

TERMS AND CONDITIONS OF SALE

1. Definitions

"Company" means Merrick & Day Limited having its principal place of business at Redbourne Road, Redbourne, Gainsborough DN21 4TG and includes any of its trading divisions or subsidiaries.

"Customer" means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the sale of Goods or the provision of Services by the Company.

"Contract" means any contract for the sale of Goods and/or the provision of Services between the Company and the Customer.

"Goods" means any curtain making products, tracks, poles or accessories or any other product to be supplied or sold to the Customer by the Company, either independently or as part of the Services.

"Services" means any of the services undertaken by the Company to be provided to the Customer by the Company under the Contract, either independently or as part of the provision of the Goods.

2. These Terms and Conditions to Prevail

2.1 All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and all or any of its Customers.

2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole agreement, between the Company and the Customer and shall not be modified or varied unless specifically accepted by the Company in writing.

2.3 In the event of any conflict between these terms and conditions and any other terms and conditions, whether express or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole from the Contract.

3. Quotations and Acceptance of Order

3.1 A quotation or a price advertised by the Company on its website does not constitute an offer and the Company reserves the right to withdraw or revise a quotation or a website price at any time prior to the Company accepting a Customer's order. A Customer placing an order on the Company's website constitutes an offer which is accepted by the Company only when the Company confirms the Customer's order by electronic mail, letter or telephone.

3.2 No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by the Company and on such terms that the Customer shall indemnify the Company in full against all reasonably incurred loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

3.3 Any bespoke orders cannot be cancelled by the Customer other than at the Company's absolute discretion, confirmed in writing.

3.4 Orders for Services will not be accepted by telephone.

4. Description of Goods / Services

4.1 The description and illustrations of the Goods and Services given to the Customer, or contained in the Company's website, catalogues, brochures, price list and other advertising materials, are intended to present a general idea of the Goods and Services only and shall not form part of the Contract.

4.2 The Company shall not be liable for any variations in any specification or description of the Goods or Services which do not materially affect the use and/or the operation of the Goods or the performance of the Services, or for the substitution of any materials or component parts of a quality equivalent or superior to that originally specified.

4.3 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods or Services unless confirmed in writing by the Company and, in entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

4.4 **The Company's Goods can be used for a vast variety of applications. The Company therefore accepts no liability whatsoever that the Goods purchased by the Customer are suitable for the Customer's application. IT IS THE SOLE RESPONSIBILITY OF THE CUSTOMER TO ENSURE THAT THE GOODS MEET THE CUSTOMER'S REQUIREMENTS AND SPECIFICATIONS.**

5. Prices

5.1 All prices shall be calculated and paid in Sterling unless otherwise stated or agreed in writing.

5.2 All prices are quoted exclusive of VAT or other relevant taxes.

All rates, prices and discounts quoted to the Customer or published in the Company's website, catalogues, lists and other documents are subject to variation at any time prior to acceptance of the Customer's order by the Company. If (1) no rate or price is quoted or published at the time of acceptance of the order by the Company, or if (2) delivery of the Goods or performance of the Services is to take place at the request of the Customer more than 30 days after the acceptance of the order by the Company, the price shall be that ruling at the date of delivery or performance, as determined solely by the Company.

5.3 The Company reserves the right, by giving notice to the Customer at any time before delivery or performance (or during delivery or performance where the Contract is being performed in stages or over a period of time), to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, increases in the prices of the Goods, alterations of duties, significant increase in the costs of labour, materials or other costs of the Services), any change in delivery or performance dates, quantities or specifications for the Goods or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5.4 SERVICES: Where an order turns into a "rush order" after the order has been placed, the Company shall be entitled to add a 20% surcharge to the price originally agreed.

5.5 Unless otherwise agreed in writing by the Company, all prices are given by the Company on an ex works basis with postage and packing charges being in addition to the prices quoted for the Goods and/or Services.

6. Customer's Responsibilities

6.1 GOODS: In relation to the sale of Goods, The CUSTOMER SHALL BE SOLELY RESPONSIBLE to the Company for ensuring the ACCURACY of the terms of any order.

6.2 CURTAIN MAKING SERVICES:

6.2.1 With regard to the provision of Services by the Company, the Customer shall be responsible for ensuring that all order details submitted by the Customer are entirely accurate. Such specifications shall include colour, manufacturer's name and reference number, quantity, pattern repeat, swatch, complete finished measurements and any other relevant details or

specifications. Swatches on order sheets must be right side up, with pattern in the correct top to bottom position. THIS IS VERY IMPORTANT in particular where fabric is used in conjunction with wallpaper and/or upholstery. Swatches of trims, contrast fabrics and passementarie must also be attached to the Customer's order sheets. Where lining is required, the Customer must indicate if a contrast lining is to be used (failing which the Company will always use its standard lining).

