

## **Terms and Conditions Policy**

### **GENERAL**

These conditions shall cover the contract for the sale of goods entered into by Evans Textile (sales) Ltd and Bridstock Gate Limited trading as Portfolio Home ('the Company') and shall supersede and cancel all such previous conditions.

### **INTERPRETATION**

In these conditions the following expressions shall carry the following meaning in so far as the context shall admit:

- "BUYER" means the person who has permission to place the order for goods on behalf of the purchasing company
- "CONDITIONS" means the terms and conditions set out in this document
- "CONTRACT" means the contract between the Buyer and Seller for the purchase and sale of Goods
- "FORCE MAJEURE" means an event or circumstances beyond reasonable control
- "GOODS" means the goods (or any part of them) which the Seller is to supply
- "ORDER" means the Buyer's order for goods as set out in the Buyer's purchase order or written approval
- "SELLER" means Portfolio Home, a trading style of Bridstock Gate Limited (Part of the Evans Group of Companies). Company Number 1216234 or Evans Textile (Sales) Limited. Company Number 06186585.

### **BASIS OF SALE**

- These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- An order is an offer to purchase Goods. The contract becomes binding only when an order is accepted by the Seller. In any event, a quotation shall only remain valid for a period of 30 days from date of issue.
- The Buyer is responsible for ensuring that the terms of the order are complete and accurate.
- Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### **THE GOODS**

- The quantity and description of the Goods shall be as set out in the Seller's quotation.
- Any samples, drawings or advertising produced by the seller is for illustrative purposes only. They shall not form part of the Contract.
- All Goods sold in packaging may be resold by the Buyer only in the packaging supplied by the Seller.

- In no case should the intellectual property including logos, designs or trademarks be altered without the Seller's written permission. Buyers may promote the sale of goods under product names or branding associated with the Buyer.
- Use of registered trade name or collection name by the Buyer is at the Seller's discretion and may be subject to withdrawal if deemed inappropriate.
- Any variation of these Terms and Conditions will only bind the Seller if agreed in writing between authorised representatives of the Seller and the Buyer.

## **PRICE OF GOODS**

- The price of Goods shall be the price set out in the order, list price or quotation.
- Prices quoted exclude VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- Whilst it is our intention to maintain these prices for as long as possible, they are subject to fluctuation due to raw material increases beyond our control. We therefore reserve the right to change prices and specifications without prior notice.
- Our quotations lapse after 30-days unless otherwise stated.
- Any prices quoted in any list price, catalogue or website of the Company shall only be for the guidance of Buyers and shall not constitute an offer to sell at those prices. The contract price, unless otherwise specifically agreed, shall be calculated in accordance with the Company's price list and payment terms in force on the date of despatch of the Goods, which may be altered by the Company at any time without notice.
- The Buyer will pay each invoice in full and cleared of the Seller's due date
- If the Buyer fails to make payment by the due date then, without prejudice to any other right or remedy available, the seller will be entitled to; (a) terminate the contract; (b) suspend any further deliveries to the Buyers; (c) seek legal solicitation.

## **CUSTOM MADE ORDERS & CONTRACT ORDERS**

- Custom made orders are made to customer's individual requirements and will be manufactured under a no refund policy.
- The seller can only accept liability for orders received in writing and confirmed by the Seller. Order forms can be supplied on request.
- Where a sample is submitted by the Buyer does not agree with written particulars supplied by the Buyer, the written particulars shall prevail.
- After project acceptance, initial design concepts will be free of charge and include a set of up to 3 amendments. However, where there is a change of brief, fees for design services will be incurred and issued by the Seller. Fees will be issued in a written estimate or quotation provided to the Buyer. Work on the project will not recommence until the Seller has received written acceptance of the design fees. Fees will be charged at £50 per hour.
- By supplying text, images and/or other data to the Seller for design and print reproduction, the Buyer declares that they hold the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the client.
- If the Seller prepares goods in accordance with the Buyer's specifications or instructions the Buyer must ensure that the specifications and instructions are accurate, the goods will be fit

for purpose for which the buyer intended to use them and the Buyers specifications do not result in infringement of intellectual property rights of a third party, or are in breach of any applicable law or regulation.

