

## **TERMS AND CONDITIONS**

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE GEORGIA ARBITRATION CODE, OFFICIAL CODE OF GEORGIA ANNOTATED § 9-9-2, ET SEQ., (AS AMENDED) OR IF IT IS DEEMED NOT TO APPLY, PURSUANT TO THE FEDERAL ARBITRATION ACT, TITLE 9, SECTION 1 ET SEQ., UNITED STATES CODE (AS AMENDED).

### **Definitions**

“Seller” means Prestige Impex, Inc., a South Carolina corporation.

### **Arbitration**

- (a) Any controversy or claim arising out of or relating to this contract, or the interpretation or breach thereof, including any modification or extension thereof, shall be settled by arbitration in the City of Atlanta in accordance with the rules then obtaining of the General Arbitration Council of the Textile and Apparel Industries, a division of the American Arbitration Association or its successor.
- (b) Arbitrators shall be bound by the terms and conditions of this contract and shall have no power to alter or in rendering their award to depart from any express provision of this contract, and their failure to observe this limitation shall constitute grounds for vacating their award.
- (c) The fees and expenses of such arbitration proceedings, including reasonable counsel fees, may be allocated between the parties or charged to anyone of the parties by the arbitrators as part of their award.

### **Jurisdiction**

The parties consent to the jurisdiction of the Supreme Court of the State of Georgia or the United States District Court for the Northern District of Georgia for all purposes relating to this contract, whether in connection with arbitration or otherwise. The parties consent that any process or notice of motion or other application to either of said courts, and any paper in connection with such proceedings may be served within or outside of the State of Georgia by certified mail or registered mail or by personal service or by such other manner as may be permissible under the rules of the applicable court or arbitration tribunal.

### **Assortments**

If buyer does not furnish specifications for assortments, patterns or other particulars within the time specified or, if not specified, within five (5) business days after Seller's demand in writing therefore, or forty-five (45) days prior to the initial delivery date, whichever is earlier, Seller may at its option either (1) treat the contract as substantially breached and claim damages for such breach, or (2) hold the goods for Buyer's account and invoice the Buyer therefore at finished goods contract price, in which case the Seller shall be deemed to have fully performed and to be entitled to payment from the Buyer and risk shall be upon the Buyer when goods are so set aside and invoiced. If Seller permits the Buyer to complete assortments or specifications subsequent to the time required hereunder, Seller may delay delivery for such period of time as may be then reasonably necessary.

**Warranties**

Seller warrants that merchandise delivered shall conform with the description on the face of the Contract between the parties.

Buyer agrees that the Seller makes no warranty in fact or in law that the merchandise which is the subject of this sale is suitable for any particular use or purpose and that the suitability of the merchandise for any use is the sole responsibility of the Buyer.

Seller shall not be liable for normal manufacturing, processing or finishing defects nor for customary variations from quantities or specifications. Whether the goods are first quality shall be determined in accordance with the applicable quality standards of the Worth Street Textile Market Rules.

However, performance and other physical or chemical characteristics of the merchandise are not guaranteed unless and except to such extent as is otherwise specifically provided herein or in any other writing signed by the seller. There are no warranties which extend beyond the description on the face hereof.

**Deliveries**

(a) Unless otherwise expressly provided herein, any shipment or tender made within fifteen (15) days after any date specified for delivery shall constitute timely delivery hereunder.

(b) Delivery to a carrier or in the absence of shipping instructions, the mailing of a covering invoice after completion of manufacture shall constitute good delivery or tender of delivery, subject to Seller's right of stoppage in transit, and subject to Seller's security interest therein as elsewhere herein provided. Goods invoiced and held by the Seller for whatever reason shall be at Buyer's risk.

(c) In the event that delivery under this contract is prevented or delayed by strikes, lockouts, embargoes, force majeure or act of God, or any cause or circumstance not limited to the above, which is beyond the Seller's reasonable control, Seller shall not be held liable for the consequences thereof.

**Credit and Payment**

(a) In case any invoice shall not be paid when due or upon Buyer's breach or default with respect to any term or condition of this or any other contract with Seller, all sums owing under this and other contracts between Buyer and Seller, shall at the option of Seller or its factor, at once become due irrespective of the terms of sale, and the Seller may defer delivery under this and such other contracts until such sums shall be paid and for a reasonable time thereafter. If the total amount due or to become due under the contracts between the Buyer and Seller exceeds the credit limit for Buyer, which may be fixed or varied from time to time at and in accordance with the sole discretion and opinion of Seller, or its factor, Buyer agrees to pay cash before delivery or anticipate payment for any future shipment in excess of such credit limit. Upon failure by Buyer to make any such payment within five (5) days after demand in writing, Seller shall have the option to cancel this and other contracts between Buyer and Seller or to sell all or part of the merchandise undelivered thereunder without notice, at public or private sale, holding Buyer responsible for any deficiency, or to bill Buyer as of the date of such demand for all or any part

of the merchandise undelivered thereunder on terms of cash before delivery. Approval or credit for one delivery or more shall not be deemed a waiver of this provision.

(b) Any property of the Buyer, at any time in Seller's possession, including but not limited to merchandise paid for by the Buyer, shall be deemed held as security (with a security interest therein granted by Buyer to Seller) for Buyer's obligation under this and any other contract with the Seller. Such property, to the extent of the value thereof, may be applied by the Seller as a credit against such obligations of the Buyer, or such property or any part thereof may be sold by the Seller at public or private sale with the proceeds thereof applied as a credit against such obligations of the Buyer.

### **Claims**

If Buyer claims goods are defective, they must be promptly and properly offered to Seller for examination. If Buyer fails to make such goods available for examination, Buyer shall not be entitled to make any claim with respect to such goods. Seller may within fifteen (15) days after such examination replace any merchandise which is found to be not in accordance with the contract, and in such event no claim may be made by Buyer. Buyer may cancel only that portion of the order pertaining to goods found to be defective in quality and not replaced by Seller. With respect to greige goods, claims for patent defects are barred unless made in writing within twenty (20) days of discovery or within ninety (90) days after the date dyeing instructions were first issued for all or part of the goods by the Buyer, or within six (6) months after the Seller's invoice date, whichever is earliest. Buyer may make no claim for any quantity of greige goods with patent defects which have already been cut or otherwise processed beyond dyeing and finishing. With respect to dyed or finished goods, claims for patent defects are barred unless made in writing within twenty (20) days after discovery or within sixty (60) days from shipment by the Seller or ninety (90) days from Seller's invoice date, whichever is earliest, but prior to the cutting or processing of the goods beyond the original condition as shipped by the Seller. Claims for greige or finished goods with latent defects are barred unless made in writing within twenty (20) days after discovery, or ninety (90) days after shipment of the goods by the Seller to the Buyer, or within nine (9) months after the Seller's invoice date, whichever is the earliest. The limit of liability of Seller for late delivery or non-delivery or any other breach shall be the difference, if any, between the contract price and the fair market price on the contract date of delivery of the goods delivered or to be delivered. In no event shall Buyer be entitled to claim any consequential damages or any other damages of any nature whatsoever, and in no instances shall damages include profit on contemplated use or profit of any description. Without limiting the foregoing, if Buyer exports the goods, Seller shall not be liable whatsoever for freight charges outside of the continental United States, or for customs duties, or for insurance or for forwarding costs or any other costs connected with the export of the goods.

### **Applicable Law**

The laws of the State of Georgia shall apply to this contract and shall control its interpretation.

### **Integration**

This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.