

# Karpelle Ltd

## Terms and Conditions of Sale

### 1. DEFINITIONS

In these terms and conditions:

**1.1** “The Company” means Karpelle Limited registered in England and Wales with company number 01983060.

**1.2** “The Customer” means any person, firm, company or other legal entity which places an order, or buys any Products from the Company and includes the employees, servants, agents, principals (whether disclosed or undisclosed) or sub-contractors of any such person, firm, company or other legal entity.

**1.3** “Products” means any garments or materials agreed in the Contract to be supplied by the Company to the Customer.

**1.4** “Contract” means a contract between the Company and the Customer for the sale and purchase of the Products, incorporating these Terms and Conditions.

**1.5** “Statutory Interest” means statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended & supplemented by the Late Payment of Commercial Debts Regulations 2002.

**1.6** “Terms and Conditions” means these terms and conditions of sale.

**1.7** “Late Payment Compensation Fee” is detailed in Condition 5.4.

### 2. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions shall be incorporated into the Contract and shall apply in place of and prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by trade, custom or practice or course of dealing. Other purported terms and conditions which the Customer seeks to impose or incorporate are expressly rejected by the Company.

### 3. ORDERS AND CONTRACTS

**3.1** By placing an order with the Company, the Customer is offering to purchase the Products on the basis of these Terms and Conditions. The Contract shall be formed when the Company acknowledges acceptance of the Customer’s order or delivers the Products to the Customer whichever occurs earlier.

**3.2** The Customer is responsible for ensuring that the terms of any order are complete and accurate.

**3.3** No pricing made available to the Customer in any way shall constitute an offer and the Company may amend its prices at any time. Prices are quoted exclusive of VAT which shall be charged if applicable.

**3.4** The price for the Products shall be the price set out in the relevant order and the price for the Products shall be inclusive of all costs and charges of packaging, insurance and transport of the Products, unless otherwise agreed in the relevant order.

**3.5** The Contract is subject to availability of stock and the Company reserves the right to vary or alter the specification of Products without notice unless otherwise agreed in writing with the Customer.

**3.6** The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Company which is not set out in the Contract.

#### **4. TITLE & RISK**

**4.1** Subject to clause 4.2, the risk of loss or damage to the Products shall pass to the Customer upon completion of the delivery to the Customer's premises, in accordance with Condition 6.3 (delivery).

**4.2** The Company shall not be responsible for any loss or damage to the Products sustained whilst on Customer's premises, but before completion of the delivery or signature of the delivery note, if such loss or damage arises as a consequence of the condition of the Customer's premises or any act, default or omission of the Customer or its representatives.

**4.3** Title in the Products shall not pass to the Customer until the earlier of:

**4.3.1** the Company having received in full (in cash or cleared funds) all sums due to it in respect of the relevant order for the Products; and

**4.3.2** the Customer selling the relevant Products, in which case title to such Products shall pass to the Customer at the time specified in Condition 4.6. **4.4** Notwithstanding Condition 4.3, where any other sums are due to the Company from the Customer other than in respect of the relevant order for the Products at the relevant time, then title in the Products delivered pursuant to the relevant order shall not pass to the Customer until the earlier of:

**4.4.1** the Company having received (in cash or cleared funds) all sums which are or which become due to the Company from the Customer upon any account; and

**4.4.2** the Customer selling the relevant Products, in which case title to such Products shall pass to the Customer at the time specified in Condition 4.6.

**4.5** Until title passes to the Customer, the Customer shall store the Products separately from all other products in such a way that they are clearly identifiable as the property of the Company; maintain the Products in a satisfactory condition, and keep them insured on the Company's behalf for their full price against all risks, and notify the Company immediately if it becomes subject to any of the events listed in Condition 9.2.

**4.6** Subject to Condition 4.7, the Customer may re-sell or use the Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products. However, if the Customer re-sells the Products before that time:

**4.6.1** it does so as principal and not as the Customer's agent; and

**4.6.2** title to the Products shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

**4.7** If before title in the Products passes to the Customer the Customer becomes subject to any of the events listed in Condition 9.2, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may

at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored, in order to recover them.

## **5. PAYMENT TERMS**

**5.1** The Company shall invoice the Customer for the Products upon delivery. Where credit is granted, unless otherwise agreed in writing, all sums payable in respect of garments delivered must be paid without deductions or any set-off within 14 days from the invoice date, unless a longer credit period has been agreed in writing by the Company. Where any discount has been agreed by the Company for early payment, such discount will only apply where payment is made within the agreed credit period.

**5.2** Failure to pay by the due date shall entitle the Company to suspend delivery of all unexecuted or future orders. The time for payment of the price of the Products shall be of the essence.

**5.3** The Company reserves the right at any time in its absolute discretion to demand immediate payment or alter the relevant credit terms of any account whether due or not where there is any change or perceived change in the credit status of the Customer, and to take legal action to recover the relevant debt and costs.

