

The customer's attention is drawn in particular to *clause 8*.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Contract: the contract between LYNDHURST SHOE COMPANY LIMITED and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from LYNDHURST SHOE COMPANY LIMITED.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Losses: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or in a form agreed between the parties as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and LYNDHURST SHOE COMPANY LIMITED.

Supplier: LYNDHURST SHOE COMPANY LIMITED (registered in England and Wales with company number 03280008).

1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax and email.

2. BASIS OF CONTRACT

- 2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer must ensure that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3** The Order shall only be deemed to be accepted when LYNDHURST SHOE COMPANY LIMITED issues a written acceptance of the Order,

at which point and on which date the Contract shall come into existence.

2.4 The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings or advertising produced by or on behalf of LYNDHURST SHOE COMPANY LIMITED and any illustrations contained in LYNDHURST SHOE COMPANY LIMITED's catalogues or brochures (whether digital or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by LYNDHURST SHOE COMPANY LIMITED shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. GOODS

3.1 The Goods are described in LYNDHURST SHOE COMPANY LIMITED's digital and printed catalogue as modified by any applicable Specification.

3.2 To the extent that the Supplier manufactures (or appoints a third party to manufacture) the Goods in accordance with a Specification supplied by the Customer, the Customer shall indemnify LYNDHURST SHOE COMPANY LIMITED against all Losses incurred by LYNDHURST SHOE COMPANY LIMITED as a result of any claim that the LYNDHURST SHOE COMPANY LIMITED's use of the Specification infringes the intellectual property rights of any third party. This clause 3.2 shall survive termination of the Contract.

3.3 LYNDHURST SHOE COMPANY LIMITED reserves the right to amend the Specification if required by any applicable law or regulatory requirement, and shall notify the Customer in any such event.

4. DELIVERY

4.1 LYNDHURST SHOE COMPANY LIMITED shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 LYNDHURST SHOE COMPANY LIMITED shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after LYNDHURST SHOE COMPANY LIMITED notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. LYNDHURST SHOE COMPANY LIMITED shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide LYNDHURST SHOE COMPANY LIMITED with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If LYNDHURST SHOE COMPANY LIMITED fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. LYNDHURST SHOE COMPANY LIMITED shall not be liable for any failure to deliver the Goods that is caused by a Force Majeure Event or the Customer's failure to provide LYNDHURST SHOE COMPANY LIMITED with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within 7 Business Days of LYNDHURST SHOE COMPANY LIMITED notifying

the Customer that the Goods are ready for delivery, then, except where such failure is caused by a Force Majeure Event or LYNDHURST SHOE COMPANY LIMITED's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the first Business Day after the day on which LYNDHURST SHOE COMPANY LIMITED notified the Customer that the Goods were ready; and
- (b) LYNDHURST SHOE COMPANY LIMITED shall store the Goods until actual delivery takes place, and shall, without limiting its rights, be entitled to charge the Customer for all related costs and expenses (including insurance).

4.7 If 7 Business Days after the date on which LYNDHURST SHOE COMPANY LIMITED notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, LYNDHURST SHOE COMPANY LIMITED may resell or otherwise dispose of part or all of the Goods.

4.8 LYNDHURST SHOE COMPANY LIMITED may deliver the Goods by instalments, which it shall invoice and which the Customer shall pay for separately. Each instalment shall constitute a separate contract. Any delay in delivery of or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 LYNDHURST SHOE COMPANY LIMITED warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by LYNDHURST SHOE COMPANY LIMITED.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to LYNDHURST SHOE COMPANY LIMITED within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) LYNDHURST SHOE COMPANY LIMITED is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by LYNDHURST SHOE COMPANY LIMITED) returns such Goods to LYNDHURST SHOE COMPANY LIMITED place of business at the Customer's cost,

LYNDHURST SHOE COMPANY LIMITED shall, at its option and to the extent that it agrees that such Goods do not comply with the warranty set out in Clause 5.1, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 LYNDHURST SHOE COMPANY LIMITED shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow LYNDHURST SHOE COMPANY LIMITED's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of LYNDHURST SHOE COMPANY LIMITED following any drawing, design or specification supplied by or on behalf of the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of LYNDHURST SHOE COMPANY LIMITED;

