

# Oversea Wholesale terms and conditions

The following terms shall apply to all sales of Goods by Bcool Fashion Manufacturing Limited to the Buyer (as defined).

## ■ INTERPRETATION

1. In these Terms and Conditions (as defined), the following words shall have their corresponding meaning:
  - “Buyer” the person(s), firm or company who purchases the Goods from the Company;
  - “Company” Bcool Fashion Manufacturing Limited, registered in Hong Kong and PR China;
  - “Contract” any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
  - “Goods” any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them). “Terms and Conditions” any terms and conditions of sale set out in this document and any special term agreed in writing by the Company.

## ■ THE CONTRACT

1. Subject to Clause 3, All Contracts for the sale of Goods from the Company to the Buyer will be subject to these Terms and Conditions to the exclusion of all other terms and conditions (including any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties) that the Buyer purports to apply under any purchase order or other document, including any standard or printed terms tendered by the Buyer.
2. Any amendments to these Terms and Conditions shall be, and any representations about the Goods shall have no effect unless, expressly agreed in writing and signed by a director or senior sales manager of the Company.
3. 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) payment in full and cleared funds is made and the Company delivers the Goods to the Buyer.
4. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer’s acceptance of these Terms and Conditions with no further liability on the part of the Company.

## ■ DESCRIPTION

1. All drawings, descriptive matters, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures are issued for the sole purpose of giving an approximate idea of the Goods described in them. The use of such description shall not constitute a sale by description. The Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

## ■ DELIVERY, SHIPPING AND FREIGHT

1. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. A delivery charge (to the Buyer's address) shall be added to the Contract price for orders under USD500 (charge is waived for orders exceeding USD500). Delivery charges to orders outside PR China by the Company shall be quoted on request.
2. Delivery is made upon receipt of payment in cleared funds for all amounts owed by the Buyer to the Company.
3. The Company shall use its reasonable endeavors to meet any date stated for delivery. In any event, time of delivery shall not be of the essence, and the Company shall not be liable whatsoever for any delay in delivery or any loss, cost, damages or expenses arising directly or indirectly out of any failure to meet any estimated delivery date.
4. If items ordered are not in stock, delivery takes place approximately 4-6 weeks from receipt of order, depending on manufacturing capacities and material availability.
5. If for any reason the Buyer is not willing or able to accept delivery of any of the Goods when they are ready for delivery: risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
6. the Goods will be deemed to have been delivered; and the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
7. The Company shall not be liable for non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 working days of the date when the Goods would in the ordinary course of events have been received. Subject to the carrier's availability and performance, delivery is normally made within 3 working days of despatch.
8. Subject to quantity and timing, the goods shall be delivered by sea in container (transportation 30 days approximately from the Company's China port to the Buyer's port), by air freight (transportation 5 days approximately from the Company to the Buyer's city, or 7 days approximately door to door), By express delivery (transportation 4 days approximately by a carrier such as UPS, DHL etc).

## ■ RISK IN AND OWNERSHIP

1. Title and Risk in the Goods shall pass to the buyer upon delivery of the Goods.
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 the Goods and any other outstanding costs owed by the Buyer to the Company on any account.
3. Until ownership has passed, the Buyer must hold the Goods on a fiduciary basis as the Company's bailee, safely store and maintain the Goods, and keep them insured against all risks on behalf of the Company (whereupon any moneys in respect of an insurance claim shall be apportioned in respect of the value of the Goods lost or damaged and held on trust for the Company).
4. Provided that no insolvency or like proceedings have commenced against the Buyer and

the Buyer does not, and does not purport to, encumber the Goods, Clauses 14 and 15 shall not prevent the Buyer from selling the Goods on its own behalf at full market value, but any proceeds of sale shall be held on trust for the Company in separate funds to the Buyer's usual trading account and used to discharge any amounts owed by the Buyer to the Company within 3 working days of receipt.

#### ■ PRICE AND PAYMENT

1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price quoted by the Company at a show or exhibition, or offering by the Company based on the buyer's inquire.
2. The price is exclusive of VAT, import tax and the costs of loading, unloading, carriage and insurance, all of which are payable by the Buyer in addition to the quoted price when payment for Goods is due.
3. Payment shall be made in full and in cleared funds prior to delivery. Timing of payment shall be of the essence.
4. Where alternative payment terms have been agreed with the Company and payments have not been paid in full by their due date, interest shall accrue on the outstanding amount from such due date, at the annual rate of 3% above the base lending rate of the HSBC Bank plc from time to time, compounding monthly until payment in full is made, whether before or after any judgment.
5. The Company understands and will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if the Company is not paid according to agreed credit terms.