- The precise fibre content shall be provided in writing by the buyer to the seller. The seller shall not be held responsible for inaccuracies in this description.
- The Seller shall not be responsible for any claim arising from inaccurate descriptions of the finished goods applied at the customer's request and the buyer shall indemnify the seller against any claims so arising.

## **DELIVERY**

- The Seller shall deliver the Goods to the location set out in the order agreed with the Buyer.
- Even though we take extreme care to protect our goods in transit on the odd occasion damage or loss will occur. Please ensure that you sign for the correct number of items and check the good condition prior to accepting the delivery. Any discrepancies must be acknowledged at the point of signature and advised in accordance with our terms and conditions.
- All delivery dates quoted by the Seller are approximate only. The Seller shall not be liable for any delay in delivery of Goods caused by a Force Majeure or the Buyers failure to provide adequate delivery instructions.
- In the event of any complaint in respect of goods delivered damaged or part missing, goods must be signed for accordingly with the carrier and notice given within 24hrs to the Seller. Failure to do so could negate any claim.
- We take extreme care to protect our goods in transit on the odd occasion damage or loss will occur. Please ensure all parties within your organisations are aware of the need to check and sign for the correct amount of goods per delivery and the condition of the goods. This includes 3rd party locations and delivery addresses.
- If any non-delivery related defect or fault is found in the goods, notice must be given within 14 days of delivery and a reasonable opportunity for the Seller to examine the goods/claim before any claim can be entertained. If any defect is found to exist we will replace those goods or the defective part free of charge subject to warranty but we accept no liability for any consequential loss, damage or injury attributed to the use of such goods.
- No claims will be considered after the goods have been cut up, treated, processed or resold. Any recommendations or suggestions relating to the use of the goods made by us is given in good faith but it is for you to satisfy the suitability of the goods for sale purpose.
- The Seller will use its reasonable endeavours to deliver within the time specified or requested in any order, all delivery dates stated are approximate and in no circumstances will delivery dates form part of the contract/sale. The Seller will not be responsible for any onward costs associated with the arrival of goods should they be delayed/lost/damaged in transit.
- Subject to stock availability and wherever possible, goods ordered will be despatched according to the date required.
- As a consequence of our low pricing policy UK mainland orders below £125 will be subject to an additional charge of £8.50 for a next day delivery service unless otherwise agreed at the quote stage. [www.evans-textiles.com](http://www.evans-textiles.com) Webtex ordering platform offers carriage paid at £100. To access Webtex or to exceed the £125 carriage charges please contact our office to discuss the complete range. Off shore deliveries below £300 will be subject to an additional

charge quoted at the time of ordering. Guaranteed timed deliveries are available on request. We may decline delivery if the premises or access to them are unsuitable for our vehicle.

- Please arrange collection of faulty goods with our office. We may request a sample/photograph to be sent to our offices for assessment prior to agreeing a return or credit, this process can often eliminate the need for a collection. To help us process the credit with the minimum of delay, please ensure that the goods are suitably protected for transit and all tickets/labels are attached. Credit notes will be issued when goods are returned to our warehouse for inspection. Our standard terms and conditions apply and your statutory rights are not affected. Replacement orders will be charged at standard rates and credits issued against returned goods.
- Notwithstanding the Sale of Goods Act 1979 Section 35A(1), acceptance of some of the Goods by the Buyer, whether conforming to the contract or not, shall deprive the Buyer of the right to reject the rest of the Goods, whether they conform to the contract or not.
- Goods ordered in error will be subject to a £25 handling charge plus carrier collection costs for returns and only permitted with approval from the Seller. Credits will be issued subject to the condition and approval of returned goods. Goods made to order (Contract) may not be returned under any circumstances.

