

LoomTex

Conditions of Sale

This document governs the relationship between LoomTex Pty Ltd and the Purchaser and by submitting a purchase order to LoomTex Pty Ltd you confirm that you have read/understand and will abide by our Conditions of Sale. If these Conditions of Sale are unclear and require clarification, contact LoomTex (03 4208 1058). Within this document 'LoomTex' refers to LoomTex Pty Ltd and the 'Customer' refers to the Purchaser.

1.0 Payment for goods

1.1 Terms for Approved Accounts Customers

Customers must sign a Credit Application and Terms and Conditions. All credit accounts are payable in full within 30-days from date of statement. Deducting and holding retentions is not permitted. All overdue accounts are placed on stop supply at 35-days. Accounts are monitored and payment patterns will determine if facilities are revoked. Credit limits are subject to payment pattern, this determines any increases/decreases in limits.

1.2 Terms for Non-Account (Cash Sale) Customers

Orders should be placed as per clause 2.0. A proforma invoice will be issued to obtain payment and all products must be paid either in full or a deposit paid prior to goods being placed into production. Where a deposit is paid the balance must be paid and payment cleared prior to the products being placed into production and or goods being despatched.

1.3 Payment for Non Account (Cash Sale) Customers

Orders for products where a deposit has been paid prior to production commencing are accepted on the following conditions:

- When production is completed, a proforma tax invoice will be issued for the outstanding balance
- Balance of payment for these products is required within 5-days of the balance of proforma tax invoice being issued.
- If payment is not received within the period specified above, LoomTex reserves the right to charge a daily warehousing fee (after the initial 5-day pack + hold period). The fee's will be deducted from the deposit and reflected in the outstanding balance due. At LoomTex's discretion, an interest charge may also apply on the debt due at the rate of $(\text{debt} \times 15\% \times \text{overdue days} / 365)$
- If the balance owing is not paid in full within 14-days of the balance proforma tax invoice being issued, LoomTex may commence legal action to recover outstanding monies. All costs incurred will be added to the debt and payable by the purchaser.
- Products will not be dispatched until payment in full is received.

1.4 Indent/Large orders For Account Customers

Payment claims are made under the Australian Building and Construction Industry Security of Payment Act 1999. Deducting and holding retentions is not permitted. When sign off is accepted by Loomtex, the Purchaser agrees that any production and/or contractual delays they may incur will not delay the payment to Loomtex, that is, the Purchaser will accept the goods purchased as per the order and pay the account at 30-days in full as per the commercial credit terms offered by Loomtex.

1.5 Invoice Dating

Invoices are raised at the point of dispatch and charged to the account same day. Invoices are not to be rolled if delivery falls outside the month charged. LoomTex cannot be held responsible for delivery ETA's or delays.

1.6 Overdue Accounts

The Customer acknowledges that interest charges apply on all overdue accounts. The interest charge will be calculated at the following rate: $(Debt \times 15\% \times \text{overdue days} / 365)$. Loomtex may at its discretion, request from time to time that a commercial credit application be updated. Failing to update as requested could result in loss of commercial credit facilities until the required documents are completed and returned. All business and trading/as names must be registered if you wish to use them as an account name. Notification in writing is requested prior to selling the business, name changes and/or Director changes etc. The Customer further acknowledges that they shall be liable for any costs incurred by LoomTex in collecting or attempting to collect outstanding monies, including commissions paid to agents and legal fees. Any breach of these terms will result in credit facilities being revoked. LoomTex also reserves the right to revoke commercial credit facilities at its discretion, without notice.

2.0 ORDERING PROCEDURES (both cash sale and account customers)

2.1 The processing of all orders is managed by our Sydney Customer Service Team. Orders are to be placed via email refer sales@loomtex.com.au. When placing orders quote:

Business name and / or Account name, A.B.N, Official order number, Product name, Colour name, Quantity required, Delivery instruction.

