



Terms and Conditions of Sale

1. Interpretation

- 1.1 “Van Hessen” shall mean Van Hessen UK Casings Ltd and its subsidiaries and the words “we”, “us” and “our” shall have the same meaning.
- 1.2 “Goods” shall mean the goods which we agree to supply by this contract.
- 1.3 “Specification” shall mean, except where the context otherwise requires, the specification of the goods to be supplied by us and shall include any description and quantity specified.
- 1.4 “Blanket Contract” shall have the meaning given in clause 4 of this contract.
- 1.5 The singular shall include the plural and the plural shall include the singular.

2. General

- 2.1 These are the general conditions on which Van Hessen agree to supply Goods.
- 2.2 We will only agree to supply Goods on other conditions if one of Van Hessens Directors, General Manager or the Company Secretary signs such contract.
- 2.3 Only those terms and conditions of sale specifically referred to in a Schedule of Special Terms and Conditions as being amended with the amendments set out in the Schedule and signed by a Director of the Company or the General Manager will be deemed to be amended. No oral representations nor procedures established through custom and practice will be deemed to have amended any term or condition.
- 2.4 Nobody acting on our behalf has authority to enter any collateral contract which may affect the operation of these conditions or your duties under this contract.
- 2.5 No document whether produced by us or not (including all catalogues, brochures, price lists, newsletters, advertisements or drawings) shall form part of this contract, unless reference is made to each such document in the special conditions of this contract.

3. Quotations and Orders

- 3.1 Unless stated otherwise, any quotation given by us is valid as an offer to supply Goods for a period of one calendar month. At any time during that period, we reserve the right to withdraw or amend the quotation.
- 3.2 If we accept any orders of yours, our acceptance is subject to these general conditions to the exclusion of any other terms and conditions which you may seek to incorporate.

4. Blanket Contract

- 4.1 If this is a Blanket Contract, we agree to supply Goods to you at the price and in the manner agreed by this contract: either
 - 4.1.1 for the period fixed by this contract; or if no period is fixed.
 - 4.1.2 for an indefinite period terminable by either side on three months notice.
- 4.2 You must provide us with a forecast of your demand for Goods at least 30 days prior to the initial delivery date. The initial delivery date is set out in the Blanket Contract Schedule hereto.
- 4.3 You will notify us as soon as possible of any changes in the forecast.
- 4.4 If you change a forecast or change a firm order under a Blanket Contract, then we shall take reasonable steps to mitigate any loss which we might suffer.

- 4.5 If you change a firm order under a Blanket Contract, you shall (subject to our duty to mitigate) pay us all costs and losses (including loss of profit) suffered by us in consequences thereof.
- 4.6 If a change in a forecast results:
 - 4.6.1 in our purchasing materials which cannot be used in the ordinary course of our business, or
 - 4.6.2 in our employees lacking work to do, or
 - 4.6.3 in part or all of our premises, factories, workshops or production lines standing idle, you agree (subject to our duty to mitigate) to pay us the costs or losses (but not loss of profit) reasonably attributable thereto.
- 4.7 We shall use reasonable efforts to meet orders for Goods pursuant to your forecasts. If, despite reasonable efforts, we will not be able to meet your forecasts, we will have the option to decline any order placed by you under the Blanket Contract.
- 4.8 Under a Blanket Contract, you will order Goods, which we shall deliver in accordance with your order.
- 4.9 The consideration for the Blanket Contract is your making of the first order under the Blanket Contract.
- 4.10 Unless otherwise agreed, we reserve the right to vary prices to take into account changes in our labour and overhead rates.
- 4.11 The detail of the items and quantities to be supplied and the delivery terms of the Blanket Contract are set out in the Schedule hereto.

