

DEFINITIONS

In these Conditions the following words will have the following meaning:

“The Company” shall mean Arivatex Ltd.

“The Goods” shall mean the products articles or things to which are referred to in the order of the Buyer

“The Buyer” shall mean the corporate entity, firm or person buying the Goods

2.1 MAKING THE CONTRACT

No salesperson agent or employee of the Company is an authorised representative nor authorised either to confirm or vary these Conditions or to make any representation or promise on the Company's behalf.

2.2 ORDERS

All orders placed by the Buyer will be governed by these Conditions alone.

2.3 TELEPHONE ORDERS

Where orders are placed by the Buyer and accepted by the Company on the telephone and:

2.3.1 Details of the order are confirmed by the Company in writing; those details will be deemed to be correct in all respects unless by return, the Company receives notification in writing of any discrepancies.

2.3.2 Details of the order are confirmed the buyer, in writing, the Buyer shall be deemed to have accepted the Goods if they are delivered before receipt of the confirmation by the Company if those Goods substantially conform to the details received by telephone.

2.4 NON-TELEPHONE ORDERS

2.4.1 An order received otherwise than by telephone will be deemed to have been placed when it is received by the Company unless the order is refused or queried by the Company in which event it will be deemed to have been placed when agreement is reached between the Company and the Buyer whether in writing or otherwise.

2.4.2 Where details of the order are confirmed by the Company in writing, those details will be deemed to be correct in all respects unless by return, the Company receives notification in writing of any discrepancies.

2.5 THESE CONDITIONS

2.5.1 These Conditions exclude any other Conditions inconsistent therewith which the Buyer might seek to impose even though those other Conditions may be submitted in a later document and/or purport to exclude or supersede any Conditions inconsistent with them or may be contained in any offer acceptance or counter-offer made by the Buyer.

2.5.2 No variation of these Conditions is permitted.

3. PRICE

3.1 All prices are those ruling at the date of acceptance of order by the Company and are net exclusive of VAT.

3.2 The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any variation in any duty payable by the Company directly or indirectly, the cost of raw materials, labour or services or the cost of imported goods due to exchange rate fluctuations.

3.3 The Buyer shall be liable to pay for the actual quantities delivered up to 5% in excess of the quantity ordered.

4. TERMS OF PAYMENT

4.1 The terms of payment are specified in the letter addressed to each customer that is attached to these terms and conditions and this therefore forms part of the terms and conditions.

4.2 Time for payment shall be of the essence.

4.3 The Company reserves the right to charge interest on all overdue accounts at 3 per cent per annum above the bank rate for the time being of National Westminster Bank Plc or such other bank as the Company may specify such interest being deemed to accrue on a day to day basis from the date payment becomes due under Clause 4.1.

4.4 The Buyer shall have no right of set-off, statutory or otherwise.

4.5 The Buyer will be deemed to have repudiated the contract if:

4.5.1 (i) Being a Company

(a) Has a petition presented for its winding-up;

or (b) Passes a resolution for voluntarily winding-up (otherwise than for the purpose of a bona fide amalgamation or reconstruction);

or (c) Compounds with its creditors;

or (d) Has a receiver or administrator appointed of all or any part of its assets.

or (ii) Being a partnership or individual it:

(a) Becomes bankrupt or insolvent;

or (b) Enters into any arrangement with its creditors.

or 4.5.2 It commits a material or serious breach of these Conditions (and if the breach is remediable fails to remedy it within 7 days of receiving notice to do so).

4.6 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

5. DELIVERY

5.1 Subject to Clause 2.3.2 delivery will be deemed to have been effected.

5.1.1 If by carrier or by the Company's transport, when the Goods have been unloaded at the address for delivery;

5.1.2 If collected by or on behalf of the Buyer, when the goods have been loaded onto the vehicle.

5.2 Time of delivery is not of the essence.

5.3 The Company shall not be liable for any loss whatsoever or howsoever arising caused by non-delivery of any Goods.

5.4 The Company reserves the right to make delivery by instalments and to render a separate invoice in respect of each instalment.

5.5 Delay for whatever reason in the delivery of any of the Goods whether by instalments or otherwise including delay in any one or more instalments will not entitle the Buyer to treat the contract as repudiated or to damages.

6. RISK AND PASSING OF PROPERTY

6.1 Risk in the Goods shall pass to the Buyer on deliveries as defined in Clause 5.1.

6.2 Notwithstanding the provision of Clause 6.1 title in the Goods shall not pass to the buyer until whichever shall be the first to occur of the following:-

6.2.1 Payment being received by the Company for the Goods and no other amounts then being outstanding from the Buyer to the Company in respect of other goods supplied by the Company.

6.2.2 The Buyer selling the Goods in accordance with the provisions of these Conditions in which case title to the Goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer's customer.

6.2.3 The Company in writing waiving its rights under this Clause 6.2 in respect of specified Goods whereupon title to the said Goods shall forthwith vest in the Buyer.

6.3 Subject to Clause 6.4.3 and 6.4.4 the Buyer is licensed by the Company to use or to agree to sell the Goods delivered.

6.4 Until title to the Goods passes:

6.4.1 The Buyer will hold the Goods as fiduciary agent and bailee of the Company;

6.4.2 The Goods shall be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company;

6.4.3 The Company may at any time revoke the power of use and sale contained in Clauses 6.2.2 and 6.3 by notice to the Buyer.

6.4.3.1 If the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Company, whether in respect of the Goods or any other goods supplied at any time by it to the Buyer;

or 6.4.3.2 At any time if the company has bona fide doubt as to the solvency of the Buyer;

6.4.4 The Buyer's power of use and sale contained in Clauses 6.2.2 and 6.3 shall automatically cease in any of the circumstances set out in Clause 4.5.1.

