

Absolute Apparel Terms and Conditions of Sale

The Buyer's attention is particularly drawn to condition 9 (Liability)

1. Interpretation

- 1.1 In these terms and conditions (the "Conditions"), the following definitions shall apply:
 - "Business Day" means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business
 - "Buyer" means the person or firm who purchases the goods and/or services from the Seller
 - "Contract" means the contract between the Seller and the Buyer for the supply of goods and/or services in accordance with these Conditions
 - "Order" means the Buyer's order for the supply of goods and/or services, as set out in the Buyer's purchase order form, or the Buyer's written acceptance of the Seller's quotation, as the case may be
 - "Seller" means Absolute Apparel Limited, a company registered in England and Wales under company number 05219123 with its registered office at Unit 2A Hill Top Industrial Estate, Shaw Street, West Bromwich B70 0TX
 - "Site" means the Seller's website, www.absoluteapparel.co.uk
- 1.2 In these Conditions, the following rules apply:
 - 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.2 a reference to a party includes its successors or permitted assignees;
 - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.2.5 a reference to writing or written includes faxes and e-mails.

2. Application of Conditions

- 2.1 The Order constitutes an offer by the Buyer to purchase goods and/or services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures and/or on its Site are produced for the sole purpose of giving an approximate idea of the goods described in them and any measurements that are described as 'to fit' are for guidance only. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms which the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any variation(s) to these Conditions, including the introduction of any additional terms and conditions, shall only be binding when agreed to in writing and signed by a Director of the Seller.
- 2.7 Any quotation given by the Seller shall not constitute an offer, and is only valid for the period as shall be specified on the quotation.
- 2.8 The Buyer is responsible for ensuring that the terms of its Order and any applicable specification for the goods that are submitted to the Seller, including any related drawings, that are agreed by the Buyer and the Seller (the "Specification"), are complete and accurate.
- 2.9 The Buyer warrants that the Seller's compliance with the Specification shall not breach any third party's intellectual property rights and, to the extent that the goods are to be manufactured in accordance with the Specification, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This condition 2.9 shall survive termination of the Contract.
- 2.10 The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or for the ongoing improvement of the goods.

3. Prices

- 3.1 Subject to condition 3.3, the prices payable for the goods shall be those in the Order or, if no price is quoted, the price set out in the Seller's published price list as at the date at which the Seller issues written acceptance of the Order.
- 3.2 Any samples of goods produced by or on behalf of the Seller for or in connection with the Contract will be chargeable and non-returnable.
- 3.3 At the Seller's absolute discretion, a surcharge of 5% per garment may be made on Orders where size XL or bigger only is required.
- 3.4 Orders placed for goods via the Seller's Site totaling £100 or more (excluding VAT and delivery costs) or other than via the Seller's Site totaling £200 or more (excluding VAT and delivery costs) that are to be delivered to U.K. mainland locations and that are to be despatched by the Seller's normal next day carrier service will qualify for free delivery if, when the Order is acknowledged (or as the case may be the quotation is accepted) the goods are in stock. All other orders are subject to delivery costs as specified on the Order Confirmation.
- 3.5 Goods despatched by special delivery of whatever kind at the Buyer's request are subject to a carriage surcharge.
- 3.6 VAT shall be added to all amounts payable by the Buyer where applicable.
- 3.7 The Seller reserves the right to revise prices and/or delivery charges at any time but changes will not affect Orders in respect of which the Seller has sent an acknowledgement of Order (or as the case may be, a quotation) to the Buyer.
- 3.8 The Site and the Seller's catalogues, brochures and/or on its Site each contain a large number of goods and it is always possible that, despite the Seller's best efforts, some of the goods listed on the Site and in the Seller's catalogues and/or brochures may be incorrectly priced. The Seller will normally verify prices as part of its dispatch procedures so that, where the correct price is less than the stated price, the Seller will charge the lower amount when dispatching the goods to the Buyer. If the correct price for the goods is higher than the price stated on the Site and/or in the Seller's catalogues and/or brochures, the Seller will normally, at its discretion, either contact the Buyer for instructions before dispatching the goods, or reject the Buyer's Order and notify the Buyer of such rejection.
- 3.9 The Seller is under no obligation to provide the goods to the Buyer at the incorrect (lower) price, even after the Seller has sent the Buyer an Order Confirmation, if the pricing error is obvious and unmistakable and could have reasonably been recognised by the Buyer as an error.
- 3.10 Where the Seller has provided the Buyer with a quotation for the goods, this shall not constitute an offer. A quotation shall only be valid for the period of time expressly stated on the quotation.

