

TERMS AND CONDITIONS OF TRADE

1. Interpretation

- 1.1 In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:
- 1.1.1 **Application** means the credit application accompanying these Conditions, which shall form part of and be read and construed with these Conditions.
- 1.1.2 **Company** means Producto Holdings Limited or any of its subsidiaries.
- 1.1.3 **Conditions** means these terms and conditions.
- 1.1.4 **Contract** means a contract for the supply of Products by the Company to the Customer, which these Conditions apply.
- 1.1.5 **Customer** means the purchaser of the Products from the Company or any person acting on behalf of and with the authority of the Customer.
- 1.1.6 **GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985.
- 1.1.7 **Quotation** means a quote from the Company setting out the particulars of the supply of Products.
- 1.1.8 **Price** means the price payable for the Products as agreed between the Company and the Client subject to clause 4.5.
- 1.1.9 **Products** means the goods and services supplied by the Company to the Customer.
- 1.1.10 **Purchase Order** means an order for the Products placed by the Customer.
- 1.1.11 **Working Day** means a day on which registered banks are open for general banking business in both of the cities in which the Customer and Producto's head offices are located in.
- 1.2 **Conflict of Terms:** Unless the Company and Customer agree otherwise in writing in the event of any conflict arising between these Conditions, a Quotation or Purchase Order, the Conditions shall prevail.

2. Supply of Products

The Company will supply to the Customer, and the Customer will purchase the Products described in the Purchase Order on the terms of these Conditions.

3. Acceptance of Conditions

- 3.1 Any instructions received by the Company from the Customer for the supply of Products shall constitute acceptance by the Customer of these Conditions.

- 3.2 In the event that the Customer cancels delivery of the Products the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including but not limited to, any loss of profits).

- 3.3 Cancellation of orders for Products made to the Customer's specifications, or for non-stockist items, will not be accepted once an order has been placed.

4. Price and Quotes

- 4.1 In consideration for the supply of the Products, the Customer shall pay to the Company the Price of the Products.
- 4.2 The Prices are expressed in New Zealand currency and exclusive of GST.
- 4.3 Where a Quotation is given by the Company to the Customer for the Products, that Quotation will be valid for a maximum of 7 days from the date of issue of the Quotation unless otherwise stated and is subject to:
- 4.3.1 the Customer's Purchase Order matching the quoted details; and
- 4.3.2 Final confirmation of Quotation upon receipt of the Purchase Order.
- 4.4 The Company reserves the right to correct any typographical or clerical errors contained in the Prices or specifications in the Purchase Order and/or Quotation.
- 4.5 The Company reserves the right to review the Price of the Quotation if requested by the Customer or required due to any delay by the Customer.
- 4.6 Any variations from the plan of scheduled services or specification of the Products (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Company in the cost of taxes, levies, materials, and labour) will be charged for on the basis of the Company's Quotation and will be shown as variations on the invoice.
- 4.7 The Customer will accept Products within a variance of five percent (5%) above or below the quantity quoted in a Purchase Order as full satisfaction of the relevant Purchase Order, provided that where the quantity supplied is below the order quantity, the Company will charge only for the quantity supplied. Where the quantity supplied is above the order quantity, the

Company will charge for the quantity supplied, and the Customer agrees to pay the full invoice price for all such Products.

- 4.8 The Company reserves the rights to requote the Price based on fluctuation in currency exchange rate or increases in production costs if production samples are not approved within 30 days of receipt.

5. **Payment**

- 5.1 Payment for the Products will be made on the Payment Dates specified on the approved Application. The Company reserves the right to require the Customer to pay for the Products (either in full or in part) prior to their supply by the Company and payment is received in full in accordance with these Conditions.

- 5.2 The time for payment is of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due:

- 5.2.1 the Company may treat the Contract as being repudiated by the Customer or may until payment in full is made, suspend delivery of the Products.

- 5.2.2 the Customer will (if required by the Company) pay interest to the Company at the default interest rate of two and a halfpercent (2.5%) above the current base lending rate set from time to time by the Company's bankers in New Zealand. Interest shall be payable daily until payment is received.

