

THOUGHT
Conditions of Sale

1 Definitions

1.1 'Buyer' means the person who buys or agrees to buy the Products from the Seller.

1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by THOUGHT (the Seller).

1.3 'Delivery Date' means the date as agreed between the Seller and Buyer when the Products are to be delivered.

1.4 'Products' means the articles which the Buyer agrees to buy from the Seller.

1.5 'Price' means the price for the Products excluding carriage, packing, insurance and VAT.

1.6 'Seller' means THOUGHT of Westgate House, 149 Roman Way, London UK N7 8XH.

1.7 'Samples' means articles supplied to potential buyers/Buyers to assist potential buyers/Buyers to decide whether or not to purchase Products from the Seller

2 Conditions applicable

2.1 These Conditions shall apply to all contracts for the sale of Products by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 All orders for Products shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Conditions.

2.3 Acceptance of delivery of the Products shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by THOUGHT (the Seller).

3 The Price and payment

3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.

3.2 In some cases payment of a non-refundable deposit of 50% of the Price and VAT shall be due and payable to the Seller before delivery of the Products. The Seller reserves the right to require a larger non-refundable deposit from the Buyer and to require payment in full for the Products before delivery.

3.3 The balance of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment (including time of payment of the deposit) shall be of the essence.

3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the prevailing rate as set out in the Late Payment of Commercial Debts (Interest) Act 1998.

3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:

3.5.1 suspend or cancel deliveries of any articles due to the Buyer; and/or

3.5.2 appropriate any payment made by the Buyer to such of the Products (or Products supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.

4 Samples

4.1 The Samples shall remain the property of the Seller at all times

4.2 The Samples shall be at the potential buyers/Buyers risk as from their delivery to the potential buyers/Buyers.

4.3 The potential buyers/Buyers shall return the Samples to the Seller upon the request of the Seller and in any event within 14 days of the date of delivery of the Samples.

4.4 Any costs incurred in the return of the Samples to the Seller shall be the potential buyers/Buyers responsibility

4.5 The Samples shall be returned to the Seller in the condition that they were delivered to the potential buyers/Buyers and shall be packaged at the potential buyers/Buyers expense to a standard at least as high as the standard of packaging used by the Seller when the Samples were delivered to the potential buyers/Buyers.

4.6 In the event that the Samples are lost destroyed or in any way damaged whilst at the potential buyers/Buyers risk the Seller shall be entitled to the replacement value of the samples from the potential buyers/Buyers.

5 The Products

5.1 This contract of sale is a contract for sale by sample to the specification of the Seller.

5.2 The bulk of the Products will correspond with the sample in quality and design provided that the Seller shall have no liability to the Buyer unless more than 5% of the Products do not so correspond.

5.3 Notwithstanding the foregoing the Seller reserves the right to use raw materials and fabric in the manufacture of the Products that differ from the raw materials and fabric used in the samples.

5.4 The Buyer shall be deemed to have had a reasonable opportunity of comparing the bulk of any consignment of Products with the Samples after 2 days from delivery have expired.

Upon the Buyer having been deemed to have had a reasonable opportunity of comparing the bulk of any consignment with the sample the Buyer will also be deemed to have notice of any defect rendering the Products not in accordance with the contract and to have accepted all the Products so delivered.

5.6 All terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in these conditions of sale) relating to the quality and/or fitness for purpose of the Products or any of the Products are excluded.

5.7 The designs of the Products (including any copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Products shall not infringe the rights of any third party.

5.8 The Seller may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.

6 Delivery

6.1 The Products shall be delivered to the Buyer at the Seller's address. The risk in the Products shall pass to the Buyer upon such delivery taking place.

6.2 Delivery dates specified by the Seller are approximate and any claims arising as a result of late delivery are excluded.

6.3 The Seller is entitled to make delivery of the Products in instalments.

6.4 Time for delivery of the Products shall not be of the essence.

The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Products. The Seller shall promptly upon request supply all documents reasonably required by the Buyer for this purpose. In the case of Products comprising exotic skins delivery outside of the EU may not be possible or may be delayed as additional authorizations are sought.

6.5 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

7 Acceptance of the Products

7.1 No Products delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.

7.2 If the Seller agrees to accept any such Products for return the Buyer shall be liable to pay a handling charge of 10% of the invoice price. Such Products must be returned by the Buyer carriage-paid to the Seller in their original shipping carton.

7.3 Products returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

8 Title and risk

8.1 The Products shall be at the Buyer's risk as from delivery.

8.2 In spite of delivery having been made property in the Products shall not pass from the Seller until:

8.2.1 the Buyer shall have paid the Price plus VAT in full; and

8.2.2 no other sums whatever shall be due from the Buyer to the Seller.

8.3 Until property in the Products passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Products and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Products (at no cost to the Seller) separately from all other Products in its possession and marked in such a way that they are clearly identified as the Seller's property.

8.4 Notwithstanding that the Products (or any of them) remain the property of the Seller the Buyer may sell or use the Products in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Products passes from the Seller the entire proceeds of sale or otherwise of the Products shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Products has not passed from the Seller.

8.6 Until such time as property in the Products passes from the Seller the Buyer shall upon request deliver up such of the Products as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Products are situated and repossess the Products. On the making of such request the rights of the Buyer under clause 8.4 shall cease.

8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Products which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8.8 The Buyer shall insure and keep insured the Products to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Products passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9 Remedies of Buyer

9.1 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

9.2 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Products.

9.3 The Buyer agrees that any claims against the Seller must be brought within 9 months of the alleged breach by the Seller ("the Contractual Limitation Period") and that any claims brought after the expiry of the Contractual Limitation Period shall automatically fail as being out of time.

10 Proper law of contract

10.1 This contract is subject to the law of England and Wales.

10.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served on them by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this contract.