

Terms and Conditions

Open Line Products for Ultrafabrics Europe, Ltd



Section 1: General Terms & Definition

- 1.1 "Agreement" shall mean the quote containing the names of the parties, the goods sold and the price charged, along with these Terms & Conditions which accompany it. For the purposes of this Agreement these two documents shall be considered one, and the parties agree that all the terms and conditions contained in each of these documents shall govern and apply to the transaction.
- 1.2 "Buyer," as used in this Agreement, is the person or organisation listed and identified as such on the front page of the accompanying quote.
- 1.3 "Goods" for the purpose of this Agreement shall be those items listed and described in the "Item" column of the accompanying quote.
- 1.4 "Seller" is Ultrafabrics Europe, Ltd. a company with its principal place of business located at 114 The Burrows, East Goscote, Leicestershire, LE7 3XD, United Kingdom.

Section 2: Acceptance

- 2.1 The quote in conjunction with these terms and conditions shall be considered an offer to sell for the price quoted for the Goods. The Quote in conjunction with these Terms & Conditions shall be considered an offer to sell the goods specifically identified and described therein. No additional terms or modifications shall be accepted. Any additional documents sent by Buyer that accompany this Agreement and which contain supplementary terms and/or conditions will be deemed a rejection of Seller's offer and considered a counteroffer, the terms of which Seller shall either accept or deny in whole or in part at its sole discretion.

Section 3: Status of Pre-Contractual Statements

- 3.1 Each of the parties acknowledges and agrees that in entering into the Agreement and the documents referred to in it or annexed to it, it has not relied and does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) of any person (whether party to this agreement or not) other than as expressly set out in the Agreement or those documents.
- 3.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Agreement.
- 3.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 3.4 These terms and conditions shall prevail over all terms contained in Buyer's purchase orders or Seller's acknowledgement.
- 3.5 No modifications to this Agreement shall be binding on Seller unless the modification is in writing and signed by both parties to this Agreement.

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Section 4: General Obligations of the Parties

- 4.1 Seller shall transfer and deliver to Buyer the Goods. Seller shall have the option to deliver the goods in two or more installments as Seller shall elect, but Seller shall give Buyer five (5) days' written notice of any intention to make delivery in installments and of the schedule of deliveries to be made.
- 4.2 Buyer shall promptly forward payment to the Seller in accordance with the terms of this Agreement and accept from Seller all conforming goods.

Section 5: Title & Risk of Loss

- 5.1 Subject to clause 5.2, all goods will be delivered ExWorks Seller's facility (Incoterms ® 2010), where Seller's facility is as set out in the quote.
- 5.2 Unless otherwise stated on the front of the accompanying quote:
 - 5.2.1 title to, and all risk of loss, injury or destruction to the goods, shall be borne by Buyer from the point Seller delivers the goods to the carrier for shipment; and
 - 5.2.2 any loss, injury, or destruction to the Goods during delivery shall not release Buyer from any obligation under this Agreement;
- 5.3 Buyer may, at its own expense, purchase insurance from the shipping carrier selected by Seller which covers the value of the goods should they be damaged or lost in transit. Upon Buyer's request, Seller shall obtain from the carrier and furnish to Buyer the estimated cost to procure said insurance.

Section 6: Payment

- 6.1 Seller is under no obligation to deliver any goods to Buyer until Seller receives full payment for the goods in cleared funds.
- 6.2 Failure to tender payment as required shall constitute a material breach of this Agreement and justify Seller's withholding or stopping delivery of the Goods.
- 6.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). Buyer shall, on receipt of a valid VAT invoice from Seller, pay to Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 If Buyer fails to make any payment due to the Seller under the Agreement by the due date for payment, then Buyer shall pay interest on the overdue amount at the rate of [4]% per annum above Barclays Bank's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Buyer shall pay the interest together with the overdue amount.

- 6.5 Buyer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and Buyer shall not be entitled to assert any credit, set-off or counterclaim against Seller in order to justify withholding payment of any such amount in whole or in part. Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer.
- 6.6 Buyer may request that a credit line be established for its benefit, the terms and approval of which shall be decided at Seller's sole discretion. Buyer agrees to furnish to Seller upon demand any requested financial and credit information pertaining to the Buyer's business enterprise for the establishment and/or continuation of any credit line.

Section 7: Right of Inspection & Acceptance

- 7.1 Buyer may not return goods unless written authorisation is received from Seller. Both parties acknowledge that the Goods are not perishable and are of such kind that they will not decline in value.
- 7.2 Buyer shall have seven (7) business days to inspect the goods commencing from the date of their arrival at Buyer's facility. Any rejection of the goods must be made in writing and received by Seller within said time period.
- 7.3 Such notice of rejection must specify in detail the basis of Buyer's objection and advise of its intention to reject the goods in their present form.
- i. Buyer shall be deemed to have irrevocably accepted the Goods:
- 7.3.2 upon any use of the Goods, including, but not limited to, the cutting of the material, shall be deemed and construed as an acceptance of the goods and as conclusive evidence that the goods are as represented unless Buyer receives written authorisation from Seller before doing so;
 - 7.3.3 after Buyer has had seven (7) days to inspect it after delivery and has not supplied a notice of rejection to Seller; or
 - 7.3.4 if it fails to comply with this clause Section 7:.
- 7.4 Upon Seller's receipt of notification from Buyer of its rejection of Goods, Seller shall:
- 7.4.1 within a reasonable time, but in any case within six (6) weeks, provide instructions regarding their disposal;
 - 7.4.2 have six (6) weeks to cure any objection raised by Buyer due to receipt of defective and/or non-conforming goods before Seller incurs any liability to Buyer.