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description and any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, LYNDHURST SHOE COMPANY LIMITED shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by LYNDHURST SHOE COMPANY LIMITED.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) LYNDHURST SHOE COMPANY LIMITED receives payment in full (in cash or cleared funds) for the Goods and any other goods that LYNDHURST SHOE COMPANY LIMITED has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as LYNDHURST SHOE COMPANY LIMITED's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify LYNDHURST SHOE COMPANY LIMITED immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give LYNDHURST SHOE COMPANY LIMITED such information as LYNDHURST SHOE COMPANY LIMITED may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the Customer's ongoing financial position.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before LYNDHURST SHOE COMPANY LIMITED receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as LYNDHURST SHOE COMPANY LIMITED's agent; and
- (b) title to the Goods shall pass from LYNDHURST SHOE COMPANY LIMITED to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, LYNDHURST SHOE COMPANY LIMITED may:

- (a) by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

- (b) require the Customer to deliver up all Goods in its possession and control that have not been resold, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to recover them.
- 7. PRICE AND PAYMENT**
- 7.1** The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in LYNDHURST SHOE COMPANY LIMITED's published price list in force as at the date of delivery.
- 7.2** LYNDHURST SHOE COMPANY LIMITED may, by giving notice to the Customer at any time up to seven Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond LYNDHURST SHOE COMPANY LIMITED's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give or delay by the Customer in giving LYNDHURST SHOE COMPANY LIMITED adequate or accurate information or instructions.
- 7.3** The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to LYNDHURST SHOE COMPANY LIMITED at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) **excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be calculated separately once the order is placed and invoiced to the Customer in LYNDHURST SHOE COMPANY LIMITED's usual course of business. (shipping and delivery costs available upon request)**
- 7.4** LYNDHURST SHOE COMPANY LIMITED may invoice the Customer for the Goods on or at any time after the completion of delivery pursuant to clause 4.3.
- 7.5** The Customer shall pay each invoice submitted by LYNDHURST SHOE COMPANY LIMITED:
- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by LYNDHURST SHOE COMPANY LIMITED, and
- (c) time for payment shall be of the essence of the Contract.
- 7.6** If the Customer fails to make a payment due to LYNDHURST SHOE COMPANY LIMITED under the Contract by the due date, then without limiting LYNDHURST SHOE COMPANY LIMITED's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. LIMITATION OF LIABILITY**
- 8.1** The limits and exclusions in this clause 8 reflect the insurance cover LYNDHURST SHOE COMPANY LIMITED has been able to arrange. The Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 8.2** References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.
- 8.3** Nothing in in the Contract limits any liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987;
- (e) any liability that cannot legally be limited; or
- (f) the Customer's payment obligations under the Contract.
- 8.4** Subject to clause 8.3, LYNDHURST SHOE COMPANY LIMITED's total liability to the Customer shall not exceed £100,000.
- 8.5** Subject to clause 8.3, the following types of loss are wholly excluded:
- (a) loss of profits (including loss of anticipated savings);
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of use or corruption of software, data or information;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.
- 8.6** This clause 8 shall survive termination of the Contract.
- 9. TERMINATION**
- 9.1** Without limiting its other rights or remedies, LYNDHURST SHOE COMPANY LIMITED may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of it being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2** Without limiting its other rights or remedies, LYNDHURST SHOE COMPANY LIMITED may suspend supply of the Goods under the Contract or any other contract between the Customer and LYNDHURST SHOE COMPANY LIMITED if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or LYNDHURST SHOE COMPANY LIMITED reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3** Without limiting its other rights or remedies, LYNDHURST SHOE COMPANY LIMITED may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer

fails to pay any amount due under the Contract on the due date for payment.

extent possible, achieves the intended commercial result of the original provision.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to LYNDHURST SHOE COMPANY LIMITED all of LYNDHURST SHOE COMPANY LIMITED's unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, LYNDHURST SHOE COMPANY LIMITED shall submit an invoice, which the Customer shall pay immediately on receipt.

11.6 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

(b) Any notice shall be deemed to have been received
(i) if delivered by hand, at the time the notice is left at the proper address; and
(ii) if sent by next working day delivery service, at 9:00 am on the two Business Day after posting.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. FORCE MAJEURE

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate the Contract by giving not less than 7 days' written notice to the affected party.

11.7 Third party rights.

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11. GENERAL

11.8 Governing law.

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

11.1 Assignment and other dealings.

(a) LYNDHURST SHOE COMPANY LIMITED may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

11.9 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

11.2 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.3 Variation.

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 Waiver.

(a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

(b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

11.5 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 11.5, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest