

# LLOYD CURZON



TEXTILES EST. 1973

## TERMS AND CONDITIONS OF SUPPLY ("Terms") Lloyd Curzon Textiles Pty Ltd ACN 007 747 711("LCT")

### 1. **Interpretation**

#### In these Terms:

- 1.1 "Customer" means the buyer of the Goods detailed in the Customer Order / Invoice;
- 1.2 "Customer Order" means an order submitted by the Customer to LCT either online at lcurzon.com.au, via email, via an agent of LCT or in any other form as accepted by LCT for the provision of the Goods.
- 1.3 "Goods" means the goods to be supplied by LCT to the Customer as detailed in the Customer Order; and
- 1.4 These Terms form part of the Customer Order for the provision of the Goods.

### 2. **General**

- 2.1 LCT agrees to supply the Goods to the Customer and the Customer agrees to purchase the Goods on these Terms.
- 2.2 Any request from the Customer to LCT for the supply of the Goods will constitute acceptance of these Terms.
- 2.3 These Terms will apply to the supply of Goods by LCT despite any conflicting terms proposed by the Customer, unless waived in writing by LCT.

### 3. **Goods**

- 3.1 LCT will supply the Goods to the Customer as set out in the Customer Order and as accepted by the Customer.
- 3.2 LCT will deliver the Goods to the address set out in the Customer Order ("Delivery"). Delivery is at the Customer's expense unless otherwise stated in the Customer Order.
- 3.3 LCT is not liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery or failure to deliver the Goods, either in whole or in part, due to circumstances beyond LCT's control.

### 4. **Title and Risk**

- 4.1 Any Goods are at the risk of the Customer from the time of Delivery.
- 4.2 Ownership of and title in the Goods shall not pass to the Customer until LCT has received payment in full of all sums due to LCT in respect of the Goods.
- 4.3 If the Customer has not paid any sums owing to LCT for delivered Goods but sells or otherwise disposes of the Goods or any part of them, the monies received in respect of the disposal of the Goods will be held on trust by the Customer for LCT and will be payable immediately to LCT on demand.
- 4.4 LCT may demand at any time until title has passed to the Customer, that the Customer return the Goods or any part of them to LCT.
- 4.5 In the event that the Customer defaults in the payment of any monies owing to LCT as set out in these Terms, LCT and its employees or agents will have the right to enter without notice, the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods. The Customer must grant reasonable access rights to LCT and LCT, its employees and agents will be entitled to do all things required to secure repossession of the Goods by LCT.
- 4.6 LCT will not be required to make good any damage caused by such recovery or removal and the Customer will indemnify LCT against any costs, claims, damages or losses suffered by the Customer as a result of such removal.



## 5. **Payment**

- 5.1 LCT will provide the Customer with an invoice:
  - 5.1.1 at the time that it supplies the Goods ("Invoice"); or
  - 5.1.2 upon Delivery of the Goods in the case of payment on delivery Customers.
- 5.2 Unless credit is provided to the Customer by LCT, all Invoices are due and payable without deduction 30 days end of the month in which LCT issues the Invoice to the Customer or other period as set out in the Customer Order ("Due Date").
- 5.3 LCT reserves the right to require part or full payment in advance of delivering Goods to the Customer ("Advance Payment").
- 5.4 The Customer will be advised of any Advance Payment requirements of LCT in writing either in the Customer Order or via email. LCT offers a discount for 14-day payment terms as set out in its Invoice.
- 5.5 The Customer must notify LCT of any dispute regarding any amounts owing in connection with these Terms within 7 days of delivery of the Goods. Failure to notify LCT of any such dispute within this timeframe will result in deemed acceptance of the order and the Goods by the Customer.
- 5.6 If the Customer fails to pay the Invoice in accordance with these Terms, LCT may in its absolute discretion charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the Commonwealth Bank Business Overdraft interest rate as published on the [commbank.com.au](http://commbank.com.au) website plus the rate of 2% per month from the date on which such default arose.
- 5.7 All prices set out in the Invoice are inclusive of any goods and services tax ("GST") unless otherwise expressed.
- 5.8 LCT may pass on to the Customer its costs of processing any payments pursuant to this clause 5, including but not limited should payment be made by credit card, Square, Visa, MasterCard or American Express branded cards.
- 5.9 Should it be considered necessary for LCT to incur legal and/or other expenses, including such expenses to any debt collection agency in obtaining, or attempting to obtain payment for any amount due by the Customer, the Customer will be liable for all such expenses. The Customer acknowledges that those expenses will be recoverable as a debt from the Customer to LCT. The Customer fully indemnifies LCT for all amounts incurred by it in recovering any unpaid amounts from the Customer.
- 5.10 If the Customer fails to pay any amounts in connection with these Terms, LCT may immediately cease supply of the Goods until all outstanding amounts in connection with the Goods have been repaid. LCT will not be liable for, and the Customer must indemnify LCT against any costs, claims, damages or losses suffered by the Customer as a result of LCT not supplying Goods to the Customer.