6.2.2 Where the Customer has specific, particular requirements these must be accompanied by a drawing or sketch.

The above rules constitute simple common sense rules to ensure that the Services provided by the Company are carried out to the full satisfaction of the Customer. The Company shall therefore not be liable for any loss to the Customer if the Customer fails to meet the above requirements.

6.2.3 CUSTOMER PROVIDING FABRIC: Any fabrics sent to the Company by or on behalf of the Customer must clearly display name and address details on the delivery note. If this is not provided, the Company is unable to check the correctness of the fabric and therefore cannot accept any responsibility in this respect. In addition, if fabrics posted are not correctly labelled (as set out above) the Company accepts no responsibility for loss or delay. Customers must arrange for the fabric companies to roll all fabrics on tubes with no more than one fabric per tube. The Company will attempt to reasonably remove all creases but cannot give any guarantee in this respect.

6.2.4 The Company takes no responsibilities for fabric flaws. If it is not possible to cut round such flaws, the Company will notify the Customer before continuing with the Services. In such circumstances, the Customer is invited to view the fabric and provide further directions. If the Customer fails to do so, the Company cannot accept any further responsibility.

6.2.5 The Company reserves the right to add a surcharge to the make-up costs where fabrics, woven or printed off-grain, require extra time to make and where fabrics and patterns behave unexpectedly.

6.2.6 The Company accepts no responsibility for shrinkage curtains that have been steamed or for curtains which have been exposed to varying humidity causing the fabrics to shrink.

6.2.7 The Company accepts no responsibility for the suitability of the fabric to any treatment. It is the Customer's responsibility to obtain assurances from the Customer's designer that fabrics and trims have been selected which are able to withstand a particular treatment.

6.2.8 The Company cannot be held responsible for the wearability of fabric or trim, not for its present or future behaviour of the treatment/fabric/trim (such as, without limitation, wearing and deterioration, stretching, shrinking, staining, cleanability, fading or damage to person or property).

6.2.9 Where the Company when providing the Services is unable to pattern match printed and/or woven fabrics, the Company will suspend the Service until further instructions can be obtained from the Customer.

6.2.10 The Company reserves the right to make a surcharge where the Company is supplied with many small pieces of fabric from which to make a product.

6.2.11 PLEASE NOTE THAT THE COMPANY WILL NOT START WITH THE SERVICES UNTIL IT IS IN POSSESSION OF ALL COMPONENTS REQUIRED TO COMPLETE THE CUSTOMER'S ORDER. This is the "ready order" date. The Company will not be able to provide a completion date until the ready order date. Any completion date suggestions provided to the Customer by the Company prior to the ready order date are estimates only and do not form part of the Contract.

6.2.12 HOLIDAY CUT OFF DATES: Customer orders and/or fabrics must be received by 01 February for pre-Easter delivery and by 01 October for pre-Christmas delivery.

6.3 It is the Customer's responsibility to give the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms. The Company shall not be liable for any loss howsoever and whatsoever directly or indirectly occurring (including any loss as a result of delay) if such loss is in any way the result of delay or inaccurate information being supplied by the Customer.

6.4 The Customer shall fully indemnify the Company against any losses, costs, claims, damages and expenses awarded against or incurred by the Company, or its employees or agents, as a result of a claim by any third party that any product made from the Goods is defective (save to the extent that any such claim results from the supply by the Company of Goods which do not correspond with their specification for reasons for which the Company is liable) or arising as a result of any negligent act or omission or any deliberate act or instruction of the Customer, or its employees or agents.

7. Payment

7.1 GOODS: Unless the Company confirms otherwise in writing, all Goods and/or Services must be paid for in full at the time of placing an order.

Where credit account facilities have been agreed between the Company and the Customer, payment of any invoice must be made in full within 30 days of the date of that invoice.

7.2 CURTAIN MAKING SERVICES: A non-refundable deposit of 50% of the order value must be paid at the time of placing the order for Services. The balance must be paid within 30 days from the agreed delivery date.

7.3 Any amount due by the Customer to the Company under the Contract shall be payable in full without any compensation, set-off or counterclaim.

7.4 Time of payment shall be of the essence of all Contracts.

7.5 Payment must be made when due, notwithstanding that property in the Goods has not passed to the Customer.

7.6 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest, at the rate of seven per centum per annum above the HSBC Bank plc base rate in force from time to time, on the amount due from the due date for payment until the actual date when payment in full, including interest, is received by the Company, and such interest shall be charged as well after as before any judgement.

7.7 If the Customer fails to make timely payment in accordance herewith then, in addition to any other remedies available to the Company, the Company may either suspend all further deliveries of the Goods or performance of the Services under the Contract until payment is made in full or, at its option, treat the Contract as repudiated by the Customer.

