

Terms and Conditions

1. Acceptance. All orders are considered offers by the purchaser (the “Buyer”) and are subject to acceptance by the seller Custom Bags Inc. (“CBI”), a corporation located in Mount Sinai, New York. Any alterations to this document, the Terms and Conditions of sale (“T&C”), by the Buyer will be considered a material alteration and will not be binding upon the CBI, unless CBI or CBI’s agent agrees to the alteration by signed writing (a “Writing”). A facsimile signed by the CBI or CBI’s agent will be deemed satisfactory in regards to this Writing requirement.

2. Limited Warranty. CBI offers the following expressed warranty for merchantability: CBI will deliver goods that meet or exceed generally accepted standards for commercial use within the industry. ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED ARE HEREBY DISCLAIMED BY CBI. Any advice offered by CBI is merely advice and not to be considered a warranty for fitness for a particular purpose. The Buyer is solely responsible for determining what type and size of bag is necessary to meet their needs and therefore waives any and all claims relating to advice offered by CBI employees.

3. Claims, Returns, and Cancellations.

3.1. Claims for Defective Product. All claims for defective goods must be made in Writing within thirty (30) days of the delivery date (a “Claim”). After thirty (30) days from the delivery date, no Claim for any defective product will be accepted for any reason. The written Claim must include the type of bag, quantity damaged, description of the damage, company name, and the invoice number. If CBI does not receive a written Claim request within the above time period, the goods are deemed to have been accepted by the Buyer unconditionally without qualification.

3.2. CBI reserves the right to inspect any goods included in a Claim. CBI, at its own expense, will send a representative to inspect or pay to have a portion of the product sent for inspection. Goods returned to CBI are for inspection purposes only and as such, title of the returned product remains with the Buyer until such time a decision is rendered in writing by CBI regarding the Claim.

3.3. By signing the T&C the Buyer recognizes that there are certain tolerances that are deemed acceptable within the industry. Any goods that are within these tolerances are considered to be conforming goods and as such no Claim will be accepted for them. *If the Buyer requires a precise definition of tolerances for a particular product they should submit a written request prior to signing the T&C.*

3.4. Claims for goods that were stored or handled improperly will not be accepted. Paper, plastic, and vinyl bags are very sensitive to temperature, sunlight, and water and therefore they should be stored in a clean and dry environment with a temperature around 65° F.

3.5. In instances where an order is delivered with both conforming and non-conforming (damaged) goods, the Buyer agrees that CBI, at its sole discretion, will either replace the non-conforming portion of the order or refund the Buyer for payment of the damaged portion of the goods, including any shipping costs applicable to delivery of the damaged product. CBI is under no obligation to reproduce the portion of the order that was non-conforming and CBI is not liable for any damages, whether damages are special, indirect, or consequential, except for the remedies provided for within this provision.

3.6. Returns. CBI will not honor any credit requests or accept any returned goods without a written authorization number issued by an CBI representative (an “RA#”).

3.7. Cancellations. By signing the T&C the Buyer acknowledges that goods produced for a Custom Order (as defined herein under section 7) are unique and as such are altered in such a way as to make them un-sellable to another customer through the normal course of business and therefore the Buyer will be unable to cancel the order once production begins. The Buyer further agrees and accepts responsibility for any costs associated with procurement of materials and any product produced prior to, and for a reasonable period after, should the Buyer breach this section (3.7 of the T&C).

4. Title and Shipping.

4.1. Title. In all circumstances, shipping terms are FCA (as defined by INCOTERMS 2000) and as such, title and risks of loss and damage for the goods pass from CBI to the Buyer upon delivery to the carrier at the domestic shipping point, unless the sales order specifies an alternative FCA location. All foreign manufactured products are FCA point of entry into the United States of America. If the sales order and the T&C conflict on FCA location, the sales order FCA point controls. CBI assumes all risks of loss, damage, and liabilities arising from the storage and handling of the goods until such time as goods are delivered to the carrier, or buyer, at the FCA point.

4.2. Shipping Information. CBI reserves the right to choose any insured shipping carrier to deliver goods, unless Buyer specifically requests in writing that a particular carrier be used. Under no circumstances will CBI ship product with a carrier that does not insure the shipment.

5. Liability. CBI’s liability is limited to the Buyer’s invoice amount and under no circumstances shall CBI be held liable for any special, indirect, or consequential damages.

5.1. Delivery Date. The delivery date specified on sales order is to be used as a guideline and is NOT a guaranteed delivery time. If the Buyer requires a guaranteed delivery time, CBI will do so in a signed writing that will be attached to the T&C as an appendix (a “Delivery Guarantee”). CBI will not be held liable for any special, incidental, or consequential damages that result from delayed delivery without a Delivery Guarantee.

