

## CONDITIONS OF SALE

### 1. Definitions

- 1.1. "Conditions" means these Conditions of Sale.
- 1.2. "Contract" means an agreement between Seller and Customer for the sale and purchase of Products. A Contract may arise in different ways such as when Seller accepts Customer's purchase order or when Customer accepts Seller's quotation, works order or sales contract, as the case may be. Customer shall be deemed to have accepted Seller's quotation, works order or sales contract for Products if Customer then issues a purchase order for such Products, whether or not Customer's purchase order specifically refers to Seller's quotation, works order or sales contract.
- 1.3. "Customer" means any person that buys a Product from Seller, including retailers, distributors, importers, website customers, corporate customers, end users and consumers.
- 1.4. "Intellectual Property" means the proprietary rights of Seller and Seller's suppliers, as the case may be, in the Products, including, without limitation, any patents and patent applications (whether owned by Seller or licensed to Seller), the brands, designs, specifications (including all measurements and dimensions), fabrics, technical information, know-how, Product documentation and company literature
- 1.5. "Net 20 EOM" means a payment term pursuant to which payment is due by the 20th day following the end of the month in which the relevant shipment occurs.
- 1.6. "Products" means the full range of products that Seller sells, from time to time, including any custom products meeting the specifications and requirements of Customer.
- 1.7. "Seller" means Styx Mill Clothing Company Limited, a Limited Company registered under the New Zealand Companies Act 1993 (No: 2128037), and its affiliates, subsidiaries and trading divisions.

### 2. General

- 2.1. All sales are subject to these Conditions. These Conditions are deemed incorporated in any Contract; provided however that in the event of a conflict between an express term in a Contract and an express term in these Conditions, the Contract shall govern. The specific terms of any sales confirmation, quotation, works order or sales contract to which these Conditions are attached, or incorporated by reference, shall prevail in the event of a conflict.
- 2.2. Any purchase order submitted by Customer shall be subject to these Conditions. Any terms and conditions of Customer's order deviating from, or inconsistent with, these Conditions are expressly rejected by Seller. This rejection also extends to any statement by Customer that Customer's terms and conditions shall prevail and to any stipulation by Customer as to the manner of declaring such rejection. Any conditions in Customer's purchase order, or otherwise proposed by Customer, shall not bind Seller unless Seller expressly acknowledges each such condition and accepts each such condition in writing.
- 2.3. Customer's receipt of the Products shall constitute its acceptance of these Conditions.
- 2.4. To modify these Conditions, both parties must sign an agreement to that effect.
- 2.5. Seller's staff, agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with these Conditions, unless made in writing and signed by a duly authorized officer of Seller. Any such unauthorized representations, statements, warranties, conditions or agreements shall not bind Seller nor form part of any Contract between Customer and Seller.
- 2.6. Absent a specific agreement with Customer to the contrary, Seller is not bound by any territorial or market restrictions. Seller may sell the Products to other customers, be they competitors of Customer or customers of Customer, including other retailers, distributors, importers, website customers, corporate customers and consumers.
- 2.7. The sale of Products to Customer shall not carry with it any obligation upon Seller to make repeat sales to Customer. Subject to compliance with applicable law, Seller reserves the right to refuse to deal with Customer for any reason, or for no reason, in Seller's sole and absolute discretion.
- 2.8. Seller sources garments, components, fabrics and other raw materials from suppliers all over the world. If Customer needs to know the specific country (or countries) of origin relative to the Products, fabrics or components, Customer may obtain such information upon request. Otherwise, beyond an obligation of Seller to comply with New Zealand country of origin law, Seller makes no representation or warranty concerning the country of origin of the Products. Customer should not infer that the Products are made in New Zealand from the fact that Seller is located in New Zealand.

### 3. Orders

- 3.1. Lead times and delivery dates will vary depending upon whether Seller has the Products in stock at the time that Customer places its order. Seller shall advise Customer of relevant lead times and delivery dates. Any lead times and delivery dates given, whether oral or in writing, shall be deemed good faith estimates only. Time is not of the essence of a Contract. Seller shall use

reasonable endeavours to meet any delivery dates specified in an order that it has accepted. However, Seller shall not be responsible for late delivery due to holidays, shortages, defaults by suppliers and contractors, labour problems, transport delays and other events and circumstances beyond Seller's reasonable control. Seller accepts no liability whatsoever for any loss or damage suffered by Customer because of any delay or failure to deliver any of the Products, irrespective of the cause. If Seller is unable to deliver the Products because of any cause beyond its reasonable control, it may suspend delivery, or cancel Customer's order, without incurring any liability for loss or damage suffered by Customer.