7.8 If the Customer repudiates the Contract for any reason, or is deemed to have repudiated the Contract in accordance with Clause 7.7, then the Company shall, in addition to any other remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.

7.9 The Company, in its sole discretion, may require full or partial payment of the price at any time prior to or after delivery or performance or may require the provision of security for payment by the Customer, in a form acceptable to the Company.

8. Company's Retention of Title and Lien over Goods

This provision shall apply to all and any Goods supplied to the Customer by or on behalf of the Company:-

(a) Legal and beneficial ownership and title in and to the Goods shall not pass from the Company to the Customer until all monies due by the Customer (or any of its associated subsidiary or holding companies) to the Company under any Contract (and this includes the Company's terms and conditions applicable to and forming part of any such Contract) between them, including any interest and charges, have been paid in full. Until such time as property and title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the customer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Company's property and shall allow (without requirement for any further written consent) the Company access to the place where the Goods are stored for the purposes of verifying that this has been done.

(b) Until such time as property and title in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company, or its employees or agents, or, at the Company's sole discretion, forthwith to enter upon any premises or property of the Customer or any third party where the Goods are stored (with the Customer's express consent which is impliedly granted by these Terms and Conditions becoming part of the Contract) and to repossess the Goods.

(c) The Customer shall not be entitled to pledge, or in any way charge by way of security, any of the Goods which remain the property of the Company but, if the Customer does so, all moneys owing by the Customer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.

(d) If:-

(i) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the customer accordingly then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer, and if the Goods have been delivered but not paid for in full, the legal and beneficial title to the Goods remains with the Company and, provided the Goods are identifiable as the Company's, no receiver or liquidator of the Customer shall sell the Goods. In these circumstances, the Customer hereby accepts and consents that the Company shall be entitled to enter any premises or property where the Goods are located and repossess the Goods. Until such time as property and title in the Goods passes to the Customer, the Customer shall not be entitled to in any way annex the Goods to any property or premises (whether his own or that of a third party) without the Company's prior express written consent. The Company retains and reserves the legal and beneficial ownership and title in and to the Goods until the Customer has paid for all and any Goods supplied by the Company to the Customer and has repaid all other monies owed to the Company regardless of how such indebtedness arose. If the Customer transfers property in the Goods to a third party prior to legal and beneficial ownership and title in and to the Goods passing to the Customer (as set out in Clause 8(a) above), the Customer must notify the third party in writing at the time of sale of the fact that the Company retains title in and to the Goods. In addition, the Customer shall repeat such third party notification every time it delivers up Goods to a third party which are subject to the Company's retention of title. Any monies received by the Customer for the Goods are the sole property of the Company until legal and beneficial ownership and title in the Property has passed to the Company and all such monies shall be held by the Customer in a separate, clearly identifiable account designated as containing monies owed by the Company.

(e) If the Customer transfers property in the Goods to a third party by way of a purported sale and following such transfer any of the events outlined in Clause 8(d) above occur (the *Events*), then the Customer hereby acknowledges and agrees that any monies still due for payment by the third party for the Goods at the time of the occurrence of any of the Events are the exclusive property of the Company and the Customer hereby agrees that the Company is entitled to contact and negotiate directly with such third party and to collect such monies directly from the third party. The Customer acknowledges the Company's absolute legal entitlement to such monies and hereby agrees that in such circumstances it automatically (and without the need for any further written confirmation from the Customer) relinquishes all claims in connection with such monies and accepts any direct payments made by a third party to the Company. Any monies already paid to the Customer (or its receiver, administrator, administrative receiver or liquidator) shall be held by the Customer (or its receiver, administrator, administrative receiver or liquidator) as fiduciary agent of the Company in a separate account and shall be paid to the Company immediately on demand.

9. Risk in Goods

9.1 Notwithstanding that property and title in the Goods has not passed under Clause 8 hereof, the risk of loss, damage or destruction to the Goods shall pass to the Customer on delivery or performance.

10. Delivery/Performance

10.1 Unless otherwise specified, delivery and performance dates or periods given by the Company are estimates only and shall not be essential terms of the Contract.

10.2 Delivery of the Goods shall take place:-

(a) in the event that the Company undertakes delivery of the Goods, when the Goods are handed to the carrier engaged for the delivery of the Goods to the Customer. The Company accepts no responsibility for the late or non-delivery of Goods by a carrier company.

(b) in the event that the Customer undertakes to collect the Goods, when the Goods are loaded onto the Customer's carriage, lorry or other transport at the Company's premises.

10.3 Performance of the Services shall be deemed to have taken place when, in the sole opinion of the Company, the work required to be performed by the Company under the Contract has been completed.

10.4 Any receipt obtained by the Company from the Customer, or its employee or agent, acknowledging performance of the Services (or such part thereof as is indicated by the receipt) shall be conclusive evidence of satisfactory performance by the Company.

