

# ABIGAIL EATON

## TERMS & CONDITIONS

### 1. Introduction

These are the terms and conditions referred to in your order ('Order') for us to supply you with Fashion Design and Make ('Products and Services').

They describe the terms on which we will sell the goods and or services to you. In particular, we must deliver the correct goods to the right place at the agreed time in good condition, and they explain our legal responsibility to you if we fail to meet these standards.

They also explain that you must pay us the correct price, and when legal ownership of the goods passes from us to you. These issues are important for insurance and risk purposes, and so we have also included a clause to explain the position if goods are damaged or products or services delayed for reasons outside anyone's control (including natural causes).

This introduction is designed to give you an overview of the terms and conditions, but it is not part of the terms and conditions themselves.

### 2. The Contract

2.1 The Order is your offer to buy the goods from us on these Conditions, and you must make sure that the Order (and any required standards or measurements or specification of the Goods that form part of your Order) is correct.

2.2 When we send you a written acceptance, you have a binding contract with us, and these Conditions are part of it.

2.3 The contract is our entire agreement. No previous statements or representations that we have made to you form part of the contract unless they are written into it. This includes samples, drawings, advertising, catalogues and other promotional or descriptive material.

2.4 If we have given you a quotation for the goods, it is only valid for 7 days from its issue date. It is not an offer to sell you the goods.

2.5 If either of us needs to give the other a notice under the contract ('Notice'), the Notice must be given properly to be effective. Clause 9.4 explains how to give a proper Notice.

2.6 We will ensure that the following information is given or made available to you prior to the formation of the Contract between us and you, unless such information is already apparent from the context of the transaction:

2.6.1 The main characteristics of the Goods or Services;

2.6.2 Our identity and contact details;

2.6.3 The total Price for the Goods or Services including taxes or, if the nature of the Goods or Services is such that the Price cannot be calculated in advance, the manner in which it will be calculated;

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2.6.4 Where applicable, all additional delivery charges or, where such charges cannot be calculated in advance, the manner in which they will be calculated;

2.6.5 Where applicable, the arrangements for payment, delivery and the time by which we undertake to deliver the Goods or Services;

2.6.6 Our complaints handling policy;

2.6.7 We shall ensure that you are aware of our legal duty to supply goods that are in conformity with the Contract;

2.6.8 Where applicable, details of after-sales services and commercial guarantees;

2.6.9 Where applicable, the functionality, including appropriate technical protection measures, of digital content; and

2.6.10 Where applicable, any relevant compatibility of digital content with hardware and software that we are aware of or might reasonably be expected to be aware of.

### 3. The Goods

3.1 The goods are described in the specification attached to your Order.

3.2 If the Goods or Services have been manufactured at your request or to any specification that you have supplied, you will pay for all expenses, losses and costs that we suffer from any claim made against us for breach of someone else's intellectual property rights. This applies even after this contract has ended and includes the value of any damages which a court orders us to pay.

3.3 We are allowed to change any of our specifications, or any specification that you have supplied, if this is necessary to comply with any regulations.

### 4. Delivery of the Goods or Services

4.1 We will give you a delivery note with each delivery of goods. It will state the Order date, the Order reference number, the type and quantity of goods, the storage instructions, and the outstanding balance of the Order if we are delivering goods by instalments.

4.2 With some goods, we collect the packaging materials from you at our expense after delivery. In this case, we will explain the package collection arrangements on the delivery note, and you must follow them.

4.3 We will deliver the goods to within three working days after we send you a Notice that they are ready. However, Delivery dates are approximate, and time of delivery is not guaranteed.

Delivery will be completed when the goods are delivered to the delivery address on your Order or the goods have been collected by you.

4.4 If you do not take or accept delivery of the goods within three days of our Notice date, delivery will be assumed to have been completed by us at 9:00 am on the first day after the Notice date. We will then store the goods and charge you for all storage and related costs (including insurance) until delivery actually takes place. If you have still not taken delivery after seven days, we are allowed to sell the goods (or some of

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them), in which case we will pay you any excess of the sale price over the price you owe us (less our storage and selling costs). If the sale price is below the price you owe us, we will charge you for the shortfall.

