



CONDITIONS OF TRADING

1 APPLICATION

These conditions of trading along with the account application form (together the "Contract") apply to all sales of Colefax and Fowler goods by Domus Textiles Pty Limited (the "Company") to any purchaser (the "Customer") and shall apply in place of and prevail over any terms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing and any purported provisions to the contrary are hereby excluded or extinguished.

2 TERMS OF PAYMENT

Terms strictly net.

Payment of invoices shall unless otherwise agreed in writing by the Company be made in full without any deduction or set-off not later than the twentieth day of the month following the date of the invoice concerned. Any extension of credit allowed to the Customer may be changed or withdrawn at any time.

If in the opinion of the Company the credit-worthiness of the Customer shall have deteriorated prior to delivery the Company may require full or partial payment of the price prior to delivery. The Company reserves the right to hold back any order pending if an account is overdue for payment.

3 GOODS AND PRICES

The prices payable for the goods shall be those contained in the Company's list prices current at the time of despatch (the "Prices"). The Company shall have the right at any time without notice to change its Prices and/or to withdraw any goods from the range of products offered by the Company and/or to withdraw any discounts (where given). Where applicable GST and any other tax or duties payable by the Customer shall be added to the price.

4 ORDERS

The minimum order is for one roll of wallpaper or border or one metre of fabric.

All goods shall be supplied and invoiced in metres and orders not expressed in metric measurements will be converted into metric measurements and rounded up to the nearest ten centimetres.

Orders must be made or confirmed in writing by the Customer and are in all cases subject to written acceptance by the Company.

5 DELIVERY

Any time or date for delivery mentioned in any quotation, acknowledgement of order or elsewhere is approximate only and not of any contractual effect and the Company shall not be under any liability in respect of any failure to deliver at any particular time or date.

A fee of \$30.00 + GST will be charged on all orders.

Where delivery to a private address is requested, the Company reserves the right to charge a fee of \$15.00 per delivery should it not be possible to gain ready access to the premises.

Where an order is to be delivered to more than one delivery point, the Company reserves the right to charge a fee of \$15.00 for each additional delivery.

6 REFUSAL OR FAILURE TO TAKE DELIVERY

If the Customer refuses or fails to take delivery of goods rendered in accordance with the Contract or fails to take any action necessary on its part for delivery and/or shipment of the goods the Company shall be entitled to terminate the Contract with immediate effect and recover from the Customer any loss and additional costs incurred as a result of such refusal or failure.

7 INSPECTION

It shall be the responsibility of the Customer to inspect and check all goods immediately on delivery (and in any event before such goods are cut or hung) for colour, condition and accuracy of printing and in order to ensure that such goods are those ordered by the Customer. The Customer's said responsibility shall not be in any way diminished or extinguished in the case of goods which are delivered to a third party on the instruction of the Customer. Any queries regarding the above must be referred to the Company prior to the goods being cut or hung.

8 RISK AND TITLE

Goods shall be at the Customer's risk immediately on delivery to the Customer or into custody on the Customer's behalf, and the Customer should insure accordingly. The goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company the price therefore. Until such payment the Customer shall be in possession of the goods solely as bailee for the Company and in a fiduciary capacity and shall store the goods in such a way as to enable them to be identified as the property of the Company. The Company reserves the immediate right of re-possession of any goods to which it has retained title as aforesaid and thereafter to re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.

