



SWI

Terms and conditions for contracting with a business

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the school, local authority, academy, firm, company or business which purchases the Goods from the Company.

Company: **Banner** Ltd, a private company limited by shares and registered in England and Wales with number **07464584**, registered office **Kennet Way, Trowbridge, Wiltshire, BA14 8BL**.

Contract: a contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions, for the onward supply or sale of the Goods by the Buyer to third parties.

Delivery Point: the place where delivery of the Goods is to take place under clause 4.

Design: includes badges, logos, emblems, lettering, numbering, stripes, or any other application to the Goods

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them) but which shall primarily be garments.

Parent: shall include the guardian or other person having custody or control of the child in question

written or in writing: includes faxes and email

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. ORDERS

2.1 Subject to any variation under clause 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions

which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract or otherwise.

2.3 These conditions apply to all the Company's sales to a Buyer other than to a private individual (where alternative terms and conditions shall apply). Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company, or person nominated by them. The Buyer 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. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer (which written acknowledgement may be an email from the Company).

2.6 The Buyer shall ensure that the terms of its order and any applicable specification of the Goods are complete and accurate, including of any Design to be applied to the garment or for which the garment is altered or specifically produced.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

2.8 The Buyer shall enter into the Contract for the purchase of the Goods from the Company, for supply by the Buyer to Parents or other end users. The Goods may be delivered by the Company either to the Buyer or direct to the Parent or end user, as agreed between the Buyer and the Company. Deliveries of the Goods by the Company to the Buyer may take place in a number of consignments.

2.9 The Buyer may order further quantities of the Goods any time but the price may be subject to revision from that charged for the initial order.

2.10 Where a Buyer enters into a Contract with the Company:

- a) the Buyer shall complete a stockholding forecast of the quantity of the Goods which the Buyer wishes the Company to hold;

- b) the Buyer shall make the forecast in paragraph (a) in regard to Goods to be made available by the Company to the Buyer as per the dates agreed in the forecast in the stockholding agreement;
- c) the forecast quantity in paragraph (a) and the forecast dates in paragraph (b) are commitments of the Buyer to the Company under the Contract;
- d) the Buyer shall draw down the Goods in batches between the agreed forecast dates in question;
- e) the Company shall invoice the Buyer under clause 8 for each batch of the Goods drawn down;
- f) the Buyer may make additional orders, under clause 2.9, to increase the size of the stockholding of the Goods under paragraph (a); and
- g) the Buyer shall buy from the Company, take delivery of and pay for, any stock of the Goods still held by the Company at the end of the agreed forecast dates in question.

2.11 Where the Company agrees with the Buyer to supply an agreed quantity of Goods under clause 2.10, the Buyer undertakes not to change the Design of the Goods any sooner than the end of the forecast dates in question.

2.12 If the Buyer does change the Design, the Buyer shall buy from the Company, no later than the end of the forecast dates in question, all unsold stock of the Goods still held by the Company, or in transit or on order from the Company's suppliers.

2.13 Where additional quantities of Goods are ordered by the Buyer from Company, the Company will endeavour to supply these as soon as possible but a period of at least 3 weeks should be allowed by the Buyer for the supply of such Goods.

2.14 The cancellation, or "cooling off", period of 7 days under regulations 10 and 11 of the Consumer Protection (Distance Selling) Regulations 2000, as amended, does not apply to a Contract for the purchase of Goods from the Company from its website, as under regulation 13(c) the Goods supplied by the Company to the Buyer are specifically for that Buyer's use.

2.15 If the Buyer has a Design applied to the Goods after the Goods have left the Company's control, then the Company shall refuse to permit the return by the Buyer to the Company of such Goods.

2.16 Where the Company has problems sourcing the Goods from its suppliers, it reserves the right to supply substitute Goods of an equivalent quality.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order from the Buyer.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Buyer shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions or documents:

- a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- b) the Goods shall be deemed to have been delivered; and
- c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer shall collect the Goods from the Delivery Point or the Company may consign them to a carrier for transport to the Buyer or direct to the Parent.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity ordered by the Company, the Buyer shall not be entitled to object to or reject the Goods, or any of them, by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery, unless the Buyer can prove the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 working days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1 Each consignment of the Goods is at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- a) the Goods; and
- b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- a) hold the Goods on a fiduciary basis as the Company's bailee;
- b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods or supply them to a Parent or other end user before ownership has passed to it but solely on the following conditions:

- a) any sale or supply shall be effected in the ordinary course of the Buyer's business at full market value; and
- b) any such sale or supply shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale or supply.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- a) the Buyer has a bankruptcy or other insolvency order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- c) the Buyer encumbers, or in any way charges, any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery, or on the quotation supplied by the Company to the Buyer. In the event of a conflict, the quotation shall prevail.

7.2 The price for the Goods shall be exclusive of any value added tax (VAT) and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition to the price of the Goods.

8. PAYMENT

8.1 Subject to clause 8.4, payment of the price for the Goods by the Buyer to the Company is due in pounds sterling within 30 days of dispatch to the Buyer of the invoice by the Company (unless the invoice specifies another currency, in which case payment shall be made by the Buyer to the Company in that currency).

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 6% above the base lending rate from time to time of Nat West Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 If a payment by the Buyer to the Company is by a cheque which is dishonoured, or the payment is otherwise refused by the Buyer's bank, the Company reserves the right to charge the Buyer an administration charge of £20 plus VAT in regard to each such refused payment, in addition to any sums due under clause 8.6.

9. QUALITY

9.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall, within the meaning of the Sale of Goods Act 1979, be:

- a) of satisfactory quality; and
- b) reasonably fit for purpose.

9.2 The Company shall not be liable for a breach of any of the warranties in clause 9.1 unless:

- a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.3 The Company shall not be liable for a breach of any of the warranties in clause 9.1 if:

- a) the Buyer makes any further use of such Goods after giving such notice;
or
- b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
or
- c) the Buyer alters or repairs such Goods without the written consent of the Company.

9.4 Subject to clause 9.2 and clause 9.3, if any of the Goods do not conform with any of the warranties in clause 9.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.5 If the Company complies with clause 9.4 it shall have no further liability for a breach of any of the warranties in clause 9.1 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1 Subject to clauses 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- a) any breach of these conditions;

- b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

- a) for death or personal injury caused by the Company's negligence; or
- b) under section 2(3), Consumer Protection Act 1987; or
- c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- d) for fraud or fraudulent misrepresentation.

10.4 Subject to clauses 10.2 and 10.3:

- a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. EVENTS OUTSIDE OUR CONTROL

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of

adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. GENERAL

13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or 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.

13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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

13.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

13.7 All notices sent by the Buyer to the Company must be sent to the Company at the above address. The Company may give notice to the Buyer at either the email or postal address which the Buyer provided in the Order. Notice will be deemed received and properly served 24 hours after an email is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an email that the email was sent to the specified email address of the addressee.