4.5 If we fail to deliver the goods, our legal responsibility to you will be limited to your costs of obtaining replacements of similar type and quality at the cheapest available price, less the price of the goods. We will not be legally responsible to you for non-delivery if you give us inadequate delivery or other supply instructions.

4.6 We are allowed to deliver the goods in instalments. If we do this, each instalment will make up a separate contract with its own invoice and payment arrangements. If an instalment is delayed, you may not cancel other instalments because of the delay.

4.7 If we refuse to deliver the goods, you may treat the Contract as being at an end and we will reimburse you without undue delay. Alternatively, you may, instead of treating the Contract as being at an end, specify a new delivery time or time period. If we continue to fail to deliver the Goods or Services, you may treat the Contract as being at an end and we will reimburse you without undue delay.

### 5. Promises

5.1 We want you to be satisfied with the quality of the goods or services and so we offer you the following promise for three months from the delivery date:

5.1.1 the goods are the same in all material respects as their description. We have made every reasonable effort to ensure that the Goods conform to illustrations, photographs and descriptions provided in our sales and marketing literature. We don't, however, guarantee that all descriptions, illustrations and/or photographs will be precisely accurate. If we find, or are made aware of, any typographical, clerical or other accidental errors or omissions in any sales and marketing literature, price lists or any other documents we will make every reasonable effort to correct such errors or omissions as soon as is reasonably possible.

5.1.2 the goods are free from significant defects;

5.1.3 the goods are of satisfactory quality;

5.1.4 the goods are suitable for any purpose that we have specified.

5.2 If you discover that some or all of the goods do not meet this promise, you can either reject them within 30 days of their receipt by notice in writing to us, or require us to repair or replace them, or (if we fail to do that) require us to refund you the price of the defective goods. This will only apply, however, if you have done the following:

5.2.1 given us a reasonable opportunity of examining the goods, and

5.2.2 returned the goods to us at our address and cost, if requested.

5.3 Our promise does not apply if:

5.3.1 you continue to use the goods after you have given us Notice of a defect;

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5.3.2 the defect has arisen because you have failed to follow any written or oral instructions on the use, storage, installation, or maintenance of the goods;

5.3.3 the defect arises because we followed your instructions, specifications, drawing or design;

5.3.4 you alter or repair the goods without previously getting our written agreement;

5.3.5 the defect is a result of fair wear and tear, negligence, (being your lack of reasonable care), abnormal storage or working conditions, or deliberate damage;

5.3.6 changes have been made to the goods to comply with regulations which apply to them.

5.4 Our promise only applies on the basis of this clause, but it also applies on the same basis to any repaired or replacement goods that we supply.

5.5 You may cancel your Order at any time before we dispatch the goods by contacting us in writing.

5.6 You may also cancel your Order within 14 days of receipt of the goods if it is placed with us electronically. If you have already paid for the goods, the payment will be refunded to you within 14 days of your cancellation (including delivery costs). You agree that this cancellation right does not apply if the goods you have purchased are digital goods and you have authorised us to download those digital goods to you prior to the expiry of such 14 day period, or if the goods have been personalised for your use.

5.7 We may cancel your Order at any time before we dispatch the goods in the following circumstances:

5.7.1 The goods are no longer in stock and we are unable to re-stock (if, for example, the goods are discontinued); or

5.7.2 An event outside of our control set out in Clause 8.3 continues for more than 14 days.

5.8 If we cancel your Order under sub-Clause 5.7 and you have already paid for the goods, the payment will be refunded to you within 14 days. If we cancel your Order, the cancellation will be confirmed by us in writing.

### **6. Ownership and Risk**

6.1 The risk of damage to the goods or their loss passes to you on completion of delivery. (Completion of delivery is explained in clauses 4.4 and 4.5.). You should make sure that you insure the goods from this time onwards.

6.2 Ownership of the goods passes when you have paid us for them in full. Until the ownership passes to you, we will still own the goods.

