

WEST COAST DISTRIBUTION LTD

GENERAL TERMS AND CONDITIONS OF SALE

1. GENERAL TERMS AND CONDITIONS OF SALE

1.1 The General Terms and Conditions of Sale set out below shall govern the relationship with buyers notwithstanding any and all stipulations to the contrary contained in any and all documents issued by the buyers, except if otherwise agreed in writing.

1.2 The written offers of sale remain in force one month from their date of despatch. After such time they will be null and void.

1.3 The following definitions shall apply in this agreement:

THE BUYER means the person, firm or company whose order for goods is accepted by the Seller
THE SELLER means West Coast Distribution Ltd, company number 05300792
THE GOODS means the goods and products which form the subject matter of this agreement.

2. PURCHASE ORDER

2.1 All and any orders shall be made by the Buyer using only the Seller's standard Purchase Order Form. The Seller nevertheless, at its sole discretion, reserves the right to accept, and to act upon, orders placed by other means with the intent and to the effect that the Buyer is thereby bound by the terms of such accepted order and, further, is bound by and is deemed to have prior knowledge of these General Terms and Conditions of Sale if the Buyer shall at any time previously have placed an order with the Seller using the Seller's Standard Purchase Order Form.

2.2 In the event of request for modification to or cancellation in part or in whole of a purchase order issued by the Buyer, such request must be sent to the Seller in writing no later than seven days after the date of taking of the order. Orders modified or cancelled after the seven day period shall be subject to a cancellation and restocking charge of 30% plus vat, where applicable, of the relevant goods.

2.3 All goods ordered are intended exclusively for the Buyer. In order to maintain a common identity and preserve the integrity and reputation associated with the brands, the onward sale of the Goods to other stores and other locations of sale without prior written agreement of the Seller is not authorised. The Seller reserves the right to refuse to fulfil any order or terminate the agreement by notice forthwith, where the Seller knows or has reason to believe that the Buyer has: (a) sold or intends to sell the Goods to other stores or sales outlets, (b) assigned (or purported to assign) this agreement to a third party.

2.4 On receipt of a purchase order, the Seller shall, if it considers necessary, conduct a credit check on the Buyer. The Seller reserves the right to cancel the order if the credit check reveals the Buyer is unable or is unlikely to be able to pay for the Goods.

2.5 The Seller reserves the right in any event and with no requirement to state reason, to decline acceptance of any order.

3. DELIVERY

3.1 Delivery means the handover of the Goods to the Buyer at the place of delivery shown on the purchase order or as otherwise expressly agreed.

3.2 Any damages or shortfalls in the order must be notified to the Seller in writing within 24 hours of receipt of the delivery.

3.3 Unless whole order shipment is specifically requested by the Buyer, all ordered items will be despatched as and when they become available in the warehouse.

4. PRICING

4.1 All prices in the pricelist are shown exclusive of taxes, duties, and carriage charges.

4.2 Sales Tax, where applicable, shall be charged at the prevailing rate at date of invoice.

4.3 Seller's prices may be changed at any time without prior notice.

4.4 The Buyer shall not be entitled to discounts other than those confirmed in writing by the Seller.

4.5 The Buyer is responsible for setting the price of the Goods. The Seller's recommended prices are for guidance only.

5. PAYMENT – RETENTION OF TITLE

5.1 Seller's Invoices are payable either (a) by cash, cheque or bank transfer prior to shipment of the Goods and no later than 10 days from despatch of the Proforma invoices or (b) where credit terms have been agreed within 30 days of receipt of the Goods.

5.2 The Seller reserves the right to modify terms and conditions of payment granted to a Buyer and in the event of the Buyer not accepting any change, the Seller reserves the right to cancel any and all undelivered orders without incurring any liability to the Buyer.

5.3 Title to the Goods shall remain with the Seller and shall not pass to the Buyer until payment in full of all the amounts owed to the Seller by the Buyer (including amounts due but not yet payable).

5.4 Notwithstanding that title is retained by the Seller under clause 5.3, risk in the Goods shall pass to the Buyer upon delivery of the Goods and the Buyer shall insure the Goods to their replacement value naming the Seller as the loss payee and, upon request, the Buyer shall provide to the Seller a certificate or other evidence of such insurance.

