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KARL MAYER TEXTILE MACHINERY INDIA PRIVATE LIMITED

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# STANDARD TERMS AND CONDITIONS OF SALE

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Valid from [01] April 2023

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## 1. INTERPRETATION

### 1.1 In these conditions: -

- (a) "Acceptance Protocol Sheet" means the standard acceptance sheet issued by the Seller to be countersigned by the Buyer confirming acceptance of and satisfaction with the Goods after Seller's technician has checked and signed that the Goods are properly installed and are in good working condition.
- (b) "the Buyer" means any persons, firms or corporations placing orders with the Seller for goods to be supplied by the Seller.
- (c) "Conditions" means the standard terms and conditions of sale set out in this document and incorporated by reference into the Order Confirmation to which these Conditions are annexed and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- (d) "Contract" means the contract for the sale and purchase of the Goods as entered by the Seller into the Order Confirmation.
- (e) "Delivery Address" means the address of the Buyer (if any) stated on the face of the Order or confirmed in writing by the Buyer.
- (f) "The Goods" means the subject matter of any order placed by the Buyer with the Seller in accordance with these conditions and includes without limitation the goods which are the subject of the Order Confirmation.
- (g) "Order" means any order placed by the Buyer with the Seller for the supply of the Goods and confirmed by the Seller in an Order Confirmation.
- (h) "Order Confirmation" means the sales order confirmation made by the Seller for the supply of the Goods ordered by the Buyer and substituting and replacing in all respects any offer made by the Seller and as set out in the document to which these Conditions are annexed.
- (i) "The Ordinance" means The Indian Contract Act, 1872, the Sale of Goods Act, 1930 or any other applicable legislation.

(j) "Price" means the price of the Goods.

(k) "the Seller" means KARL MAYER Textile Machinery India Private Limited.

(l) "Specification" means the Buyer's technical description (if any) of the Goods contained or referred to in the Order.

(m) "Vessel" includes ships, aircraft, trains and trucks.

(n) "Writing" includes emails .

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 Unless otherwise agreed in writing by the Seller, these Conditions shall override any terms or conditions stipulated, incorporated, or referred to by the Buyer whether in the Order or in any antecedent negotiations warranties, and any such conditions whether directly between the Buyer and the Seller or through their respective representatives or otherwise, are excluded and hereby negated. These Conditions shall also apply if the Seller carries out the delivery without reservation in the knowledge of conflicting or supplementary conditions of the Buyer. Within the framework of ongoing business relationships, these Conditions will also apply to future transactions. These Conditions also apply if no express reference is made to them.

2.3 These Conditions shall be superseded by individual agreements made with the Seller in individual cases (including

ancillary agreements, supplements and amendments). Subject to proof to the contrary, a written contract or a written confirmation is decisive for the content of such agreements.

- 2.4 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6 The use of the Goods in a manner which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice, recommendation or use, which is not so confirmed.
- 2.7 Any unilateral, legally binding declarations and notifications by the Buyer in relation to the Contract subject to these Conditions (such as, in particular, notices of defects or setting of additional deadlines) shall be made in writing. Further legal requirements remain unaffected.
- 2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller and no contract shall be concluded until the Seller shall have notified the Buyer of the acceptance by the Seller of an Order received from the Buyer.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall pay / indemnify

the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of the Order Confirmation by the Seller. Where the Goods are supplied for export from India, the Seller's published export price list shall apply. The prices quoted are ex-works Seller's registered office in accordance with ICC Incoterms 2020. All prices quoted are valid for 30 days only after which time they may if not already accepted by the Buyer be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the express right, by giving notice to the Buyer at any time before delivery, to correspondingly increase the Price of the Goods to reflect any increase in the cost to the Seller (subject to increase in Price by more than 5%) which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, market price for materials, increase in cost by third parties involved in performance of Contract, special tooling or other costs of manufacture, operation, transport and miscellaneous charges), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The Buyer shall have the right to withdraw from the Contract if the increase is more than 20% from the agreed Price. This right must be exercised immediately after notification of the increased price by the Seller. In the event of decrease in aforementioned costs to the Seller (on or before the delivery) by more than 5 % of the agreed Price, the Seller may, at its sole discretion, give due impact of the said decrease in the agreed Price and inform the Buyer about the same.
- 4.3 Any quotation by the Seller shall remain open for a maximum period of 30 days and the Seller reserves the express right of withdrawal before the expiry of such 30 days period of any quotation which at the date of exercise of such right of withdrawal shall not have been the subject of any order by the Buyer communicated to and received by the Seller.
- 4.4 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all Prices are given by the Seller on an ex works basis in accordance with ICC Incoterms 2020, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance. The Price shall not include any costs of transportation and/or insurance, tax, notarisation or consular legalisation or other fees, surcharges, levies or duties whatsoever which shall be for the account of the Buyer. Such price quotations shall, where necessary, at the sole discretion of the Seller, include the costs of export packing by the Seller.
- 4.5 The Price is exclusive of any applicable Goods and Service Tax (GST) and other applicable taxes and duties, which the Buyer shall be additionally liable to pay to the Seller.
- 4.6 Assembly / commissioning shall be invoiced over and above the Price and as per the time spent in such support, unless a