2.2 Minimum order quantities apply and vary across all products as outlined in the Sellers offer. There is a + / - 5% overage or underage that must be accepted and paid for.

2.3 Where a client is a cash sale client either a deposit or full payment will be required to commence production and the balance required prior to delivery.

3.0 Colour Matching

Due to the nature of textiles supplied, it is not always possible to obtain an exact colour match with the standard sample.

Although every effort is made to ensure colours correspond to the standard, these are an indication of colour only and variations occur between batches and/or deliveries. Should a close colour match be required it is recommended that a cutting from stock be requested for the Customer's approval. In the case of repeat orders, the Customer must submit with each new order a cutting from a previous order and quote the batch number which will assist in colour matching. Even then colour variations may still occur.

4.0 PRICING

4.1 Prices

Every endeavour will be made to maintain prices at the current offer levels. However, owing to the numerous variables beyond LoomTex's control, prices are subject to change without notice.

Quoted prices shall be valid for one month only, unless otherwise agreed by LoomTex in writing. A copy of the quote should be forwarded with your official purchase order to ensure agreed pricing is charged.

5.0 Freight

Freight charges apply for all orders. If your order has more than one destination a charge will apply for each.

6.0 DELIVERY

Deliveries will be made to the address nominated by the Customer. If the Customer requests delivery of the goods to a third party, the third party must accept the goods for and on behalf of the Customer. Unless specifically requested, all deliveries within Australian will be made by a carrier nominated by

LoomTex. If an alternative freight company is nominated by the Customer then the Customer will cover the expense of this option.

The Customer acknowledges that the capacity of LoomTex to deliver products is subject to external factors, persons and entities beyond the control of LoomTex and over which LoomTex has no control. The delivery times advised to the Customer are estimates only and LoomTex will not be liable for late delivery or non-delivery by a carrier. Under no circumstances shall LoomTex be liable for any loss, damage or delay suffered by the Customer arising from late or non-delivery of goods.

The Customer shall, at their own expense, provide all necessary labour and equipment (including fork lift if required), to offload goods on arrival at the nominated place of delivery. If at the nominated delivery point the Customer is unable to take delivery or offload the goods for whatever reason, the Customer will be liable for all additional freight costs associated with a second or subsequent delivery attempts.

7.0 INSPECTION OF PRODUCTS ON DELIVERY

7.1 Check all Products

It is important that the Receiver check on arrival and before cutting/usage that:

- The correct product has been received
- The colour is correct, and
- The quality and quantity are as ordered

7.2 Alteration or Cancellation of Orders

All reasonable requests for changes will be accommodated where possible:

If the Customer wishes to cancel or amend an order, contact our the Customer Service Team on 03 4208 1058 however once an order has commenced production it cannot be cancelled or amended.

8.0 Return of Products.

- No return will be accepted without prior written approval from LoomTex. A return will only be accepted if there is a problem with the product i.e. defects, or error on LoomTex's behalf. Products that have been specifically manufactured or imported for the Customer or discontinued lines are not returnable.

A return can only be accepted under the following circumstances:

- Loomtex is notified within 7-days of receipt of products.
- The product is returned in the same condition as supplied and products are securely wrapped for transportation. The return of products will NOT be accepted after the product has been cut, treated, marked and/or altered in any way.
- When Loomtex has agreed in writing to accept a return the products are required to be returned as outlined in the return documents issued and within 14-days of this written agreement.

8.1 Seven Days Reasonable + Sufficient For Examination

The Customer acknowledges that a period of 7-days after the date of delivery of the products is a reasonable and sufficient period within which to examine the products for all purposes.

9.0 Quality

All quotations are without guarantee, expressed or implied that the products will be suitable for a specific purpose although such purpose may be known to Loomtex. Nor is any guarantee given by Loomtex as to the performance of any products supplied hereunder. The Customer acknowledges that the products are manufactured from natural materials and variations may occur from one roll to another and within individual rolls. LoomTex will not be liable for any colour variations and/or product imperfections after the products have been cut, marked or used in any other way.