9 LIABILITY

- (A) Subject always to Condition 10 below, the Company shall not be liable to the Customer:
- (i) for shortages in quantity delivered (or any other order discrepancy) unless the Customer notifies the Company of any claim for short delivery (or other discrepancy) within fourteen days of receiving the goods;
 - (ii) for non-delivery of the goods or damage to or loss of the goods or any part thereof in transit (where the goods are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Customer shall notify the Company of any such claim within fourteen days of the date of the Company's invoice for the goods and in the case of goods all or any part of which are received damaged, unless the Customer shall sign for them as damaged and shall notify the Company of the damage in writing within 7 days of receiving the goods;
 - (iii) for defects in the goods caused by fair wear and tear, abnormal conditions of storage or use or the application of any treatment or process whatsoever to the goods after purchase (including, without limitation, any spray or flame proofing) or any act, neglect or default of the Customer or of any third party;
 - (iv) for other defects in the goods unless notified to the Company within twenty-eight days of the date of the Company's invoice for the goods and in any event before the said goods are cut or hung; or
 - (v) if the Company is unable to supply goods subsequent to receiving an order from the Customer.
- (B) Subject always to Condition 10 below:
- (i) Where liability is accepted by the Company under paragraph A, the Company's only obligation shall be at its option to make good any shortage or non-delivery under/or as appropriate to replace or repair any goods found to be damaged or defective and/or to refund the cost of such goods to the Customer;
 - (ii) The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods which give rise to such liability as determined by the net price invoiced to the Customer for the said goods in respect of any occurrence or series of occurrences;
 - (iii) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- (C) Subject to the foregoing and to Condition 10 below, all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the goods are hereby expressly excluded and the Company shall be under no liability to the Customer for any loss damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising SAVE THAT the Company shall accept liability for death or personal injury caused by the negligence of the Company.
- (D) The Company's prices are determined on the basis of the limits of liability as set out in this Contract. The Customer may by written notice to the Company request the Company to agree a higher limit of liability provided insurance cover can be obtained therefore. Any increase in the Company's costs for such higher insurance shall be for the Customer's account.

10 CONSUMER RIGHTS

These conditions do not and will not affect the statutory rights of a Customer who is a consumer.

11 RETURNS

Subject always to condition 10 above, no goods will be accepted back for credit unless the Company's prior written agreement for their return has been obtained. Goods must be returned within twenty-eight days to invoice date. A Returned goods Notice should be obtained in respect of such Goods from the Company's Sales Department before they are returned. Claims for credit will only be considered for goods which are returned with the Returned Goods Note issued in respect of them.

12 COLOUR MATCHING

- (i) All conditions warranties and representations expressed or implied by statute common law or otherwise that the colour or shade of the goods shall match accurately the colour or shade of any sample or cutting or of goods shown in any advertisement, pattern book, display card or elsewhere are hereby excluded.
- (ii) Without prejudice to paragraph (i) of this Condition, in the event that the customer requires an accurate match, including for repeat orders, the Customer shall either deliver a cutting of the required colour and shade to the Company or ask the Company to supply a cutting from its current stock.

13 SAMPLES

Samples and cuttings will be sent by post on application. Samples on approval not returned within fourteen days will be charged at the price per sample ruling at the date of despatch.

14 CREDIT REFERENCE

The Company reserves the right to make a search with a credit reference agency, which will keep a record of that search, and will share that information with other businesses. The Company may also make enquiries about the principal directors or partners with a credit reference agency.

15 INSOLVENCY AND DEFAULT

If the Customer 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 (being a company) an order is made or a resolution is passed for the winding up of the Customer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Company) or if a receiver is appointed of any of the Customer's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up Order or if the Customer takes or suffers any similar or analogous action in consequence of debt or commits any breach of this Contract or any other contract between the Company and the Customer, the Company may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries and/or by notice in writing to the Customer immediately terminate the Contract.

16 WAIVER

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

17 NOTICES

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class post or fax to the party concerned at its last known address. Notice sent by first class post shall be deemed to have been given seven days after despatch and notices sent by telex or fax shall be deemed to have been given on the date of despatch.

The Company reserves the right to refuse to open accounts or to accept orders and to close accounts at its discretion.

The Company may from time to time alter these Conditions. Any such changes will be set out on the Company website or as otherwise notified to the Customer. All orders placed following notification of such changes by the Company shall be on the new Conditions.

18 GOVERNING LAW

The Contract shall be governed by and in accordance with the Laws of Australia and the parties hereby submit to the jurisdiction of the Australian Courts.