4. Payment Terms

- 4.1 Before placing an Order with the Seller, the Buyer is required to register its details with the Seller and open a credit or proforma account, as, at the Seller's discretion, the case may be.
- 4.2 The Buyer acknowledges and agrees that details of the Buyer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Seller in connection with opening a credit or proforma account.
- 4.3 The Buyer is responsible for maintaining the confidentiality of its user account and password and for otherwise preventing unauthorised access to the Buyer's account. The Buyer agrees to accept responsibility for all activities that occur under its account or password. The Buyer should inform the Seller immediately if it has any reason to believe that its password has become known to anyone else, or if the password is being, or is likely to be, used in an unauthorised manner.
- 4.4 The Seller reserves the right to refuse access to the Site, terminate accounts or cancel Orders at its absolute discretion. If the Seller cancels an Order, the Buyer will not be charged.
- 4.5 Conditions 4.6 to 4.13 (inclusive) shall apply in relation to Credit Accounts. The remainder of this condition 4 shall apply in relation to Credit Accounts and proforma accounts.
- 4.6 The Buyer may apply for a Credit Account with the Seller which would allow the Buyer to pay for the goods after the Seller has provided the goods to the Buyer by requesting a Credit Account Application Form from the Seller. Once completed, this must be returned to the Seller.
- 4.7 The Seller will assess the Buyer's eligibility for a Credit Account and if deemed eligible, the Seller will set up a Credit Account for the Buyer and the Buyer will be given an account number.
- 4.8 The Buyer's Credit Account will be subject to these Conditions and any other terms and conditions that the Seller may advise from time to time.
- 4.9 The Buyer must comply with all terms and conditions that relate to its Credit Account, including the credit limit that the Seller places on the Credit Account.
- 4.10 The Seller will send to the Buyer a statement on account at the expiry of each calendar month.
- 4.11 The Seller reserves the right to alter the amount of credit allowed to the Buyer either up or down, at its absolute discretion.
- 4.12 The Seller may suspend or close the Buyer's Credit Account immediately if the Buyer:
 - 4.12.1 enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if an order is made or a resolution passed for the winding up of the other party or if a Receiver is appointed over any of the Buyer's assets or undertakings or if the Buyer takes or suffers any similar or analogous action in consequence of debt; or
 - 4.12.2 commits a material breach of the Contract and/or these Conditions and (if such a breach is remediable) fails to remedy that breach within 7 days of the Buyer being notified in writing of the breach.
- 4.13 If the Seller suspends or closes the Buyer's Credit Account for any reason, the Buyer must settle any outstanding invoices immediately.
- 4.14 The Seller may invoice the Buyer for the goods on or at any time after the goods have been despatched. All invoices sent will be sent via email to the email address provided by the Buyer upon placing an Order.
- 4.15 Payment of invoices shall be made in advance without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such account in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer. The Buyer can settle any invoices by direct debit, credit card, debit card, BACS, CHAPS or cheque.
- 4.17 The Seller reserves the right to surcharge the Buyer should payment be offered by credit card.
- 4.18 The Buyer is responsible for any bank or other charges which it incurs as part of its payment to the Seller.
- 4.19 Any payments that the Buyer makes by cheque that bounce will incur a £20.00 surcharge.
- 4.20 Time of payment is of the essence.
- 4.21 The Seller reserves the right to charge interest on overdue accounts at the rate of 5% over HSBC Bank Plc's base rate to run from the due date for payment until receipt by the Seller of the full amount whether or not after judgment.