6.4.5 Upon determination of the Buyer's power of use and sale pursuant to Clause 6.4.3 or 6.4.4 the Buyer shall place at the disposal of the Company any of the Goods in its possession or under its control and unsold and further the Company shall be entitled to enter upon any premises of the Buyer for the purpose of removing such Goods.

6.5 In this sub-clause "payment" means any payment made by the Buyer in respect of the Goods or of any part thereof or any other payment by the Buyer.

6.6 At any time and notwithstanding any purported contrary appropriation by the Buyer the Company shall be entitled in its absolute discretion to appropriate any payment to the settlement in full or in part of such sums owed to it by the Buyer as it shall think fit.

7. LIEN AND STOPPAGE

The Company has the right to withhold delivery in any of the circumstances set out in Clause 4.5.1.

8. INSPECTION AND SHORTAGES

8.1 The Buyer is under a duty wherever possible to inspect the Goods on delivery as defined in Clause 5.1 hereof.

8.2 Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".

8.3 The Company shall be under no liability either under these Conditions or otherwise unless:

8.3.1 The carrier's note (or, if delivery is by the Company's vehicle or by collection by the Buyer's vehicle, the Company's delivery sheet) is marked sufficiently to identify shortages or defects and

8.3.2 Written complaint detailing the alleged shortages or defects is made to the carrier within the time limited by the carrier's terms and to the Company within 14 days after delivery of the consignment complained of (whether delivery is by carrier or otherwise) and

8.3.3 An opportunity to inspect the Goods is given to the Company before any use is made of them or any alteration or modification is made to them by the Buyer.

8.4 Where the Company is liable it shall entirely at its own option either make good any shortage in the Goods and where appropriate replace any damaged Goods as soon as it is reasonably able to do so or credit the Buyer with the value of the Goods not delivered but otherwise shall be under no liability whatsoever or howsoever arising for such shortage or damage.

8.5 "Shortage" shall for the purpose of this Clause be interpreted under the provisions of Clause 11.

9. WARRANTIES

9.1 The Company warrants that it has title to and the unencumbered rights to sell the Goods.

9.2 No representation or warranty is given as to the suitability or fitness of the Goods for any or any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible therefore notwithstanding any advice or information which may be given to the Buyer all of which is given in good faith but without any liability.

9.3 The Company shall use every care to ensure uniformity and matching in shades in fabrics but shall not be liable for any shade discrepancy arising out of varying dye affinities of fabrics or variations of shade between different dye-lots or loss of colour fastness.

9.4 If the Goods are in such a condition as would but for this Condition entitle the Buyer to repudiate the contract and/or claim damages the Company reserves the right to replace the Goods.

9.5 If the Buyer alleges that the Goods are in the condition referred to in sub-clause 9.4 he shall return the Goods to the Company at his own expense and the risk of accidental loss while they are being returned will be borne by the Buyer.

10. **LIABILITY**

10.1 Nothing in this Clause shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence.

10.2 Each of the sub-clauses in this Clause is to be treated as separate and independent.

10.3 The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contracts, damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except in so far as such injuries are attributable to the Company's negligence).

10.4 Where notwithstanding the provisions of these Conditions the Company is liable to the Buyer, its total liability for any one claim or for the total of all claims arising from any one act or default of the company (whether arising from the Company's negligence or otherwise) shall not exceed £1,000 or the contract price whichever is the smaller.

11. **QUANTITY**

While the Company shall seek to ensure that the quantity of Goods delivered accords with the quantity ordered by the Buyer it shall be under no liability for any shortfall not exceeding 5% and the Buyer shall (subject to the provisions of these Conditions) pay for the quantity supplied up to 5% in excess of the quantity ordered.

12. **PATENTS, TRADEMARKS AND COPYRIGHT**

The Buyer warrants that nothing in the order to the Company constitutes a breach or infringement of any patent copyright design trade mark or other industrial or intellectual property right and shall indemnify the Company against any and all loss damage or liability suffered and legal fees and costs incurred by the Company resulting from any breach thereof or from any allegation of such breach by any third party claiming against the Company.

13. **FORCE MAJEURE**

13.1 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control. Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lock-outs, Government action or regulations (whether of the United Kingdom or otherwise), delay or failure by suppliers, accidents and shortages of materials, labour or manufacturing facilities.

13.2 Should the Company be prevented from delivering in the circumstances set out in sub-clause 13.1 it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.

13.3 If the circumstances preventing delivery are still continuing 3 months after the notice, then either party may give written notice to the other cancelling the contract.

13.4 If the contract is cancelled under the provisions of this Clause the Company will refund any payment which the Buyer has already made on account of the price subject to deduction of any amounts the Company is entitled to claim from the Buyer but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

14. **SALES DOCUMENTATION**

Whilst the Company takes every precaution in the preparation of its and, insofar as it can do so, its manufacturers' catalogues, price lists other literature and selling aids, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

15. **NOTICES**

Any notice to be given hereunder shall be sent by first class post or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct facsimile number of the addressee.

16. **ASSIGNMENT**

Neither the Company nor the Buyer shall assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior written consent of the other.

17. **WAIVER**

Any neglect or delay by or forbearance on the part of the Company in seeking to implement or enforce these Conditions or any of them shall not act as nor shall be deemed to be a waiver of or release from any at the Conditions hereof.

18. **PROPER LAW AND JURISDICTION**

The contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English courts save that the Company shall not be limited in its right to commence any proceedings in any other jurisdiction it may consider appropriate.

19. **HEADINGS**

The headings of these Conditions are for convenience only and shall have no effect on the interpretation thereof.