**5.4** If payment is not made in accordance with this Condition, the Company reserves the right to charge Statutory Interest on the overdue balances for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgment or decree against the Customer. In addition each overdue invoice will attract a Late Payment Compensation Fee of £40 by way of a reasonable pre-estimate of the Company's additional administration costs in recovering the payment, but without prejudice to the Company's right to claim and recover from the Customer all of its other costs and expenses (including without limitation legal fees) in recovering the relevant amount due.

**5.5** In the event of any cheques, standing orders or direct debits due from a Customer to the Company being dishonoured, a charge of £45 (or such other sum as the Company may from time to time advise the Customer) will be made on the Customer's account to cover bank and administrative costs.

**5.6** The Company reserves the right in its absolute discretion to refuse to grant credit.

**5.7** The Company may, at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## **6. DELIVERY**

**6.1** Deliveries of Products to the Customer shall be in accordance with the Company's delivery schedule. The Company shall not be liable for any loss or damage whatsoever arising as a result of a delay or failure to deliver Products by a particular date or arising as a result of any cause beyond the Company's control, including any force majeure event or the Customer's failure to provide adequate delivery instructions. Time for delivery shall not be of the essence unless otherwise agreed by the Company in writing.

**6.2** Delivery of Products shall be made by the Company to a reasonably accessible location at the Customer's premises, or as otherwise agreed between the parties ("the Delivery Location"). The Customer shall allow the Company access to such premises and shall use best endeavours to ensure that a responsible person shall be at the place of delivery to take delivery of the Products and to sign for them.

**6.3** Delivery of the Products shall be completed on completion of unloading of the Products at the Delivery Location.

**6.4** If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may do one or more of the following:

**6.4.1** charge the Customer the cost of carriage of the refused delivery both to and from the premises of the Customer in addition to the Company's administration charges involved;

**6.4.2** charge the Customer the full cost price of the Products and a sum in respect of its loss of profit provided that the Company shall use its reasonable endeavours to mitigate such loss;

**6.4.3** Store the Products until delivery takes place and charge the Customer for all related costs and expenses (including without limitation additional costs of storage and insurance).

**6.5** The Company may deliver the Products by instalments, which shall be invoiced separately. Any delay in delivery shall not entitle the Customer to cancel any other instalment unless otherwise agreed in writing between the parties.

## **7. ACCEPTANCE AND CLAIMS PROCEDURE**

**7.1** The Customer must check that the quantity and specifications of Products delivered correspond with the Contract before signature of the delivery note.

**7.2** Claims in respect of short deliveries of Products must be made to the Company within 24 hours of the time of the delivery and claims in respect of damaged or defective Products reasonably visible on inspection must be made to the Company within ten days following the time of the delivery which gives rise to the claim. The Customer must retain damaged/defective Products for inspection and collection. Credit, or if appropriate, a refund, will only be granted by the Company if the provisions of this Condition are complied with.

## **8. CANCELLATION OF CONTRACT**

The Contract may not be cancelled by the Customer without the written consent of the Company. The Company reserves the right upon consent being given to levy a cancellation charge of equal to the Company's out of pocket costs and expenses in relation to such Products, including without limitation all raw materials purchased for incorporation into the Products and the Company's development costs of the Products.

## **9. INSOLVENCY OF CUSTOMER**

In the event that:

**9.1** the Customer makes any voluntary arrangement with its creditors, proposes to enter into a company voluntary arrangement, enters into administration or an application is made to appoint an administrator, suspends payment of its debts, or is unable to pay its debts as they fall due, makes application to a Court to suspend enforcement action against it, a petition is filed for the winding up of the Customer or the Customer goes into liquidation (in the event that the Customer is a company) or becomes insolvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Customer is an individual or firm), or if the equivalent occurs under any jurisdiction; or

**9.2** an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Customer; or

**9.3** the Customer suspends any payments hereunder or ceases, or threatens to cease, to carry on business; or

**9.4** the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for, the price for the Products shall become immediately payable notwithstanding any previous agreement to the contrary.

## **10. WARRANTIES**

**10.1** The Company warrants that all Products comply with all relevant UK legislation from time to time in force and that at the time of delivery the Products will conform in all material respects with their description, be free from material defects in design, material and workmanship, and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

## **11. LIMITATION OF THE COMPANY'S LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

**11.1** The Company limits its liability to the maximum extent permitted by law as follows:

**11.1.1** the Company's liability shall be limited at its option to replacing the whole or any part of any Products found to be damaged or otherwise defective or refunding or crediting the purchase price or a pro rata portion of the purchase price of the Products of which the defective Products form part; and

**11.1.2** the Company's liability in respect of death or personal injury caused by the Company's negligence, or for fraud or fraudulent representation or for any breach of the terms implied by Section 12 of the Sale of Goods Act 1979, shall not be limited.