#### **TITLE AND RISK**

- The Goods shall be at the Buyer's risk as from delivery.
- In spite of delivery having been made property in the Goods shall not pass from the Seller until: (a) the Buyer shall have paid the Price plus VAT in full; and (b) no other sums whatever shall be due from the Buyer to the Seller.
- The goods shall remain the property of the seller until the invoice price has been paid in full or until goods have been resold by the buyers in which event the beneficial entitlement of the sellers shall attach to the proceeds of sale. If the goods are incorporated into other products while they are the property of the sellers all the sellers rights in the goods shall extend to other products and the proceeds of sale thereof. Until the property in the goods shall pass to the buyers the sellers shall be entitled to retake the goods at the buyers expense in the event of the buyer failing to pay for the goods or commencing liquidation or ceasing or threatening to cease to trade or if serious doubts arise as to the buyers solvency.
- The buyer must store the goods so that they are clearly identifiable as the seller's property.
- Buyers must inform the Seller (in writing) immediately of becoming insolvent and if the right to use and sell the goods ends you must allow the Seller to remove the goods.

#### **WARRANTIES**

- The Seller warrants that on delivery, the goods: Shall (a) conform to an applicable specification (b) Be free from material defects, (c) Be of satisfactory quality.
- Unless otherwise stated the standard product liability is 1 year
- The warranty will cover any defective part. Parts will be replaced free of charge but we accept no liability for add on costs such as additional fitting charges
- Replacement parts covered under this warranty may be charged pending inspection by the seller of any claimed defective part. The warranty is firstly a "repair or replace" at the sellers discretion. If complete replacement of goods are required the seller reserves the right to charge for these products pending inspection of any goods claimed under the warranty.

## **RETURNS**

- Returns are subject to the above if the Buyer gives notice in writing to the Seller within a reasonable period of time (14 days of goods received)
- Where the Buyer returns goods, the Buyer will make every effort to return the goods in a saleable condition (with packaging intact)
- The Seller, at its discretion, may repair or replace defective goods.
- We may request a sample to be sent to our offices for assessment prior to agreeing a return or credit, this process can often eliminate the need for a collection. To help us process the credit with the minimum of delay, please ensure that the goods are suitably protected for transit and all tickets/labels are attached. Credit notes will be issued when goods are returned to our warehouse for inspection. Our standard terms and conditions apply and your statutory rights are not affected. Replacement orders will be charged at standard rates and credits issued against returned goods.
- Goods ordered in error will be subject to a £25 handling charge plus carrier collection costs for returns and only permitted with approval from Portfolio Home. Credits will be issued subject to the condition and approval of returned goods. Contract and bespoke designed may not be returned under any circumstances.
- The Seller will not be liable to accept returns if; (a) defects arise because the Buyer failed to follow instruction of storage or use of goods, (b) the defect arises as a result of a brief or instruction provided by the Buyer (c) the Buyer alters the product without written permission by the Seller, (d) the defect arises from general wear and tear (e) the goods deviate from the specification due to regulatory requirements

## **LIABILITY**

- Nothing in this contract shall limit or exclude the Seller's liability for (a) death or personal injury caused by negligence, (b) fraud or fraudulent misrepresentation, (c) breach of the terms implied by the Sale of Goods Act 1979, (d) defective products under the Consumer Protection Act 1987, or any matter that would be unlawful for the Seller to exclude or restrict liability.
- Under or in no connection with any contract will the Seller be liable to exceed the amount payable to the Buyer in respect to the order value. The Buyer accepts the Seller is not liable for any loss of profit or consequential loss arising from the contract of sale of goods.

## **PAYMENT AND THE CREDIT APPLICATION PROCESS**

- Buyers are to pay the Seller in cash or in cleared funds on or prior to delivery, unless approved credit has been agreed in writing with the Seller. Proforma orders must be paid within 7 days of the order date.
- If the buyer fails to pay the seller in full on the due dates we reserve the right to suspend or cancel any future deliveries and cancel any discount offered to the buyer.
- All invoices are due for payment within 30 days unless alternative terms have been agreed. In the event of failure to pay by the due date, the whole debt becomes payable with interest chargeable at the rate set under the section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 before and after any judgement (unless the court orders otherwise) Future credit facilities will be affected if these terms are ignored.

- Please note that we may transfer personal information about you to those we may appoint to administer your account, insure your account or recover amounts owing to the seller.

