

TERMS AND CONDITIONS OF SALE

1. The order described on the accompanying page(s) is incorporated herein and is binding on Buyer and shall constitute the entire agreement (the "contract") between Buyer and Seller, whether or not this contract is signed by Buyer, when Buyer has retained possession of this contract without objection for a period of three days or when Buyer has accepted delivery of any part of the goods subject hereto. This contract is subject to the following terms and conditions, which may not be varied or added to except in writing and signed by Seller's duly authorized representative. This contract is intended by the parties as a final, complete and exclusive expression of their agreement with respect to, and statement of, the terms of the sale of goods subject hereto, and supersedes any order or confirmation of Buyer, whenever delivered, and governs the sales transaction described on the accompanying page(s) in all respects.
2. Payment of Seller's invoices shall be made in U.S. funds by check drawn on a U.S. bank. Checks received from or for the account of Buyer, regardless of writings, legends or notations on such checks, may be applied by Seller against amounts owing by Buyer at the sole discretion of Seller. In the event Seller instructs Buyer to make remittances directly to a specific financial institution, Buyer agrees to promptly comply with such instructions.
3. Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of the sale included in the price, any increase in rates becoming effective after the date hereof shall be for the account of Buyer.
4. The price of any undelivered portion of this contract is subject to increase due to any legislation or other governmental action affecting Seller's cost, and deliveries may be modified to the extent necessitated by any such action. The price of any undelivered portion of this contract is subject to increase due to any increase in Seller's direct or indirect costs of labor or materials respecting same; however, in no case shall such price increase exceed 10% of the original contract price.
5. Except as otherwise provided herein, all import permits and licenses and the payment of all U.S. or other import duties and custom fees shall be the sole responsibility of Buyer.
6. All sales, excise and similar taxes which Seller may be required to pay or collect with respect to the goods covered by this contract shall be for the account of Buyer, except as otherwise provided by applicable law.
7. Seller shall not be responsible for delays in delivery or any failure to deliver due to causes beyond Seller's reasonable control, including but not limited to acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign governmental regulations or orders, fires, floods, strikes, lockouts and other labor difficulties, or shortage of inability to obtain shipping space, transportation and/or raw materials.
8. The acceptance of shipment by a common carrier or licensed public truckman in accordance with Buyer's shipping instructions shall constitute a delivery. Buyer's acceptance of goods shall constitute a waiver of any claim for late delivery, and goods shall not be returned nor allowance made after goods have been cut or otherwise changed from their original condition. Seller shall have the right to replace defective goods within a reasonable time after return by Buyer, and in such event no claims shall be made by Buyer. No returns or allowances shall be made for normal manufacturing defects or slight variations in shade.
9. Shipments made within thirty days after the date of delivery specified by Buyer shall constitute a good delivery. Tender made within thirty days after the date of delivery specified by Buyer shall constitute a good tender.
10. With respect to BRelaxed products, Seller expressly warrants to Buyer that the goods are in accordance with the official product description prepared by Seller and delivered to Buyer (BR-1 (3/17) - the "Product Description"). If any of the goods delivered to Buyer are not in accordance with the Product Description, Seller shall have the right in its sole discretion either to replace such defective goods or to refund the portion of the purchase price applicable thereto, which shall be Buyer's exclusive remedy at law or in equity. HOWEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCESSING, LOST PROFITS, INJURY TO GOODWILL OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. This warranty will be invalidated if the goods have been (i) subject to abuse, misuse, neglect, or accident; (ii) improperly stored or handled; (iii) improperly maintained (including, but not limited to, noncompliance with the Care Instructions); or (iv) repaired by any person other than Seller. For the avoidance of doubt, this paragraph 10 contains Buyer's exclusive warranty with respect to BRelaxed products and Seller makes no other warranty, express or implied.
11. With respect to BRelaxed products, Seller makes no representations or promises other than those specifically stated in the Product Description for such products.
12. Buyer has requested Seller to provide promotional and other materials concerning BRelaxed products to Buyer, which Buyer may choose to use for advertising and/or other purposes in connection with Buyer's customers. Buyer understands and agrees that, notwithstanding this or any other fact, neither Seller nor Buyer intends for Seller to make or provide express warranties or representations to Buyer's customers or to any other person or entity other than Buyer. If Buyer makes any representations, warranties, or promises to its customers or any other person or entity concerning BRelaxed products (including, without limitation, by providing or making available promotional, advertising, or other materials, whether or not prepared by or in conjunction with Seller), Buyer does so at Buyer's own risk and Buyer shall bear sole and exclusive responsibility and liability for any such warranties, representations, or promises.
13. Buyer shall defend, indemnify, and hold harmless Seller from and against all direct and indirect allegations, claims (whether valid or invalid), actions, suits, investigations, proceedings, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation reasonable attorneys' fees and costs), whether foreseeable or unforeseeable, whether based in tort, contract, or any other theory of liability or on account of any state or federal statute, which arise out of, relate to, or result from any act or omission (whether willful, negligent, or otherwise) by Buyer with respect to any warranties, representations, advertising, sales practices, or promises concerning BRelaxed fabrics by Buyer to its customers or any other person or entity (collectively, the "Indemnified Claims"). This provision requires Buyer to reimburse Seller promptly, upon demand, for all of Seller's out-of-pocket expenses incurred in connection with any Indemnified Claims.
14. EXCEPT FOR THE LIMITED EXPRESS WARRANTY FOR BRELAXED PRODUCTS IN PARAGRAPH 10, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, RESPECTING ANY GOODS SUBJECT HERETO, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY SELLER. Without limiting the generality of the foregoing, Buyer hereby acknowledges and agrees that the goods covered by this contract are not suitable for all uses, and in particular are not intended for use as rental or commercial furniture upholstery and the wear and tear reasonably expected in connection therewith.
