

1. INTERPRETATION

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

Company: Fall of Eve Clothing Limited (company registration number 5799293) of PO Box 90, Manchester M24 1LY

Contract: the Order and the Seller's acceptance of the Order.

Designs: any Designs agreed to be bought by the Company from the Seller (including any part or parts of them).

Order: the Company's written instruction to buy the Designs, incorporating these conditions.

Seller: the person, firm or company who accepts the Company's Order.

1.2 A reference to a particular 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 A reference to one gender includes a reference to the other gender.

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

1.5 Words in the singular include the plural and vice versa.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Designs by the Company from the Seller shall be deemed to be an offer by the Company to buy Designs subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Company's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

3. QUALITY AND DEFECTS

3.1 The Designs shall be of the best available Designs, of the best quality and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Seller.

3.2 The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.

3.3 At any time prior to delivery of the Designs to the Company the Company shall have the right to inspect and test the Designs at all times.

3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Designs do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Designs and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.6 If any of the Designs fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. EXCLUSIVITY

4.1 The Seller shall sell the Designs exclusively to the Company for the Company's sole use and hereby transfers ownership the Designs exclusively to the Company for its onward sale, use and production at its absolute discretion.

4.2 The Seller warrants that prior to the sale to the Company;

4.2.1 the Designs belong to the Seller and are the Sellers original works

4.2.2 the Designs are based on the Seller's own creativity and are not based on any other design, logo, motive or otherwise designed by someone else

4.2.3 the Seller has sole rights to dispose of the Designs and that no one else has any interests, ownership or input in the Designs

4.2.4 the Seller has not sold, licensed or permitted, either willing or unwillingly, any other party to use the Designs

4.2.5 the Seller has not allowed, either willing or unwillingly, any other party to use the Designs in any capacity whatsoever

4.2.6 the Seller has not breached any copyright, patent or trade mark by virtue of the De-

signs

4.3 The Seller hereby acknowledges that it is transferring ownership of the Designs to the Company and that the Designs will belong to the Company and will be labelled by the Company under any name which the Company may chose to use from time to time.

5. INDEMNITY

The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- (a) defective workmanship;
- (b) an infringement or alleged infringement of any copyrights, patents, trade marks, intellectual property rights caused by the use, manufacture or supply of the Designs; and
- (c) any claim made against the Company by any party claiming to have any rights, interests or otherwise in the Designs; and
- (d) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Designs as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

6. DELIVERY

The Designs shall be delivered to the Company's by the Seller uploading the Design on to the Company's website as directed by the Company to the Seller from time to time.

7. COMMISSION

7.1 The Seller shall be paid for the Designs by the Company by way of a commission payment agreed between the parties from time to time based on the number of products sold by the Company containing the Designs.

7.2 If any product containing the Design is returned to the Company and is re-sellable then the Seller shall not receive commission upon this product.

7.3 If any product containing the Design is returned to the Company and is not re-sellable due to a manufacturer fault then provided this is through no fault of the Seller then the Seller shall still be entitled to commission on this product.

7.4 Payment of the commission to the Seller shall be made by a monthly payment direct to the Sellers bank account or paypal account as the parties shall decide from time to time.

7.5 The payment of the commission shall directly correlate with the sale of products containing the Designs and thus if no units containing the Designs are sold then no payment shall be due to the Seller.

7.6 No variation in the price nor extra charges shall be accepted by the Company.

8. PAYMENT

Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. THE COMPANY'S PROPERTY

Materials, equipment, tools, dies, moulds, copyright, Designs rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or by the Seller to the Company or not so supplied but used by the Seller specifically in the manufacture of the Designs shall at all times be and remain the exclusive property of the Company.

11. TERMINATION

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued.

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

(a) the Seller commits a material breach of any of the terms and conditions of the Contract; or

(b) any distress, execution or other process is levied upon any of the assets of the Seller; or

(c) the Seller has a bankruptcy 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 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 Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

(d) the Seller ceases or threatens to cease to creating Designs; or

(e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

11.4 Upon termination ownership of the Designs shall vest in the Company.

12. REMEDIES

Without prejudice to any other right or remedy which the Company may have, if any Designs are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Designs have been accepted by the Company:

(a) to rescind the Order;

(b) to reject the Designs (in whole or in part) and return them to the Seller at the risk and cost of the Seller;

(c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Designs or to supply replacement Designs and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Designs but without any liability to the Seller;

(e) to carry out at the Seller's expense any work necessary to make the Designs comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. ASSIGNMENT

13.1 The Seller shall not be entitled to assign the Contract or any part of it.

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

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Designs ordered 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.

15. GENERAL

15.1 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.

15.2 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.

15.3 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.

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

15.5 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.

15.6 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.