5. Price and Payment

- 5.1 The price shall be that agreed.
- 5.2 Unless otherwise agreed, the price shall;
 - 5.2.1 be exclusive of Value Added Tax; but
 - 5.2.2 include all other import and other duties; and
 - 5.2.3 include delivery and packaging.
- 5.3 Payment is due by you 30 days from the date of invoice.
- 5.4 We reserve the right to charge interest and costs in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 If any invoices for Goods provided by us are due but unpaid, we shall (in contract) be entitled to withhold all supplies of Goods which may be outstanding. In addition, we may (at our option) treat you as being in repudiatory breach of this contract.
- 5.6 If we supply Goods in instalments or pursuant to a Blanket Contract, we shall, unless otherwise agreed, be entitled to tender separate invoices in respect of each delivery thereof.
- 5.7 You shall have no right of set off, counterclaim, discount, credits or rebates against invoices submitted.

6. Price Variations

In the event:

- 6.1 that there is any variation of the Specification which incurs additional work or materials;
- 6.2 that additional works or replacement materials are required by reason of any defect or modification of the Specification;
- 6.3 that the price of materials or other components required to supply the Goods has increased;
- 6.4 that taxes, duties or other levies have increased the cost of the Goods which we agree to supply;
- 6.5 that any currency fluctuations have increased the cost of the Goods which we agree to supply;
- 6.6 we may, at our option, increase the price by such amount as may be reasonably attributable to such an event or events.

7. Specification

- 7.1 We undertake that the Goods supplied conform with the Specification.

- 7.2 However, unless specific tolerances and permitted shortages are specified in the specification, we shall be permitted to supply goods with such tolerances and shortages as may be reasonable in all the circumstances.
- 7.3 We may unless the contrary is expressly stated in the Specification substitute any materials with other of a similar standard.
- 7.4 We warrant that all Goods sold are of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended.
- 7.5 We shall afford you an opportunity to inspect our production facilities subject to prior appointment. You agree not to use any information acquired by you in the course of such inspection save bona fide in connection with the supply of Goods by us to you.

8. Delivery and Inspection

- 8.1 We will use our reasonable endeavours to deliver Goods to the place agreed and at the time agreed unless it has been agreed that you will be responsible for collection of Goods in which case they may be collected from the agreed point of collection. Save as aforesaid, time shall not be of the essence in respect of any delivery of Goods by us.
- 8.2 You shall endeavour to inspect the Goods as soon as reasonably possible.
- 8.3 You agree to give us a reasonable opportunity to inspect any Goods supplied under this contract in respect of which you claim any defect or shortage. We shall be given reasonable opportunity to carry out tests and take all such copies, photographs and samples as we may reasonably require.
- 8.4 You agree to notify us in writing within 7 days of all claims in respect of defects in or shortages of any Goods supplied under this contract where such defects or shortages were or would have been reasonably apparent on inspection. You agree to waive all claims for damages or other relief in respect of any such defects or shortages not notified to us in writing within 7 days.
- 8.5 We cannot accept any liability if Goods have been altered, modified or have deteriorated whilst in your possession. Neither can we accept liability for Goods which have been subject to abnormal use, misuse or neglect.
- 8.6 Subject to the above, we shall make good all defects or shortages at our cost.
- 8.7 If you are collecting Goods, you are responsible for loading the same at the point of delivery.
- 8.8 Where you are collecting Goods, for health and safety reasons, our employees are not obliged to assist in the loading of Goods.
- 8.9 Where we agree to deliver Goods by instalments, a failure to make any particular delivery on time or at all shall not be repudiatory breach of the whole contract.

9. Our Liabilities

By placing an order with us you agree to indemnify us against all claims of whatsoever nature howsoever arising including, but not limited to, any claims arising out of our negligence or breach of contract or breach of the law including, but not limited to, claims for damages and claims for consequential loss. You agree that you will have in place insurance cover to meet all such claims.

10. Passing of Risk and Title

- 10.1 Risk shall pass on delivery.
- 10.2 Property in the Goods supplied by us shall not pass until we have received payment by cash or cleared funds of all outstanding invoices whether due or not due.
- 10.3 If you sell the Goods supplied by us before property has passed to you, pursuant to section 25 of the Sales of Goods Act 1979 you are able to give good title for those Goods to your sub-buyer. In this case, however, you must keep the proceeds of such a sub-sale on trust for us.