15. If any inspection or testing of the goods has been agreed upon, such inspection or testing shall be made at Seller's mill or its source of supply before shipment of the goods, and approval or rejection shall be made promptly and in any event before shipment. In all other cases, Buyer is required to give written notice to Seller of any claim promptly upon receipt of goods and in any event within 90 days thereafter, and Seller shall thereupon be afforded a reasonable opportunity to inspect the goods.
16. If any of the goods delivered to Buyer are determined within said 90 days to be defective or are otherwise not in accordance with contract specifications, Seller shall have the right in its discretion either to replace such defective goods or to refund the portion of the purchase price applicable thereto, which shall be Buyer's exclusive remedy at law or in equity. No goods shall be returned to Seller without Seller's written consent. Failure to deliver any installment due or a defect in any delivery in breach of this contract constitutes a severable breach only, and Buyer cannot treat the entire contract as breached. If an adjustment is reached for any failure to deliver or for any defective delivery, or replacement made therefor, such default or defective delivery shall be treated as if it had not occurred.
17. Unless otherwise expressly stated in this contract, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries or any failure to deliver or defective delivery as to any other installments or shipments. Failure by Buyer to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining installments. Upon breach by Buyer as to any installment, Seller, in its sole discretion, may treat such breach as severable or as a breach of this entire contract, in which event, in addition to all other rights and remedies provided by law, Seller may sell the goods at public or private sale without notice to Buyer and Buyer shall be liable for the difference between the contract price and the amount received on such sales, together with the costs and expenses of such sale, it being understood that Seller may be the buyer of any such goods at any such sale.
18. If, by the terms of the sale, credit is extended to Buyer, Seller reserves the right to revoke such credit if Buyer fails to pay for any goods when due, and to demand payment before further shipment of any goods. Without limiting the foregoing, Seller may at any time alter or suspend credit when, in its opinion, the financial condition of the Buyer warrants it. In such case, cash payment or satisfactory security may be required by Seller before shipment, and/or the payment terms established with respect to goods previously shipped may be accelerated.
19. Seller's liability for any claims arising out of or related to this contract or the sale of the goods or their use, under any legal theory or for any cause whatsoever, whether based upon contract or tort, including but not limited to negligence and strict liability, or any other theory of liability, shall be limited to the difference between the contract price of the goods and the market value on delivery date. HOWEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCESSING, LOST PROFITS, INJURY TO GOODWILL OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. The foregoing limitations on liability shall be inoperable to the extent they conflict with applicable law.
20. Without in any way limiting any other restrictions set forth in this contract, all causes of action or claims, regardless of form, arising out of or related to this contract or the sale of the goods or their use, whether based upon contract or tort, including but not limited to breach of warranty, negligence and strict liability, or any other theory of liability, must be brought by Buyer within twelve (12) months after Buyer's receipt of goods, or the shortest duration permitted under applicable law if such period is greater than twelve (12) months.
21. This contract shall be governed by and construed according to the laws of the Commonwealth of Massachusetts (other than the conflicts of laws principle thereof) and the customs and usages of the textile industry, provided however, that if any provision of this contract is inconsistent with the customs and usages of the textile industry, then the provisions of this contract shall prevail.
22. Any claim or controversy arising under or in relation to this contract or any modification or extension thereof, including any claim for damages and/or rescission, shall be resolved by binding arbitration in Boston, Massachusetts in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The language of the arbitration shall be English. The written decision of the arbitrators, which may include, as appropriate, a monetary award, but not a penalty or punitive, consequential or exemplary damages, however described, shall be final and binding upon the parties. Judgment upon any award(s) rendered by the arbitrator may be entered in any state or federal court in the Commonwealth of Massachusetts or any other court of competent jurisdiction. Buyer and Seller consent to the personal jurisdiction and venue of the state courts of the Commonwealth of Massachusetts and of the United States District Court for the District of Massachusetts. The parties shall not raise in connection therewith and each party irrevocably waives all objection to the laying of venue of any proceedings brought in such courts and any defenses based upon venue, inconvenience of forum, lack of personal jurisdiction, sufficiency of service of process or the like in any action or suit brought in such courts. Arbitration proceedings must be instituted within one (1) year after the claim or controversy arose and the failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims. Notwithstanding the foregoing, Buyer acknowledges and agrees that a breach by Buyer of paragraph 26 of this contract may cause irreparable harm and significant injury prior to or during any arbitration proceeding. Accordingly, Seller shall have the right to seek injunctive relief from either the arbitral tribunal or any court having competent jurisdiction over the parties and the subject matter to enjoin any breach or other violation of such provision pending adjudication on the merits in arbitration. Should any of the provisions of this contract be declared by an arbitrator or court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions.
23. This contract may not be modified or terminated orally. No claimed modification, termination or waiver of any of its provisions shall be valid unless in writing and signed by Seller's duly authorized representative.
24. All rights and remedies of Seller under this contract are in addition to Seller's other rights and remedies and are cumulative, not alternative.
25. No rights of Buyer hereunder or arising out of this contract may be assigned without the express written consent of Seller.
26. No rights in patterns or designs or goods covered by this contract shall pass to Buyer hereunder. Buyer agrees not to copy or cause to be copied or reproduce, either directly or indirectly, any such patterns or designs. More particularly, no right to the use of any trademarks or trade names or service marks or service names of Seller shall pass to Buyer hereunder, and Buyer agrees to refrain from using such marks or names directly or indirectly, unless specifically authorized in writing by Seller.
27. Continuing guarantee under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.