### **7. Price and Payment**

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7.1 The price of the goods or services is stated in our acceptance of your Order. It does not include VAT, packaging, insurance and transport costs for which we will invoice you.

7.2 We are allowed to increase the price, by giving you a Notice of increase up to 14 days before we deliver the goods, but only to take into account any of the following:

7.2.1 things which are beyond our control (examples include tax changes, foreign exchange fluctuations, increases in the costs of labour, manufacturing, and/or materials, and those matters set out in Clause 8.3);

7.2.2 changes in delivery dates, or quantities, types, or specifications of goods that you have asked for;

7.2.3 delay caused by you, or your supplying us with inadequate or inaccurate instructions.

7.3 You must pay our invoice in full within seven days of our invoice date. You guarantee this time of payment. If you fail to pay on time, we may charge you interest at 2.4% per year above the Bank of England's base rate from time to time from the due date until payment of what you owe us, whether that happens before or after any court judgment on the debt that you owe. The interest will be earned daily and you must pay it all with the overdue amount.

7.4 You are not allowed to hold back any payment due to us as a set-off or credit or counterclaim against some other amount that you think we owe you unless the law allows it. However, we may set off any amount you owe us against any amount we owe you.

7.5 We have made every reasonable effort to ensure that our Prices are correct. Prices will be checked when we process your Order. If the actual Price of the Goods is lower than that stated in your Order, you will be charged the lower Price (unless the lower price was an obvious mistake that you could have reasonably recognised). If the actual Price of the Goods is higher than that stated in your Order, we will ask you how you wish to proceed.

7.6 All Prices include VAT. If the rate of VAT changes between the date of your Order and the date of your payment, we will adjust the rate of VAT that you must pay. Changes in VAT will not affect any Prices where we have already received payment in full from you.

7.7 Our Prices exclude the cost of delivery. Delivery costs will be added on to the final sum due.

7.8 All payments for Goods must be made in advance before we can dispatch the Goods to you.

7.9 We accept the following methods of payment: Credit and debit card payments as well as PayPal

7.10 Credit and/or debit cards will not be charged until we dispatch the Goods to you.

### **8.Limitations on our Legal Responsibilities**

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8.1 We will not be legally responsible to you for any loss of profit or any loss which you allege arises as a consequence from our contract with you, and our total legal responsibility to you under the contract will not exceed the price of the goods.

8.2 These Conditions do not limit our legal responsibility for death, personal injury caused by our unreasonable carelessness (known as negligence) or that of our employees, agents or sub- contractors , fraud, defective products under the piece of legislation known as the Consumer Protection Act 1987, breach of the requirements that our goods be of satisfactory quality, fit for purpose, match a sample, or match a model seen; or any other matter that the law says we can't exclude (for example under the Consumer Rights Act, 2015).

8.3 Neither of us will be legal responsible to the other for failure or delay in carrying out this contract which is caused by an event beyond our reasonable control, which we could not have foreseen or which was unavoidable. This includes industrial disputes, energy or transport failures, acts of God, war, terrorism, civil unrest (such as riots), explosions, mechanical breakdown, natural disasters, deliberate damage, or being let down by suppliers or sub-contractors.

8.4 We only supply goods for domestic and private use, we make no warranty or representation that the goods are fit for commercial, business or industrial use of any kind (including re-sale).

### 9.Data Protection

9.1 The following definition shall apply this clause 9: Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

9.2 Both of us, in so far as is required agree that we will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to and does not remove or replace, a party's obligations under the Data Protection Legislation.

9.3 For the purposes of the Data Protection Legislation you are the data controller and we are the data processor (where Data Controller and Data Processor have the meanings defined in the Data Protection Legislation).

9.4 Without prejudice to the generality of clause 9.2 you will ensure that you have all necessary appropriate consent and notice in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this agreement.

9.5 Without prejudice to the generality of clause 9.2 we warrant and undertake that we shall, in relation to any Personal Data processed in connection with this agreement:

9.5.1 process the Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union to process Personal Data. Where we rely on the laws of a member of the European Union or European Union law as the basis for processing Personal Data

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we shall notify you of this before performing the processing required by those laws unless those laws prohibit us from doing so.