Notwithstanding any such notification the Customer acknowledges that variations in the material substances from which products are manufactured preclude any warranty that all products supplied will be fit for the purpose notified. Any samples shown to the Customer are intended to indicate the general colour only and all agreements are entered into without guarantee expressed or implied that the products delivered will colour match with the standard sample(s).

10.0 CLAIMS

10.1 Procedure for Claims to Be Strictly Complied With

The Customer must notify LoomTex in writing if the products are defective in whole or in part:

- a) Within 7-days after the date of delivery (in which respect time shall be of the essence); and
- b) Prior to the products being cut, laminated, treated, marked and/or altered in any way.
- c) No refund or credit will be given or allowed by LoomTex to the Customer unless the Customer complies with the provisions of paragraphs (a) and (b) and the products are returned as follows;
 - In the same condition as supplied to the Customer;
 - Strictly in accordance with the directions of LoomTex; and
 - To LoomTex's Geelong factory warehouse within 14-days after LoomTex has agreed in writing to the return.

10.2 Limitation of Liability

Where LoomTex is in breach of any term, warranty or condition, whether contained in these Conditions of Sale or implied by statute, law or otherwise and which has not been excluded from these Conditions of Sale, the Customer acknowledges and agrees that LoomTex's liability for damages shall be limited to the invoice value of the goods supplied and whichever of the following LoomTex, at its sole discretion, decides:

- (a) The replacement of the products.
- (b) The repair of the products.
- (c) The payment of the cost of replacing products or acquiring equivalent products.
- (d) Or the payment for the repair of the products.

IMPORTANT – Notwithstanding, to the extent lawfully permitted, Loomtex liability is further limited to a sum not exceeding the invoice price of the products, and the Customer acknowledges that all products are supplied on this basis.

10.3. Goods not manufactured by Seller: The Seller shall not be liable for any loss which the Buyer and those claiming through or under the Buyer may suffer in respect of products not manufactured by the Seller which the Seller may have stored, handled, processed or dealt with in any way and the Buyer shall indemnify the Seller against any such claims.

10.4 LoomTex Not Liable For Consequential Damages

The Customer further acknowledges and agrees that in no circumstances shall LoomTex be liable for any consequential losses or damages suffered or incurred by the Customer as a consequence of a breach by LoomTex of any term or condition on its part to be performed or of any warranty notwithstanding that LoomTex may have been given notice by the Customer of the prospective consequential losses or damages the Customer may suffer or incur as a consequence of such breach.

11.0 WARRANTIES, REPRESENTATIONS, FITNESS

11.1 Exclusion of Implied Terms Etc

To the fullest extent lawfully permitted and so that this provision is not rendered void, all terms, warranties, conditions or liabilities implied or imposed by statute, law or otherwise are hereby negated and/ or excluded.

11.2 No Warranties Etc Given by LoomTex Pty Ltd

The Customer acknowledges that without limiting the effect of any other provision of these conditions, LoomTex does not warrant:

- Suitability – that the products will be fit or suitable for the purpose for which the Customer is acquiring the same, unless stated in quotations or given in writing;
- After treatments – that the products may be treated in any way including without limitation, treatment such as fire retardants, soil resistant finishes, sprays, finishes, dips, backings or coatings without damaging the products or otherwise affecting their durability, performance or finish.

12.0 RISK + TITLE

12.1 Risk

The risk in the products shall pass to the Customer upon delivery to the Customer or to any carrier or agent acting on the Customer's behalf. For the purpose of this provision, when LoomTex has agreed to deliver the products to the premises of the Customer, its carrier or agent, as the case may be, delivery shall be deemed to have been effected upon the entry of the carrier onto such premises and thereafter the products shall be at the Customer's risk, including without limitation during the off-loading of the products from LoomTex's carrier. Or in the event of the products being picked up from the premises of LoomTex, the risk in the products shall pass to the Customer on leaving the premises of LoomTex.