5.5 Until such time as title of the Goods has passed to the Buyer: (i) the Seller shall have absolute authority to retake possession of the Goods and/or sell, dispose of or otherwise deal with the Goods, or any part of them, at any time; (ii) for the purposes specified in 5.5 (i) the Seller or any of its agents or authorised representatives shall be entitled to enter upon any premises where the Goods are stored, displayed or kept or reasonably believed by the Seller to be stored, displayed or kept; (iii) the Seller shall be entitled to seek a court injunction to prevent the Buyer from selling, transferring, disposing of or otherwise dealing with the Goods; and (iv) the Buyer shall keep the Goods separate from other products in its possession and shall not remove any identifying marks placed on the Goods by the Seller or incorporate such marks in any other product.

5.6 (i) Without prejudice to clause 5.3, the Buyer shall be entitled to sell the Goods in the ordinary course of its business as principal. Such right of sale shall terminate automatically if the Buyer goes into liquidation, administration, receivership, administrative receivership, company or individual voluntary arrangement or bankruptcy, or the Buyer or any creditor of the Buyer (in relation to the Buyer) applies for, convenes a meeting for the purpose of commencing or takes any steps in order to initiate, any such procedure. If such circumstances arise, the Buyer shall notify the Seller forthwith. (ii) In the event that the right of sale is terminated under clause 5.6 (i) then, notwithstanding such termination, the Seller shall be entitled at its sole discretion to authorise the Buyer in writing to sell or otherwise deal with Goods on its behalf and as its fiduciary agent, in which case the proceeds of such a sale of dealing shall be held by the Buyer in a separate account on trust for the Seller. For the avoidance of doubt, nothing in this clause 5.6 shall prejudice the right of the Seller to repossess the Goods under 5.5.

5.7 The Seller shall be entitled to sue the Buyer for the price of the Goods once payment falls due notwithstanding that title to the Goods remains in the Seller pursuant to the agreement.

5.8 In the event of any seizure of the Goods, the Buyer shall inform the Seller thereof forthwith so as to enable it to oppose such seizure within the time limits set.

5.9 If the Buyer is a tenant of the premises in which the Goods are stored, the Buyer shall inform the landlord in writing with acknowledgement of receipt that the Goods are encumbered by a retention of title clause.

5.10 In the event that the Seller accepts in writing payment by instalments, failure to pay one such agreed instalment shall cause the whole amount to be immediately payable.

5.11 Furthermore, in the event of failure to pay under the terms of clause 5.1 or 5.10 here above, the Seller shall be empowered to either: (a) foreclose the sale eight days after official warning sent to the Buyer by registered letter, if it remain without effect, such foreclosure to be without prejudice to any and all damages and interest the Seller may be entitled to claim. The Goods shall in such event be returned to the Seller by the Buyer forthwith in default of which the Seller may collect the Goods at the Buyer's expense. The Goods shall be identified by both parties and acknowledgement of receipt shall be given to the Buyer, who shall be required to pay a flat amount determined by the Seller to cover its expenses and foreseeable losses, even in the event that it were possible to resell the Goods. Such amount shall amount to no less than 30% of the price exclusive of taxes of the Goods as shown in the Seller's pricelist in force on the date of recovery of the Goods; or (b) Grant the Buyer additional time to pay. In this case the Buyer shall pay interest

for late payment in addition to the price of the Goods. The interest rate shall be 8% above Bank of England Reference rate in accordance with the Late Payment of Commercial Debt Act 1998.

5.12 If the Seller is required to approach an agent either to obtain settlement from the Buyer of the price charged for the Goods or to take legal action to establish the Seller's claim, there shall be due to the seller a flat rate indemnity of 18% if the amount outstanding excluding taxes without prejudice to any other entitlement of the Seller to seek and recover legal costs and expenses incurred by legal action. The Seller shall be entitled to assign all of the down payments made by the Buyer to the discharge in whole or in part of this flat rate indemnity.

5.13 It is nevertheless agreed that that the down payments received from the Buyer shall on a priority basis be assigned to the payment for such Goods as have been resold by the Buyer and on which, consequently, no claim may be made in respect of clause 5.3 of the present General Terms and Conditions of Sale.