11. Term and Termination

- 11.1 These provisions are in addition to any other right to terminate the contract for breach of any obligation.
- 11.2 Either party may at its option terminate this contract by notice in writing if the other party;
 - 11.2.1 ceases to trade or threatens to cease trading; or
 - 11.2.2 enters into a composition or voluntary arrangements with its creditors; or
 - 11.2.3 has a receiver or administrator appointed over the whole or any part of its business or assets, or
 - 11.2.4 has a creditor's winding up petition advertised against it in the appropriate Gazette; or
 - 11.2.5 passes a resolution to wind up (other than for the purposes of a solvent amalgamation or reconstruction).
- 11.3 In the event of termination under clause 11.2 or termination for repudiatory breach:
 - 11.3.1 you shall pay to us all sums outstanding for the supply of Goods as at the date of termination whether or not the same have been delivered or collected.
 - 11.3.2 subject to prior receipt of the sums referred to in sub-clause 11.3.1, you shall at your cost arrange for the collection of all outstanding Goods, materials and components within 7 days of the date of termination. If you shall not arrange such collection, then without further reference to you we may at our option dispose of such items in any manner we think fit provided that doing so shall not prejudice our right to pursue you for all outstanding sums.

12. Confidentiality

- 12.1 Both parties shall keep confidential:
 - 12.1.1 all business and trade secrets including business methods;
 - 12.1.2 the details of any specification which we may have given you;
 - 12.1.3 any other confidential information which either party may have obtained from the other.
- 12.2 Neither party shall seek to solicit or seek to entice away any person employed by the other whether now or within 2 years the termination of this contract.

13. Assignment

Neither party shall assign this contract without the consent of the other.

14. Force Majeure

Van Hessen shall not incur any liability for any loss or damage which may be suffered by you as a result, either directly or indirectly, of the supply of Goods being prevented, hindered or delayed as a consequence of circumstances beyond their reasonable control including but not limited to Act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm or difficulty in obtaining raw materials. Nor shall Van Hessen be in repudiatory breach of this contract by reason of any such prevention, hindrance or delay.

15. Waiver

Any waiver by either party of any breach of any of the terms of this contract by the other shall not be construed as a waiver of any earlier or later default of a similar nature.

16. Publicity

Neither party shall publicise the existence of this contract without the prior consent of the other which consent shall not be unreasonably withheld.

17. Inducements

- 17.1 You must not offer or supply any of our employees with any incentive, gift or other collateral advantage.

17.2 Any breach of this duty will be a fundamental breach of this contract and entitle us to terminate the contract.

18. Health and Safety

18.1 You must warn us of any matter which may affect the safety of our employees and others in the supply of Goods.

18.2 Failure to comply with these duties shall be a fundamental breach of this contract and entitle us to terminate the contract.

19. No Legal Partnership

Nothing in this contract creates or shall be deemed to have created a legal partnership and neither party shall have authority to act as agent or otherwise bind the other or make any representation suggesting to any other person that a partnership may exist.

20. Limited Invalidity

If any paragraph, part of paragraph or any other provision of this contract shall be or become void or unenforceable, the remainder of this contract shall remain in full force and effect and neither party shall be discharged from its remaining obligations hereunder.

21. Proper Law and Jurisdiction

We operate a complaints procedure which is designed to deal with all complaints of whatsoever nature in an amicable manner. Full details of that procedure are available upon request to an Account Manager or from our Head Office.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in London, before an Arbitrator. At the option of the first to commence an arbitration, the arbitration shall be administered by The Chartered Institute of Arbitration of **12 Bloomsbury Square, London, WC1A 2LP, UK** pursuant to its rules. Judgement on the Award may be entered in any relevant court in England. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction in England.

The Arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the Arbitrator and the reasonable legal fees of the prevailing party.

22. Notice

Where the terms of this contract require notice to be given then proper notice shall be deemed to have been given if the notice is in writing and, unless otherwise specifically stated herein, is given 28 days in advance by First Class post. Notice to us must be delivered to our Head Office, addressed to the General Manager and the envelope marked "Most Urgent". We shall give notice in writing to the customer's delivery address.