- 3.2. Seller shall not be deemed to have accepted Customer's purchase order unless and until Seller confirms its acceptance in writing.
- 3.3. Customer may not modify or cancel a purchase order except with Seller's prior written approval.
- 3.4. Customer shall immediately confirm, in writing, all verbal instructions and orders. Seller may wait until Customer does so before executing Customer's verbal instructions and orders. If Seller does not wait, Seller shall execute Customer's verbal instructions and orders entirely at Customer's risk. In that case, Seller accepts no responsibility for errors and omissions.
- 3.5. Certain Products may be subject to minimum order sizes.

### 4. Delivery

- 4.1. Seller's standard shipping terms are *ex works* its facility in Christchurch, New Zealand. Consistent with *ex works* shipping terms, Customer assumes all risk of loss or damage to the Products once they are placed at the disposal of Customer, or its carrier, at Seller's facility. Incoterms 2010 shall govern the rights and obligations of the parties in an *ex works* shipping contract or when another shipping term is stipulated in a Contract.
- 4.2. Although Seller's standard shipping terms are *ex works*, Seller may arrange freight and insurance at Customer's request and expense and Customer shall reimburse Seller for such charges. For purposes of clarification, when Seller arranges freight and insurance, it does so purely as an accommodation to Customer and as agent for Customer. The provision of such service shall not alter the *ex works* shipping terms.
- 4.3. Customer may elect to pick-up the Products and make its own shipping arrangements, provided it notes such preference when placing an order.
- 4.4. Seller shall ship the Products as soon as they are ready for delivery. Customer may neither delay delivery nor fail nor refuse to accept delivery. If delivery of the Products is delayed or refused by Customer, Customer shall be liable for extra charges, losses or expenses incurred by Seller. If delivery of the Products is delayed or refused by Customer, the day upon which the Products were first ready for delivery from Seller's warehouse shall be regarded as the date of delivery for invoicing and payment purposes.
- 4.5. To assist with timely delivery, Customer shall promptly provide all specifications and other information that Seller may require to design and manufacture a custom Product.
- 4.6. Seller may deliver the Products by instalments or partial shipments.

### 5. Price

- 5.1. Seller's prices do not include taxes, freight, insurance or Customs clearance charges. Seller shall add any such charges, where applicable, to the price of the Products. Such charges shall either appear as separate items on the invoice or be included in the price of each Product, as detailed to Customer. Seller may issue a supplementary invoice for any deferred or delayed charges that would otherwise be payable by Customer but for the fact that they were not known by Seller on the date of invoice.
- 5.2. Seller may change its prices at any time in its sole and absolute discretion. Price changes shall not apply to orders that Seller shall have already confirmed.
- 5.3. Seller's prices are in New Zealand dollars unless a works order, quotation or Contract specifies a different currency. However, website sales are in US dollars.
- 5.4. If Seller provides a quotation to Customer, Customer may not treat such quotation as a firm and binding offer from Seller. A firm and binding commitment to supply shall not arise until Seller confirms that it will sell the Products at the price originally quoted.

### 6. Payment

- 6.1. If Customer has applied for credit and its application has been approved, the payment terms are Net 20 EOM. Otherwise, the payment terms are cash before delivery. With large orders, Seller may require progress payments.
- 6.2. Customer shall effect payment by electronic funds transfer (EFT) to Seller's bank account, as notified by Seller from time to time.
- 6.3. Prompt payment shall be deemed a material condition and Customer's late payment shall be deemed a material breach of such condition. In relation to the payment terms, time is of the essence. Seller reserves the right to charge Customer interest on late payments at the rate of 1½% per month on the unpaid balance and to recover debt collection costs. Customer agrees to pay

