

**Terms and Conditions
of Sale
Hermitage Holdings Limited**

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These terms and conditions of sale (“Terms”), together with our order confirmation, create a legally binding agreement between the Buyer and the Company relating to all sales or supplies of goods. The Company will rely on these Terms in all our dealings with the Buyer and the Terms supersede all previous versions of same intimated to the Buyer and take precedence over any terms stated by the Buyer in its documentation.

WITHOUT LIMITING THE APPLICABILITY OF ALL OF THE TERMS, THE BUYER’S ATTENTION IS DRAWN IN PARTICULAR TO CLAUSES 3.3, 4.8, 4.9, 7.8, 8.

1. Interpretation

1.1 Definitions

Unless expressly stated otherwise in these Terms or in writing issued by the Company, the words and phrases set out below have the following meanings:

Accessories Order: an Order placed for wholesale accessories, including but not limited to items such as, bags, blankets, throws and scarves.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Buyer: the person or firm who purchases the Goods from the Company.

Company: Hermitage Holdings Limited a company incorporated under the Companies Acts in Scotland (company number SC194152) and having its registered office at The Capital Building, 12 - 13 St. Andrew Square, Edinburgh, Scotland EH2 2AF.

Company Premises: has the meaning given in clause 4.2(b).

Contract: the contract between the Company and the Buyer for the sale and purchase or any other supply of the Goods as confirmed by the Order Confirmation, in accordance with these Terms.

Delivery: has the meaning given in clause 4.5.

Delivery Location: has the meaning given in clause 4.2(a).

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order Confirmation.

Order: the Buyer's request for the Goods, including any Accessories Order, as accepted and detailed in the Company’s written confirmation of order document issued by a director or other authorised representative of the Company and “**Order Confirmation**” shall be construed accordingly.

Terms: the terms and conditions set out in this document as varied from time to time under clause 11.4.

Specification: any specification for the Goods that is agreed in writing by the Buyer and the Company as confirmed or referred to in the Order Confirmation.

1.2 Interpretation of these Terms:

- (a) A **person** includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes any permitted assignees.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding such terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 These Terms apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted and the Contract made when the Company issues the Order Confirmation.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document it creates or issues that is inconsistent with these Terms.
- 2.5 Any samples, drawings, photographs, videos, descriptive matter or advertising produced by the Company and any descriptions, images or illustrations contained in the Company's catalogues, look book, line sheet, website or marketing materials ("**Illustrative Materials**") are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. The Illustrative Materials are provided for illustrative purposes only and are not part of the Contract.
- 2.6 Any quotation for the Goods issued by the Company shall not constitute an offer and the Company will only regard it as applicable for a period of 20 Business Days from its date of issue.

3. Goods

- 3.1 Subject to clause 2.5, the Goods are as described or shown in the Company's catalogue, brochure, look book, line sheet, website or marketing materials, as the case may be, subject to any modifications made by any Specification accepted by or referred to in the Order Confirmation.
- 3.2 The Company will use reasonable endeavours to adhere to the details in the Order Confirmation, including but not limited to: the measurements, sizes, capacities, dimensions and weight of the Goods. However, given the nature and variable tolerances of the Goods, the Company reserves the right to accommodate a tolerance of 5% shrinkage or increase, as the case may be, in the Goods.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 3.3 shall survive implementation or termination of the Contract.
- 3.4 The Company reserves the right to amend the Specification if required to comply with any applicable statutory or regulatory requirement, and the Company shall notify the Buyer of any such amendment if material.

4. Delivery

- 4.1 Each delivery of the Goods will be accompanied by a delivery note that shows the date of the Order Confirmation, the contract number, the type and quantity of the Goods, storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Company shall notify the Buyer when the Goods are ready and, as agreed between the parties, either:
- (a) arrange a carrier to deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree in writing ("**Delivery Location**"), but the Company shall not be responsible for the unloading of the Goods at the Delivery Location; or
 - (b) ensure the Goods are packaged for transportation, are accompanied by any necessary documentation, and are made available for collection by the Buyer, or the Buyer's designated carrier, from the location specified by the Company ("**Company Premises**"), but the Company shall not usually be responsible for the loading of the Goods. However, where the parties (including the Buyer's carrier), agree that the Company shall load the

Goods, the Company shall bear no responsibility for any damage to the Goods during loading.

- 4.3 If clause 4.2(b), applies, the Buyer shall collect the Goods within 14 Business Days of the Company notifying the Buyer that the Goods are ready.
- 4.4 The Buyer shall bear the full cost and responsibility for obtaining the relevant export and import clearance, as the case may be.
- 4.5 Delivery occurs on the completion of:
- (a) the Goods being delivered into the custody of the carrier (or first carrier if there are successive carriers), where clause 4.2(a) applies; or
 - (b) the Goods being placed at the disposal of the Buyer at the Company Premises in accordance with clause 4.2(b),
- as the case may be ("**Delivery**").
- 4.6 Any dates quoted for Delivery are approximate only and the time of Delivery is not of the essence. The Company shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Company fails to deliver the Goods, its liability shall be limited to replacing the non-delivered Goods within a reasonable time or issuing a refund or credit for the amount paid by Buyer for the non-delivered Goods.
- 4.8 Where clause 4.2(b) applies, if the Buyer fails to take delivery of the Goods within 14 Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) Delivery of the Goods shall be deemed to have been completed at 9.00am on the fifteenth Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
 - (b) Subject to clause 4.9, the Company shall store the Goods until actual delivery takes place, and charge the Buyer storage fees and for all related costs and expenses (including any insurance premiums).
- 4.9 Where clause 4.2(b) applies, if 30 Business Days after the day on which the Company notified the Buyer that the Goods were ready for Delivery the Buyer has not taken actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods on such terms as the Company in its sole discretion deems acceptable and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the Contract price of the Goods.