- 5.2.3 The Customer shall indemnify the Company for any amounts payable by the Customer not being paid when due; and any costs, losses, expenses, or liabilities (including all legal expenses on a solicitor and own client basis) sustained or incurred by the Company as a result of any amounts payable by the Customer not being paid when due.

- 5.3 The Customer is not entitled to make any deduction from the price of the Products in respect of any set-off or counterclaim or to withhold any payment without the prior written approval of the Company.

- 5.4 The Company may, at its discretion, delay or terminate the supply of any Products, including existing and future orders for Products, if the Customer's credit account exceeds the credit limit set by the Company. The Customer agrees that the Company shall retain the title of the supplied Products until the payment is received in full in accordance with these Conditions.

6. **Delivery and Risk**

- 6.1 All risk of loss, damage or destruction to the Products shall pass to the Customer upon delivery to, or upon collection by or on behalf of the Customer.

- 6.2 Delivery of the Products shall be deemed complete when the Company delivers the Products to the Customer's address or possession of the Products is given to the Customer's agent or carrier.

- 6.3 If the Customer refuses to accept delivery, the Products will be deemed to have been delivered when the Company was willing and able to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.

- 6.4 If the Products are held by the Company on behalf of the Customer, risk is deemed to have passed to the Customer when the Products would otherwise have been able to be delivered.

- 6.5 If any of the Products are damaged or destroyed prior to them passing to the Client, the Company is entitled, without prejudice to any of its other rights or remedies under this agreement (including the right to receive payment of the balance of the Price for the Products), to receive all insurance proceeds payable in respect of the Products. This applies whether or not the Price has become payable under this agreement. The production of this agreement by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

- 6.6 Where the Products are to be supplied to an address outside New Zealand, delivery dates or arrangements stated in the Quotation shall be treated as an estimate only and the Company shall not be liable to the Customer for any delay arising from manufacturing, shipping, or transport.

- 6.7 The Customer acknowledges that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by the Company to match colour and shade of the Products, the Company shall not be liable for any loss, damage, or costs, however arising resulting from any variation in colour and shading between batches of the Products or sale samples and the final Products supplied.

- 6.8 The Customer acknowledges and accepts that the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, the Company reserves the right to

vary the price with alternative Products as per clause 4.5. The Company also reserves the right to halt all services until such time as the Company and the Customer agree to such changes.

Ownership

- 6.9 Until the Company has been paid in full for the Products, the Company and the Customer agree that:
 - 6.9.1 title in the Products remains with the Company.
 - 6.9.2 the Company and its agents or servants may, upon giving reasonable notice, enter premises occupied by the Customer to search for and remove any of the Products supplied by it, without in any way being liable to the Customer or any person claiming through the Customer.
 - 6.9.3 if the Company exercises its right to reclaim the Products it shall be entitled to dispose of them as it sees fit. The Customer will indemnify the Company for any costs incurred by the Company in reclaiming the Products, including any shortfall incurred by the Company in realizing the Products; and
 - 6.9.4 if the Products or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be held on trust for the Company.
- 6.10 The Customer agrees, if required by the Company, to store the Products separately to enable them to be identified.

7. Personal Property Security Act

- 7.1 In accordance with the Personal Property Securities Act 1999 (PPSA), the parties agree that this agreement:
 - 7.1.1 creates a security interest in and constitutes a security agreement in respect of the Products in favor of the Company.
 - 7.1.2 confirms that the Products constitute the collateral until payment in full has been made to the Company for the Products and the security interest has been released by the Company.
 - 7.1.3 confirms that the security interest attaches to the collateral when the Products are delivered to or received by the Customer in accordance with these Conditions.
 - 7.1.4 confirms that the security interest covers the Products, any accessions, together with proceeds of all kinds, to the invoiced amount of all Products that the Company has supplied to the Customer.
 - 7.1.5 authorizes the Company to register a financing statement in respect of the security interest.

- 7.2 The Customer undertakes to promptly do all things necessary and sign all documents and provide all information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its security interest.

- 7.3 To the extent permitted by law, the parties' contract out of Part 9 of the PPSA in that:

- 7.3.1 the rights and obligations contained in sections 14(1)(a), 125, 129, 132, 133 and 134 of the PPSA do not apply between the parties; and

- 7.3.2 the Customer waives its rights contained in sections 121 and 131 of the PPSA and the right to receive any financing statement or financing change statement from Producto pursuant to section 148 of the PPSA; and the parties acknowledge that the security interest has the same priority in relation to all amounts owed by the Customer to the Company from time to time.