fixed price has been expressly agreed between the Seller and the Buyer before commencement of such support. The invoice of Assembly / commissioning shall be raised separate from invoice for sale and purchase of Goods.

## **5. TERMS OF PAYMENT**

- 5.1 Unless otherwise expressly agreed to in writing by the Seller, the terms of payment for the Goods shall be by irrevocable and confirmed by letter of credit.
- 5.2 The Seller is entitled to invoice physically as well as electronically. The Buyer agrees to the sending of invoices, credit notes and, if applicable, reminders by e-mail in pdf format and must therefore provide the Seller with an e-mail address to ensure receipt of these electronically sent documents. The Buyer shall raise objections to invoices, if any, within 14 days of receipt of the invoice at the latest; otherwise the invoice in question shall be deemed to have been approved.
- 5.3 Unless otherwise stated in the Order Confirmation, the Price shall be due immediately, without deduction, upon conclusion of the Contract and shall be paid no later than 30 days after receipt of the invoice. The Seller reserves the right to charge to the Buyer interest at the rate of 3% per month on any outstanding overdue payment and also on any storage and other charges incurred until full payment shall have been made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 If the Buyer for whatever reason fails to pay the Price, or any portion thereof on the due date therefor, the Seller may, in its discretion, either insist upon the performance of the present contract, or withhold the provisions of outstanding services or repudiate the same and all other executory contracts with the Buyer, without granting a period of grace to the Buyer, to make it dependent on the payment of all outstanding payments by the Buyer and generally only to execute against advance payment or the provision of security.
  - 5.4.1 The Seller shall also be entitled further to: -
    - 5.4.1.1 suspend or withhold any further deliveries to the Buyer;
    - 5.4.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).
- 5.4.2 If the Seller keeps the contract alive, it shall not be bound to perform its part of the contractual obligations until the Buyer performs its obligations. In whichever case, the Seller's right to any claim and/or damages shall not be affected.
- 5.5 In the event that the Buyer shall fail to take delivery of the Goods and fails to pay for them, the Seller shall be entitled to withdraw from such Contract (in whole or part) and be at liberty at any time to sell or otherwise dispose of the Goods and the Buyer shall be responsible for and indemnify the Seller against any difference between the contract price and the proceeds of sale and disposal and for all charges incurred, interest charged, additions to or increases of the contract price and also for all damages, and consequential losses arising from such breach by the Buyer.
- 5.6 In the event, the Seller becomes aware of events that are likely to materially affect the Buyer's creditworthiness and as a result of which the payment of the outstanding claims of Seller by the Buyer from the respective contractual relationship is at risk, the Seller shall be entitled to withhold its performance until the Buyer has paid all open invoices till date. After

setting a corresponding deadline for concurrent performance or provision of security, the Seller can also withdraw from the contract and demand compensation for damages.