- Seller, on demand, late payment interest and all collection costs (including legal expenses) incidental to recovering payments of moneys owing.
- 6.4. Customer shall pay each invoice in full. Customer shall have no right to set off against an invoice, or to deduct from an invoice, any claims that Customer may have against Seller.
- 6.5. Seller reserves the right to alter its payment terms to Customer at any time in Seller's sole and absolute discretion. Seller may require Customer to post security for payment before acceptance of an order or its delivery. Seller may withhold acceptance of an order, or its delivery, until Customer pays cash or posts security in accordance with the payment terms specified by Seller. Seller may delay shipping an order until Customer has paid any overdue balance.
- 6.6. Customer is responsible for all bank charges, fees, currency exchange costs and like charges, associated with the payment of commercial invoices issued by Seller to Customer, where applicable. The Customer shall gross up its payment to Seller for any such charges that Seller incurs.
- 7. Retention of Title**  
*The sub-clauses in this clause 7 apply when Seller ships the Products to Customers in New Zealand, Australia, and such other jurisdictions where retention of title clauses are enforceable.*
- 7.1. It is expressly agreed and declared that title to the Products shall not pass to Customer until Seller receives payment in full of the purchase price of such Products. Customer shall, in the meantime, take custody of the Products and retain them as the fiduciary agent and bailee of Seller. Customer may re-sell the Products but only as fiduciary agent of Seller and with no right to bind Seller to any liability to any third party by contract or otherwise. Any such resale shall be at arm's length and on market terms and pending resale, the Products are to be kept separate from Customer's own property, stored, protected and insured. Customer will receive all proceeds in a separate account until its liability to Seller shall have been fully discharged. Seller shall have the power to appropriate payments for such Products from such accounts as it thinks fit, notwithstanding any appropriation by Customer to the contrary.
- 7.2. Seller retains, and/or Customer hereby grants to Seller, a security interest (hereinafter "Security Interest") in and to all the Products, the proceeds of any contract, sale, assignment, lease or sub-lease thereof, any insurance proceeds, and any other rights of Customer in and to the Products and/or their proceeds. No title, equity or right in or to the Products shall pass to Customer except in accordance with the terms hereof. Customer agrees that Seller is authorized to file a copy of this Security Interest as a financing statement and file it or other financing statements or amendments thereto with or without the signature of Customer with respect to any or all of the Products and, if Customer's signature is required thereon by law, Customer irrevocably appoints Seller as Customer's attorney-in-fact to execute any such financing statements.
- 7.3. On the request of Seller, Customer shall promptly execute any documents, provide all necessary information and do anything else required by Seller to ensure that the Security Interest created under the Contract constitutes a perfected Security Interest in the Products, and the proceeds thereof, which Security Interest will have priority over all other security interests in the Products and proceeds.
- 8. Returns Policy**
- 8.1. Seller's returns policy applies to stock Products that do not conform to Customer's order but are otherwise of merchantable quality and saleable condition. Seller's returns policy also applies to non-stock Products (i.e. custom Products) but only where such non-stock Products do not conform to Customer's order because of Seller's error. Seller's returns policy does not apply to defective Products. For Seller's policy on defective Products, refer to clause 9 (Limited Warranty).
- 8.2. Customer shall inspect all Products upon receipt to ensure that they conform to Customer's order. Unless Customer has given written notice to Seller within seven (7) days after receipt that the Products do not conform to Customer's order, the Products shall be deemed to have been accepted in good order and condition, and to conform to Customer's order.
- 8.3. Customer may only return Products to Seller, and receive a credit or refund, with Seller's authorization. Seller may withhold its authorization in its sole and absolute discretion, except if the Products do not conform to Customer's order because of Seller's error.
- 8.4. To return Products, Customer must contact Seller within 7 days of receipt and request a Returns Authorization Number. If Customer's request is more than 7 days from receipt, any return so authorised by Seller shall be subject to a 20% handling fee.
- 8.5. Customer must promptly return the Products to Seller in their original condition and packaging, and must specify the Return Authorization Number on the packaging. The Products must be unsoiled, undamaged and in saleable condition (or Customer shall pay Seller's costs to repackage, restore, recondition, repair or replace such Products).
- 8.6. Customer shall ship the Products, freight prepaid, to Seller's warehouse. However, if Seller's error is the reason for the return, Seller shall pay for the freight cost.
- 9. Limited Warranty**
- 9.1. Seller warrants that the Products will be free of defects in materials and workmanship. The term of this warranty is 90 days from date of shipment. Seller hereby limits its liability, whether in contract, tort or otherwise, for any loss or damage suffered by Customer to the repair or replacement of a defective Product or the refund of its purchase price. Where another manufacturer supplied Seller with a defective component, the warranty of Seller shall not be more extensive than any warranty in favour of Seller from such other manufacturer. Seller shall endeavour to pass on to Customer the benefit of such other manufacturer's warranty.
- 9.2. Seller's warranty is void in any of the following circumstances: (a) The warranty claim relates to normal wear and tear; (b) The Product was misused, neglected, damaged, abused or involved in an accident; (c) The Product was used for a purpose for which it was not designed nor intended; (d) The Product was improperly cared for, cleaned, repaired or maintained; (e) The Product was altered or modified; (f) The owner of the Product did not follow any warnings, safety instructions, maintenance instructions and care and use instructions provided with the Product; and/or (g) The Product sustained damage after risk of loss and damage passed from Seller to Customer according to the agreed shipping term.
- 9.3. To assert a warranty claim, Customer shall return the Products to Seller at Customer's cost, provided that if Seller accepts Customer's warranty claim, Seller shall reimburse Customer for such cost. Customer shall include with the returned Products proof of purchase and a full written description of the nature of the defect, identifying any specifications to which the Products do not conform. Seller shall then inspect the Products. If Seller, acting reasonably, accepts Customer's warranty claim, Seller shall, at its cost and expense, either (a) repair the Products, (b) replace the Products, (c) issue a credit for the purchase price of the Products, which Customer may apply to the purchase of other Products, or (d) refund the purchase price. The decision whether to repair, replace, credit or refund shall be in Seller's sole and absolute discretion.
- 9.4. Customer acknowledges that the Products are capable of being used for many purposes and applications. It is not possible for Seller to know all of the criteria and factors that bear upon its customers' purchasing decisions. Proper selection of a specific Product for a specific purpose, application and performance expectation is Customer's responsibility. Customer is responsible for selecting Products that are suitable for Customer's purposes and will meet Customer's performance expectations. Customer is solely responsible for determining the suitability of the Product for its needs. Seller does not warrant a Product's fitness and merchantability for a specific purpose.
- 9.5. This is an express warranty. Seller disclaims any other express or implied warranties, including warranties of merchantability or fitness for purpose, to the maximum extent permitted by law.
- 10. Product Changes**
- 10.1. Because Seller is continually improving and upgrading the Products, the specifications, dimensions and Product descriptions, in printed material and on Seller's website, are subject to change without notice.
- 10.2. A Contract shall not create a sale by description or sample unless expressly stated. Seller does not warrant that the Products conform to a specific description or sample. Seller reserves the right to alter Product dimensions, drawings, specifications, designs, materials components and construction methods. Seller may do so without notice. Any such alterations shall not impose on Seller an obligation to alter Products that Seller has already delivered to Customer.
- 10.3. Variations in colours, fabric dyes, fabric batches, styles and other specifications may also occur as part of Seller's procurement and manufacturing process.
- 10.4. Clerical errors by Seller in computations, typing, data entry or otherwise in invoices, delivery dockets, credit notes, quotations, work orders, sales contracts, catalogues, brochures and specifications shall be subject to correction.
- 11. Product Standards**
- 11.1. If it is a condition that the Products comply with a specific standard, Customer shall specify the standard to which the Products must comply in its purchase order. If Seller is able and willing to supply Products conforming to such standard, Seller shall so state in writing. Otherwise, Seller does not warrant that the Products comply with any specific standard except if the Products bear a compliance tag to that effect.
- 11.2. If compliance to a specific Product standard is a condition of the Contract, Seller warrants such compliance as at the date of sale. Customer is responsible for maintaining such compliance after the date of sale through proper use, care and maintenance of the Product.
- 11.3. Changes in relevant standards after the date of sale shall not impose any responsibility on Seller to change Products previously sold to Customer, nor accept the return of such Products.
- 11.4. Customer is responsible for using Products within such usage parameters and constraints as the relevant standard may specify. This includes any health and safety requirements applicable to the user of such Products.
- 11.5. The Products are intended for use by persons who are in good health and properly trained. Seller is not responsible for accidents or injuries resulting from the use of the Products by persons who are not in good health or properly trained.
- 12. Compliance with Law and Regulations**
- 12.1. Customer shall comply with all applicable laws and regulations in the countries where Customer intends to use or sell the Products. Specifically, and without limiting the generality of the foregoing, Customer shall comply with all health and safety requirements.