#### ■ WARRANTY

1. The Company warrants that (subject to the other provisions of these Terms and Conditions) at the time of delivery, the Goods will be of satisfactory quality and fit for purpose within the meaning of the Sale of Goods Act 1979 UK, as amended, and the Company shall not be liable for a breach of this warranty unless notified in writing within 10 working days of delivery.
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 UK, as amended) are, to the fullest extent permitted by law, excluded from the Contract.

#### ■ RETURNS AND CANCELLATION

1. The Buyer shall inspect the Goods immediately upon receipt and shall notify the Company within 10 working days of delivery if the Goods are damaged or do not comply with the Contract, subject to the following conditions:
2. The Buyer must notify the Company in writing of any error in quantity of Goods, and of any case of Goods being mixed with others not included in any term of the Contract.
3. Further or alternatively, the Buyer must immediately notify the Company of any damage

being due to faulty design, materials or workmanship of the Company. The buyer must call the telephone number advertised by the Company at the time of the placing of the order to arrange for collection, return or exchange of the product. Credit notes shall be issued at the sole discretion of the Company.

4. The Company shall accept the returned Goods from the Buyer only if such are returned within the time limit above and by prior arrangement confirmed in writing.
5. Any custom made or non-stocked product cannot be returned once an order has been confirmed.
6. Any Goods to be repaired or replaced shall be returned to the Company's place of business at the Buyer's expense, if so requested by the Company.
7. Any Goods returned must be suitably packed and with the nature of the fault clearly indicated.
8. If Goods are found to be damaged due to the Buyer's fault, the Buyer will be liable for the cost of remedying such damage.
9. Goods returned in as new condition for credit due to incorrect ordering or specification will be subject to an agreed handling charge at the Company's sole discretion.
10. Any order accepted by the company may not be cancelled except with the written consent of the company. The Buyer will accept liability to reimburse the company for any loss or expense incurred due to such cancellation and at the company's discretion the Buyer will be subject to an agreed handling charge.
11. If for any reason the Buyer wishes to amend or cancel an order, the Buyer must do so in writing by recorded delivery post, fax on the number advertised by the Company or email to [buyinchina@vip.163.com](mailto:buyinchina@vip.163.com). If said notification is not received, all orders must be paid for in full. Notification must be made:
12. within 7 days of placing the order; or within 7 days of the end of the show if the order was made at a show or exhibition.
13. The remedies contained in this Clause are without prejudice to the Terms and Conditions herein. By placing an order, the Buyer agrees to the terms above.

#### ■ LIMITATION OF LIABILITY

1. Nothing in these Terms and Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence.
2. Subject to clauses 9, 23 and 24 above, the total liability of the Company for any claim brought by the Buyer (whether under contract, tort or otherwise) shall not exceed the price of the Goods. In any event, the Company shall not be liable to the Buyer or any third party for any loss (direct, indirect or consequential), claims, costs, damages, expenses or otherwise (howsoever caused) arising under or in connection with the Contract.

#### ■ INTELLECTUAL PROPERTY RIGHTS

1. All Intellectual Property Rights including all inventions, logos, art work, slogans, designs, trade marks, trade names, works in which copyright may subsist and all works

protected by the rights or forms of protection of a similar nature or having equivalent effect anywhere in the world are the property of the Company. Reproduction of any kind is forbidden without the prior written consent of the Company.

#### ■ FORCE MAJEURE

1. The Company shall not be liable for any failure or delay to perform its obligations in relation to the Goods if the failure or delay results wholly or partially from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, war, accidents, fire or shortage or unavailability of raw materials from a natural source of supply, and the company shall be entitled to a reasonable extension of its obligations. Where the delay persists for such time as the Company considers unreasonable, it may, without liability on its part, suspend its obligations to the Buyer or terminate the contract.

#### ■ RELATIONSHIP OF PARTIES

1. Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

#### ■ WAIVER

1. The failure of either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

#### ■ SEVERABILITY

1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by a court of competent jurisdiction or arbitrator such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provisions eliminated.

#### ■ JURISDICTION

1. The contract shall be governed by the laws of the Hong Kong Special Administrative Region ("Hong Kong") without regard to its conflict of law provisions. The Buyer agrees to submit to the sole and exclusive jurisdiction of the courts of Hong Kong in any dispute arising from the contract, even where conflict of laws occur.