7.5 If Seller fails to give instructions to Buyer regarding the disposition of rightfully rejected goods within said six (6) week period, Buyer shall have the right to either:

7.5.1 store the goods for the account of Seller; or

7.5.2 return the rejected goods back to the Seller at the expense of Seller.

7.6 Buyer may not return goods unless written authorisation is received from Seller. Both parties acknowledge that the Goods are not perishable and are of such kind that they will not decline in value.

Section 8: Assignment & Delegation

8.1 Seller may, at its sole discretion, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

8.2 Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

Section 9: Nondisclosure

9.1 Each party shall keep in strict confidence all information developed by or communicated to it in the course of or in connection with its performance under this Agreement. Each party agrees that it will not, without the prior express and written consent of the other party, make any oral or written disclosures of any such confidential information, either during or after the term of this Agreement. However, such information may be disclosed to employees of the parties and other authorized persons who may be designated to perform work pursuant to this Agreement.

9.2 All data, drawings, specifications or other materials furnished directly or indirectly, in writing or otherwise, to each other pursuant to this Agreement, along with the intellectual property rights in such materials, shall in no event become the property of the other party and shall be used only in fulfilling the obligations imposed by the Agreement and shall not be duplicated or disclosed to others or used in whole or in part for any other purpose.

Section 10: Intellectual Property

10.1 Seller makes no warranty with respect to the freedom of the goods from claims of infringement by third parties arising from trademark, patent or other property rights in the goods covered.

10.2 Buyer agrees to indemnify and defend Seller and hold Seller harmless from all legal expenses that may be incurred, as well as all damages and costs that may finally be assessed against Seller, in any action for infringement of any third party intellectual property rights, or any claim for violation of any trade secret, for which Seller becomes liable as a consequence of manufacturing the Goods in conformity with specifications and detailed designs furnished by Buyer, or from Buyer's use, sale or distribution of the Goods.

Section 11: Damage to Goods

- 11.1** If there is damage to the goods covered under this Agreement which occurs without fault to either party (including negligence and willful misconduct) and before risk of loss has passed to Buyer, then:
- 11.1.1** if the damage is total, the contract is avoided;
 - 11.1.2** if the damage is partial or the goods have so deteriorated as to no longer conform to the Agreement, Buyer may demand inspection and either:
 - (i) treat the Agreement as avoided; or
 - (ii) accept the goods with due allowance from the quote price for the deterioration or the deficiency in quantity, the sum of which must be mutually agreed between the parties in writing.

Section 12: FORCE MAJEURE

- 12.1** Seller shall not be liable for any delay or non-delivery directly or indirectly resulting from, in whole or in part, any foreign or domestic laws or regulations, embargos, seizure, act of God, civil or military authority, insurrection, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly rendering impossible or impractical production or delivery of goods under this Agreement, lack of the usual means of transportation, fires floods, severe weather, explosions, epidemics, quarantine restrictions, strikes, inability to obtain necessary labour, materials, or manufacturing facilities or other accident, contingency or condition beyond Seller's reasonable control including such delay or non-delivery to Seller by the manufacturer of the goods resulting from any such event, accident, contingency or condition.
- 12.2** If any delivery under this Agreement is suspended or delayed by reason of any one or more of the occurrences or contingencies described above, then any and all deliveries so suspended or delayed shall, at Seller's option, be made after such event or condition has ceased to exist.

Section 13: Warranties

- 13.1** Seller warrants the goods covered under this Agreement shall be free of original defects in materials or workmanship for a period of two (2) years from the date of shipment.
- 13.2** The warranty set out in clause 13.1:
- 13.2.1** does not include any condition or damages:
 - (i) caused by shipping, abuse, accidents, alterations, misuse, neglect, normal wear and tear, or other physical damage, or from failure to exercise due care in the measurement, installation, cleaning or maintenance of the fabric;
 - (ii) for scuffs, scratches, scrapes, tears and abrasive or excessive wear;
 - (iii) due to repair, alteration, or modification of the product by anyone other than Seller, unless such repair, alteration or modification is authorized by Seller in writing.

