

THE BUYER'S ATTENTION IS DRAWN TO CONDITION 7d
WHEREBY THE SELLER SEEKS TO LIMIT ITS LIABILITY

1. DEFINITIONS

- a) In these Conditions:
"Buyer" is the purchaser of the goods.
"Contract" is any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions.
"Goods" are goods and products of any kind sold by the seller.
"Seller" is PenCarrie Ltd and associated businesses.

- b) A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. APPLICATION OF CONDITIONS

All Goods are sold by the Seller on the following Conditions which shall prevail unless otherwise agreed in writing by the Seller.

3. PRICES

- a) Prices quoted in the Sellers price list are subject to change without notice. The price payable by the Buyer will be the price current at the date of despatch.
- b) The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

4. ACCEPTANCE

- a) Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- b) No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

5. DELIVERY

- a) Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- b) Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- c) The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- d) Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

6. NON-DELIVERY

- a) No liability for alleged shortages of delivery or non-delivery of Goods will be accepted by the Seller unless claims are notified in writing to the Seller within 7 days of delivery for shortages or 10 days from date of invoice for non-delivery.
- b) Any liability of the Seller for non-delivery arising out of Condition 6a) shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for the Goods.

7. DESCRIPTION AND QUALITY OF GOODS

- a) The Seller is not the manufacturer of the Goods and gives no guarantees as to the washing stability, colour fastness, durability or making up quality of Goods. Fabric composition given as a guide only and the Seller reserves the right to change composition without prior notice.
- b) The Buyer is responsible for verifying the suitability and quality of the Goods prior to use.
- c) Subject to Conditions 5, 6, 7a) and 7b), the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- i) any breach if these Conditions;
 - ii) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- d) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- e) Nothing in these conditions excludes or limits the liability of the Seller:
- i) for death or personal injury caused by the Seller's negligence;
 - ii) under section 2(3) of the Consumer Protection Act 1987;
 - iii) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

- iv) for fraud or fraudulent misrepresentation.
- f) Subject to Condition 7d) and Condition 7e):
 - i) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
 - ii)

8. RETURN OF GOODS

- a) The Seller will not accept the return of Goods which have been altered in any way.
- b) The Buyer has not right to return any Goods supplied pursuant to contract without prior written authorisation by the Seller. All requests for the return of Goods must be made within 5 days of delivery.
- c) The Seller reserves the right to apply a handling charge on any Goods returned.

9. OWNERSHIP OF GOODS

- a) All Goods shall be at the Buyers risk from the time of delivery but will remain the property of the Seller until all payment in respect of any Goods delivered by the Seller to the Buyer have been paid for in full.
- b) The Seller may at any time when payment is due to the Seller for any Goods retake possession of all the Sellers Goods then in the custody of the Buyer.
- c) The Buyers right to hold or deal in any way with the Sellers Goods shall terminate automatically and the Sellers shall be entitled to immediately recover the Goods if:-
- i) The Buyer, being an individual, becomes Bankrupt or is the subject of a Bankruptcy Petition or enters into any arrangements with creditors or,
 - ii) The Buyer, being a limited company is subject to the appointment of an Administrative Receiver or goes or is forced into any form of Insolvency.
- d) The Buyer authorises the Seller, its employees or agents to enter the Buyers premises for the purpose of enforcing these provisions.

10. PAYMENT

- a) Unless otherwise specifically agreed in writing by the Seller, payment for the Goods is due to the Seller within 30 days of the contract.
- b) The Seller reserves the right to charge interest at 4% above the base rate at National Westminster Bank PLC on any amount overdue, from due date to the date of payment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- c) The Seller may set off against any overdue account any sums due for any reason from the Seller to the Buyer.
- d) Time for payment shall be of the essence.
- e) No payment shall be deemed to have been received until the Seller has received cleared funds.
- f) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- g) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

11. CANCELLATION

- a) Any orders placed by the Buyer shall be treated as a firm commitment and cancellation will not be accepted unless agreed in writing by the Seller.
- b) The Seller will make all reasonable efforts to fulfil its obligations under such orders but shall not be liable for any cancellation or suspension of such orders caused by events beyond the control of the Seller.

12. REPRESENTATIONS

No statement, information, warranty, condition or recommendation made by the Sellers employees or agents shall vary or override these conditions.

13. WAIVER

The failure of the Seller to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

14. ENTIRE AGREEMENT

This Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

15. THIRD PARTY RIGHTS

The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16. LAW

- a) These conditions and all transactions between the Seller and the Buyer shall be governed by English Law and any disputes arising shall be resolved by the Courts in England.
- b) If any condition herein becomes or shall be declared by a Court to be invalid or unenforceable that shall not impair or affect all other Conditions, which will remain in full force and effect.