- 12.2. At the time Customer places its order, it shall advise Seller of any such legal requirements to the extent they relate to the specifications, the manufacturing process, the labelling or the packaging of the Products. If Seller is able to do so, it shall comply with such requirements. Seller reserves the right to increase the price to cover the reasonable cost of complying with any such requirements. Customer acknowledges that Seller shall be relying entirely upon Customer's advice in respect to the legal requirements in Customer's markets.
- 13. Limitation of Liability**
- 13.1. Any liability of whatsoever nature arising directly or indirectly from any defect in the Products, or any advice tendered by Seller in connection with the Products, shall be limited to the replacement or repair of such defect and shall not in any case exceed the invoice value of the Products.
- 13.2. Seller is not liable for damage, loss or expense resulting from its failure to give advice or information or the giving of incorrect advice or information, whether or not due to Seller's negligence or that of its employees, agents or sub-contractors.
- 13.3. Seller's liability for loss arising from any defect or non-compliance in relation to the Products supplied is limited, at Seller's option, to replacement of the Products or a refund not exceeding the invoice value of the Products.
- 13.4. If Customer is buying the Products for resale, Customer accepts full responsibility for resolving any claims made by its customers and indemnifies Seller against any such claims. Customer's sole recourse against Seller is pursuant to these Conditions.
- 13.5. Customer shall strictly comply with any instructions for use, care and maintenance, trouble shooting, warnings and safety procedures provided by Seller. Where appropriate, Customer shall pass any such instructions to its customers and end users and Customer shall use its best endeavours to ensure that they comply with such instructions. Seller shall not be liable for any costs or damages incurred by any person because of such person's failure to comply with such instructions.
- 13.6. Where Seller gives technical advice, Seller does so to provide helpful suggestions only. Seller has not inquired, nor does it know, all of Customer's unique circumstances to make a professional judgement. Seller assumes no obligation or liability for any technical advice so given. Customer accepts such technical advice entirely at its own risk. Customer shall use its own judgement and not rely upon Seller's. Any suggestions by Seller regarding use, selection, application or suitability of the Products shall not be construed as an express warranty unless specifically designated as such in a writing signed by an officer or other authorized representative of Seller
- 13.7. Under no circumstance shall Seller be liable for any incidental, special, indirect, consequential or punitive damages, including loss of profits, loss of revenues, loss of business, loss of operations, injury to reputation or loss of good will. Seller shall not be liable for death, personal injury or property damage resulting from, or relating to, use of the Products. Customer understands and agrees that all claims in the nature of products liability shall be its sole re-