## WEBSITE USAGE

- Use of the Evans Group websites; Buyers are responsible for ensuring the confidentiality of account and password details and for restricting access to computer systems to prevent unauthorised access to Portfolio Home.
- Buyers agree to accept responsibility for all activities that occur under your account or password.
- Buyers will inform the Seller immediately if there is any reason to believe passwords have been compromised or if the password is being used without authorisation.
- All information and descriptions (including particulars of weights and dimensions) given or specified by the Seller in respect of goods sold online are approximate only.
- All electronic communications, brochures, websites and other promotional materials are to be treated as illustrative only. Shades may vary from batch to batch but the seller guarantees a commercial match as defined.
- Use of the website is acceptance of our Cookie Policy and Privacy Policy which can be found online at [www.portfoliohome.com](http://www.portfoliohome.com) [www.evans-textiles.com](http://www.evans-textiles.com) [www.bespokebyevans.com](http://www.bespokebyevans.com) or requested in print for a nominal administration charge.
- For the avoidance of doubt, terms of sale of goods apply online.

## THIRD PARTIES

- To the extent permitted by applicable law, these Terms of Sale do not create or confer any rights or benefits enforceable by any person that is not a party to this Agreement

## FORCE MAJEURE

- We shall not have any liability to you or be deemed to be in breach of these Terms of Sale from any circumstances which are beyond our reasonable control (including a delay in delivery caused by force majeure).
- Either party may suspend delivery due to any stoppage of machinery through fire, Queens enemies, explosion, breakdown, strike, drought, flood, lockout or any cause whatsoever beyond control. Neither party will be held responsible for any damage cause thereby to the other party.

- **Brexit**

**Brexit Trigger Event** means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:

- an adverse impact on the Seller's ability lawfully to perform its obligations under these Conditions and/or in respect of any Order;
- an increase in the costs incurred by the Seller and/or which the Seller anticipates incurring in performing its obligations in respect of any Order of at least 5% since the relevant quotation was given;
- The price of the Goods under an Order is at least 5% lower than the market value for similar products.

- If a Brexit Trigger Event occurs, the Seller may:
  - require, by written notice served on the Buyer (**Brexit Trigger Notice**), the Buyer to negotiate in good faith an amendment to these Conditions and/or any Order affected by the Brexit Trigger Event to alleviate the Brexit Trigger Event; and
  - if no such amendment is made within 30 days, terminate any Order affected by the Brexit Trigger Event by giving the Buyer not less than 7 days' written notice.
- The Seller's obligations in relation to any Order that is affected by a Brexit Trigger Event shall be suspended from and including the date of a Brexit Trigger Notice being given in respect of such Brexit Trigger Event until and including the date of the first to occur of:
  - the parties agreeing an amendment in respect of such Order [under Clause 10];
  - termination of the Order (under Clause 10)

### **Copyright & Intellectual Property Rights**

- All content including product designs, logos and text is the exclusive property of Evans Textile (Sales) Ltd and Bridstock Gate Ltd and is protected by United Kingdom copyright and database right laws.
- Copyright of all design work is retained by Evans Textile (Sales) Ltd and Bridstock Gate Ltd including text, concepts, proofs and illustrations unless specifically released in writing.

### **Amendments**

- We reserve the right to make changes to these Terms of Sale at any time. The Buyer will be subject to the Terms of Sale in force at the time of placing an order with the Seller, unless any change to these Terms of Sale is required to be made by law (in which case it will apply to any orders previously placed by you).

### **Law and Disputes**

- The Seller shall sell and the Buyer shall purchase the goods in accordance with this contract.
- Any disputes relating to this Order shall be referred to the Tribunal of Manchester Chamber of Commerce for Arbitration. All goods or services are bought on these conditions only.
- These Terms of Sale and all matters arising from it are governed by and construed in accordance with the laws of the United Kingdom without regard to conflict of law provisions thereof and whose courts shall have exclusive jurisdiction over all disputes arising in connection with these Terms of Sale.
- Evans Group of Companies includes Evans Textiles (Sales) Ltd t/a Evans Textiles and Bespoke by Evans and Bridstock Gate Ltd t/a Portfolio Home and Kids Club by Portfolio