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- 13.3** If a sample was provided to Buyer prior to its execution of this Agreement, Seller warrants that the goods ordered and delivered shall conform to said sample in respect to colour, texture, and pattern, with the exception of slight variations that typically occur in the materials' production and that are commercially acceptable and in accordance with usage of trade.
- 13.4** Buyer's sole remedy under the warranties set out in this clause Section 13: is to replace the defective goods without charge.
- 13.5** Goods will only be replaced as set out in clause 13.4 on the condition that:
- 13.5.1** Buyer immediately contacts Seller upon the discovery that it has a warranty claim;
 - 13.5.2** Buyer complies with all instructions of Seller in processing its warranty claim, including, but not limited to, providing Seller with all documentation and material it requests within thirty (30) days; and
 - 13.5.3** Seller has inspected the goods in question and determined that such goods are defective.
- 13.6** Buyer's failure to comply with the conditions set out in clause 13.5.1 and 13.5.2 shall be deemed an abandonment of its warranty claim and no future warranty claim shall be available to Buyer with respect to those Goods.
- 13.7** Seller shall not be responsible for the costs associated with the measuring or installing of the replacement product.
- 13.8** Except as set out in this clause Section 13: all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

Section 14: Customer Insolvency

- 14.1** If Buyer becomes subject to any of the events listed in clause 14.2, or the Seller reasonably believes that Buyer is about to become subject to any of them and notifies Buyer accordingly, then, without limiting any other right or remedy available to Seller, Seller may cancel or suspend all further deliveries under this Agreement or under any other contract between Buyer and Seller without incurring any liability to Buyer, and all outstanding sums in respect of Goods delivered to Buyer shall become immediately due.
- 14.2** For the purposes of section 14.1, the relevant events in relation to Buyer are:
- 14.2.1** Buyer ceases to pay its debts or suspends payments generally, or becomes unable or admits its inability to pay its debts as they fall due, or the value of its assets is or becomes less than its liabilities (taking into account contingent and prospective liabilities), or it becomes otherwise insolvent;
 - 14.2.2** a moratorium or suspension of payments is declared or instituted or ordered, or a resolution is passed in respect of any indebtedness of Buyer, or Buyer is otherwise afforded protection from its creditors generally;

- 14.2.3 Buyer passes a resolution for voluntary winding up or a court of competent jurisdiction makes an order that Buyer be wound up (except for the purposes of bonafide reconstruction while solvent);
- 14.2.4 save in respect of a solvent reorganization, a liquidator, receiver, administrative receiver, administrator, examiner, trustee, supervisor, compulsory or interim manager is appointed over Buyer or any of its assets; or
- 14.2.5 any similar or analogous event in any jurisdiction.

Section 15: Limitation of Liability

- 15.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 15.1.1 any breach of the Agreement; and
 - 15.1.2 any representation, misrepresentation (whether innocent or negligent) statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.
- 15.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.
- 15.3 Nothing in these conditions excludes or limits the liability of the Seller for:
 - 15.3.1 death or personal injury caused by the Seller's negligence; or
 - 15.3.2 fraud or fraudulent misrepresentation.
- 15.4 Subject to condition 14.2 and condition 14.3:
 - 15.4.1 the Seller shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or

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- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) the cost of substitute equipment; or
- (x) any claims by third parties; or
- (xi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

15.4.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the lesser of the difference between the quote price and the market price and the price payable for the Goods.

Section 16: Limitation Period

- 16.1** To the extent permitted by law, no action, regardless of form, arising out of the transactions under this Agreement may be brought by Buyer more than two (2) years after the cause of action has accrued.
- 16.2** Should Buyer default in any provision of this Agreement, including any extensions of or amendments mutually entered into between the parties, Seller shall have the right to declare the unpaid balance of the purchase price immediately due and owing.

Section 17: Termination

- 17.1** Except in case of an actual breach of an obligation or duty under this Agreement, or as otherwise provided under this Agreement, neither party shall have the power to terminate this Agreement unilaterally; both parties must act together to terminate this Agreement and termination may be accomplished only in writing and signed by both parties.

Section 18: Liability

- 18.1** Buyer shall indemnify and keep indemnified Seller, its subsidiaries and affiliates and their respective officers, directors, employees and agents ("Indemnities") from and against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses), awarded against or incurred by Indemnities in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim arising out of the use, storage, sale, processing or other disposition the goods covered by this Agreement after their delivery to Buyer. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of the Seller.

Section 19: Severability

- 19.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

Section 20: Anti-corruption Policy

- 20.1 Seller has adopted an anti-corruption policy whereby neither Seller nor any of Seller's officers, employees, agents, representatives or other persons acting on Seller's behalf is permitted to offer or authorize the making of or receive directly or indirectly any payment, gift, promise, entertainment or other advantage that would violate any anti-bribery law, rule, regulation or good business practice, the details of which policy may be found on Seller's website ("Seller's Compliance Policy").
- 20.2 Buyer agrees to comply with and observe Seller's Compliance Policy in all of Buyer's dealings with Seller and Seller's officers, employees, agents, representatives and other persons acting on Seller's behalf, and to report promptly to Seller's senior management any known or suspected violation of Seller's Compliance Policy.

Section 21: Governing Law & Jurisdiction

- 21.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 21.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Section 22: Headings

- 22.1 Headings used in this Agreement are for convenience only and shall not effect the interpretation of the Agreement.