- 5.7 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
  - 5.8 The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
  - 5.9 The purchase price shall be deemed to be fully paid only if the respective remittance arrives at the place of the Seller's domicile or at another place (if any) designated by the Contract or otherwise designated in writing by the Seller to the Buyer.
  - 5.10 The Buyer shall have the right to withhold any portion or whole of the Price if it is based on any counter-claim, under the same contractual relationship that is undisputed, ready for a decision or established by a final court decision. Insofar as the Buyer's counterclaim is not legally established, ready for decision, or uncontested, the Buyer shall not be permitted to offset. It is hereby clarified that the statutory payments under applicable laws shall remain unaffected and shall be deposited with the relevant authority by responsible party.
  - 5.11 If payment is by means of a letter of credit, the terms and conditions of such a letter of credit, to the extent possible, must not differ from the terms and conditions of the Contract.
  - 5.12 The Seller shall not be bound to dispatch the Goods if the letter of credit is not opened within the term fixed in the Contract, or in compliance with sub-clause (5.7) hereof.
- ## **6. DELIVERY**
- 6.1 The delivery shall be ex works basis in accordance with ICC Incoterms 2020. Delivery deadlines are only binding if they have been expressly agreed in writing as binding; they are met if the Goods have been dispatched or are ready for dispatch by the expiry of such deadline and the Buyer has been notified of such readiness for dispatch.
  - 6.2 Delivery of the Goods shall be made by the Seller over the side of the carrying vessel of shipment or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
  - 6.3 A delivery period begins from the moment that all the documentation is received from the Buyer, such as specifications, drawings and all the details necessary for producing the item (clarification of the order). Postponement of the deadline for clarifying the order (making available specifications) shall extend all subsequent deadlines accordingly. Claims for compensation by the Buyer as a result of failure to fulfill, or late fulfillment of its obligations to timely self-deliver and provide correct and complete documentation shall not be permissible.
  - 6.4 Any dates quoted for delivery of the Goods are approximate estimation only and the Seller shall not be liable for, or for any consequences of, and delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 6.5 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage. Additionally, the Buyer will also be entitled to pay Liquidated damages to the Seller, as calculated by the Seller. The Buyer agrees that the Liquidated damages claimed by the Seller are final and binding. Also, the Buyer's liability is not restricted only to Liquidated Damages, the Buyer shall also be liable to all other damages as specified in the Contract and/or applicable laws;
- 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.7 The fulfilment of Seller's contractual obligations is subject to correct and timely self-supply correct and complete documentation. If Seller's supplier is only temporarily prevented from delivering, the delivery period will be extended appropriately without Seller being in default. If the Seller is permanently unable to deliver or if one of the parties can no longer reasonably be expected to adhere to the contract due to the duration of the hindrance, each of the parties is entitled to withdraw from the contract after prior notice. The provisions of clause 12 shall mutatis mutandis apply to this clause. In this case, the Seller already now assigns to the Buyer any claims for damages due to delay to which it is entitled against the Supplier.
- 6.8 In the event the Seller fails to perform or is in default of delivery due to reasons directly attributable to the Seller alone, the Buyer shall grant the Seller a reasonable grace period of at least half of the original delivery period, but not less than 20 working days to rectify such failure. In the event of failure of the Seller to rectify the default within the grace period, the Buyer may then withdraw with effect for the unfulfilled transactions if the legal requirements are met; with effect for partially fulfilled transactions, the Buyer may only withdraw if there is absolutely no interest in the partial delivery and performance. The Buyer shall only be entitled to claims for damages due to delay insofar as Seller's liability is not excluded or limited in accordance with these Conditions and even then these shall be limited to the damages which are direct and foreseeable at the time of conclusion of the Contract, but in total to a maximum of 5% of the net purchase price of the delayed performance insofar as this cannot be used by the Buyer in good time or in accordance with the Contract as a result of the delay or non-delivery. The Seller reserves the right to prove that the Buyer has not suffered any damage at all or only significantly less damage than the damage claimed.
- 7. RISK, PROPERTY AND PASSING OF TITLE**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer: -
- 7.1.1 in the case of Goods to be delivered are stored at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection / ready for dispatch; or
- 7.1.2 in the case of Goods to be delivered at a location other than at the Seller's premises, at the time when the Goods are placed by the Seller into the custody of the carrier at the air or sea port of shipment who shall be deemed agent of the Buyer.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the legal and equitable title to and the property in the Goods shall expressly not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due and of any interest and additional costs.
- 7.3 Until such time as the legal and equitable title to and the property in the Goods passes to the Buyer: -
- 7.3.1 the Buyer shall not incorporate the Goods into its assets;
- 7.3.2 the Buyer shall possess the Goods on a fiduciary basis only with the right to sell the same for the account of the Seller and with a fiduciary duty to account to the Seller for the proceeds of such sale to the full extent of monies then owed by the Buyer to the Seller;
- 7.3.3 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured at its own expense;
- 7.3.4 Any modification or reworking of the Goods or combining them with other products to form a uniform or inseparable product, shall be deemed as being performed on behalf of the Seller. The Buyer agrees to transfer the rights and title of the new product to the Seller. The Buyer remains in possession of the new product on lease.
- 7.3.5 Until all the claims of the Seller are settled, the Buyer shall adequately insure the Goods against fire, theft and any other risk, at its own expense.
- 7.3.6 The Buyer must notify the Seller in writing, immediately, of any seizure or sequestering of Goods by a third party. In this case, any intervention costs shall be borne by the Buyer.
- 7.3.7 In the event of the Buyer transferring its business to a third party, the Buyer is under obligation to notify the said third party about the Seller's right of retention and any obligation resulting from such right to retention shall be transferred to the third party.
- 7.4 Until such time as the legal and equitable title to and the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 7.6 (a) The responsibility of the Seller shall cease immediately the Goods are placed by the Seller into the custody of the carrier at the air or sea port of shipment who shall be deemed agent of the Buyer, and the Seller shall be under no obligation to give the Buyer any notice regarding the same.  
 (b) The Goods shall travel at the risk and peril of the Buyer even when the Seller shall expressly undertake carriage and customs costs and the Buyer shall accordingly be exclusively responsible for all relevant insurance cover to the full value of the Goods in the books of the Buyer. In case of conflict, Incoterms used in the Order Confirmation shall apply.
- 7.7 Nothing in this clause shall for any other purpose affect the relationship of Seller and Buyer borne by the parties hereto nor shall confer any right upon the Buyer to return the goods sold under any invoice or otherwise or to refuse or delay payment.
- 8. PRODUCT DOCUMENTS, DUTY TO EXAMINE**
- 8.1 The documents, illustrations, drawings, details of performance, weights and dimensions in catalogues, product sheets and/or on the Seller' website only represent approximate values. They are not indications of the quality of the Goods unless they are expressly designated as binding. The Seller reserve the right to make improvements and changes to the extent customary in the trade and reasonable for the Buyer.
- 8.2 The technical drawings and/or descriptions provided by the Seller must be checked by the Buyer. The inspection and confirmation shall be made by returning a copy with a confirmation note from the Buyer within two weeks of receipt by the Buyer. If the Buyer waives confirmation and return, this shall not release him from the obligation to check and the confirmation shall be deemed to have been made. Desired corrections must be communicated to the Seller immediately and require our written confirmation. Additional costs incurred due to drawings and/ or descriptions not being checked by the Buyer or not being checked in good time will be invoiced separately by Seller.
- 8.3 The Seller shall provide to the Buyer with parts of the operating instructions in digital form only, insofar as these do not contain any information relevant to safety and health protection. If required in sole opinion of the Seller, the Seller will provide the Buyer with the relevant parts of the operating instructions in paper form as a supplement, without assuming any liability whatsoever.
- 9. INSPECTION OF GOODS**
- 9.1 Any inspection of the Goods by or on behalf of the Buyer prior to shipment thereof by the Seller shall be binding on the Buyer so that the Buyer must accept and pay for the same unless the Seller, prior to shipment of the Goods, receives written notice from the Buyer either notifying rejection of the Goods or alleging grounds for complaint.
- 9.2 If there is no inspection of the Goods prior to shipment thereof the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.
- 10. WARRANTIES AND LIABILITY**
- 10.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve (12) months calculated from the date of dispatch from the factory after which all relative warranties and conditions pursuant to any applicable law shall not apply.
- 10.2 Any description given of the Goods has been given by way of identification thereof only and shall not constitute a sale by description for the purpose of any applicable law or otherwise.
- 10.3 The above warranty in 10.1 is given by the Seller subject to the following conditions: -
- the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - the Seller shall be under no liability in respect of any defect arising from natural wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price for the Goods has not been paid by the due date for payment;
  - the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 10.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with Specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet Specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge and the Seller shall have no further liability to the Buyer whatsoever.
- 10.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damages (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or release by the Buyer, except as expressly provided in these Conditions.
- 10.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: -