5.14 In the event of insolvency, administration under court appointed receiver, or liquidation of the Buyer's assets, and in the event of any other similar or equivalent proceedings: if the Goods have not yet been delivered, foreclosure of sale shall occur with the full force of the law without prior official warning and without prejudice to any and all damage and interest to which the Seller may be entitled to lay claim

5.15 Any display stands provided by the Seller are designed for the exclusive use of the Goods ordered from the Seller. When commercial relationships terminate, such stands shall be returned to the Seller as a matter of obligation forthwith in default of which the Seller may collect the Goods at the Buyer's expense..

5.16 The Goods are to be displayed in accordance with the Seller's recommended layout, if any.

6. WARRANTY

6.1 The Seller warrants the Buyer against visible defects affecting the Goods provided such defects are notified to the Seller in writing, within 7 days of delivery. In the event of defective goods, returns shall be accepted only for the current season.

6.2 The Buyer shall return Goods to the Seller for inspection after previously obtaining authorisation. In the event that the Buyer were to return Goods to the Seller for any reason whatsoever without said authorisation, the Seller shall refuse to accept the Goods in accordance with clause 7.

6.3 The acceptance of such Goods by the Seller shall not be deemed acknowledgement of the defects alleged by the Buyer.

6.4 The Seller shall subject the Goods to inspection after which the Seller shall determine whether such defect exists.

6.5 In the event of the acknowledgement of said defects and subject to compliance with the above mentioned seven day period in clause 6.1, the warranty shall be limited to the replacement of the Goods and the Seller shall not in any way be held liable for any other prejudice damage or loss howsoever arising suffered by the Buyer.

6.6 The provisions of clauses 6.1 to 6.5 inclusive above shall not stand in the way of the application of the legal warranty against hidden defects. Nevertheless, the warranty against hidden defects shall not be applicable if the goods concerned have suffered deterioration due to abnormal use or use contrary to the instructions for use shown on the Goods or on their labelling, packaging or any other documentation dispatched with the Goods.

6.7 The return of defective Goods to the Seller's warehouse shall be an expense borne by the Buyer even in the event that the Seller acknowledges liability in regard to a visible or hidden defect. The mileage costs for return of the Goods to the Buyer after their repair or replacement shall be borne by the Seller.

6.8 In the event of force majeure such as war, violence, civil disturbance, strike, lockout, fire, explosion, severe weather etc the performance of the Seller's obligations shall be suspended and in the event of definitive impediment to performance, the Seller reserves the right unilaterally to foreclose all sales agreed by it.

6.9 In the event of any such change in the situation of the Buyer as puts the amounts owing to the Seller at risk, including incapacity, winding up of the company, winding up or administration of the company under court appointed receivers, the Seller shall be empowered under law to foreclose any and all agreements made with said Buyer doing so by registered letter without prejudice to any and all damage and interest from the Buyer to which the Seller may be entitled to lay claim.

6.10 Save as set out in this clause 6 all conditions, warranties, terms and undertakings express or implied statutory or otherwise in respect of the Goods are hereby excluded to the extent permitted by law.

7. RETURNS

7.1 Any Goods returned shall be covered by an authorisation voucher of return of Goods issued by the Seller's customer service department showing the reference numbers, quantity, size and colours specified by the Buyer.

7.2 In the event of unauthorised return of Goods, no credit note shall be issued.

7.3 In the event of items missing from the authorised return of Goods, the credit note shall be issued in regard to the sole items received and accepted by the Seller's services.

7.4 Carriage of items returned shall be a liability and expense borne by the Buyer.

7.5 In the event of dispute in regard to return of Goods, the Buyer shall be required to supply the Seller with proof of delivery by the Buyer's carrier.

7.6 Any authorised return shall occur within no more than 7 days of the date of authorisation, as shown on the carrier's voucher.

8. COMPETENT COURT

8.1 The Seller reserves the right to place any and all dispute of whatsoever kind before the English courts.

8.2 The Law applicable shall be the English Law.

8.3 The fact that the Seller expressly at the time of a particular sale declares that it shall not avail itself of the benefit of any one of the provisions of the present General Terms and Conditions of Sale shall not be construed as a failure to avail itself in respect of the sale of the benefit of the other provisions of same Terms and Conditions of Sale nor as a failure to avail itself of the benefit of said provision or of all of the provisions of the present Terms and Conditions of Sale in respect of any and all later sales made with the respective Buyer.