9.5.2 ensure that we have the appropriate technical and organization measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage of the Personal Data.

9.5.3 ensure that all personnel who have access to and / or process the Personal Data are obliged to keep the Personal Data confidential; and

9.5.4 not to transfer any Personal Data outside of the EEA without your prior written consent and ensuring the following conditions are met:

9.5.4.1 you or we have provided appropriate safeguards in relation to the transfer;

9.5.4.2 the data subject enforceable rights and effective legal remedies;

9.5.4.3 we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

9.5.4.4 we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data.

9.5.5 assist you at your cost in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notification, impact assessments and consultations with supervisory authorities.

9.5.6 notify you without undue delay on becoming aware of a Personal Data breach

9.5.7 at your written request return or delete Personal Data and copies of Personal Data on termination of the agreement unless required by law to retain them.

9.5.8 maintain complete and accurate records and information to demonstration compliance with clause 9.

9.6 You and us agree to indemnify and keep indemnified and defend at their own expense the other against all costs, claims, damages or expenses incurred by the other party for which the other party may become liable due to any failure by the other party or its employees or agents to comply with any of its obligations under this clause 9

### 10. General

10.1 We are allowed to transfer our rights and responsibilities under this contract to someone else, for example by assignment, a legal charge or sub-contracting our rights and obligations under this contract, but you may not do any of these things unless we have previously agreed in writing that you can.

10.2 Nobody other than we and you may rely on any terms of this contract.

10.3 Changes to the contract are only binding if we agree them in writing, sign them and give you a copy.

10.4 If either of us wishes to give a notice to the other under the contract, we must give it in writing and either deliver it or send it by first class post to the other's

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registered office (or another address specifically given to the sender for this purpose). Delivery by post will be regarded as completed by 9:00 am on the second day after posting. This arrangement does not apply to the service of any documents in legal proceedings. Please email Abigail at [enquiries@abigaileaton.com](mailto:enquiries@abigaileaton.com) to obtain the address.

10.5 Delay in exercising a right under the contract will not take away that right or any other right.

10.6 We always welcome feedback from our customers and, whilst we always use all reasonable endeavours to ensure that your experience as a customer of ours is a positive one, we nevertheless want to hear from you if you have any cause for complaint.

10.7 All complaints are handled in accordance with our complaints handling policy and procedure. Complaints may be initiated by contacting [enquiries@abigaileaton.com](mailto:enquiries@abigaileaton.com)

10.8 The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it.

10.9 If any such dispute cannot be settled amicably through ordinary negotiations between the Parties, or either or both is or are unwilling to engage in this process, either Party may propose to the other in writing that structured negotiations be entered into with the assistance of a fully accredited mediator before resorting to litigation.

10.9 If the Parties are unable to agree upon a mediator, or if the mediator agreed upon is unable or unwilling to act and an alternative mediator cannot be agreed, any party may within 14 days of the date of knowledge of either event apply to appoint a mediator.

10.10 Within 14 days of the appointment of the mediator (either by mutual agreement of the Parties in accordance with their mediation procedure), the Parties will meet with the mediator to agree the procedure to be adopted for the mediation, unless otherwise agreed between the parties and the mediator.

10.11 All negotiations connected with the relevant dispute(s) will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

10.12 If the Parties agree on a resolution of the dispute at mediation, the agreement shall be reduced to writing and, once signed by the duly authorised representatives of both Parties, shall be final and binding on them.

10.13 If the Parties fail to resolve the dispute(s) within 60 days (or such longer term as may be agreed between the Parties) of the mediator being appointed, or if either Party withdraws from the mediation procedure, then either Party may exercise any right to seek a remedy through arbitration by an arbitrator to be appointed.

10.14 Any dispute shall not affect the Parties' ongoing obligations under the Agreement.

10.15 The contract operates under by English law and only the courts of England and Wales will have the right to deal with any disputes arising from it.