- 10.7.1 Act of God, explosion, flood, tempest, fire, pandemic or accident;
  - 10.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 10.7.3 act, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 10.7.4 import or export regulations or embargoes;
  - 10.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 10.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 10.7.7 power failure or breakdown in machinery.
- 10.8 The Buyer shall take the Goods at its own risk both as to their corresponding with any sample exhibited to such Goods and inspected by it and as to their quality condition or sufficiency for any purpose, notwithstanding that such purpose may be made known to the Seller which does not give any warranty as to the quality, state, condition or fitness of the Goods which must be taken by the Buyer with all faults and imperfections.
- 10.9 The Seller's liability under clause 10.1 of this Contract shall only arise if: -
- a) the Buyer shall have paid in full all invoices for Goods supplied by the Seller;
  - b) the Seller's representatives shall have been given full and free right of access to the Goods;
  - c) the Buyer shall not have misused, neglected or used other replacements and shall have properly maintained or applied the Goods in accordance with instructions, pamphlets or directions given or issued by the Seller from time to time.
- 10.10 Any claims extending beyond the term of warranty, as mentioned in this Contract, shall not be permitted. This applies in particular to any claim for damages, including those resulting from loss of profit or some other financial loss on the part of the buyer.
- 10.11 All claims on the part of the Buyer and against Seller, shall lapse after a maximum of three years following conclusion of the Contract, unless they are the subject of a shorter period of time under the applicable legislation.

