

C B BROOK & CO LIMITED
STANDARD CONDITIONS OF SALE

Interpretation

"Buyer" means the person who accepts a quotation from the Company for the sale of Goods or whose order for the Goods is accepted by the Company.

"Goods" means the goods (including any instalment of the Goods) which the Company is to supply in accordance with these Conditions.

"Seller" means C B Brook & Co Limited (registered in England under no 229755 or Cyrus Brook & Sons Limited (registered in England under no 1013178) whose registered offices are at Flagship House, Riparian Way, Cross Hills, Keighley, BD20 7BW

"Conditions" means these standard terms and conditions of sale and includes any special terms and conditions agreed in Writing by the Seller.

"Contract" means the contract for the purchase and sale of the Goods.

"Writing" includes telex, facsimile transmission and comparable means of communication,

Basis of the sale

1 All Goods sold by the Seller are subject to these Conditions which shall govern the Contract. All Contracts are to be in Writing and in no circumstances will any of these Conditions be varied or waived unless expressly agreed in Writing by an authorised official of the Seller.

2 The Seller's employees or agents are not authorised to make any representations, give advice or recommendations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations not so confirmed.

3 The Seller's order acknowledgement shall be deemed to constitute the acceptance of the order.

4 For Contracts agreed in currency other than Sterling the Seller reserves the right to renegotiate where the exchange rate works adversely against the Seller.

Quotations

The prices, quantities and delivery times stated in any quotation are commercial estimates only which the Seller will make all reasonable efforts to achieve. They do not constitute an offer to sell.

Delivery

1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller delivery of Goods to that place.

2 Any dates given for delivery are approximate only and the Seller shall not be liable to the Buyer for any loss or damage, whether direct or indirect or consequential if it is delayed or prevented, in whole or in part, from delivering the Goods.

3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4 If the Buyer refuses or fails to take delivery of the Goods on the date of delivery, the Seller will be entitled at its own discretion to:

4.1 store the Goods at the risk of the Buyer and the Buyer shall in addition to the price payable under the Contract pay all costs and expenses of such storage and any additional costs of carriage or otherwise incurred; or

4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

5 If the Seller fails to deliver the Goods for any reason (other than any cause beyond the Seller's reasonable control or the Buyer's fault) and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

Risk and property

1 Risk of damage to or loss of the Goods shall pass to the Buyer:

1.1 in the case of Goods to be despatched at the time of despatch or in the case of goods to be collected at the time when the Seller notifies the Buyer that the Goods are available for collection; or

1.2 if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

2 The Seller shall retain title and ownership of the Goods until it has received in cash or cleared funds payment in full of the price of the Goods. If payments made by the Buyer are not stated to refer to a particular invoice the Seller may appropriate such payments to any outstanding invoices.

3 Until such time as the title in the Goods passes to the Buyer, the Goods shall be properly stored, separately from any goods which belong to the Buyer, insured, clearly marked and identifiable as the Seller's property.

4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

Orders

- 1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer.
- 2 No order which has been accepted by the Seller may be cancelled by the Buyer except on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

Specifications

- 1 Where an order specifies the amount to be delivered in terms of any unit of measurement a tolerance on the length actually to be delivered shall be allowed in accordance with the following scale:
Up to 1000 metres - +/- 20% per order line , Over 1000 metres - +/- 10% per order line
- 2 In case of any dispute as to the method used in checking the length delivered, a certificate of length of the Goods shall be obtained from any testing house agreed between the parties or, in default of such agreement, from an approved Textile House whose certificate shall be final and binding. The costs of transport and all other costs in relation to such examination shall be borne by the Buyer.
- 3 Piece width has a tolerance of 2% under and 4% over the stated width on the Seller's acknowledgement of order. If the width is outside the tolerance, the pieces may be returned for reprocessing at the cost of the Seller.
- 4 Any piece delivered may contain fault tags in a ratio of up to 1 tag/10 metres unless otherwise agreed.
- 5 The Seller reserves the right to make any changes to the specification of the Goods so that the Goods conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification which do not materially affect the quality or performance.

Price of Goods

- 1 The price payable for the Goods shall be as stated in the Seller's price list (or quotation relating to the Goods) unless otherwise stipulated in Writing by the Seller but the Seller reserves the right at any time before the Contract is made to alter its prices.
- 2 The price is exclusive of delivery costs, insurance, Value Added Tax, Customs duties and other similar charges all of which shall be added to the price.
- 3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller.

Terms of payment

- 1 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after despatch of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 2 The Buyer shall make payments for the Goods in pounds sterling within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit ;
 - 3.3 cancel any or all other contracts between the Buyer and the Seller and the Buyer shall be liable to the Seller for any loss sustained as a result of such cancellation by the Seller;
 - 3.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2 per cent per annum above the Clearing Bank's base lending rate from time to time until payment in full is made.

Warranty

- 1 The Seller will at its option refund, repair or replace free of charge any Goods which its examination confirms are defective provided:
 - 1.1 the Buyer makes a full inspection of the Goods immediately upon delivery and the Buyer notifies the Seller in Writing forthwith of any defects which it discovers;
 - 1.2 the Buyer has only used the Goods in accordance with any instructions or recommendations of the Seller;
 - 1.3 the Goods have not been adjusted, altered, adapted or repaired by any party other than the Seller and in particular not further processed by the Buyer;
 - 1.4 the Goods are either made available to the Seller or his agent for an inspection or returned to the Seller at the Buyer's own expense, as the Seller may request;
 - 1.5 the Buyer can refer to the Seller's unique piece and roll number.
- 2 In no circumstances shall the Seller's liability to the Buyer for any breach of warranty exceed the price paid for the Goods with respect to which the claim is made. The Seller shall under no circumstances be liable for any indirect, special or consequential loss howsoever arising.
- 3 Except as provided for in these conditions, there are no warranties, express or implied, of merchantability or fitness for a particular purpose or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law so far as possible are hereby excluded.

Confined styles or special selvedges

1 The Seller shall, in relation to any faulty or excess Goods supplied under a Contract customised for the Buyer (ie cloth, quality, style or pattern):

1.1 offer the Goods to the Buyer under terms decided by the Seller in Writing; or

1.2 if such offer is not accepted by the Buyer within 7 days of the Seller's written notice the Seller shall have the right to offer the Goods elsewhere.

Insolvency of Buyer

1 In the event that:

1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

1.3 the Buyer ceases, or threatens to cease, to carry on business

then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Seller, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

Export terms

1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special term as agreed in Writing between the parties hereto) apply notwithstanding any other provision of these Conditions.

2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

3 The Seller shall have no liability for any claim in respect of any defect in the Goods which is made after shipment or in respect of any damage during transit.

General

1 Any notice required or permitted to be given by either party to the other under these Conditions, shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as have been notified pursuant to this provision to the party giving the notice.

2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall not be affected thereby.

4 Any dispute which cannot be resolved between the parties will be submitted to arbitration.

5 The Contract shall be governed by the exclusive jurisdiction of the English courts.