5.2. Government Requirements. It is the responsibility of the Buyer to research and notify CBI in writing of any specifications and/or warning labels that the government requires, which therefore must be present in the goods CBI supplies to the Buyer. The Buyer further agrees that if no such writing is supplied to CBI, the Buyer will be held liable, and indemnify and hold CBI harmless from and against any and all damages, cost and expenses (including without limitation reasonable attorney fees) incurred by CBI in connection with any action, suit, proceeding, demand, assessment, or judgment (including instances where CBI is a third party) for violations of any Federal, State, or local government (including all applicable government agencies) laws regarding printing, material used, dimensions, warning labels, or any other required specification that may apply.

6. Trademarks and Copyrights. By signing the T&C the Buyer agrees to indemnify and hold CBI harmless from and against any and all damages, cost and expenses (including without limitation reasonable attorney fees) incurred by CBI in connection with any action, suit, proceeding, demand, assessment, or judgment (including instances where CBI is a third party) arising out of or related to trademark and/or copyright infringement. The Buyer acknowledges that any artwork printed on any products that CBI sells is done so at the request of the Buyer and with the understanding that the Buyer is licensed to print, display, advertise, and sell goods with this artwork affixed.

7. Overrun and Underruns. **All custom orders are subject to an over/underrun of twenty-five percent (25%), unless the sales order specifies a different over/underrun percentage, in which case the percentage stated on the sales order controls.** For purposes of the T&C, a "Custom Order" consists of any order where goods with the following characteristics are produced:

- 7.0.1. The goods are for a nonstandard size;
- 7.0.2. The goods are printed; or
- 7.0.3. The quantity ordered requires manufacturing the product specifically for the order in question.

8. Payment. Terms of sale are disclosed on the sales order and sales invoice. In all cases the term for payment begins the date the Buyer is invoiced for the goods (the "Term Period"). All products are invoiced upon shipment or once title of goods passes from CBI to either the Buyer or the carrier. Any invoice not paid within the Term Period will be subject to a 1 ½% per month (18% per annum) interest charge on the outstanding balance. If a jurisdiction restricts to the interest charge to less than 1 ½% per month (18% per annum), the interest rate charged will be the maximum interest rate allowable within the jurisdiction. Under no circumstances is payment contingent on delivery of product, but rather payment becomes due when the goods are invoiced if due upon receipt or if the terms are NET XX, upon the expiration of the Term Period.

8.1. Other Payment Issues. CBI reserves the right to refuse delivery of goods under the following circumstances:

- 8.1.1. When CBI feels that the Buyer's financial position becomes questionable and its ability to pay may be jeopardized;
- 8.1.2. If the Buyer has outstanding invoices that have exceeded the Term Period; or
- 8.1.3. Any other circumstances that may result in CBI's inclusion into litigation, whether as plaintiff, defendant, or third party.

9. Assignment. These T&C will be binding on and will inure to the benefit of the parties and their respective agents, successors and permitted assigns; provided, however, that no party will have the right to transfer or assign any rights or obligations under the T&C (other than transfers or assignments by operation of law) without first obtaining the other party's written consent, which consent shall not be unreasonably withheld or delayed. Any attempted assignment in violation of this provision will be void, with the exception of the sale by Buyer of the entire portion of its business to which the sales order, and therefore the T&C, pertain.

10. Force Majeure. CBI will not be held liable, nor in breach of the related contract to sell goods to the Buyer, for any delay or failure in performance or interruption of service resulting from acts of God, government authority, civil disturbances, acts of terrorism, fire, the elements, or any other cause(s) which are beyond that party's reasonable control; provided, that that party promptly notifies the other party of the delay or failure.

11. Choice of Law and Attorneys' Fees. THESE T&C AND ANY DISPUTE ARISING FROM OR RELATING TO THESE T&C SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPALS OF CHOICE OF LAW OR CONFLICT OF LAWS, AND CHOICE OF VENUE SHALL BE, FOR ANY STATE ACTION, A NEW YORK STATE SUPREME COURT LOCATED IN SUFFOLK COUNTY, NEW YORK AND FOR ANY FEDERAL ACTION THE CHOICE OF VENUE SHALL BE A FEDERAL DISTRICT COURT LOCATED IN SUFFOLK COUNTY, NEW YORK. IN ANY ACTION TO ENFORCE THESE T&C, THE PREVAILING PARTY WILL BE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES AND OTHER COSTS INCURRED THEREIN, IN ADDITION TO ANY OTHER RELIEF GRANTED BY THE COURT.

12. Severability. If any term in these T&C is held invalid or unenforceable, the remainder of these T&C will not be affected and each other term will be valid to the extent permitted by law.

13. Notices. Any Writing(s) or Claim(s) related to these T&C should be sent to: Custom Bags Inc., 218 Main Street #222 East Setauket, New York 11733 or faxed to (888) 465-8239.

Company Name: _____ Authorized Signature: _____

Title: _____ Date: _____