



# TERMS AND CONDITIONS OF CONTRACT

## 1. ARBITRATION AND JURISDICTION:

- (a) Any dispute, claim or controversy arising out of or relating to this Contract (as amended or modified), or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration proceedings in Durham or Wake County, North Carolina, in accordance with the Commercial Rules and Mediation Procedures of the American Arbitration Association. Subject to the time limitations and restrictions noted in Sections 1(e) and 10 below, the party seeking resolution of a dispute (hereinafter called the "Complaining Party") shall provide the other party (hereinafter called the "Responding Party") with written notice describing the dispute and requesting arbitration (hereinafter called an "Arbitration Notice"). The arbitrators sitting in any such controversy shall have no power to alter or modify any express provision of this Contract or render any award which by its terms alters or modifies this Contract. The arbitrators failure to observe this limitation shall constitute grounds for vacating his or her award. The arbitrators shall have no power to direct Seller to deliver or release yarn to Buyer until Buyer has fulfilled all of its obligations to Seller under this Contract, or under any of the agreements ancillary to the claim or controversy subject to the arbitration. Judgment upon the award rendered may be entered by any court having jurisdiction. The parties consent to the jurisdiction of the state or federal courts of the Middle District of North Carolina for all purposes, including, but not limited to, enforcement of the arbitration agreement and proceedings for entry of any judgment on any award, and further consent that any process or notice of motion may be served either personally or be certified mail, return receipt requested.
- (b) The arbitrators may include in their award to the prevailing party (in addition to all other damages) an award of reasonable attorneys' fees and reimbursement for other fees and costs in connection with all proceedings under this Contract.
- (c) Buyer shall not be entitled to join or implead other parties, or assert other disputes with Seller by offset, defense or counterclaim, or by consolidation of proceedings or otherwise with any arbitration proceeding hereunder.
- (d) Any claims arising under this Contract which Buyer may validly assert against any of Seller's agents, affiliates, parents or subsidiaries shall be asserted against Seller in the arbitration proceeding provided for herein, and Buyer waives any right to institute a separate action against any of Seller's agents, affiliates, parents or subsidiaries.
- (e) Buyer expressly acknowledges and agrees that any claim Buyer may have in connection with any dispute or controversy arising out of or relating to this Contract shall be waived by Buyer unless arbitration proceedings are brought by Buyer in accordance with the terms of this Contract within one (1) year after the transaction or occurrence leading to such claim. The failure to institute arbitration proceedings within such one (1) year period shall constitute an absolute bar to the institution of any arbitration or other proceeding by Buyer, and a waiver of such claims by Buyer.
- (f) Seller shall have all rights to exercise provisional remedies that it would have at law or equity, notwithstanding the existence of this Contract.

## 2. PAYMENT:

Payment of all amounts due to Seller as evidenced by invoices under this Contract shall be paid by Buyer in United States dollars and in accordance with the terms set forth in this Contract and on each invoice. No discounts may be taken except as specifically agreed to in writing by the Seller. All amounts past due shall be subject to a delinquency charge of two percent (2%) per annum above the then existing prime rate as published in the Wall Street Journal, but in no event shall said charge exceed the maximum rate allowed by law. Any check or remittance received from or for the account of Buyer may be accepted by Seller or its factor and applied by Seller or its factor against any indebtedness or obligation owing by Buyer (in the sole discretion of Seller), as shown by the books and records of Seller, without prejudice to or the discharge of the remainder of any such indebtedness or obligation, regardless of any legend or notation appearing on, referring to, or accompanying such check or remittance. Any delivery under this Contract that is not in dispute shall be paid for by Buyer, regardless of any controversy relating to other delivered or undelivered merchandise.