sponsibility. The liability of Seller under any circumstance shall not exceed the original purchase price paid by Customer for the Product or Products giving rise to such liability.

- 13.8. Some jurisdictions do not allow certain types of disclaimers in sales contracts or may limit the scope of such disclaimers. Therefore, parts of the above disclaimers, limitations and exclusions may not conform to the law in certain jurisdictions in which Seller sells the Products. As to such jurisdictions, the clauses above shall be deemed modified, and the non-conforming parts amended or removed, but only to the extent necessary to bring such clauses into conformity with the laws therein.

**14. Intellectual Property; Brands**

- 14.1. The sale of Products does not include the sale of relevant Intellectual Property. Seller and its suppliers, as the case may be, shall retain ownership of such Intellectual Property. Customer shall not copy any Intellectual Property or use such Intellectual Property in a manner that is prejudicial to the commercial interests of Seller or its suppliers.
- 14.2. Customer shall not use Seller's brands in Customer's promotional materials, publications and on Customer's website except with the prior written consent of Seller. Customer shall submit to Seller all relevant details concerning Customer's proposed usage of Seller's brands. Seller may grant or withhold its consent in its sole and absolute discretion. If Seller grants its consent, Customer must obtain Seller's further consent to each future modification of content relating to Seller's brands. Customer shall not use third party brands (i.e. brands not owned by Seller such as GoreTex<sup>®</sup>, Proban<sup>®</sup>, 3M<sup>®</sup>).
- 14.3. Whenever Seller stops doing business with Customer, or *vice versa*, Customer shall return all of Seller's promotional material in Customer's possession. Customer shall also remove all references to Seller and its trademarks from Customer's literature, websites and other promotional material.
- 15. Disputes**
- 15.1. All Contracts shall be governed by New Zealand law and Customer submits to the jurisdiction of New Zealand courts.
- 15.2. Any dispute arising out of these Conditions or relating to the Products supplied, work done or services rendered by Seller shall be resolved in accordance with the law of New Zealand and in the courts of New Zealand.
- 16. Severability**
- 16.1. If any provision in these Conditions is deemed by a Court to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.
- 17. Non-Waiver**
- 17.1. No failure by Seller to insist upon strict performance of any of these Conditions, or delay in exercising any of its rights or remedies, shall constitute a waiver or variation of these Conditions or a waiver of any such right or remedy.

*Thank you for choosing Styx Mill!  
We shall do everything possible to retain your goodwill.*