



THE ULTIMATE IN PERFORMANCE

Standard Terms and Conditions.

1. Definitions

- 1.1 **Company** means Gelvenor Consolidated Fabrics (Pty) Ltd, Registration Number 1995/004808/07, its successors in title and / or associate entities;
- 1.2 **Customer** means the buyer of Products from the Company or, as the case may be, the prospective Customer applying for credit from the Company in anticipation of becoming a buyer of Products;
- 1.3 **Parties** means the Company and Customer; and
- 1.4 **Products** means the goods / products which are the subject of a sale by the Company to the Customer.

2. Application of Terms and Conditions

- 2.1 All Products purchased by a Customer from the Company shall be subject to this Agreement unless the Customer is a protected consumer as defined in Consumer Protection Act No. 68 of 2008 (**Consumer Protection Act**) (in which latter event, any of the terms and conditions contained herein which conflict with the said Consumer Protection Act will not apply).
- 2.2 Each provision contained herein is deemed to be incorporated in any transaction or supply of any Products.
- 2.3 These terms and conditions replace all previous terms of sale, and apply, despite anything to the contrary set out in the invoices, delivery notes and other Company stationery or as may be imposed by the Customer.
- 2.4 Any conflicting provisions contained in any of the documentation or correspondence of the Customer shall be null and void unless such special terms have been expressly reduced to writing and a non-electronic, hard copy written version must be signed by means of hand written signatures by or on behalf of the Parties on paper.

3. Ordering Procedure

- 3.1 The Customer may place an order in respect of Products orally or in writing, which order must be accepted by a duly authorized person acting on behalf of the Company.
- 3.2 The Company may accept the Customer's order in whole or in part.
- 3.3 Upon acceptance by the Company of an order, orders shall not be subject to cancellation or amendment by the Customer in any manner whatsoever without the prior written consent to such cancellation or amendment by a director of the Company.
- 3.4 Notwithstanding the acceptance of the cancellation or amendment of an order by the Company, the Company shall be entitled to recover all damages incurred by it arising from or in connection with such cancellation or amendment, including but not being limited to all costs, expenses and loss of profit.
- 3.5 The Customer must provide the Company with all the information relating to any order. Failure to provide any material information within a reasonable time of a request from the Company is a material breach and entitles the Company to cancel the order.

4. Quantities and Forecasting

- 4.1 Where the Company supplies Products to the Customer on an on-going basis and with the object of meeting the Customer's requirements for such Products, the Company shall be entitled to rely on the forecasts and/or sales history supplied to it by the Customer to facilitate the Company's production planning. Accordingly, the Customer accepts that it shall be obliged to purchase from the Company all Products already produced for the Customer, notwithstanding that orders have not been placed with the Company.
- 4.2 The Customer shall accept up to a 10% (ten percent) variance in quantity in any order placed with the Trading Agent.

5. Prices

- 5.1 The price of any Products sold by the Company will be the price sent to the Customer on confirmation of an order by the Company (**ruling price**). If there is any change in the ruling price between the date of order and the date of delivery note, the Company will notify the Customer.
- 5.2 Subject to clause 5.1 the Trading Agent may issue further specifications and revise its price(s), including increasing of prices on reasonable notice to the Customer.
- 5.3 The Customer is responsible for and undertakes to pay to the Company at the same time it is obliged to pay any sum in respect of Products supplied, any tax payable thereon in terms of the Value Added Tax Act 1991 or any replacement Act.
- 5.4 Without limiting the generality of any other conditions, the Company may at its discretion invoice the Customer in respect of all delivered portions of any order at such intervals as may be appropriate or convenient.
- 5.5 Prices are not subject to discounts unless agreed in writing by an authorised representative of the Company.
- 5.6 Quotes given are estimates only and are only valid for the period set out in that quote. The actual price payable for the Products is always the price set out in clause 5.1.
- 5.7 If, after the date of conclusion of an Order, there is an unfavourable change in the cost of the Products, resulting in an increased cost to the Company, then the Company shall be entitled to adjust its price by the amount of such increase and the Customer shall be bound by such increased price.

