

STANDARD TERMS AND CONDITIONS
FOR SUPPLY OF GOODS TO BUSINESS CUSTOMERS
FROM THE PHOENIX SUPPLIES ONLINE WEBSITE

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification;
- 1.2 "Customer" means the organisation that purchases goods from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Specification" means a statement of work, quotation or order acknowledgment / confirmation describing the goods to be provided by the Supplier;
- 1.5 "Supplier" means Albert Haywood and Sons Limited trading as Phoenix Supplies (Company Number 948233) of Glenmoor House, West Park Ring Road, Leeds LS16 6QS, which for the avoidance of doubt shall include all subsidiary companies and trading names.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods by the Supplier to the Customer via the Phoenix Supplies online website. For clarity, the Agreement is a contract between the Customer and the Supplier.
- 2.2 Before the commencement of the supply of goods the Supplier shall submit to the Customer a Specification which shall specify the goods to be supplied and the price payable. The Customer shall notify the Supplier within 24 hours if the Customer does not agree with the contents of the Specification. All Specifications shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the supply of goods within estimated time frames but time shall not be of the essence in the performance of any supply of goods.

3 PRICE AND PAYMENT

- 3.1 The price for the supply of goods is as set out in the Specification.
- 3.2 The Supplier may invoice the Customer before delivery of the goods or, where credit terms have been granted by the Supplier, after despatch of the goods.
- 3.3 Invoiced amounts shall be due and payable prior to delivery of the goods or, subject to the granting of credit terms in accordance with Clause 3.2, within 30 days of the end of the month that the invoice was issued. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of eight percent per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the goods are supplied.

4 SPECIFICATION OF THE GOODS

All goods shall be required only to conform to the specification in the Specification. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract.

5 DELIVERY

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.
- 5.2 All risk in the goods shall pass to the Customer upon delivery.
- 5.3 The Customer shall provide full details of their requirements with respect to delivery and the Supplier shall have no liability to the Customer in respect of failed delivery due to the insufficiency of the information provided by the Customer.
- 5.4 If delivery is required to be made to a residential location, then the delivery will only be made to a **ground floor entrance**.
- 5.5 If the Specification allows for a timed delivery, the Supplier shall be liable to refund the extra charge for this service if the delivery is more than 30 minutes late.
- 5.6 It is the Customer's responsibility to accept delivery of the goods, either at the advised delivery location or at an agreed alternative location. The Customer is liable to pay any return load and re-delivery charges incurred by the Supplier due to its failure to comply with this Clause 5.6.
- 5.7 If the Customer fails to accept delivery in accordance with Clause 5.6, the goods will normally be returned to the Supplier's depot and the Supplier shall endeavour to arrange revised delivery details. Goods will only be left on site if prior agreement is made and this is conditional upon the Customer accepting all risk in the left goods; this provision shall be a condition precedent on leaving goods and acceptance of this Clause 5.7 is deemed to have been made by the Customer.
- 5.8 The Customer is responsible for unloading any bulky goods and any waiting time incurred by the haulier due to delay in unloading goods or accepting delivery may be charged by the Supplier. The charge for waiting time shall be £50.00 per hour and shall apply once the haulier has been on site for at least 30 minutes.
- 5.9 The Customer is responsible for signing for the acceptance of goods and this is a condition precedent on delivery. **The Customer is responsible for ensuring that the delivery is correct in quantity and undamaged prior to signing for the delivery.** The Supplier shall have no liability to the Customer and shall have no obligation to provide a refund if the goods are not properly checked prior to signing for them.
- 5.10 The Supplier reserves the right to charge geographical surcharges for delivery to remote locations.
- 5.11 Deliveries are made by a separate delivery company and any damage caused to property by the haulier or their vehicles will be dealt with directly between the haulier and the Customer. For the avoidance of doubt, any product related damage or defective product is to be dealt with in accordance with Clause 15 (Returns and Refunds).

- 5.12 Goods may, at the Customer's choice, be collected by prior appointment from the Supplier's premises.

6 TITLE

Title in the goods shall not pass to the Customer until the Supplier has been paid in full for the goods.