5. Delivery

- 5.1 Delivery dates mentioned in any Order Confirmation or elsewhere are approximate only and are not of any contractual effect and subject to condition 9.4, the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Unless otherwise expressly agreed the Seller may effect the delivery in one or more instalments. Each instalment shall be treated as a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment. Where the Seller has already confirmed that the Buyer's Order qualifies for free delivery under conditions 3.4 and 3.6, the delivery of such order, if made in instalments, shall be made free of delivery charges if requested by the Buyer to be delivered in the U.K. mainland.
- 5.2 The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to 10% more or less than the quantity specified in the Contract and in such event the Buyer shall pay for the actual quantity delivered.
- 5.3 Delivery shall be at the Buyer's premises unless otherwise agreed by the Seller (the "Delivery Location"). Delivery of the goods will be completed on the goods' arrival at the Delivery Location.
- 5.4 Where the Buyer and the Seller agree that delivery shall be at the Seller's premises, the Buyer shall collect the goods from the Seller's premises at the main trading address stated in condition 1.1 or such other location as may be advised by the Seller prior to delivery.
- 5.5 If the Buyer refuses or fails to take delivery of the goods the Seller shall be entitled to terminate the Contract with immediate effect or to dispose of the goods as it may in its absolute discretion determine and the Seller reserves the right to recover from the Buyer a minimum handling fee of 25% of the total price of such goods (plus VAT) which shall be paid by the Buyer within 30 days of the date of invoice.

6. Risk and Title

- 6.1 Risk in the goods shall pass to the Buyer on delivery.
- 6.2 Title to the goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
 - 6.2.1 such goods; and
 - 6.2.2 all other sums which are or which become due to the Seller from the Buyer for sales of goods or on any account.
- 6.3 Until title to the goods has passed to the Buyer, the Buyer shall:
 - 6.3.1 hold such goods on a fiduciary basis as the Seller's bailee;
 - 6.3.2 store such goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to such goods; and
 - 6.3.4 maintain such goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that

is reasonably acceptable to the Seller. The Buyer shall obtain an endorsement of the Seller's interest in the goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Buyer shall allow the Seller to inspect such goods and the insurance policy, but the Buyer may resell or use the goods in the ordinary course of its business.

- 6.4 If before title to the goods passes to the Buyer the Buyer becomes subject to any of the events in condition 11.1 then, provided that such goods have not been resold and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up such goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the relevant goods are stored in order to recover them and where the goods may only be used by a specific customer, the Seller may, at its discretion, seek to sell such goods directly to the Buyer's customer to whom the goods were manufactured for.

7. Variation and Returns

- 7.1 Save as provided herein no return of goods will be accepted where:
 - 7.1.1 the goods have been printed on or have changed their form in any way whatsoever; and
 - 7.1.2 the Seller's Sales Department has refused (at its absolute discretion) to authorise such return of goods prior to dispatch and have not provided the Buyer with a 'returns authorisation number'.
- 7.2 The Seller reserves the right to charge the minimum handling fee specified in condition 5.5 above except in the case of faulty garments. Goods returned to the Seller without a 'returns authorisation number' will not be credited and will be disposed of at the Seller's discretion unless the Buyer collects such goods (at its own cost) from the Seller within 30 days of receipt of the returned goods.
- 7.3 The Buyer should check the goods carefully before using or altering them in any way as goods may not be returned after any such use or alteration.

8. Warranty

The Seller warrants to the Buyer that any goods purchased from it will, on delivery, conform in all material respects with its description, be of satisfactory quality, and be reasonably fit for all the purposes for which goods of that kind are commonly supplied.