6. **Delivery**

- 6.1 Unless otherwise stipulated, the Customer shall take delivery of Products at the premises of the Company.
- 6.2 The actual cost of the delivery where delivery of the Products is effected by the Company to the Customer at any place other than the premises of the Company shall be borne by the Customer with such costs to be paid by the Customer to the Company on demand and the Company reserves the right to charge the Customer with any other costs relating to the delivery of the Products to the Customer, including insurance premiums.
- 6.3 The Company may effect delivery of any Products in instalments and the Customer is obliged to accept delivery in instalments.
- 6.4 The delivery note of the Company signed by the Customer or any agent or any employee or any purchaser of the Customer or any person purporting to act as an agent or an employee of the Customer at the place of delivery shall for all purposes be deemed to be accurate in all respects and binding on the Customer.
- 6.5 Where the Customer requests that delivery be suspended or delayed to a date later than originally requested, or where the Customer fails to collect the Products on the agreed date, the Company shall be entitled to charge the Customer a reasonable fee for storage, should storage be possible, *alternatively* shall dispose of Products on behalf of the Customer and the Company shall be indemnified against any loss or damage which may be suffered by the Customer resulting from such storage and / or disposal.
- 6.6 Notwithstanding anything to the contrary herein contained, the Company shall have the right to suspend delivery at any time if in its sole discretion it considers that:
- (1) The amount owing by the Customer, whether due at that date or in the future is outstanding and / or has reached the limit to which it is prepared to allow the Customer credit;
 - (2) It comes to the attention of the Company that the financial position of the Customer has deteriorated;
 - (3) The Company no longer considers the Customer creditworthy;
 - (4) The Customer does not acknowledge that any contract is upon the terms set forth in these conditions.
- 6.7 The Company will make reasonable efforts to deliver Products and render services within the time stated in the order but will not be liable for any cost, expense, loss or damage arising out of any failure to deliver at the agreed or within a reasonable time due to any cause beyond its reasonable control.
- 6.8 In the event of late deliveries for any other reason, the Company will not be liable for any resultant cost, expense, loss or damage, consequential or otherwise and the Customer may only cancel the order if the Company has been grossly negligent or if the Consumer Protection Act allows for such cancellation.
- 6.9 The Customer is entitled to and is afforded a reasonable opportunity to inspect the Products when they arrive at the delivery point contemplated in clause 6.1. If the Customer is not satisfied that the Products are the type, quality or quantity reasonably expected, the Customer must reject the delivery in writing, by endorsing the delivery note to that effect. If the Customer does not reject delivery in writing, the Products are deemed to be delivered in terms of clause 6.1. In addition, incomplete, short or damaged deliveries must be reported to the Company, in writing, within 24 (twenty-four) hours from the time of delivery. The Company reserves the right not to accept the rejection if the circumstances do not justify it.
- 6.10 Where delivery is effected by the Company's transport or by the Company's transport contractor, the transporter shall be deemed to act as the Customer's agent:
- (1) all risk in and to the Products passes to the Customer once the Products are loaded for delivery to the Customer;
 - (2) delivery costs are for the Customer's account;
 - (3) the Customer is responsible for unloading and must unload the Products within four hours of the delivery vehicle arriving at the delivery point;
 - (4) the Company may charge the Customer any additional demurrage charges or any other costs whatsoever, which may be incurred by the Company as a result of delayed or protracted unloading of the Products by or on behalf of the Customer;
- 6.11 Where the Products are collected by the Customer or delivered by a carrier (regardless of the means of transport) appointed by or on behalf of the Customer:
- (1) the carrier is an agent of the Customer and not the Company;
 - (2) all delivery costs are for the account of the Customer; and
- all risk in and to the Products passes to the Customer on the Products being made available for collection by the Customer or the carrier appointed by or on its behalf at the agreed collection point or the Company's premises.
- 6.12 The Company's delivery note signed or countersigned by any representative of the Customer, unless rejected by the Customer as contemplated in this clause is for all purposes deemed to be *prima facie* proof of a complete delivery in good condition and in compliance with the order.