7 CUSTOMER'S OBLIGATIONS

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

7.1.1 co-operate with the Supplier;

7.1.2 provide the Supplier with any information reasonably required by the Supplier;

7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the supply of goods; and

7.1.4 comply with such other requirements as may be set out in the Specification or otherwise agreed between the parties.

- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1 or for any other breach of the Agreement.

- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods agreed to in the Specification, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations notified with less than five working days' written notice the full amount of the goods contracted for as set out in the Specification, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and subject to the payment of the damages set out in this clause.

- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

7.4.1 the Supplier shall have no liability in respect of any delay to the delivery of any goods;

7.4.2 if applicable, the timetable for delivery will be modified accordingly;

7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

8 ALTERATIONS TO THE SPECIFICATION

- 8.1 The parties may at any time mutually agree upon and execute new Specifications. Any alterations in the scope of goods to be provided under this Agreement shall be set out in the Specification, which shall reflect the changed goods and price and any other terms agreed between the parties.

- 8.2 The Customer may at any time request alterations to the Specification by notice to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

9 WARRANTY

Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods to be provided by the Supplier.

10 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods provided by the Supplier in accordance with the Specification infringes a patent, copyright or trade secret or other similar right of a third party.

11 LIMITATION OF LIABILITY

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to the Supplier for the goods in respect of which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

12 SPECIAL CONDITIONS FOR THE SUPPLY OF PACKAGING

- 12.1 This Clause 12 applies where the goods to be supplied are from the Supplier's range of packaging products.
- 12.2 Packaging products may be stock items which are delivered directly from the Supplier's premises or may be arranged and delivered by a third party.
- 12.3 It is the responsibility of the Customer to ensure that the goods are ordered in the correct quantity and in accordance with the Customer's requirements. The Supplier has no responsibility to accept the return of any goods unless they are defective.

- 12.4 The goods are made to tolerances and all sizes are approximate and may vary slightly. For the avoidance of doubt, minor variations in dimensions are not a defect for the purposes of the Agreement. The Supplier shall notify significant changes in dimensions at point of sale.
- 12.5 The designs of any personalised items and carton artwork are the property of the Supplier. The price of the goods is only reflective of a contribution toward the personalised element of the design. All print stamps remain the property of the Supplier. The Supplier reserves the right to dispose of any designs which have not been used within any order received from the Customer for a period of at least two years.
- 12.6 It is the responsibility of the Customer to ensure the suitability and appropriate use of the goods; the Supplier shall accept no liability in respect of how the Customer uses the goods.

13 SPECIAL CONDITIONS FOR THE SUPPLY OF CLOTHING

- 13.1 This Clause 13 applies where the goods to be supplied are from the Supplier's range of clothing.
- 13.2 In the event that the Customer orders non-personalised goods of incorrect size, the Supplier may exchange goods for the correct size items. The Customer shall be responsible for the return of goods and for the delivery costs of replacement items. Personalised items may not be cancelled or exchanged unless defective.
- 13.3 All embroidery designs remain the property of the Supplier.
- 13.4 All chest sizes quoted are approximate and minor discrepancies shall not be considered defects for the purpose of the Agreement.
- 13.5 The Customer may use information provided by the Supplier, including details on the Supplier's website or brochure but it is the Customer's responsibility to ensure that the goods that they are ordering are suitable for their requirements. **Colours of goods may not be identically represented on photographs due to camera or monitor settings and goods may vary slightly in colour depending on factors such as illumination or type of fabric.**
- 13.6 Goods may vary slightly in colour depending on the manufacturing batch; slight variations, especially from previous deliveries, shall not be considered as defects for the purpose of the Agreement.
- 13.7 It is the responsibility of the Customer to ensure that the base garment is fully in accordance with their requirements before they order any personalisation.
- 13.8 The Supplier may provide sample garments to assist the Customer in selection of their order. All samples must be returned at the Customer's expense within 28 days or the sample may be charged for by the Supplier.
- 13.9 Samples may show slight variation in colour to actual garments due to the age of the sample. Samples are provided as a guide and minor deviation from a sample shall not be considered as a defect for the purpose of the Agreement.
- 13.10 If the Specification involves any design work by the Supplier, then the Customer shall confirm their written approval or changes required in writing within 28 days of the issue of the design. No work will commence without written approval in accordance with this clause and the Supplier shall have no liability in respect of delays caused by late approval.