## 6. **Personal Property Security**

- 6.1 In accordance with clause 4 of these Terms, the Customer agrees that title of Goods will not pass until the total amount of the Invoice has been paid. Title in the Goods will only pass to the Customer upon full payment of the Invoice by the Customer for the Goods.
- 6.2 Where LCT has supplied Goods to the Customer but where title in the Goods has not yet passed to the Customer, the Customer acknowledges and agrees that:
  - 6.2.1 these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA");
  - 6.2.2 the Customer grants LCT a purchase money security interest ("PMSI") under the PPSA in the Goods and their proceeds to secure all amounts owed to LCT by the Customer;
  - 6.2.3 LCT may register the PMSI on the Personal Property Securities Register ("PPSR");
  - 6.2.4 It will undertake to do all things necessary and provide LCT on request all information LCT requires to register a financing statement or financing change statement on the PPSR;
  - 6.2.5 it undertakes not to change its name in any form or other details on the PPSR without first notifying LCT; and
  - 6.2.6 it will, if required by LCT, pay to LCT the cost of registering and maintaining registration of the Customer's PMSI on the PPSR, within 14 days of the request.
- 6.3 LCT need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- 6.4 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(7) of the PPSA) and the Customer must not authorize the disclosure of such information.



- 6.5 The Customer agrees that, to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA.
- 6.6 The Customer acknowledges that, unless otherwise defined in these Terms, the terms and expressions used in this clause 6 have the meanings given to them, or by virtue of, the PPSA.

## 7. **Warranty and Liability**

- 7.1 Any Goods not manufactured by LCT will be subject to the manufacturer's warranty (if any).
- 7.2 Except for the relevant manufacturing warranty or as required by mandatory operation of the law, all conditions or warranties in respect of the Goods, express or implied, statutory or otherwise, are excluded.
- 7.3 To the maximum extent permitted by law, the sole liability of LCT to the Customer in respect of any defective Goods is (at the election of LCT) limited to:
- 7.3.1 the resupply of the defective Goods to the Customer; or
- 7.3.2 refund the price paid by the Customer for the defective Goods.
- 7.4 The Customer will indemnify and continue to indemnify LCT against any claim arising from or in relation to the Customer using the Goods for a purpose for which they were not designed and any breach of these Terms by the Customer.

## 8. **Returned Goods**

- 8.1 Goods may only be returned with LCT's consent and in accordance with the Customer's rights under clause 7 of these Terms. All returned Goods must be returned to LCT at the Customer's cost.
- 8.2 These Terms do not vary any rights or privileges the Customer may have at law, including under the Australian Consumer Law.

## 9. **Termination**

- 9.1 Either party may terminate these Terms upon 30 days' notice in writing to the other party.
- 9.2 These Terms may be immediately terminated by LCT if:
- 9.2.1 the Customer is in breach of these Terms and fails to remedy that breach within 14 days of receiving notice to do so;
- 9.2.2 the Customer fails to pay any amount outstanding to LCT after receiving 14 days' prior notice that the amount is outstanding; or
- 9.2.3 the Customer becomes bankrupt or insolvent.
- 9.3 Either party may terminate these Terms immediately by written notice to the other if:
- 9.3.1 the defaulting party commits a material breach of these Terms and that breach is not rectified within 30 days of being notified; or
- 9.3.2 the defaulting party is presumed insolvent within the meaning of any applicable law, is made bankrupt, is placed into liquidation or any other form of administration relating to insolvent debtors or has a third party take possession of any substantial asset(s) of the defaulting party or if any proceedings are issued or an event occurs intended to lead to any of those consequences.
- 9.4 If LCT terminates these Terms pursuant to this clause 9 all monies owing and/or outstanding by the Customer to LCT become immediately due and payable without notice.

## 10. **GST**

If GST is imposed on any supply made under or in accordance with these Terms, the Customer must pay LCT, an amount equal to the GST payable on or for the taxable supply, subject to the Customer receiving (if required by law) a valid tax invoice in respect of the supply. Payment of this amount must be made at the same time as payment for the taxable supply is required to be made in accordance with these Terms.

## 11. **Governing law**

These Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.



12. **Notices**

Any notice to be given by one party to the other must be signed by the party giving the notice or by one of its duly authorised officers. The notice may be faxed to the intended recipient's facsimile number or emailed to the intended recipient's e-mail address. The notice will be deemed to have been received by the intended recipient upon receipt by the sender of a successful facsimile transmission answerback or in the case of e-mail, on the day of transmission provided that the sender is able to give evidence of transmission and the intended recipient does not give evidence of non-receipt.

13. **Privacy**

13.1 The privacy of the Customer's personal information is important to LCT. LCT is committed to respecting the Customer's right to privacy and protecting the personal information provided by the Customer and in a Credit Application.

13.2 The Customer acknowledges that any personal information or credit related personal information collected by LCT is subject to LCT's privacy policy, available on demand.

14. **Force Majeure**

No party is liable for any failure to perform its obligations under these Terms if the failure or delay is due to anything beyond that party's reasonable control. If that failure exceeds 60 days, the other party may terminate these Terms with immediate effect by giving notice to the other party. This clause does not apply to any obligation to pay any sum owing to LCT by the Customer in accordance with these Terms.

15. **Variation**

The Parties may add or vary these Terms from time to time in writing as agreed between the parties.

16. **Confidentiality**

Except where disclosure is required by law or must be made to a legal adviser, both LCT and the Customer will keep confidential these Terms and any other information that is designated by LCT as confidential or any information that the Customer knows or ought reasonably know is confidential.

17. **Assignment**

The parties may only assign their interests under these Terms with the prior written consent of the other party, which must not be unreasonably withheld.

18. **Severability**

Every provision of these Terms will be deemed severable as far as possible from the other provisions of these Terms. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Terms. These Terms with the offending provision severed and omitted and with any consequential amendment necessary will otherwise remain in full force.

