



**KARL MAYER**

WE CARE ABOUT YOUR FUTURE

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KARL MAYER Textile Machinery Limited

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# TERMS AND CONDITIONS OF SUPPLY OF EQUIPMENT, SPARE PARTS AND OTHER PRODUCTS

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March 1<sup>st</sup>, 2017

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## 1. BASIS OF CONTRACT

1.1. In the Contract (as hereinafter defined) unless the context otherwise requires:

- "Company" means KARL MAYER Textile Machinery Limited.  
"Customer" means the person whose order for Products is accepted by the Company  
"Acceptance Date" means the date upon which the Products is accepted by the Customer (deemed or actual) in accordance with Clause 4 below;  
"Actual Delivery Date" means the actual date of delivery of the Products to the Site;  
"Contract" means any contract between the Company and the Customer incorporating these conditions for the sale of Products.  
"Delivery Date" means the estimated date for the delivery of the Products as notified by the Company to the Customer;  
"Products" means any products and/or goods ordered from the Company by the Customer or to be supplied by the Company to the Customer;  
"Contract Price" means the price agreed between the Company and the Customer for the sale and supply of the Products;  
"Site" means the address for delivery of the Products agreed between the Company and the Customer.

1.2. These conditions shall govern the agreement between the Company and the Customer to the exclusion of any other terms or conditions.

1.3. These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Customer.

1.4. No variation to these conditions shall be binding on the Company unless contained in the Company's quotation or agreed in writing between the Customer and an authorised representative of the Company.

1.5. Only a Director of the Company has the authority to alter these conditions.

1.6. No oral warranties or representations shall bind the Company (unless given by a Director of the Company).

1.7. The Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Products unless confirmed by the Company in writing.

1.8. The Customer acknowledges that it does not rely on any representation and/or warranty which have not been made in accordance with these conditions.

1.9. Orders placed by the Customer leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.

## 2. Products

The Company agrees to supply and the Customer to purchase the Products upon the terms and conditions of the Contract and in consideration of the payment of the Contract Price by the Customer.

### **3. Delivery**

- 3.1 The Company shall endeavour to deliver the Products to the Site on the Delivery Date or as soon thereafter as is possible.
- 3.2 The Company shall give the Customer not less than forty eight hours' notice of the Actual Delivery Date.
- 3.3 If the Company shall fail to deliver the Products within twenty eight days of the Delivery Date the Customer shall be entitled after consultation with the Company to specify by notice to the Company such revised delivery date as it shall in its reasonable opinion think fit making time of the essence.

### **4. Acceptance**

The Customer shall be deemed to accept the Products fourteen days after delivery of the Products.

### **5. Contract Price**

- 5.1 The Contract Price shall not include the cost and terms of delivery of the Products to the Site; and all levies and taxes payable in respect of the import of the Products. These will be shown on the contract.
- 5.2 The Contract Price shall not include value added tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.

### **6. Time for payment of the Contract Price**

- 6.1 Unless otherwise agreed, the Company shall be entitled to invoice the Customer the amounts due in respect of the sale and supply of the Products at the time of delivery of the Products to the Customer.
- 6.2 Minor defects or omissions in the Products not of such significance as to affect materially their use shall entitle the Customer to retain from the Contract Price only such sum as represents the value of such incomplete or defective portion of the Products and any sum so retained shall be paid upon such omissions or defects being remedied.
- 6.3 Where the Contract Price is payable in a single lump sum, payment in full of the Contract Price (together with value added tax thereon) shall become due 30 days after the receipt by the Customer of an appropriate invoice or as otherwise agreed in writing between the Company and the Customer, time to be of the essence.

### **7. Late payment**

If any instalment of the Contract Price shall not have been paid by its due date for payment as described above, the Company reserves the right to charge the Customer interest in respect of the late payment of any sum due under the Contract (as well after as before judgment) at the rate of three per cent per annum above the base rate from time to time of HSBC Bank plc from the due date therefor until payment.

### **8 Title to and risk in the Products**

- 8.1 The Company shall retain title and ownership of the Products until the date ("the Payment Date") that it has received payment in full in cash or cleared funds of the Contract Price.
- 8.2 Until payment in full of the Contract Price the Products shall be stored separately from any products or goods belonging to the Customer or any third party and must be clearly marked and identified as being the Company's property.
- 8.3 Until the Payment Date the Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Products and the relationship between the Company and the Customer in respect of the Products including any proceeds of sale or other consideration therefor shall be a fiduciary one.
- 8.4 If either:
  - 8.4.1 the Customer fails to effect payment in full of all sums due hereunder by the Payment Date; or
  - 8.4.2 prior to the Payment Date the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) the Customer's creditors or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction)then the Company (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Site (without notice to the Customer) and remove the Products.
- 8.5 If in breach of Clause 8.3 above the Customer sells the Products prior to the Payment Date then any proceeds of sale in respect thereof and all rights arising under or in respect of said sale shall be held (in the case of the proceeds of sale in a separate account) by the Customer as trustee for the Company.
- 8.6 Risk in the Products shall pass to the Customer upon arrival of the vehicle at the Site by which delivery is actually to be effected on the Actual Delivery Date whereupon the risk of loss resulting from damage shall pass to the Customer.

### **9. Limitation of liability**

- 9.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees and sub-contractors) to the Customer in respect of:
  - 9.1.1 any breach of its contractual obligations arising under the Contract; and
  - 9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.

