

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "Color Factory" shall mean Color Factory Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing goods and services from Color Factory.
- 1.3 "Goods" shall mean:
  - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Color Factory to the Client; and
  - 1.3.2 all Goods supplied by Color Factory to the Client; and
  - 1.3.3 all inventory of the Client that is supplied by Color Factory; and
  - 1.3.4 all Goods supplied by Color Factory and further identified in any invoice issued by Color Factory to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Goods that are marked as having been supplied by Color Factory or that are stored by the Client in a manner that enables them to be identified as having been supplied by Color Factory; and
  - 1.3.6 all of the Client's present and after-acquired Goods that Color Factory has performed work on or to or in which goods or materials supplied or financed by Color Factory have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, services and advice provided by Color Factory to the Client and shall include without limitation the manufacturing and supply of clothing and all charges for labour, hire charges, insurance charges, freight costs, or any fee or charge associated with the supply of Goods by Color Factory to the Client.
- 1.5 "Price" shall mean the cost of the Goods as agreed between Color Factory and the Client and includes all disbursements e.g. charges Color Factory pay to others on the Client's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 Any instructions received by Color Factory from the Client for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Color Factory to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Color Factory to any other party.
- 3.2 The Client authorises Color Factory to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by Color Factory at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Color Factory between the date of the contract and delivery of the Goods.

### 5. PAYMENT

- 5.1 Unless otherwise agreed payment for Goods and services shall be made in full:  
**Within 14 days of the date of invoice**
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month.
- 5.3 Any expenses, disbursements and legal costs incurred by Color Factory in the enforcement of any rights contained in this contract shall be paid by the Client, including any actual solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

### 6. QUOTATION

- 6.1 Where a quotation is given by Color Factory for Goods:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Color Factory reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods.

### 7. RISK

- 7.1 The Goods remain at Color Factory's risk until delivery to the Client.
- 7.2 Delivery of Goods shall be deemed complete when Color Factory gives possession of the Goods directly to the Client or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Client.

### 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by Color Factory passes to the Client only when the Client has made payment in full for all Goods provided by Color Factory and of all other sums due to Color Factory by the Client on any account whatsoever. Until all sums due to Color Factory by the Client have been paid in full, Color Factory has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods shall remain with Color Factory until the Client has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Color Factory as security for the full satisfaction by the Client of the full amount owing between Color Factory and Client.
- 8.3 The Client gives irrevocable authority to Color Factory to enter any premises occupied by the Client or on which Goods are situated at any reasonable time after default by the Client or before default if Color Factory believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are

incorporated. Color Factory shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Color Factory may either resell any repossessed Goods and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Client's account with the invoice value thereof less such sum as Color Factory reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 8.4 Where Goods are retained by Color Factory pursuant to clause 8.3 the Client waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

- 8.5 The following shall constitute defaults by the Client:

- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Client intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods.
- 8.5.4 Any Goods in the possession of the Client are materially damaged while any sum due from the Client to Color Factory remains unpaid.
- 8.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distrains against any of the Client's assets.
- 8.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Client.

### 9. PAYMENT ALLOCATION

- 9.1 Color Factory may in its discretion allocate any payment received from the Client towards any invoice that Color Factory determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by Color Factory, payment shall be deemed to be allocated in such manner as preserves the maximum value of Color Factory's purchase money security interest in the Goods.

### 10. DISPUTES

- 10.1 No claim relating to Goods will be considered unless made in writing within fourteen (14) days of delivery.

### 11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Color Factory which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Color Factory, Color Factory's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Color Factory shall not be liable for:
  - 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by Color Factory to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Color Factory to the Client; and
  - 11.2.2 The Client shall indemnify Color Factory against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Color Factory or otherwise, brought by any person in connection with any matter, act, omission, or error by Color Factory its agents or employees in connection with the Goods.

### 12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods from Color Factory for the purposes of a business in terms of section 2 and 43 of that Act.

### 13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1 If the Client is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Color Factory agreeing to supply Goods and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Color Factory the payment of any and all monies now or hereafter owed by the Client to Color Factory and indemnify Color Factory against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

### 14. MISCELLANEOUS

- 14.1 Color Factory shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by Color Factory to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Color Factory has under this contract.
- 14.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.