- 13.11 In the event that the Specification involves the design of a logo or similar, then the Customer may instruct one change to the design that will be made free of charge by the Supplier. Any further design changes may be charged as additional work by the Supplier.

14 SPECIAL CONDITIONS FOR THE SUPPLY OF COVERS

- 14.1 This Clause 14 applies where the goods to be supplied are from the Supplier's range of covers.
- 14.2 All covers are hand cut and will vary slightly in size.
- 14.3 Covers are designed for transportation and slight aesthetic discrepancies may occur in colour and fit. Such minor discrepancies shall not be considered as defects for the purpose of the Agreement.
- 14.4 Any personalised items must be stipulated at the time of order; the personalisation occurs during manufacture and it is not possible to add this retrospectively as a change to the order.
- 14.5 The design of any personalised detail shall be owned by the Supplier.
- 14.6 If the Specification involves any design work by the Supplier, then the Customer shall confirm their written approval or changes required in writing within 28 days of the issue of the design. No work will commence without written approval in accordance with this clause and the Supplier shall have no liability in respect of delays caused by late approval.
- 14.7 Any personalisation may be subject to a minimum order quantity.
- 14.8 The design and manufacture of covers shall be completed with the reasonable skill and care to be expected of a designer and manufacturer carrying out works of a similar size and scope to that detailed in the Specification.
- 14.9 The Customer is responsible for providing accurate information in respect of their requirements and the Supplier shall not be liable for any costs incurred as a result of incorrect information being provided by the Customer.
- 14.10 Covers are water resistant and will provide temporary protection against brief exposure to rain or snow showers only. The Supplier accepts no liability for items being left exposed to the elements for a prolonged period by the Customer.
- 14.11 Any advice on lead time provided by the Supplier is a guide only and shall not constitute a guarantee of time of delivery. No precedent may be drawn from the amount of lead time required on previous contracts between the Customer or any third party and the Supplier.
- 14.12 Bespoke or personalised covers may not be cancelled or returned by the Customer unless they are defective.

15 RETURNS AND REFUNDS

- 15.1 The Customer is not entitled to a refund for any bespoke or personalised items, any packaging or any covers unless they are defective in accordance with the provisions of the Agreement.
- 15.2 The Customer may exchange incorrectly ordered items of clothing provided they are standard items and are not personalised.

15.2.1 The Customer shall be responsible for returning items to be exchanged and for all associated costs and the delivery costs of replacement items unless they are defective.

15.2.2 The goods to be exchanged must be returned in their unopened original packaging, unused and their original condition.

15.3 Should any goods be found to be defective, the Customer shall notify the Supplier within 28 days of delivery. Failure by the Customer to notify the Supplier in accordance with this clause may render the Customer ineligible to claim for any replacement or refund.

15.4 The Supplier shall replace or refund the cost of any defective goods as notified pursuant to Clause 15.3 within seven days of receipt by the Supplier of the defective goods.

16 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

17 PRIVACY AND PROTECTION OF THE CUSTOMER'S INFORMATION

All details relating to the Customer's credit or debit card shall be destroyed by the Supplier on the same working day on which payment was made. The Supplier shall not retain any financial information relating to the Customer.

18 COMPLAINTS

18.1 If the Customer has any complaints with respect of the service or goods provided by the Supplier, these should in the first instance be addressed to the Supplier. All complaints shall be submitted in writing and be clearly titled "Complaint" and shall clearly detail the reasons for the complaint.

18.2 The Customer shall allow the Supplier a minimum 14 days from the delivery of the complaint in order to respond to a complaint raised in accordance with Clause 18.1.

18.3 If the Customer does not accept the response to a complaint as detailed in Clause 18.2, then they shall notify the Supplier in writing within 14 days of the date of the response.

18.4 The Supplier shall be allowed a further 7 days from receipt to respond to the notice of non-acceptance detailed in Clause 18.3.

19 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or supply of goods, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

20 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the supply of goods being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification.

21 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

22 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

23 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party or to such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post. In addition, communication will by necessity be made in the form of electronic communication via the Provider's Website and may take the form of postings thereon; for the purposes of this Agreement, the Customer agrees that this form of communication shall be deemed to be in writing.

24 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

25 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

26 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.