**11.2** Subject to Condition 11.1.2, the Company shall have no liability for any loss or damage suffered by the Customer or any other person, whether in contract, tort (including negligence), breach of statutory duty or otherwise:

**11.2.1** as a consequence of any defect in any Product caused by abnormal conditions of storage, treatment or handling or any negligence or wrongful act on the part of the Customer or its employees or agents;

**11.2.2** for claims for damage reasonably apparent on inspection at the time of delivery or for short delivery unless the provisions of Condition 7 (Acceptance and Claims Procedure) have been complied with;

**11.2.3** for any claim arising on an invoice issued more than 3 months before the date upon which such claim is received by the Company;

**11.2.4** for any loss of profit, loss of sale, loss of goodwill, loss of reputation, loss of customers and any other indirect or consequential losses caused by the Company's negligence or other wrongful act on the Company's part or that of its employees or agents or otherwise;

**11.2.5** for any delay or failure by the Company to perform any of its obligations in these Terms and Conditions

caused by circumstances beyond its reasonable control, including without limitation those circumstances set out in Condition 13 below.

## **12. INTELLECTUAL PROPERTY**

**12.1** To the extent that the Products incorporate any trade marks or designs of the Customer, the Customer grants to the Company a limited, non-exclusive, royalty-free licence to use such trade marks and designs to the extent necessary to produce the Products. In such circumstances, the Customer 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/or 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 such trade marks and/or designs. This Condition 12.1 shall survive termination of the Contract.

**12.2** All other intellectual property rights in the Products shall remain at all times the property of the Company unless expressly agreed otherwise. The Customer shall acquire no rights in the Products except as expressly provided for in these Terms and Conditions.

**12.3** The Customer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Company's websites. The Customer may not use the Company websites or their content for any commercial purpose; including the collection and use of any listings, descriptions, prices, make any derivative or commercially exploitative use of the Company's websites or its content, download or copy account information, use any data mining, robots or similar data gathering and extraction tool without the explicit written consent of the Company. Any unauthorised use terminates any permission's granted.

## **13. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or reduce the volume of Products ordered by the Customer or to cancel the Contract without liability to the Customer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, any failure or delay on the part of the manufacturer of any of the Products to supply the Products to the Company, any strike, lock-out or other industrial action, fire, explosion, flood, closure of motorways or other roads leaving no alternative route, unusually severe weather conditions or unusually severe traffic congestion which could not reasonably have been anticipated leaving no alternative route, loss of power or telecommunications systems or computer failure or breakdown.

## **14. CONFIDENTIALITY**

**14.1** The Customer undertakes that it shall not at any time disclose or make any commercial use of any confidential information concerning the business, affairs, customers, suppliers, pricing or other financial information of the Company to any third party whatsoever.

**14.2** The Customer may disclose the Company's confidential information (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations to

the Company under the Contract, provided that such employees, officers, representatives and advisors to whom the Customer discloses such information comply in full with Condition 14.1 as if it were party to the Contract; and/or (ii) as may be required by law, court order or any government or regulatory authority, provided that the Customer gives as much advance notice of such disclosure to the Company, as possible.

**14.3** The Customer shall not use the Company's confidential information for any purpose other than to perform its obligations under the Contract.

## **15. NON-SOLICITATION**

**15.1** At all times while there is a Contract between the parties and for a period of 12 months following completion of all Contracts between the parties, the Customer undertakes that it will not, either on its own behalf or on behalf of any other person, and whether directly or indirectly:

**15.1.1** offer employment to or initiate or engage in discussions with any person who is or was an officer, employee or consultant of the Company during the period of the relevant Contract or encourage or entice them to end their relationship with the Company (whether they breach their contract to do so or not); and/or

**15.1.2** canvas, solicit or approach any supplier of the Company in competition with the Company except where in the twelve months prior to the relevant Contract being entered into, and during the existence of the relevant Contract:

**15.1.2.1** the customer or supplier did not deal with the Company; or

**15.1.2.2** the goods and services in respect of which the customer or supplier was solicited were not supplied by the Company.

## **16 ADDITIONAL TERMS**

**16.1** Failure or delay on the part of the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

**16.2** If any provision of the Contract is found by any Court, tribunal or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**16.3** The Company, but not the Customer, may assign its rights and obligations under the Contract.

**16.4** Any written communication given pursuant to the Contract must be sent by pre-paid first class post to the registered office of the addressee or such other address as may have been notified in writing and shall be deemed to have been received by the addressee two days after the date of posting.

**16.5** The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

**16.6** The Contract shall be governed by the laws of England and the Company and the Customer agree to submit to the non-exclusive jurisdiction of the English Courts.

**16.7** If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.

**16.8** The signature on behalf of a Customer who is a limited company by any person purporting to sign with the Customer's authority shall bind the Customer and the Customer shall be liable to comply with the terms of the Contract.

**16.9** The Customer shall be liable to comply with the terms of the Contract and pay for any Products which are ordered using its Customer account number.

**16.10** The Company reserves the right to amend these Terms and Conditions from time to time by posting updated versions on its website, however no other variation to a Contract shall be effective unless it is agreed in writing and signed by the Company.