

TERMS AND CONDITIONS OF SUPPLY OF GOODS

INTERPRETATION

CC: Douthwaite and Company Limited (company number 06967698) registered in England and Wales whose registered office is situated at Unit 4, Ash Way, Thorp Arch Trading Estate, Wetherby LS23 7FA, trading as Corsage Creations.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

Contract: the contract between CC and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm or company who purchases the Goods from CC.

Goods: the goods (or any part of them) as set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of CC's quotation, or overleaf, as the case may be.

BASIS OF CONTRACT

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate. The Order shall only be deemed to be accepted when CC issues a written acceptance of the Order (Order Confirmation), at which point the Contract shall come into existence.

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CC which is not set out in the Contract.

Any samples, drawings, descriptive matter, or advertising produced by CC and any descriptions or illustrations contained in CC's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

GOODS

The Goods are described in CC's catalogue.

DELIVERY

CC shall deliver the Goods to the location set out in the Order or such other location as the parties may agree

(**Delivery Location**). Delivery shall be completed on the Goods' arrival at the Delivery Location.

Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. CC shall not be liable for any failure or delay in delivery of the Goods that is caused by a Force Majeure Event, or the Customer's failure to provide CC with adequate delivery instructions, or any other instructions that are relevant to the supply of the Goods.

If CC fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

If the Customer fails to accept delivery of the Goods within three Business Days of CC notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the CC's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which CC notified the Customer that the Goods were ready; and
- (b) CC shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

If 10 Business Days after the day on which CC notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, CC may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

QUALITY

CC warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by CC.

Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to CC within 14 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) CC is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by CC) returns such Goods to CC's place of business at the Customer's cost,

CC shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

CC shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- ④ the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- ④ the defect arises because the Customer failed to follow CC's oral or written instructions as to the storage and use of the Goods or (if there are none) good trade practice regarding the same;
- ④ the Customer alters or repairs such Goods without the written consent of CC;
- ④ the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- ④ the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

Except as provided in this clause 5, CC shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

These Conditions shall apply to any repaired or replacement Goods supplied by CC.

TITLE AND RISK

The risk in the Goods shall pass to the Customer on completion of delivery.

Title to the Goods shall not pass to the Customer until CC has received payment in full (in cash or cleared funds) for:

- ④ the Goods; and
- ④ any other goods that CC has supplied to the Customer in respect of which payment has become due.

Until title to the Goods has passed to the Customer, the Customer shall:

- ④ hold the Goods on a fiduciary basis as CC's bailee;
- ④ store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as CC's property;
- ④ not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- ④ maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- ④ notify CC immediately if it becomes subject to any insolvency event; and
- ④ give CC such information relating to the Goods as CC may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

If before title to the Goods passes to the Customer the Customer becomes subject to any insolvency event, or CC reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy CC may have, CC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

PRICE AND PAYMENT

The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in CC's published price list in force as at the date of delivery. All prices quoted are in sterling.

The Customer is responsible for all import duties and local tax where applicable.

CC may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- ④ any factor beyond CC's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- ④ any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- ④ any delay caused by any instructions of the Customer or failure of the Customer to give CC adequate or accurate information or instructions.

The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**).

CC shall invoice the Customer at the time of delivery. The Customer shall pay the invoice in full and in cleared funds within the time specified on the Order. Payment shall be made to the bank account nominated in writing by CC. Time of payment is of the essence.

If the Customer fails to make any payment due to CC under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the

due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against CC in order to justify withholding payment of any such amount in whole or in part. CC may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by CC to the Customer.

CUSTOMER'S INSOLVENCY OR INCAPACITY

If the Customer becomes subject to any insolvency event, or CC reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to CC, CC may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and CC without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9. LIMITATION OF LIABILITY

Nothing in these Conditions shall limit or exclude CC's liability for:

- ④ death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- ④ fraud or fraudulent misrepresentation;
- ④ breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- ④ defective products under the Consumer Protection Act 1987; or
- ④ any matter in respect of which it would be unlawful for CC to exclude or restrict liability.

Subject to clause 9.1:

- ④ CC shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- ④ CC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of CCs or subcontractors.

GENERAL

Assignment and subcontracting.

- ④ CC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- ④ The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of CC.

Notices.

- ④ Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- ④ A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- ⑨ The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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Severance.

- ⑨ If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- ⑨ If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

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Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by CC.

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Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.