## 11. INDEMNITY

- 11.1 If any claim is made against the Buyer that the Goods infringe the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:-
- 11.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
  - 11.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
  - 11.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller to be given or not in its entire discretion;
  - 11.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the

Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavors to do);

- 11.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 11.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may in its discretion require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## 12. THIRD PARTY DELAY

In the event of a stoppage, delay or interruption of work in the establishment of either Seller or Buyer during the delivery period for any cause whatsoever beyond the control of the Seller or Buyer respectively, the Seller shall not be liable for any delay in shipment or delivery, non-delivery or destruction or deterioration of all or any part of the Goods, or for any default in performance of this Contract, arising therefrom, and the Buyer is bound to accept delay in shipment or delivery within the reasonable time or to accept cancellation of all or any part of the contract as the case may be. In any of such cases, the Seller shall not be responsible for any incidental or consequential damages.

## 13. FORCE MAJEURE

- 13.1 In the event of war, invasion, act of foreign enemy, hostilities (whether war has been declared or not) civil war, rebellion, revolution, insurrection or military or usurped power, or in the event that the means of production of the Seller shall be influenced in whole or in part by any circumstances whatsoever the Seller shall be relieved of obligation incurred under Contract wherever and to the extent to which the fulfillment of such obligation is prevented, frustrated or impeded as a consequence of any such event or by any statute rules, regulations, order or requisitions issued by any government, council or other duly constituted authority or from strikes, operational disruptions, custom duties, worldwide transport problems, shortage of raw materials or primary materials, lockouts, breakdown of plant, effect of pandemics or epidemics, fire, flood, severe weather, natural disasters, or any other causes (whether or not of a like nature) beyond the Seller's control. In the case of a pandemic or epidemic, this also applies if this had already occurred at the time the Contract was concluded, provided that the Seller was not aware of its effects on the Contract and could not have foreseen them as probable. This also applies if these circumstances occur at Seller's suppliers or their upstream suppliers.
- 13.2 The Seller will inform the Buyer immediately of the occurrence and expected duration of such events. The time for fulfilment of obligation of Seller shall be extended by the duration of the hindrance plus a reasonable start-up phase. If the impediment is permanent or, in the case of a temporary impediment, if it is no longer reasonable for one of the parties to adhere to the Contract due to the duration of the impediment, each of the parties shall be entitled to withdraw from the contract, but the customer shall only be entitled to do so

after prior written (email suffices) notice within a reasonable period. As a rule, an unreasonable duration is to be assumed in the event of an impediment of more than three months. The Seller will immediately reimburse the Buyer for any consideration already paid in the event of withdrawal. In no event shall the Seller be liable for any incidental or consequential damages.

#### **14. INSOLVENCY OF BUYER**

14.1 This clause applies if:-

14.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

14.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

14.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

14.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

14.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **15. EXPORT TERMS**

15.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chambers of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

15.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

15.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

15.4 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller or in any other way as agreed and confirmed by the Seller in writing in the Order Confirmation.

