownership of Customer Artwork) or any of the Customer's obligations under the Contract.
- 12 Limitation of liability**
- 12.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.2 Subject to clause 12.5, the Supplier's total liability shall not exceed the sum of the Contract Price.
- 12.3 Subject to clause 12.5, the Supplier shall not be liable for consequential, indirect or special losses.
- 12.4 Subject to clause 12.5, the Supplier shall not be liable for any of the following (whether direct or indirect): loss of profit; loss or corruption of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 12.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 12.5.1 death or personal injury caused by negligence;
- 12.5.2 fraud or fraudulent misrepresentation;
- 12.5.3 any other losses which cannot be excluded or limited by applicable law;
- 13 Confidentiality and announcements**
- 13.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any affiliate of the Supplier and shall only use the same as required to perform the Contract.
- 13.2 The Customer gives its consent to the Supplier that the Supplier may market, advertise, display and/or refer to the Customer and its commercial relationship for the purposes of promoting its business.
- 13.3 The Supplier may, at its discretion, and as it sees fit, discreetly use or imprint its name (brand, trading and/or otherwise) on the care labels, hang tags, swing tags or swing tickets of the Customer's Deliverables.
- 14 Processing of personal data**
- 14.1 The Supplier and Customer shall at all times comply with all applicable data protection laws. Supplier's privacy notice can be viewed at : _____
- 15 Force Majeure**
- 15.1 The Supplier shall not be liable or responsible for any failure or delay from performing its obligations due to force majeure (which includes without limitation: inability to procure materials or goods, any increases in price and change of laws) and in such circumstances the Supplier shall be entitled to terminate the Contract in whole or in part without incurring any liability whatsoever to the Customer.
- 16 Termination**
- 16.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 16.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;

- 16.1.2 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
- 16.1.3 the Supplier is unable to perform any of its contractual obligations for any reason.
- 16.2 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 17 Entire agreement**
- 17.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 18 Variation**
- No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms and Conditions and is duly signed or executed by, or on behalf of, the Supplier.
- 19 Assignment/sub-contracting**
- 19.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.
- 19.2 The Supplier shall be entitled to sub-contract any of its obligations under the Contract.
- 20 Set off**
- 20.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 20.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 21 Compliance with law**
- The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 22 Conflicts within contract**
- If there is a conflict between the terms contained in the Terms and Conditions and the terms of the Order, the terms of the Terms and Conditions shall prevail.
- 23 Third party rights**
- 23.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 23.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.
- 24 Governing law**
- The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25 Jurisdiction**
- The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).