

**TRADING TERMS AND CONDITIONS**

**1. SETTLEMENT TERMS**

- (a) **STRICTLY NETT MONTHLY.** Payment must be made by the 20<sup>th</sup> day of the month following date of invoice. We reserve the right to stop supply of further goods if these terms are not adhered to.
- (b) **APPLICATION OF FUNDS RECEIVED.** The buyer authorises Malcolm Fabrics Limited to appropriate any monies received to the oldest outstanding invoices, unless instructions accompany the payment indicating clearly which outstanding balances have been paid.
- (c) **RECOVERY OF UNPAID DEBTS.** Notwithstanding any clauses above or subsequent, Malcolm Fabrics Limited or its Agent shall maintain the right to instigate legal proceedings to recover unpaid debts without prejudice to other rights.

**2. INTEREST**

Interest will be charged on all amounts exceeding 60 days. The rate will be 3% per month.

**3. CREDIT CLAIMS**

- (a) **DAMAGED GOODS.** Goods received from carriers must be inspected on receipt. If there is any suspicion of damage they must be signed for as Damaged. Claims must be made BY THE CONSIGNEE with the carriers or their Agents within 7 days of receipt of goods. In the event of goods being damaged beyond use please notify Malcolm Fabrics Limited immediately.
- (b) **INCORRECT PRICING.** The invoice or delivery docket number and date is to be quoted on all claims which must be made to our office within 30 DAYS FROM RECEIPT OF INVOICE.
- (c) **GOODS RETURNED.** Goods returned, as all Malcolm Fabric Limited goods are indented no returns will be accepted, except in the case of faulty goods and with the prior approval of Malcolm Fabrics Limited management. - **A PHOTOGRAPH OF THE SUPPLIER LABEL IS REQUIRED FOR ALL CLAIMS.**
- (d) **PATTERN REPEAT – NO product is deemed faulty if the pattern repeat falls within a 3% tolerance, and will not be**

**entitled to any claim. Product can be checked prior to placing the order, and on request.**

- (i) Valid claims for goods sent incorrectly will be credited in full, provided we are notified within 30 DAYS of receipt of goods and the invoice number and date are provided.
- (ii) Goods returned in an unsaleable condition will only be accepted at the Company's discretion and at a discount commensurate with their condition to be decided solely by Malcolm Fabrics Limited.

**4. CONDITIONS OF SALE**

**RISK AND PROPERTY**

Upon, delivery of goods by Malcolm Fabrics Limited to the buyer's premises or any other destination determined by the buyer, the goods shall be at the risk of the buyer and the buyer shall thereafter take reasonable and proper care of the goods at all times while it is in their care, custody and control.

NOTWITHSTANDING delivery of the goods to the buyer and that the goods are at the risk of the buyer as set out in the preceding paragraph; the goods shall remain the property of Malcolm Fabrics Limited until Malcolm Fabrics Limited receives payment of all sums including any interest owed to it by the buyer.

UNTIL full payment to Malcolm Fabrics Limited of such sums owing the following conditions apply:

- (a) That the buyer holds the goods as bailee and will sell them as agent for and on behalf of Malcolm Fabrics Limited.
- (b) If directed by Malcolm Fabrics Limited, the buyer shall ensure that the goods are clearly identifiable as the property of Malcolm Fabrics Limited
- (c) The buyer shall keep the goods insured to their full insurable value at all times while it is in their care and custody or control and shall hold the proceeds of any such insurance in Trust for Malcolm Fabrics Limited.
- (d) In the event that the goods or any part thereof being sold to another person, the buyer shall until full payment for the goods has been received by Malcolm Fabrics Limited hold the proceeds of such sale in Trust for Malcolm Fabrics Limited in such manner as to be able to account to Malcolm Fabrics Limited for such proceeds.
- (e) In the event the buyer fails to pay any invoices or makes any assignment to or composition

with creditors or if an order is made or resolution passed to wind up or adjudicate bankrupt or if a receiver of any of the assets of the buyer is appointed, Malcolm Fabrics Limited shall be entitled to remove and re-take possession of the goods and for such purpose the buyer hereby give Malcolm Fabrics Limited, its servants or agents authority and licence to enter the premises to search for, remove and re-take possession of the goods without being liable in any way to the buyer. Such removal and re-taking of possession shall not constitute waiver of any other rights Malcolm Fabrics Limited may have against the buyer for non-payment of invoices or any other matter. Malcolm Fabrics Limited shall be entitled to the reasonable costs of any such removal and re-taking of possession and of re-delivery to their premises.

## 5. DEFECTS

- (a) DEFECTS NOTIFIED AFTER USE OF GOODS. Malcolm Fabrics Limited shall not be liable for any claim, loss or expense for any defect whatsoever after the goods have been fixed, laid or otherwise used, other than within normal product warranty terms.
- (b) SECONDARY CLAIMS. Malcolm Fabrics Limited shall not be liable for any claim, loss or expense (whether direct or indirect) which may be sustained or incurred by the buyer by reason of delivery by Malcolm Fabrics Limited of defective goods other than at Malcolm Fabrics Limited.
- (c) All wallpaper must be inspected prior to hanging and Malcolm Fabrics Limited will not accept any liability for rehangings, reparation of walls, or trade cost for any paper hung and found to be faulty.
- (d) All fabrics must be inspected PRIOR to cutting, and any faulty as problem bought to Malcolm Fabric's attention, **no claim will be honoured if the fabric is cut.**
- (e) **Any defects which CANNOT be replaced due to supplier stock, or terms, will be resolved in a credit for the product, which will be honoured on return of product.**

## 6. FORCE MAJEURE

**Malcolm Fabrics Limited shall not be liable for any failure to perform its obligations under this contract if such failure arises from causes beyond its control including, but without limiting the generality of the foregoing, act of**

**God, strike, lockout, industrial dispute, war, riot, pandemic, or delay in delivery by producers, manufacturers, airlines (including offloads) or other suppliers.**

## 7. SAMPLES AND WARRANTIES

Due to variations in colour, no warranty or guarantee is given by the seller that the goods shall correspond in colour or texture with any sample, display, or goods previously sold or displayed. Malcolm Fabrics Limited shall not be liable for any claim, loss or expense (whether direct or indirect) which may be sustained or incurred by the buyer by reason of any variation in colour of the goods sold.

## 8. PRICES

**Prices quoted are based on either existing stock or current rates of exchange. We reserve the right to increase prices without prior notice due to market, exchange fluctuations, freight increases or any other increase beyond our control.**

## 9. INDENT PRODUCT

**Once the order has been placed by Malcolm Fabrics, to the supplier, it CANNOT be cancelled.**

## 10. ARBITRATION

Any dispute arising out of or in connection with this agreement shall be resolved by arbitration under the Arbitration Act 2019. If the parties are unable to agree on the appointment of an arbitrator, one shall be appointed by the President of the Local District Law Society.

A party to arbitration under this agreement may appeal to the High Court on any question of law arising out of an award, and any matter relating to the construction of this agreement shall be considered a question of law.

<p><b>PLEASE DETACH THIS PAGE AND RETAIN FOR YOUR RECORDS.</b></p>
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