- 9.2 Any act or omission on the part of the Company or its employees or sub-contractors falling within Clause 9.1 above shall for the purposes of this Clause 9 be known as an "Event of Default".
- 9.3 The Company's liability to the Customer for:
- 9.3.1 death or injury resulting from its own or that of its employees' or sub-contractors' negligence; and
- 9.3.2 all damage suffered by the Customer as a result of the implied statutory undertakings as to title, quiet possession and freedom from encumbrances shall not be limited.
- 9.4 Subject to the limit set out in Clause 9.5.1 below the Company shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company or its employees and sub-contractors which is admitted by the Company or in respect of which the Customer has judgement in respect of which no further appeal by the Company is possible.
- 9.5 Subject to the provisions of Clause 9.3 above, the Company's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
- 9.5.1 £5,000,000 in the case of an Event of Default falling within Clause 9.4 above, where such Event of Default is the subject of insurance cover effected by the Company; and
- 9.5.2 the Contract Price in the case of any other Event of Default.
- 9.6 Subject to Clause 9.3 above, the Company shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.
- 9.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.
- 9.8 The Customer hereby agrees to afford the Company not less than 28 days in which to remedy any Event of Default hereunder.
- 9.9 Except in the case of an Event of Default arising under Clause 9.3 above, the Company shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon the Company within six months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 9.10 Nothing in this Clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

## **10. Telecommunications and other utility networks**

- 10.1 Should the Customer intend to attach the Products to a telecommunications or other utility network ("the Network") the Customer shall be responsible for:
- 10.1.1 where necessary obtaining the consent of the owner of the Network ("the Owner") for the connection of the Products to the Network;
- 10.1.2 purchasing and installing all equipment necessary to make the said connection to the Network;
- 10.1.3 paying all charges from time to time levied by the Owner for connection to the Network; and
- 10.1.4 at all times complying with such technical and other regulations that the Owner shall impose as a condition of connection to the Network.
- 10.2 The Company does not warrant that the Authority will not withdraw the consent referred to in Clause 10.1.1 above.
- 10.3 The Company shall not be liable for any loss or damage resulting from the acts or omissions of the Owner or the breach by the Customer of its obligations under Clause 10.1 above.

## **11. Warranty in respect of the Products**

- 11.1 Subject to the limitations upon its liability set out in Clause 9 above, and any other provision of the Contract (including any set out in this clause 11), the Company warrants to the Customer that the Products will for a period of twelve months from the Acceptance Date be free from defects in or arising from design, materials, workmanship, or delivery.
- 11.2 The Customer shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 11.3 The Company shall as soon as it is reasonable able investigate any alleged breach of warranty and in the case of a breach of warranty falling within Clause 11.1.1 above shall remedy the same free of charge by:
- 11.3.1 carrying out such repairs, modifications or alterations to the Products; and/or
- 11.3.2 replacing the Products or such component parts;
- as it shall in its absolute discretion think fit, and the Customer shall afford the Company as many opportunities (as the Company may reasonably require being not less than three) to do so.
- 11.4 Any Products or component parts of the Products replaced by the Company pursuant to Clause 11.3.2 above ("Replaced Products") shall upon replacement become the property of the Company and the Customer warrants that its title to such Replaced Products shall be free and unencumbered or that it shall have all necessary consents and authorities to part with possession of the Replaced Products.
- 11.5 Subject to the foregoing and with the exception of the condition and warranties implied by Section 12 of the Sale of Goods Act 1979 (or where the Products is sold under a consumer transaction defined by the Consumer Transactions (Restrictions or Statements Order 1976) in which case the rights of the Customer are unaffected by the Contract) all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Products are hereby excluded.
- 11.6 Should it be necessary for any equipment or machinery or the Products to be sent for repair to the Company's nominated factory, the cost of transport to such factory and the cost of the return of such equipment, machinery or Products shall be that of the Customer.
- 11.7 The Company shall not be liable for fair wear and tear of the Products.
- 11.8 The Company shall not be liable for the consequences of faulty assembly, installation or commissioning by the Customer of the Products.
- 11.9 The Company shall not be liable for minor variations in the Products.

## **12. Termination**

12.1 The Contract may be terminated:

12.1.1 forthwith by the Company if the Customer fails to pay any sum due hereunder within 14 days of the due date therefor;

12.1.2 forthwith by either party if the other commits any material breach of any term of the Contract (other than one falling within 12.1.1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy the same; and

12.1.3 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

12.2 Any termination of the Contract pursuant to this Clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **13. Force majeure**

Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority.

## **14. Notices**

Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in the Contract (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of 12 hours after dispatch.

## **15. Invalidity and severability**

If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the validity or unenforceability of such provision shall not affect the other provisions of the Contract and all provisions not affected by such invalidity or enforceability shall remain in full force and effect.

## **16. Entire Agreement**

The Company shall not be liable to the Customer for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of execution of the Contract other than those representations, agreements, statements and undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in the Contract.

## **17. Successors**

The Contract shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

## **18. Assignment**

Neither party shall be entitled to assign the Contract nor all or any of their rights and obligations hereunder without the prior written consent of the other.

## **19. Headings**

Headings to clauses in the Contract are for the purpose of information and identification only and shall not be construed as forming part of the Contract.

## **20. Law**

The Contract shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

**KARL MAYER Textile Machinery Ltd. · [www.karlmayer.com](http://www.karlmayer.com)**

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