9. Liability

- 9.1 Subject to condition 9.4, if the Seller fails to comply with these Conditions, the Seller shall only be liable to the Buyer for the purchase price of the goods or, where applicable and subject to condition 9.3.7, make good any shortage or non-delivery and, subject to condition 9.3, any losses that the Buyer suffers as a result of the Seller's failure to comply (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise) which are a foreseeable consequence of such failure.
- 9.2 The Seller shall replace any goods that do not conform with their description if the Buyer gives notice in writing of the relevant defects:
 - 9.2.1 in the case of a defect that is apparent on normal visual inspection, within 5 business days of delivery; and
 - 9.2.2 in the case of a latent defect relating to the colour bleeding/washout and shrinkage of the goods, within a reasonable time of the latent defect having become apparent.
- If the Buyer has not given notice of any defects in the goods within the relevant time period, it shall be deemed to have accepted the goods.
- 9.3 Subject to condition 9.4, the Seller will not be liable for losses that result from its failure to comply with these Conditions for:
 - 9.3.1 loss of income or revenue;
 - 9.3.2 loss of business;
 - 9.3.3 loss of profits;
 - 9.3.4 loss of anticipated savings;
 - 9.3.5 waste of management or office time;
 - 9.3.6 defects in the goods caused by fair wear and tear, abnormal condition of storage or use or any act, neglect or default of the Buyer or of any third party including (but not restricted to) failure to follow washing instructions which may result in the goods shrinking or losing their colour; shortages in quantity delivered unless the Buyer notifies the Seller of such claim within 7 days of receipt of the goods;
 - 9.3.7 damage to or loss of the goods or any part thereof in transit unless the Buyer notifies the Seller of any such claims within 7 days of receipt of the goods;
 - 9.3.9 other defects in the goods unless the Buyer notifies the Seller within 14 days of receipt of the goods by the Buyer; or
 - 9.3.10 other defects in the goods where the goods have been printed on or have changed their form in any way whatsoever.However, this condition 9.3 will not prevent claims for loss of or damage to the Buyer's tangible property that are foreseeable or any other claims for direct loss that are not excluded by conditions 9.3.1 to 9.3.10 inclusive of this condition 9.3.
- 9.4 Nothing in these Conditions excludes or limits the Seller's liability for:
 - 9.4.1 death or personal injury caused by the Seller's negligence;
 - 9.4.2 fraud or fraudulent misrepresentation;
 - 9.4.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979;
 - 9.4.4 defective products under the Consumer Protection Act 1987;
 - 9.4.5 any deliberate breaches of these Conditions that would entitle the Buyer to terminate the Contract; or
 - 9.4.6 any other matter for which it would be illegal for the Seller to exclude or attempt to exclude its liability.

10. Import Duty

- 10.1 If the Buyer orders goods for delivery outside of the U.K., they may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. The Buyer will be responsible for payment of any such import duties and taxes. Please note that the Seller has no control over these charges and cannot predict their amount. The Buyer should contact its local customs office for further information before placing its Order.
- 10.2 The Buyer should also note that it must comply with all applicable laws and regulations of the country for which the goods are destined. The Seller will not be liable for any breach by the Buyer of any such laws.

11. Insolvency and Default

- 11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 11.1.1 the other party enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if an order is made or a resolution passed for the winding up of the other party or if a Receiver is appointed over any of the other party's assets or undertakings or if the other party takes or suffers any similar or analogous action in consequence of debt; or
 - 11.1.2 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach.
- 11.2 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 11.3 Without limiting its other rights or remedies, the Buyer shall have the right to terminate the Contract by giving the Seller 3 months' written notice.
- 11.4 In the event that the Seller terminates the Contract for whatever reason, the Buyer must pay to the Seller all costs, charges and expenses that the Seller has incurred up to the date of termination and that the Seller will incur as a result of the termination.