15.5 The Buyer shall not have the right to and hereby undertakes not to sell or offer the Goods for resale or exportation or exportation to third countries or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

#### **16. INTELLECTUAL PROPERTY RIGHTS**

16.1 The Seller retains full right of property and copyright overall cost estimates, drawings, illustrations, models, plans, and other documents relating to the Goods as well as information in tangible and intangible, in particular electronic form, as well as data, experience, know-how, inventions, intellectual property rights, designs, samples and trademarks. These may not be transferred or made available in any other way to a third party. Duplication or copying of such items is only permissible within the confines of operational requirements and copyright rules. The same applies to any products produced using the Goods. Any documents, etc., relating to the order must be returned immediately on request, or if an order is not placed.

16.2 The Seller shall not be responsible for any infringement with regard to (a) patent, utility model, trade mark, design or copyright in relation to the use made or fruits of use of the Goods by the Buyer; (b) information/ specifications/ documentations provided by the Buyer in relation to Goods, whether in the Buyer's country or any other place, and any dispute raised in respect thereof, shall be settled by the Buyer, and any loss and/or damages caused thereby shall be borne by the Buyer and the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of use made or fruits of use of the Goods by the Buyer which involves the infringement of any patent or design rights.

16.3 Claims due to infringements of intellectual property rights do not exist if these are based on the fact that the goods have been modified by the Buyer or used together with products not supplied by the Seller.

17. The Seller shall not be responsible for damages, injury or loss of any kind whatsoever to any property or persons or animal or produce howsoever caused arising from the use of or in connection with the use of the Goods.

18. In the case of partial completion of an order occasioned by the Seller, the Seller shall be entitled to a quantum meruit.

19. The Buyer may cancel the order only upon payment to the Seller of all costs incurred by the Seller in respect of the work which shall be the subject of the cancellation.

#### **20. CONFIDENTIALITY**

20.1 The contents of these Conditions, the Contract and all communication, business or technical information whether written or verbal between the Parties are confidential. The Buyer shall not either during or after the tenure of the Contract disclose the same except so far as is necessary for the performance of its obligations under the Contract.

20.2 Physical and intangible information shall be returned immediately to the Seller at any time upon request or if no transaction takes place, and electronic information shall be deleted immediately. Seller undertakes to make information and documents designated as confidential by the Buyer accessible to third parties only with the Buyer's consent.

20.3 The Buyer shall indemnify the Seller, the costs, expenses, losses, damages, liabilities etc. that the Seller may suffer or incur or be put to as a result of the Buyer's disclosure of confidential information.

## 21. GENERAL

- 21.1 The Seller is a member of the group companies whose holding company is Karl Mayer Holding GmbH & CO. KG, and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 21.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 21.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 21.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 21.5 The Parties shall seek to resolve any dispute, controversy, claim or breach arising out of or in relation to this Contract including any dispute as to the existence or validity of this Contract (the "Dispute"), by amicable arrangement and compromise, and only if the Parties fail to resolve the same by amicable arrangement and compromise within a period of thirty (30) days (the "Dispute Resolution Period") of receipt of written notice (the "Dispute Notice") of the same by the other Party, either Party may resort to arbitration as provided for in clause 21.6 below.
- 21.6 After expiration of the Dispute Resolution Period any Dispute which may arise out of or in connection with this Contract, or any breach of the binding provisions hereof, shall, unless amicably settled, be referred to final and binding arbitration under the Arbitration and Conciliation Act, 1996, as amended from time to time (the "Arbitration Act"), by three (3) arbitrators. Each Party shall appoint one (1) arbitrator each and the two (2) appointed arbitrators shall appoint the third (presiding) arbitrator. The arbitration shall be conducted in the English language and shall take place in Ahmedabad, India.
- 21.7 The Parties shall not stop work during the pendency of arbitration proceedings. Any payment, if due, from either party under the terms of this Contract shall not be withheld for whatsoever reason
- 21.8 The Contract and these Conditions shall be governed by the laws of India and the Parties agree to submit to the exclusive jurisdiction of the competent Courts at Ahmedabad, India.

## KARL MAYER TEXTILE MACHINERY INDIA PRIVATE LIMITED

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