8. Warranty

- 8.1 Subject to applicable law, the Company warrants to the Customer that the Products manufactured by the Company will be free from defects in materials and workmanship and will be of acceptable quality (Warranty). The Warranty does not apply to the extent that any damage, fault, failure or malfunction results from abuse, misuse, improper installation, storage or maintenance, failure to follow the Company's reasonable instructions, unauthorised modification or repair, or fair wear and tear.
- 8.2 For Products not manufactured by the Company, the Company will pass on to the Customer the benefit of any current manufacturer's warranty to the extent that it is transferable. Subject to applicable law, the Company is not bound by, and is not responsible for, any term, condition, representation or warranty concerning those Products other than the warranty provided by the manufacturer.

9. Exclusion of Warranties and Liability

- 9.1 Subject to applicable law, the Warranty does not apply to the extent that any damage, fault, failure or malfunction results from an event beyond the Company's reasonable control, including fire, flood, earthquake, war, civil disturbance or any similar event.
- 9.2 Except for the express warranties set out in clause 8 and any guarantee, condition, warranty or other right that cannot lawfully be excluded, the Company gives no additional representation or warranty regarding the Products, including as to their suitability or fitness for any particular purpose not expressly agreed by the Company in writing.

10. Returns

- 10.1 The Customer has 20 working days following delivery of the Products to advise the Company of any defects in the Products, any incorrect deliveries, or any incorrect pricing (**Notification Period**).
- 10.2 If the Notification Period expires and the Customer has failed to notify the Company of any defects or missing Products, then the Products are deemed to be accepted by the Customer and the Company accepts no liability for claims made after the expiry of the Notification Period.
- 10.3 The Customer undertakes:
 - 10.3.1 that all claims will be supported by a packing note, delivery docket, invoice and copy of the Purchase Order together with the reason for the claim.
 - 10.3.2 that Payment will not be withheld pending settlement of any defects, and
 - 10.3.3 not to dispose of the Products prior to resettlement of any defects (excluding errors relating to pricing).
- 10.4 On acceptance by the Company of a valid claim within the Notification Period, the Company will either (in its direction) replace, repair, or provide the Customer with a credit for the defective Products.
- 10.5 The Company shall not be liable for Products which have not been stored and used in a proper manner and the Products are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.6 The Company may (in its discretion) accept the return of non-defective Products for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Products plus any freight.
- 10.7 Products returned that have had embroidery, screen-printing or other embellishment carried out on them will only be credited if the Products are found to be faulty and the Customer has complied with clause 10.

11. Liability

- 11.1 *Consequential loss*: The Company shall not be liable to the Customer for any loss of profits, or any consequential, indirect, or special loss or damages suffered by the Customer, arising directly or indirectly from any breach by the Company of the Contract or from any negligence or other act or omission of the Company.
- 11.2 *Limitation of liability*: To the fullest extent permitted by

law and notwithstanding any other provision of this agreement, if the Company is held or found to be liable to the Customer for any matter relating to or arising in connection with the Contract or these Conditions whether based on an action or claim in contract, equity, negligence, tort or otherwise, the amount of damages recoverable against the Company for all events, acts or omissions will not in aggregate exceed the sum the total price payable under a Contract for the Products.

- 11.3 *Indemnity*: The Customer shall indemnify the Company, and undertakes to hold the Company harmless from and against, all disputes, suits, actions, proceedings, and claims which may be made by any third party against the Company (whether separately or jointly with the Customer), arising directly out or in consequence of the provision and/or use of the Products by or on behalf of the Customer and any other matter for which the Customer or its Related Companies, franchises, nominated parties, servants or agents are directly or indirectly responsible, except where such disputes, suits, actions, proceedings or claims are due to the gross negligence or the willful misconduct of the Company.
- 11.4 *Consumer Guarantees Act 1993*: For the purposes of the Consumer Guarantees Act 1993, the Customer acknowledges that the Products are supplied for the purposes of a business and the guarantees under that Act will not apply.

