

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. 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.
11. Seller shall not be liable for normal variations in tolerance, dimensions, weights and quantity of goods. Weights, sizes and quantities as determined at Seller's mill or other source of supply shall be conclusive. Exact matches of color are not guaranteed by Seller. Seller shall not be liable for normal manufacturing or finishing defects, nor customary variations from specifications. Goods made in whole or in part of synthetic fabrics are sold subject to imperfections in such fabrics, over which Seller has no control. Synthetic fabrics may vary in shade from piece to piece and Seller assumes no responsibility for such variations. Shade classifications on synthetic fabrics are for convenience of Buyer only. Natural fabrics may vary in shade from packing unit to packing unit or within any packing unit if so marked, and Seller assumes no responsibility for such variations. Irregularities or defects beyond the control of Seller or natural to or inherent in any particular fiber, yarn, fabric or construction shall not be deemed an imperfection; imperfections are only such defects or irregularities as can be prevented by Seller with reasonable care and under normal conditions.
12. Subject to Seller's right to stoppage in transit, delivery of merchandise to a carrier shall constitute delivery to Buyer, and risk of loss shall thereupon pass to Buyer. Where merchandise is held in accordance with Buyer's instructions or where no instructions have been supplied by Buyer, or where otherwise authorized under this contract, Seller shall have the right to invoice the goods on a bill-and-hold basis and the mailing by Seller of such an invoice shall satisfy Seller's obligations hereunder but shall not be deemed a delivery of the goods. After such invoicing, Seller shall release the goods in accordance with Buyer's shipping instructions, provided Buyer is not in default under this or any other contract with Seller. Until Buyer shall have paid such bill-and-hold invoice in accordance with its terms, title to the goods shall remain in Seller unless Seller has shipped the goods to Buyer. Until such payment or shipment, Buyer shall have no right to sell, transfer, hypothecate, or otherwise dispose of said goods to any third party. Goods invoiced and held by Seller for any reason shall be at Buyer's risk and expense.
13. Seller reserves a security interest under the Uniform Commercial Code in all merchandise purchased under this contract until paid in full. If Buyer does not make payments as agreed, the security interest allows Seller to repossess the merchandise. Buyer is responsible to Seller for any loss or damage to the merchandise until the purchase price is paid in full.
14. 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. No claims will be entertained thereafter. 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. In any case, no claim will be entertained after the goods have been cut.
15. If any portion of the goods delivered to Buyer are 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. No goods shall be returned to Seller without Seller's written consent. In no event shall Seller be liable for the cost of processing, lost profits, injury to goodwill or any other special or consequential damages. 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. Seller's liability for breach of this contract or any installment thereof shall be limited to the difference between the contract price of the goods and the market value on delivery date. 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.
16. 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 a sale, it being understood that Seller may be the buyer of any such goods at any such sale.
17. If, by the terms of 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 other 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.
18. Any 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 governed and controlled by the laws of the Commonwealth of Massachusetts and shall be resolved by binding arbitration in Boston, Massachusetts in accordance with the laws of the Commonwealth of Massachusetts and the rules then obtaining of the General Arbitration Council of the Textile and Apparel Industries, a division of the American Arbitration Association. The parties 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, and further agree that any process or notice of motion or other application to either of said courts or any judge thereof, and any paper in connection with arbitration, may be served within or without the Commonwealth of Massachusetts by certified mail return receipt requested or by personal service, provided that at least three (3) days for appearance is allowed. Arbitration proceedings must be instituted within one year after the claimed breach occurred 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. 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.
19. This contract may not be modified or terminated orally. No claimed modification, termination or waiver or any of its provisions shall be valid unless in writing signed by Seller's duly authorized representative.
20. This contract shall be governed by and construed according to the laws of the Commonwealth of Massachusetts 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.
21. All rights and remedies of Seller under this contract are in addition to Seller's other rights and remedies and are cumulative, not alternative.
22. No rights of Buyer hereunder or arising out of this contract may be assigned without the express written consent of Seller.
23. 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 reproduced, 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.
24. Continuing guarantee under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.