## 3. CREDIT, DEFAULT AND REMEDIES:

Seller or its factor may, at any time and from time to time, in its sole discretion, limit, alter or cancel the credit of Buyer and, as a consequence, may declare payment due immediately in cash before delivery of any unfilled portion of this Contract. Buyer represents and warrants to Seller that it is solvent at the time this Contract is entered into and Buyer hereby makes a continuing representation and warranty of its solvency at the time of each tender of delivery hereunder. Upon failure of Buyer to make payment to Seller or Seller's factor when due, or upon failure of Buyer to assert, specify or accept yarn, or in the event of any default, breach or repudiation by Buyer of this or any other contract with Seller, or if Buyer shall become insolvent, or make a general assignment for the benefit of its creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Buyer, or if Buyer breaches any other provision of this Contract, Seller may, at its option, and in its sole discretion, pursue any one (1) or more of the following remedies (in addition to any other remedies allowed by law):

- (a) cancel this and/or any other contracts (or any part thereof) with Buyer (with Buyer remaining liable for damages);
- (b) defer any shipments or other tenders hereunder;
- (c) declare due and payable all outstanding invoices to Buyer under this or any other contract;
- (d) bill at contract price (on a cash before delivery basis if Seller so elects) all or any part of the yarn covered by this or any other contract (Seller to have the right to assort, specify

- and/or complete the manufacture of any of such yarn) and require Buyer to specifically perform the contract by taking in and paying for such yarn. In the case of yarn not yet completed, Seller shall have the additional right to require payment at the contract price sixty (60) days prior to the date scheduled for tender of such yarn;
- (e) sell all or any part of the yarn covered by this or any other contract, at public or private sale. In such event, Buyer shall be responsible for the costs and expenses of such sale, including (i) ten percent (10%) of the contract price to cover Seller's additional overhead, and (ii) any deficiency in the amount owed by Buyer to Seller not recovered by Seller. Seller shall have the right to become the purchaser of such yarn at any such sales;
- (f) obtain damages from Buyer equal to the difference between the market price of yarn covered by this or any other contract as of the date of default, breach or repudiation and the contract price, plus ten percent (10%) of the contract price to cover Seller's cost of reselling and additional overhead; and/or
- (g) sell in the open market at auction or otherwise, any material or supplies purchased for the contract and Buyer shall be liable for any losses of Seller.

Buyer agrees to pay all costs of collection, including such reasonable attorneys' fees as may be allowed by law. Approval of credit for one (1) or more installments (i.e., partial deliveries or tenders thereof) under this Contract shall not be deemed a waiver of the provisions of this Section 3.

## 4. SECURITY INTEREST; BILL AND HOLD:

Buyer hereby grants Seller a continuing security interest in all property in the possession, custody or control of Seller at any time (meaning also for the purpose of this clause, any parent, subsidiary or affiliate company of Seller) held for Buyer, including, without limitation, goods covered by bill and hold invoices (whether paid for or not). Such security interest shall secure Seller for all existing or future obligations of Buyer to Seller, however arising, and may at Seller's option be set off against any and all obligations of Buyer. Buyer agrees that any act on its part, either to sell, hypothecate or otherwise dispose of any interest in any goods described in this or any other contract with Seller, which are in the possession, custody or control of Seller, or any act on Buyer's part to buy or acquire any interest in any goods in the possession, custody or control of Seller described in any contract of Seller's with any third party without, in each case, receiving Seller's advance written release, shall constitute a violation of and interference with Seller's security interest established by this and/or any other such contract. The provisions of this clause shall survive performance by the parties of all other terms of this Contract. Buyer authorizes Seller to release to a public warehouse, with all freight, storage and other charges for account of Buyer, all billed and held goods, and Buyer agrees to indemnify and hold Seller harmless from all claims or causes of action asserted against Seller after such goods have been so released. All goods billed and held for Buyer's account are held at Buyer's risk of loss or damage from theft or casualty, including sprinkler damage. Buyer is responsible for any insurance coverage on goods billed and held under this Contract.

## 5. REMEDIES CUMULATIVE:

All rights and remedies of Seller under this Contract shall be in addition to all other rights and remedies of Seller under any other contract, under the Uniform Commercial Code and other applicable law, all of which rights and remedies shall be nonexclusive and cumulative and may be exercised or asserted as Seller shall elect from time to time, in its sole discretion.

## 6. ASSORTMENTS AND SPECIFICATIONS:

Buyer must specify assortments and complete specifications on or before any identified date(s) in this Contract or, if no such date(s) is identified, then within the time provided in a request for an assortment or specification made by Seller to Buyer and, in any case, in time for Seller to perform.