12. Default

- 12.1 In the event that either party:
 - 12.1.1 breaches, or fails to properly or promptly perform, any material obligation of that party under these Conditions and fails to remedy the breach or perform the material obligation to the other party's reasonable satisfaction within 15 Working Days after receiving notice from the other party specifying the breach or failure and requiring remedy; or
 - 12.1.2 becomes insolvent, has a receiver appointed, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
 - 12.1.3 ceases or threatens to cease carrying on business; or
 - 12.1.4 the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered; then
- the other party may, by written notice to that party, immediately terminate the Contract, and all amounts outstanding whether or not due for payment,

immediately become due and payable.

13. Effect of Termination

In the event the Customer breaches any of these Conditions or any term of a Contract, the Company may immediately in writing, in addition to its rights under clause 12.1 suspend supply of the Products at which point all money due and owing to the Company by the Customer will be payable. Suspension or termination will not prejudice or affect the rights of the Company to make any claims against the Customer.

14. Intellectual Property and Confidentiality

- 14.1 Copyright in the Products, including all drawings, designs and other technical information provided by the Company in connection with a Contract is vested in the Company at all times. Use by the Customer of any such information outside the terms of these Conditions will constitute a breach of these Conditions.
- 14.2 The Customer warrant that all designs, specifications, or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by third party against the Company in respect of any such infringement.
- 14.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawing or Products which the Company has created for the Customer.
- 14.3.1 Each party shall keep confidential and make no disclosure of the existence and contents of any Confidential Information; obtained from the other party under the Contract or in the course of negotiations in respect of a Contract.

15. Disputes

- 15.1 *Negotiation:* If a dispute arises (**Dispute**) between the parties in relation to the supply of Products then the parties will endeavor to settle the Dispute by way of good faith negotiation. It is further agreed that if any account is in dispute, the undisputed portion of the accounts shall be payable in accordance with the normal terms of payment as provided in clause 5. If the parties are unable to resolve the dispute within five Working Days, the Dispute shall be resolved in accordance with clause 15.2
- 15.2 *Mediation:* In the event that the Dispute is not resolved by negotiation the parties will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed upon in writing by them or (if they are unable to agree on a mediator within five Business Days

after the submission to mediation) by a mediator nominated (on application by any party to the Dispute) by the President for the time being of the New Zealand Law Society.

- 15.3 *Legal Proceedings:* No party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any Dispute unless that party has complied with this clause 15.

16. Miscellaneous

- 16.1 If any part of these Conditions is held to be unenforceable, the part concerned will be deleted or modified to the minimum possible extent necessary the remainder of the Conditions enforceable will remain in force.
- 16.2 No delay or failure by the Company to exercise its rights under a contract operates as a waiver of those rights.
- 16.3 The Customer may not assign or transfer any of its rights or obligations under or in connection with any Contract to any third party without the prior written consent of the Company
- 16.4 The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person. Notwithstanding this, The Company shall remain liable to the Customer for the supply and/or performance of the Products and of the other obligations of the Company under this agreement
- 16.5 Variations to any Contracts must be agreed in writing between the parties. The Company may amend the conditions from time to time by giving the Customer notice in writing of such amendments.
- 16.6 The Customer agrees that the Company may obtain information about the Customer from any source including credit assessment and debt collecting and the Customer consents to any person providing the Company with such information.
- 16.7 The Company shall not be liable for any loss or damage caused by its failure or delay to supply the Products due to anything outside the reasonable control of the Company, including but not limited to acts or omissions of the Customer, breakdown of plant or machinery, shortage of labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, earthquakes, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention or control, transport delays, accidents or embargoes of any kind.



PRODUCTO.

- 16.8 In the event that the Customer gives information relating to measurements and quantities of the Products required to complete the services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Company place an order based on these measurements and quantities. The Company accepts no responsibility for any loss, damages, or cost however resulting from the Customer's failure to comply with this clause.
- 16.9 The Customer will pay all costs and expenses (including legal fees) incurred by the Company in exercising any of its rights under any Contract.
- 16.10 Any notice given by one party to the other will be deemed to have been delivered 48 hours after posting to the recipient's registered office or last known address and immediately, if forwarded by facsimile or email.
- 16.11 All Contracts made between the Company and the Customer will be governed by and construed in accordance with the laws of New Zealand and the Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand Court.