12.2 Property / Ownership

Property in the products shall not pass to the Customer until full payment has been received by LoomTex. The Customer agrees that LoomTex is authorised to enter the Customer's premises and repossess the products (or any LoomTex products in lieu, even if previously paid for) if the Customer fails to comply with the terms of payment.

Until property in the products passes the Customer, the Customer shall:

- Store the products so that they are clearly identified as the property of LoomTex and;
- So much of the proceeds of the resale of the products as is owing to pay directly to LoomTex and;
- Maintain any claim against a sub-purchaser for the benefit of LoomTex.

12.3 Retention of Title

1. Title in the products shall not pass to the Customer until payment is made in full to LoomTex. Until payment in full is made, the Customer shall retain the products as LoomTex fiduciary agent and bailee.
2. The Customer may resell the products but only on market terms and pending any such resale or utilisation in any manufacturing process, the products must be insured, and securely stored separate from other products and clearly marked as being LoomTex products.
3. LoomTex at its discretion reserves the right to lodge a PPSA on an invoice and / or the commercial credit account itself.
4. The Customer shall hold in trust for LoomTex all proceeds from the resale of LoomTex products or where LoomTex products have been incorporated into other product/s such part of the proceeds from the sale of the products as relates to LoomTex products (which part shall be deemed to equal in dollar terms the amount owing by the Customer to LoomTex). Such proceeds shall be deposited to a separate account until the liability to LoomTex has been discharged.

13.0 Design Rights

The designs depicted in LoomTex samples, price lists and websites are propriety to LoomTex and LoomTex reserves the exclusive right to manufacture or distribute them. Any reproduction of these designs, in any form, including but not limited to fabric, leather, wallcovering, carpet, laminate, glass, infringes LoomTex rights and that infringement will be prosecuted.

14.0 MISCELLANEOUS

14.1 Customer's Warranty

The Customer warrants that performance by LoomTex pursuant to an order placed by the Customer will not infringe any registered trade mark or design and undertakes to indemnify and keep indemnified LoomTex against all claims, demands, actions, proceedings, liabilities, losses and expenses for actual or alleged infringement.

14.2 No Waiver

Any time or other indulgence granted to the Customer shall not affect LoomTex strict rights except to the extent to which LoomTex expressly waives such rights in writing but no waiver in respect of any breach shall affect LoomTex strict rights in respect of any other breach by the Customer.

15. Force Majeure: The Seller shall be excused from liability if performance of the Contract is prevented or hindered by any cause whatsoever beyond its control including, without limitation, natural disaster, war, government control, restriction or prohibition or any other government act or omission whether local or otherwise, fire, accident, strikes, or lockouts, riots, delays in deliveries from overseas shippers or manufacturers, breakdown of machinery and delays or loss occurring during transportation and the Seller shall not be liable for any loss or damage resulting from any such circumstances except those in relation to which liability may not lawfully be excluded.

16.0 Legal Action (both Cash Sale and/or Commercial Credit Accounts)

The Purchaser agrees and understands that should it be required – any and all legal costs shall be added to the debt and payable by the Purchaser.

17.0 Jurisdiction

Any contract for the supply of products, made between LoomTex and the Customer shall be governed by and construed in accordance with the laws from time to time in force in N.S.W. & LoomTex and the Customer hereby submit to the exclusive jurisdiction of the courts of N.S.W. The Customer acknowledges that LoomTex shall be entitled to charge interest on overdue accounts at the sum equal to the interest calculated daily on the amount outstanding from time to time at the rate/s set out in Schedule J to the NSW Supreme Court Rules 1970: and the sum equal to the costs (including without limitation legal costs on a common fund basis) incurred by LoomTex in attempting to recover the amount due.