## 7. DELIVERIES:

- (a) Delivery or tender of delivery of any installment within fifteen (15) days after the date specified for delivery shall be deemed timely performance by Seller. Thereafter, shipment or other tender of delivery prior to receipt of written cancellation by Buyer shall constitute timely performance by Seller.
- (b) The acceptance of shipment by a common carrier or truckman, the allocation of yarn to Buyer, or the mailing of an invoice by Seller to Buyer shall constitute tender of delivery and performance by Seller. Thereupon, title shall pass to Buyer subject to (i) Seller's rights under Article 2 of the Uniform Commercial Code; and (ii) Seller's security interest in property in the possession, custody or control of Seller in accordance with Section 2-401, et. al. of Article 2 of the Uniform Commercial Code. With respect to yarn for which payment is to be made on or before delivery or tender, title passes only upon receipt of full payment. In the instance of yarn held subject to Buyer's instructions, or for which Buyer has failed to supply shipping instructions, or in the case where Seller, pursuant to this Contract, determines that any part of the yarn purchased by Buyer should be held for Buyer's account, Seller may invoice the yarn and Buyer agrees to make payment at the maturity of the invoice so rendered. Yarn invoiced and held at any location, for whatever reason, shall be at Buyer's risk and expense (and Seller may charge storage at prevailing rates).
- (c) All freight, express and delivery charges shall be paid by Buyer without discount.
- (d) Delivery or tender of a quantity which does not vary more than ten percent (10%) of the weight contracted for shall constitute performance by Seller under this Contract and payment shall be made on the actual pounds invoiced.
- (e) Yarn shall be billed at scale weight and moisture content may not exceed those of ASTM's current Standard Table of Commercial Moisture Regains for Textile Fibers, or it may be billed on a standard moisture regain basis as provided in the applicable ASTM standard,

and in either case, including processing lubricants and oils, but net of packaging and wrapping materials.

- (f) Deliveries shall be accepted by Buyer and paid for at contract prices and terms. All samples furnished shall be paid for by Buyer at contract price. Delay in delivering samples or other sample requirements shall not constitute a breach of this Contract by Seller. Any defect in quality or delay in performance by Seller shall not affect the terms of this Contract. Any installment of yarn not in dispute shall be paid for on the due date, as provided in this Contract, without offset, defense or counterclaim and regardless of controversies relating to other yarn. Where Buyer has declared or manifested an intention that it will not accept yarn in accordance with the provisions of this Contract, no tender shall be necessary but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to perform in accordance with this Contract and such notice shall constitute valid tender of delivery and performance by Seller.
- (g) Seller shall not be liable to Buyer if any aspect of performance by Seller under this Contract is delayed or prevented due to casualty, accident, labor disturbance, embargo, lack of shipping facilities, delay or inability to obtain supplies, labor, raw materials or energy through Seller's usual and regular sources, fires, floods, war, governmental requests, requirements or regulations or by Seller's acceptance of government contracts or subcontracts, act of God, or any cause or circumstance whatsoever (whether like or unlike the foregoing) beyond Seller's control. In such event, Seller may, in its discretion: (i) extend Seller's time for performance for a time which is reasonable under all of the circumstances; or (ii) cancel all or any portion of this and any other contracts with Buyer; (iii) apportion Seller's available supply among its customers in any reasonable manner. If embargo or lack of shipping facilities prevents or delays shipment of any yarn ready for shipment, Seller may immediately invoice the yarn, at which time title to the yarn shall pass to Buyer (subject to Seller's rights referred to herein), and Seller shall hold the yarn for the account of Buyer, who shall pay the invoices rendered when due. Buyer shall not be entitled to damages for late delivery or nonperformance unless Buyer actually purchased the same merchandise elsewhere at a higher price (which such higher price shall be determined to be the fair market price at the time of such purchase).