7. **Packaging**
- 7.1 The Company shall be entitled to charge for packaging, boxing and/or crating and where appropriate such packaging, boxing and/or crating will be invoiced at the time of dispatch.
- 7.2 Packaging, boxing and/or crating which must be returned to the Company will be indicated as such, will be invoiced at the time of dispatch and the cost of the returnable packaging will only be credited to the Customer if the returnable packaging is returned to the Company within 7 (seven) calendar days from the date of dispatch of the Products to the Customer.
8. **Payment**
- 8.1 Notwithstanding delivery as contemplated by clause 6, payment of the purchase price shall be in accordance with the terms reflected on the statement submitted by the Company to the Customer, *alternatively*, within the time period as agreed to in writing between authorised representatives of the Customer and Company, free of exchange in South African currency in cash into the bank account of the Company, or such other bank account as the Company may from time to time nominate.
- 8.2 Where applicable the Company shall not be obliged to authorise the commence or complete manufacture unless the deposit requested, if any, has been paid and the Company reserves the right to request an advance of payment prior to delivery of the Products.
- 8.3 The Customer shall not be entitled to set-off any amounts which may be owing to the Customer by the Company for any reason whatsoever.
- 8.4 If the Customer fails to pay any amount owing to the Company on the due date, the Company shall be entitled to suspend delivery of any order or part thereof.
- 8.5 The Company reserves the right to unilaterally rescind the Customer's credit facilities to the Customer and to request that the Customer pay in advance of delivery or provide adequate security for payment of the purchase price.
- 8.6 Arrangements for payments may, at the sole discretion of the Company, be reviewed or withdrawn from time to time without the Company incurring any obligation to provide the Customer with prior notice of any amendment to the terms of payment.
- 8.7 Unless the National Credit Act No 34 of 2005 (**National Credit Act**) is applicable, an amount not paid on due date shall, at the discretion of the Company, shall bear interest from the due date until it is paid in full at the rate of 2 percentage points above the prime interest rate as publicly quoted by the South African Reserve Bank from time to time, calculated per annum and compounded monthly in arrears.
- 8.8 In the event of any change in the Customer that will effect the applicability of the National Credit Act, such as but limited to change in the asset value and/or annual turnover, a change in the number of trustees, a change in the legal status of the Customer, the Customer will be obliged to immediately advise the Company in writing of such change, failing which the Customer hereby indemnifies the Company against any liability incurred and undertakes to be responsible for any penalties imposed in terms of the aforementioned National Credit Act.
9. **Ownership**
- Ownership of all Products delivered will not pass from the Company to the Customer until such time as the purchase price has been paid in full.
10. **No Warranties**
- 10.1 The Company gives only those warranties required by the Consumer Protection Act (if the Act is applicable) and no other warranties.
11. **Obligations of the Customer in the on-sale of Products**
- 11.1 The Customer agrees to comply with all laws (national, provincial and local), by-laws, regulations, licenses, permits and any other requirements of any relevant authority applicable to the sale of the Products supplied by the Company to it.
- 11.2 Without limiting clause 11.1 the Customer agrees to comply with all of its obligations under the Consumer Protection Act, including but not limited to ensuring that:
- (1) all of its staff understand and comply with their obligations;
 - (2) it has a returns policy that is compliant with the Consumer Protection Act and it adheres to that policy;
 - (3) any advice or warning given in respect of the Products supplied to it by the Company is accurate, not misleading and in line with the obligations of the Consumer Protection Act;
 - (4) all trade descriptions, marketing and advertising in relation to the Products is not misleading, fraudulent or deceptive and otherwise complies with the Consumer Protection Act; and
 - (5) no labels or trade descriptions placed on the Products or provided by the Company are altered or defected in any manner.
12. **Breach**
- 12.1 The Customer is in default if it breaches any clause of this Agreement and fails to remedy that breach within 5 (five) days of written notice calling it to do so and/or if:

- (1) the Customer fails to pay any amount due to the Company on due date; or
 - (2) any cheque, promissory note or other bill of exchange to the Company in respect of any indebtedness of the Customer under any contract or order is dishonoured by non-payment; or
 - (3) the Customer's estate is provisionally or finally sequestrated or it is placed in provincial or final liquidation or is under business rescue proceedings; or
 - (4) the Customer commits an act of insolvency contemplated in terms of Section 8 of the Insolvency Act; or
 - (5) the Customer enters into any compromise with its creditors; or
 - (6) the Customer fails to satisfy any default judgment granted against it within seven days after date of judgment.
- 12.2 If the Customer is in default in terms of clause 12.1 above, the Company is entitled, without prior notice to the Customer and without prejudice to any rights which it may have as a result of such default, to:
- (1) cancel this Agreement or any order or other contract with the Customer (or any part thereof);
 - (2) claim specific performance of the Customer's obligations;
 - (3) claim payment of any amount owing by the Customer to the Company whether or not due and payable; and / or
- 12.3 Despite the acceptance by the Company of the cancellation of a contract or order by the Customer, the Company is entitled to recover all damages incurred by it arising out of or in connection with such cancellation, including but not limited to all costs, expenses and loss of profit arising out of or in connection with such cancellation provided that should the Consumer Protection Act apply, the amount recovered shall be limited to a reasonable charge as contemplated in that Act.
13. **Limitation of Liability and Indemnity**
- 13.1 Except for where the Company has been grossly negligent, the Company will not be liable for any cost, expense, loss, damage whether direct or indirect (including consequential loss or damage) or claim arising out of this Agreement whether suffered/incurred by the Customer, the company of a third party, including without limitation arising out of or in connection with the Products supplied to the Customer, or any act, omission or negligence (other than gross negligence) of the Company, its employees or agents.
- 13.2 The Customer indemnifies and holds the Company harmless against any cost, expense, loss, damage, liability or claim contemplated in clause 13.1.
- 13.3 Any advice or assistance rendered to the Customer by the Company before or after delivery of the Products, which advice is in connection with the use of such Products, will be without charge and is provided on the basis that it represents the Company's best judgement under the circumstances but that such advice is nevertheless used at the Customer's own risk and the Company will not be liable for any cost, expense, loss, liability or claim arising out of or in connection with information given, unless the Company was grossly negligent.
14. **Exclusions**
- 14.1 If manufacturing tolerances, materials or type of finish are not clearly stipulated and defined in specification or drawings supplied by the Customer, then the Company shall accept no liability whatsoever, howsoever caused, including an allegation that the specification is commercially accepted as a minimum requirement for the Products concerned.
- 14.2 Where drawings and/or specifications are supplied by the Customer, the Customer indemnifies the Company and agrees to hold it harmless against all claims, arising out of or in connection with the use of such drawings and/or specifications by the Company based on the allegation that the Company has infringed or is involved in an infringement, or is about to infringe or be involved in an infringement, of a patent, registered design, trademark, copyright or other exclusive right.
- 14.3 The Company shall not be liable to the Customer, and accepts no responsibility, for the accuracy of the information specifications or drawings supplied or approved by the Customer or any design reflected therein and the Customer indemnifies the Company and agrees to hold it harmless against all claims arising out of or in connection with any inaccuracy or defective design in such information, specifications or drawings.
- 14.4 Unless otherwise agreed in writing, all patterns, drawing, tools, moulds and the like produced or supplied by the Company, and all intellectual property rights therein, shall remain the property of the Company and the Customer may not reproduce or communicate the knowledge of such items to any third party without the express written consent of the Company and the Customer shall return same to the Company at any time at the request of the Company.
- 14.5 If any performance by the Company is prevented by any act of God, strikes, lockouts, shortened working hours, shortage of labour or materials, any default or delay in any sub-contractor or suppliers of the Company, war, political or civil disturbances, or any other cause whatsoever beyond the control of the Company then the Company shall have the election either to cancel the order in question; or to extend the time for performance until the cause preventing or delaying performance ceases to apply.
- 14.6 If any Products are latently, patently, or otherwise defective but were not sold as sub-standard the Company may in its sole discretion compensate the Customer in respect of such Products, in which event the Company shall notify the Customer in writing of its election to replace the defective Products, or credit the
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Customer in respect of the purchase price of the Products, or request that the Customer accept the Products at a reduced purchase price to be agreed, provided that if the Parties are unable to agree on the amount of the reduction that question shall be submitted to be resolved by an independent person agreed upon between the Parties and failing such agreement, appointed by the President for the time being of the KwaZulu-Natal Law Society, and that person's decision shall be final and binding upon the Parties.

- 14.7 If the defective Products supplied by the Company were not manufactured by the Company, the Customer's claim against the Company shall under no circumstances exceed the claims which the Company is entitled to make against the third-party manufacturer in respect of such defective Goods.
- 14.8 If a Customer sells or disposes of any Products supplied to it by the Company or in respect of which the Company has undertaken any business, to a third party or otherwise permits a third party to use such Products, the Customer shall include in the Customers agreement with the third party a provision in terms of which the Company is afforded similar limitation of a liability to that contemplated in this clause.

15. Return of Products

- 15.1 The Customer shall not be entitled to return the Products without the prior written approval of the Company which approval shall not be withheld if the Customer can prove that the damage or defect in respect of the Products which is the basis for the proposed return of the Products was in existence or had occurred prior to the delivery of the Products. If Products are returned contrary to what is provided for herein, the Company shall be entitled to store and / or dispose of the Products at the Customer's sole risk and expense, with the Company being entitled to charge a reasonable amount for such storage and handling.
- 15.2 Products may not be returned by the Customer if they have been partially or entirely disassembled, physically altered, or mixed with any other Products.
- 15.3 Agreed returns must be delivered back to the Company within 24 (twenty-four) hours of the Company's approval whereafter no returns will be accepted.
- 15.4 The Company shall in its sole discretion be entitled to charge a handling fee of 10% (ten percent) on all returns.
- 15.5 The Company may, at its discretion, replace any defective Products or reimburse the Customer after receipt of the defective Products from the Customer. The decision will be communicated to the Customer in writing and on acceptance will be binding on the Customer.
- 15.6 Any Products returned to the Company by the Customer as "*defective*" that are in fact not defective, may be returned by the Company to the Customer at the Customer's risk and cost.