- 4.10 Upon Delivery, the Buyer, their agent or consignee shall examine the Goods and the Buyer shall give notice in writing to the Company of any shortage of Goods within 3 days of the date of actual delivery.
- 4.11 Should a shortage of Goods occur, the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, the Company shall, at their discretion, make a pro rata adjustment to the invoice for the Goods or arrange delivery of the outstanding Goods.
- 4.12 The Company may deliver the Goods by instalments, which may be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5. Quality

- 5.1 The Buyer shall be responsible for arranging any testing and inspection of Goods the Buyer requires at the Company's premises before delivery, including the costs of such testing. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent upon inspection and which is made after Delivery, or in respect of any damage during transit unless, in the case of delivery by the Company's carriers, those carriers accept liability for the damage.
- 5.2 The Company warrants that upon Delivery the Goods shall:
- (a) conform in all material respects with their description, any sample supplied to the Buyer, and any applicable Specification in the Order Confirmation;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.3 Subject to clause 5.4, if:
- (a) the Buyer gives notice in writing to the Company within 3 days of the actual delivery of Goods, that some or all of the Goods do not comply with the warranty set out in clause 5.2;
 - (b) the Company is given a reasonable opportunity of examining such Goods; and
 - (c) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4 The Company shall not be liable for any failure of the Goods to comply with the warranty set out in clause 5.2 if:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.3;
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- (d) the Buyer alters or repairs such Goods without the prior written consent of the Company;
- (e) the Buyer cuts, sponges or subjects the Goods to any process subsequent to Delivery;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, improper handling or abnormal storage or working conditions; or
- (g) the Goods differ from their description and any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Terms shall also apply to any repaired or replacement Goods supplied by the Company.

6. Title and risk

6.1 The risk in the Goods shall pass to the Buyer on Delivery.

6.2 Title to the Goods shall not pass to the Buyer until the earlier of:

- (a) the Company receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall only pass at the time of payment of all such payments; and
- (b) the Buyer reselling the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give the Company such information as the Company may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Buyer.

6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that payment:

- (a) it does so as principal and not as the Company's agent; and
- (b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

6.5 At any time before title to the Goods passes to the Buyer, the Company may:

- (a) by notice in writing, terminate the Customer's right under to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order Confirmation, or, if no price is stated there, the price set out in the Company's published price list in force as at the date of Delivery.

7.2 In the case of an Accessories Order, the price of the Goods set out in the Order Confirmation shall include the cost of labelling, bagging and tagging.

7.3 The Company may, by giving notice to the Buyer at any time before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any offer by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

7.4 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

7.5 The Company may invoice the Buyer for the Goods on or at any time after Delivery.

7.6 The Buyer shall pay each invoice submitted by the Company:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence of the Contract.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.8 Buyer's Indemnity: if the Buyer requests that any third party be invoiced for the price due to the Company and if the third party does not pay the Company on or before the due date for payment under these Terms, the Buyer will hold harmless, pay and indemnify the Company in full and on demand the price and all ancillary costs and lost interest incurred by the Company. If at any time requested to do so, the Buyer will on demand execute a discrete letter of indemnity in such form as the Company may require. The Buyer will further, if required by the Company, produce on demand a direct undertaking in such form as the Company may require from the third party undertaking to pay the invoice to the Company on the due date for payment. The Company may suspend its performance of the Contract until the requirements of this clause have been met.

8. Limitation of liability

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) defective products under the Consumer Protection Act 1987.

8.3 Subject to clause 8.2, the Company's total liability to the Buyer shall not exceed the greater of (a) the price of the Goods supplied to the Buyer or (b) the amount, if any, paid to the Company by its insurers in respect of the Buyer's claim.

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of actual or anticipated profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive implementation or termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five Business Days of that party being notified in writing to do so;
- (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Buyer's financial position deteriorates so far as to reasonably justify the Company's opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
- (e) The Buyer or any relevant third party fails on demand to comply with clause 7.8.

- 9.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(e), or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after Delivery of the Goods or termination of the Contract shall remain in full force and effect.

10. Force majeure

With the exception of payment obligations which have fallen due for payment or any outstanding obligations under clause 7.8, neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

11. General

11.1 Assignment and other dealings

- (a) The Company may at any time assign, transfer or subcontract any of its rights or obligations under the Contract without the consent of the Buyer.
- (b) The Buyer may not assign, transfer or subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company.

11.2 Confidentiality

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any

confidential information concerning the Contract, business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by 11.2(b).

- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 **Entire agreement**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4 **Variation**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver**

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

11.7 Notices

- (a) Any notice issued to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to an address provided in writing by the party to be served.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.

11.9 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Scotland.

11.10 Jurisdiction

Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.