## 8. EXCLUSION OF WARRANTIES:

- (a) BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS CONTRACT. BUYER ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, THAT THE YARN WHICH IS THE SUBJECT OF THIS SALE IS SUITABLE FOR ANY PARTICULAR USE OR PURPOSE. SELLER ASSUMES NO RESPONSIBILITY THAT THE YARN WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH BUYER MAY BE BUYING THE YARN, EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT. THE SUITABILITY OF THE YARN FOR ANY USE IS THE SOLE RESPONSIBILITY OF BUYER, TO BE ASCERTAINED BY BUYER'S SAMPLING AND TESTING. THE WARRANTY OF MERCHANTABILITY IS LIMITED TO YARN SOLD AS FIRST QUALITY. THE SELLER UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE YARN EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO: (i) FASTNESS OF COLOR OR UNIFORMITY OF SHADE FROM LOT TO LOT; (ii) BREAKING STRENGTH; (iii) SHRINKAGE; (iv) YIELD; (v) ABSENCE OF MINOR CONTAMINATION; (vi) PHYSICAL OR CHEMICAL QUALITIES; AND (vii) USUAL OR ORDINARY VARIATION IN THICKNESS, SIZE OR COUNT, OR TPI IN YARN.
- (b) Seller shall not be liable for normal manufacturing defects or for customary variations from specifications. Any yarn made in part or wholly of man-made fibers is sold subject to the inherent imperfections in such man-made fibers, including, without limitation, its potential for pilling or causing pilling.
- (c) Exact matches of color are not guaranteed, nor is percentage or type of sizing, wax and/or lubricant used. Yarn may vary in shade, lubricant, sizing or wax content, and Seller shall not be liable to Buyer for such variations.
- (d) Seller shall not be liable to Buyer for imperfections due to insufficient removal of gums, waxes, yarn sizing materials, tint, lubricant or other stains which can be removed in boil-off, scouring, dyeing or other finishing processes, or for latent defects inherent in the raw materials used.

## 9. BUYER'S TESTING:

It is Buyer's obligation, in advance of purchase and before putting new merges or other lots into production, to determine in each case that the yarn to be purchased by Buyer is satisfactory for Buyer's particular use. To meet Buyer's obligation, sample runs and tests should be made in the dyeing, weaving, knitting, tufting or other processing and finishing of the yarn or fabric made therefrom to the point that Buyer finds that the yarn is satisfactory for all of Buyer's requirements, processes and production.

## 10. CLAIMS:

- (a) All claims of any kind, nature or description arising under this Contract shall be waived by Buyer and Buyer shall be deemed to have accepted the yarn and its right to cancel, reject or claim damages shall expire unless Buyer's written and particularized claim is received by Seller (i) within ten (10) days from the date of tender if the claim relates to weight or excessive moisture or lubricant content, which claim shall be referred to an independent testing laboratory, whose test report shall be made on previously unopened cases or other containers of yarn and which test shall be conclusive; or (ii) within forty-five (45) days from date of tender if the claim relates to count, twist or shade variations or other elements of quality. Where Seller has tendered the yarn and Buyer has left the yarn in Seller's possession, Buyer has the right to test the yarn in a reasonable manner. Notwithstanding the foregoing, in no case will any claim be considered after yarn has been dyed, woven, knitted, tufted or processed in any manner, except that if the Arbitrator makes an express finding in his or her award that the claimed defect was not or could not have been discovered through testing actually conducted by Buyer as required by Section 9 hereof, and that upon discovery, Buyer made written claim to Seller promptly thereafter (such claim will not be barred provided that an arbitration proceeding was commenced within the time required by Clause 1(e)).