12. Anti-Bribery

- 12.1 The Supplier shall:
 - 12.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "Relevant Requirements");
 - 12.1.2 comply with the Buyer's ethics, anti-bribery and anti-corruption policies, if any, that the Seller has been provided with and approved (the "Relevant Policies");
 - 12.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
 - 12.1.4 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of the Contract; and
 - 12.1.5 within 12 months months of the date of the Contract, and annually thereafter, certify to the Buyer in writing signed by an officer of the Seller, compliance with this condition 12 by the Seller and all persons associated with it under condition 12.2. The Seller shall provide such supporting evidence of compliance as the Buyer may reasonably request.
- 12.2 The Seller shall ensure that any person associated with the Seller who is performing services or providing goods to the Buyer does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this condition 12 (the "Relevant Terms"). The Seller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Buyer for any breach by such persons of any of the Relevant Terms.
- 12.3 Breach of this condition 12 shall be deemed a material breach under condition 11.
- 12.4 For the purpose of this condition 12, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and a guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this condition 12 any person associated with the Seller includes but is not limited to any subcontractor of the Seller.

13. General

- 13.1 All notices given by the Buyer to the Seller must be given to Absolute Apparel Limited at Unit 2A Hilltop Industrial Estate, Shaw Street, West Bromwich, B70 0TX, United Kingdom, via email to: sales@absoluteapparel.co.uk, or via fax to: 0121 289 3216. The Seller may give notice to the Buyer at either the e-mail address, postal address, or via fax to the number, that the Buyer provides to the Seller when placing an order. Notice will be deemed received and properly served immediately when posted on the Seller's website, 24 hours after an e-mail or fax is transmitted, and three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee, and in the case of a fax, that such fax was sent to the fax number specified by the addressee and confirmation of transmission was received.
- 13.2 The Contract between the Buyer and the Seller is binding on the Buyer and the Seller and on their respective successors and assignees.
- 13.3 The Buyer may not transfer, assign, charge or otherwise dispose of a Contract, or any of its rights or obligations arising under it, without the Seller's prior written consent.
- 13.4 The Seller may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of its rights or obligations arising under it, at any time during the term of the Contract.
- 13.5 The Seller shall not be liable to the Buyer for loss or damage suffered by the Buyer as a direct, indirect or consequential result of the supply of goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control.
- 13.6 If the Seller fails, at any time during the term of a Contract, to insist upon strict performance of any of the Buyer's obligations under the Contract or any of these Conditions, or if the Seller fails to exercise any of the rights or remedies to which it is entitled under the Contract, this will not constitute a waiver of such rights or remedies and will not relieve the Buyer from compliance with such obligations.
- 13.7 A waiver by the Seller of any default will not constitute a waiver of any subsequent default.
- 13.8 No waiver by the Seller of any of these terms and conditions will be effective unless it is expressly stated to be in writing and is communicated to the Buyer in writing in accordance with condition 13.1 above.
- 13.9 If any of these Conditions or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable in any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 13.10 These Conditions and any document expressly referred to in them constitutes the whole agreement between the Seller and the Buyer and supersedes all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between the Seller and the Buyer relating to the subject matter of any Contract.
- 13.11 Both parties acknowledge that, in entering into a Contract, neither party has relied on any representation or warranty (whether made innocently or negligently) that is not set out in these Conditions or the documents referred to in them.
- 13.12 Both parties agree that their only liability in respect of those representations and warranties that are set out in the Contract (whether made innocently or negligently) will be for breach of contract.
- 13.13 Nothing in conditions 13.10 to 13.12 (inclusive) limits or excludes any liability for fraud.
- 13.14 The Seller has the right to revise and amend these Conditions from time to time.
- 13.15 The Buyer will be subject to the policies and terms and conditions in force at the time that it orders goods from the Seller, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to Orders previously placed by the Buyer), or if the Seller notifies the Buyer of the change to those policies or these Conditions before the Seller sends the Buyer the Order Confirmation (in which case the Seller has the right to assume that the Buyer has accepted the change to the Conditions, unless that Buyer notifies the Seller to the contrary within 7 business days of receipt by the Buyer of the goods).
- 13.16 The Contract shall be governed by and construed in accordance with English Law, the parties submit to the exclusive jurisdiction of the English Courts.