16. Goods Delivered but not yet paid for

- 16.1 The Customer shall, immediately on delivery of the Products for which payment in full to the Company remains outstanding:
- (1) notify any landlord of the premises in which the Products are stored that ownership of the Products remains with the Company;
 - (2) store the Products in a separate or marked off area so that they are easily identifiable;
 - (3) take out and maintain adequate insurance over the Products;
 - (4) take whatever steps are necessary to ensure that no lien or hypothec is exercised over such Products by any other person whatsoever and that the Products remain unencumbered.
- 16.2 If the Products are sold by the Customer, the purchase price paid for the Products must be paid into a separate account and designated for the payment to the Company.

17. Errors and Omissions

- 17.1 The Company shall not be liable to the Customer for any errors and/or omissions contained in any documentation.
- 17.2 All price lists, acknowledgements and invoices are subject to correction by the Company for any errors or omissions. In particular, the Company may correct typing and clerical errors in respect of the Company documentation.

18. Interpretation and Jurisdiction

- 18.1 This Agreement must be interpreted according to the laws of the Republic of South Africa.
- 18.2 At the option of the Company any claim against the Customer may be brought in any Magistrate's Court having jurisdiction notwithstanding that the amount of that claim may otherwise exceed the jurisdiction of the Magistrate's Court.

19. Legal Charges

In the event of the Company having to institute legal proceedings of whatsoever nature against the Customer, the Customer will be liable for the Company's legal costs on an attorney and own client scale.

20. Domicilium

- 20.1 The Parties hereby choose for the purposes of this Agreement their *domicilia citandi et executandi* at the following addresses:
- (1) The Company: Corner Anderson and Morewood Roads, Hammarsdale, 3700.
 - (2) The Customer: the addresses and e-mail address set out in the Customer Application Form, alternatively, if such form is not completed the address set out in any order.
- 20.2 Any notice or communication given or permissible in terms of this Agreement shall only be valid and effective if given in writing.
- 20.3 Either party may amend its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, provided that such amendment shall only be effective on the seventh day after receipt of notice to such effect.
- 20.4 Any notice to a party which:
- (1) is contained in a correctly addressed envelope and has been dispatched to such party's *domicilium citandi et executandi* per prepaid registered post; or
 - (2) is delivered during normal business hours by hand at a party's *domicilium citandi et executandi* to a responsible person; or
 - (3) is dispatched per e-mail address to the abovementioned e-mail address; shall be deemed to have been received by such party, in the case of clause (1) on the seventh day of business after it has been posted (unless the contrary is proved) and in the case of clause (2) on the date of delivery, and in the case of (3), on the date of dispatch, provided that such day is a business day, failing which on the following business day.
- 20.5 Notwithstanding anything to the contrary herein contained, a written notice or communication which has been actually received by a party will be regarded as sufficient notice, irrespective of the fact that it has not been dispatched to the appointed domicilium or delivered to such domicilium.

21. Warranty by Customer and Signatory Regarding Information and Authority to Sign

- 21.1 The Customer and/or the signatory warrant that:
- (1) all information provided is true, accurate and complete and that the Company will be immediately notified of any changes in writing; and
 - (2) that he/she has read and understood all the terms of this Agreement and agrees to and has the authority bind the Company to them.

22. General

- 22.1 The Customer may not cede any of its rights or delegate or assign any of its obligations without the prior written consent of the Trading Agent and Manufacturer.
- 22.2 In terms of the Protection of Personal Information Act 4 of 2013, the Trading Agent and Manufacturer will take all reasonable steps to regulate the processing of personal information provided by the Customer and undertakes to only maintain Customer records for as long as reasonably necessary.
- 22.3 In terms of the National Credit Act, the Customer hereby consents to the Trading Agent and / or Manufacturer receiving, sharing, transmitting and storing credit information concerning the Customer with other credit granters and credit bureaux for the purpose of credit granting decisions and to manage credit risk.
- 22.4 Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation.
- 22.5 No indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.
- 22.6 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.
- 22.7 Any illegal or unenforceable provision of this Agreement may be severed and the remaining provisions of this Agreement continue in force.
- 22.8 The Customer acknowledges and agrees to abide to the Terms and Conditions as set out herein and as published and updated from time to time under the Terms and Conditions section, accessible at all times on the Company's website (www.gelvenor.com)