- (b) Within thirty (30) days after receipt of written notice of claim for defects in yarn, Buyer shall make the yarn available for inspection by Seller at a point in the continental United States designated by Seller, and without cost to Seller. Failure to do so constitutes acceptance and waiver of all claims for defect. Seller may, in its discretion, examine and accept such yarn for return or make allowances agreeable to both parties. If the yarn is accepted for return, Seller, at its option, may replace the yarn within a reasonable time in full satisfaction of all claims of Buyer.
- (c) The limit of Seller's liability for defective yarn shall be the difference, if any, in value on the contract date for performance between the yarn specified and the yarn actually tendered or delivered. The limit of liability of Seller for late or nonperformance shall be the difference, if any, between the contract price and the fair market price on the contract date for performance of the yarn in question. In no event shall Buyer be entitled to claim or receive any consequential, indirect, special and/or punitive damages of any nature for defective goods or late or nonperformance or otherwise, and in no instance may damages include loss of profit on contemplated use or profit of any description.
- (d) Notwithstanding any contrary provision in any contract, purchase order, invoice or other document entered into by and between Seller and Buyer, Seller, including its agents, representatives or otherwise, shall not and does not accept, assume or undertake any responsibility or liability to indemnify, defend, save or hold harmless any other person, firm or party from or against any loss, damage or injury. Buyer agrees to save Seller harmless and indemnify it against any claims of third persons for injuries or damages resulting in whole or in part from the manufacture or sale of the product made from the goods covered by this Contract.

## 11. BEAMS, WARPS, ETC.:

All spools, bobbins, tubes, section beams, loom beams, beam racks, beam cases and other special shipping units (the "Shipping Units") owned by Seller shall remain Seller's property and shall be included in the applicable invoice at theoretical weight. Seller guarantees actual weight will be within two percent (2%) of theoretical weight. Buyer shall be responsible for Buyer's losses or damages in connection with the Shipping Units, and within forty-five (45) days from the date of shipment, shall reship the Shipping Units in good condition to Seller, freight prepaid. For any Shipping Units damaged or not reshipped within said time, Buyer shall pay Seller the cost of replacement.

## 12. PRICES:

Prices for this Contract are based, among other things, upon costs to Seller (as of the date of this Contract), from Seller's customary source of raw materials and energy. Prices on any unfilled portion of this Contract are subject to increase to the extent of added costs to Seller for raw materials, energy or unanticipated governmental action or legislation, etc. The amount of any such increase as computed by Seller shall be binding upon Buyer except for clerical or mathematical errors.

## 13. PATENTS:

Seller, at its option, may cancel this or other contracts with Buyer for the sale of any products, the manufacture, sale or use of which, in Seller's opinion, infringes any patent under which Seller is not licensed. Buyer agrees to hold Seller harmless against all damages and expenses arising from claims from infringement of patent rights on materials specifically produced at Buyer's request and against all damages or expenses arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content or other labeling used by Seller at Buyer's instructions.

## 14. TECHNICAL ADVICE:

Seller may, in its sole discretion, and upon Buyer's request from time to time, furnish technical advice, without charge to Buyer, with respect to the yarns sold hereunder. Buyer expressly acknowledges and agrees, however, that Seller is under no obligation to furnish such technical advice and Buyer further acknowledges and agrees that such advice is given by Seller and accepted by Buyer at Buyer's sole risk. Under no circumstances shall Seller be responsible or liable to Buyer, for the advice or assistance given or the results thereof.

## 15. NOTICES:

All communications provided for hereunder shall be in writing, and if to Seller, mailed or delivered to Seller at the address stated on the face hereof, or to such other address as Seller may designate from time to time, or if to Buyer, mailed or delivered to Buyer at its address designated on the face of this Contract, or at such other address as Buyer may hereafter designate.

## 16. GENERAL PROVISIONS:

This contract shall be governed by the laws of the State of North Carolina. Waiver by Seller of any term, provision, or condition hereof shall not be deemed a waiver of any other term, provision, or condition hereof. This Contract contains all of the terms and conditions of the Contract between Buyer and Seller, and the Contract shall not be modified by Buyer from the terms originally presented to Buyer by Seller except upon the written approval of Seller. If any provision of this Contract or the application thereof shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

## 17. ASSIGNMENT:

No rights of Buyer under, or arising out of, this Contract may be assigned, pledged, hypothecated or transferred, by operation of law or otherwise, without the express, advance written consent of Seller. Any attempted assignments or transfers in violation of this clause shall be void, and of no effect.

## 18. FUTURE TRANSACTIONS:

Except to the extent a future transaction is governed by an executed contract between the parties hereto, the terms and conditions hereof, including, without limitation, the arbitration provisions, shall govern all further transactions between Seller and Buyer.