10.5 The Company may elect to deliver the Goods or perform the Services in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as a whole as repudiated.

10.6 If the Customer fails to take delivery of the Goods or accept performance of the Services (or any part(s) thereof) on the due date, or to give adequate instructions to enable the Goods to be delivered or the Services performed on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the Customer on the date delivery was due or, in the case of Services, that the Customer is in breach of the Contract. Thereafter the Company shall store the Goods at the Customer's expense or attempt to

mitigate the Company's loss in respect of the Services but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure or breach.

11. Goods or Services not conform to Contract / RIGHT TO CANCEL

11.1 The Customer shall be deemed to have examined the Goods upon delivery thereof and the Services upon performance thereof (time being of the essence) and to have satisfied itself that they conform to Contract. A claim that Goods or Services are not in accordance with the Contract (which shall in any case be subject to Clause 4.4 above) will not be accepted by the Company unless notice in writing, specifying the alleged default and stating what is required of the Company to remedy the alleged default, is given to the Company within 7 days of delivery of the Goods or performance of the Services. Failure to do so will release the Company from liability for claims for non-delivery or non-performance.

11.2 Any Goods considered to be damaged, defective or not in accordance with the Contract (together with their packaging materials) will only be accepted by the Company if returned to the Company by the Customer IN UNUSED AND "AS RECEIVED CONDITION".

IN ALL CIRCUMSTANCES THE CUSTOMER IS UNDER AN OBLIGATION TO RETURN THE GOODS TO THE COMPANY IF THE CUSTOMER CANCELS THE CONTRACT.

11.3 Any work performed under the Services which is considered to be sub-standard or not in accordance with the Contract shall be left unaltered by the Customer for a period of twenty eight days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods or work carried out under the Services and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Goods or Services which are alleged not to conform to Contract.

11.4 If the Company agrees with the Customer that the Goods are damaged or defective, or that the work carried out under the Services is sub-standard, and that it is not possible to remedy any defect then the Company shall, at its sole option, replace the Goods or re-perform the Services or credit the Customer accordingly within 30 days. In case of Goods returned to the Company, the Company will also reimburse the Customer for reasonable postage costs incurred in returning the Goods.

11.5 The Company shall have no liability to the Customer in respect of damaged or defective Goods or sub-standard Services (and the Customer shall be required to pay the full contract price) where:-

(a) any claim made by the Customer is not in accordance with these terms and conditions;

(b) damage has been sustained after delivery of the Goods to the Customer or after performance of the Services;

(c) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered or the Services have been performed in a satisfactory manner.

12. Company's Limitation of Liability

12.1 The Company shall be under no liability:-

(a) in respect of any defect in the Goods or Services arising from any drawing, design or specification supplied by the Customer;

(b) where any of the circumstances referred to in Clause 11.5(a) to (c) occur;

(c) to the extent that the total price for the Goods or Services has not been paid by the due date for payment;

(d) where parts, materials or equipment have not been manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the goods to the Company;

(e) in the context of non-consumer contracts, for any consequential loss howsoever caused.

12.2 In relation to non-consumer Contracts, the Company's liability howsoever arising shall not in any event exceed the total price for the Goods or Services.

12.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.4 The Company does not exclude its liability for death or personal injury or, in the case of a Contract with a consumer, its liability for negligence if so established.

13. Force Majeure

The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.

14. Notices

Any written notice to be given under the Contract may be given by way of electronic mail, first class Recorded Delivery post or facsimile transmission or by personal delivery by the party giving it to the other. Letters shall be deemed to be delivered either 48 hours after posting. Emails, faxes or personal delivery shall be deemed to be delivered immediately after receipt.

15. Termination of Contract

If either the Customer or the Company shall make default in, or commit any breach of, any of its obligations to the other, or if any distress or execution shall be levied upon the Customer or the Company, its property or assets or if the Customer or the Company shall make or offer to make any arrangement or composition with its creditors or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or the Company or if any resolution or petition to wind up the Customer's or the Company's business is passed or presented (otherwise than for reconstruction or amalgamation) or if a liquidator, receiver, administrative receiver or administrator is appointed to the Customer's or the Company's undertaking, property or assets or any part thereof, then the Customer or the Company (as the case may be) shall have the right forthwith to determine any order then subsisting, without prejudice to any other remedies available to the Customer or the Company, and all sums to be paid to the Company by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary or, in the case of the Customer, all payments made prior to delivery of an order shall become immediately repayable.

16. General

16.1 The Customer shall not be entitled to assign or transfer, in whole or in part, the benefit or burden of the Contract without the Company's prior written consent.

16.2 The rights and remedies of the Company set out in these conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

17. Invalidity

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

18. Governing Law

These terms and conditions shall be governed by and construed in accordance with the Law of England and Wales. The parties hereto hereby choose and submit to the exclusive jurisdiction of the English courts.