

ADVANCED PROCESSING LIMITED

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions the following words have the following meanings:

"the Carrier"	means Redstar, Courier, Data Post, Express Post, Airfreight or the Company's own transport division or any other sub contractor instructed by the Company or the Customer to collect and/or deliver the Goods either prior to or after the provision of the Services
"the Company"	means Advanced Processing Limited
"the Conditions"	means the provisions contained herein which shall be incorporated into this Agreement in their entirety
"the Contract"	means all and any contracts between the Company and the Customer whether written or oral, relating to the provision of the Services, incorporating these Conditions
"the Customer"	means the person who enters into the Contract with the Company
"the Goods"	means the goods which are the subject of the Services which are supplied by the Customer to the Company
"the Services"	means garment processing, warehousing and distribution or such other services as the Company from time to time agrees to provide to the Customer
"the V.A.T"	means the Value Added Tax or any similar charge tax or levy on purchase of goods or services

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

1.5 Sole Conditions

The Company is a member of the United Kingdom Warehousing Association (formerly the National Association of Warehouse Keepers), is not a common carrier, and undertakes all the Services subject solely to the following Conditions (to the exclusion of all other terms and conditions) which can be varied only in writing by a Director of the Company.

If a Customer's acceptance document, purchase order or other documentation, received by the Company before or after notification of these Conditions, contains terms or conditions additional to, or at variance with these Conditions, then every such additional or varying term or condition shall be of no effect. Each request for the Services by the Customer from the Company shall be deemed to be an offer by the Customer for the Services subject to these Conditions and acceptance by the Company of the request for the Services from the Customer whether in writing, oral or by commencement of the Services shall be subject to these Conditions.

IMPORTANT NOTE

THE CUSTOMER'S ATTENTION IS DRAWN SPECIFICALLY TO CONDITIONS 4 and 5. Condition 4.1 has been included herein solely to relieve the Customer (including any associated packing and equipment) or the owner's agent, of the additional costs that the Company would need to include to recover insurance charges were its liability not limited as provided for in Condition 4.2. Condition 4.2 will only become operative at the written request of the Customer on the terms provided therein.

2 PRINCIPAL

2.1 The Customer warrants that unless it otherwise instructs the Company in writing it is and shall throughout the Services remain the owner of the Goods.

2.2 The Customer enters into the Contract and these Conditions as principal and not as agent for any other party.

3 CUSTOMER'S UNDERTAKINGS AND INDEMNITY

3.1 The Customer undertakes that:-

- When presented for the Services, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Company or any persons on the premises of the Company or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
- Before presentation of the Goods for the Services, the Customer will inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which the Company may need to comply.
- It will reimburse and fully indemnify and keep indemnified the Company against all duties and taxes, increased costs of labour, foreign exchange fluctuations, currency regulations, increased cost of materials or other costs beyond the Company's control that the Company may be required to pay in respect of the Goods, except to the extent that the Company is required to accept responsibility for them in accordance with Condition 4.
- It has paid all duties, taxes, foreign exchange fluctuations and currency regulations to the relevant authority whether in the United Kingdom or elsewhere in relation to the importation of the Goods.
- Unless prior to delivery of the Goods to the Company the Company receives written notice containing all appropriate information, none of the Goods constitute "Waste" as defined in the Environmental Protection Act 1990.
- Unless prior to delivery of the Goods to the Company the Company receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution of the environment or harm to human health.

3.2 The Customer will indemnify and keep indemnified the Company against all costs, loss, damage, expenses or liabilities whatsoever suffered directly or indirectly as a result of a breach of the Contract or these Conditions by the Customer and will pay all costs and expenses (including professional fees) including any direct or indirect consequential losses or damage (whether for loss of profit, depletion of goodwill or otherwise) incurred in, and the Company's reasonable charges for, dealing with the breach and its consequences. If the Company suspects a breach of warranty in Condition 2 or of any undertaking in Condition 3.1, or of the Contract or these Conditions it may demand the immediate removal of any of the Goods held for the Customer, or itself arrange their removal without notice, at the Customer's expense but without prejudice to any of its other remedies hereunder.

4 INSURANCE

4.1 Except as provided in Condition 3.2 below, the Company shall be under no obligation to insure the Goods whether during in transit or while in the custody of the Company and the Customer shall make arrangements to cover the Goods against all risks to the full insurable value thereof. The Goods are therefore at all times at the Customer's risk.

4.2 The Company will insure the Goods during the period they are in its custody and control but not (for the avoidance of doubt) whilst the Goods are in transit, if it receives prior written notice before the Goods arrive at the Company's premises that the Customer wishes it to do so provided that:-

(a) The Customer shall give written notice to be received by the Company at least 7 days before the date on which the insurance is required to be operative and shall specify the nature and the maximum value of the Goods to be at risk inclusive of duty and taxes paid or payable thereon. Under no circumstances will the Company's liability to the Customer exceed the value given under this notice.

(b) The Customer shall accept an increase in the Company's charges to cover the costs incurred in insuring against the Company's additional liability hereunder.

5 EXCLUSION OF LIABILITY

5.1 **The total financial liability of the Company under the Contract and these Conditions whether for:**

(a) **any breach of the Contract or these Conditions; and**

(b) **any representation, statement or tortious act or omission of the Company shall be as set out in this Condition 5.**

5.2 **The Company's total liability in Contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract or these Conditions shall be limited to the cost of the services in relation to the Goods in respect of which the claims arises.**

5.3 **All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.**

5.4 The Company, whilst making every effort to comply with any instructions of the Customer including anticipated delivery dates for the Goods, cannot accept any liability for late delivery of the Goods (the time for which shall not be of the essence of the Contract) on the basis that the Goods are delivered by Carrier and the Services in relation to the Goods and the cost of those Services are a small percentage of the value of the Goods, which have been manufactured by a third party.

5.5 Liability for late delivery and/or damage or loss during transit shall be the responsibility of the Carrier and any such claims made by the Customer shall be against the Carrier. However, the Company agrees that it will assign such rights as it may have (if any) against the Carrier to the Customer upon written notice in accordance with Condition 5.7(a) from the Customer that the Goods have been lost, damaged or delayed during transit.

5.6 The Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract or these Conditions.

5.7 (a) The Company shall not be liable for any breach under the Contract or these Conditions unless it has received written notice including all material details of the breach from the Customer within 21 days (7 days in the case of a breach during delivery both to the Company and the Carrier) of the breach, reasonably coming to the Customer's knowledge in the case of latent defects or of the Goods being delivered to the Customer in the case of patent defects.

(b) The Goods in respect of a claim must be preserved as delivered for a period of 14 days from notification of a written claim at which time the Company shall be at liberty to attend at the Customer's premises and inspect the Goods or may, at the Customer's cost, require the Goods to be returned to its premises for inspection.

(c) No legal proceedings may be brought against the Company unless they are issued and served, and no counterclaim may be raised unless full written details as provided in Condition 5.7 are received by the Company, within 6 months of the Customer's knowledge or delivery as set out in Condition 5.7(a).

5.8 The Company shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's warranties and undertakings or the Customer's use of the Goods, or its alteration or repair of the Goods, or its storage of the Goods (or by any other circumstances by virtue of which the Company is relieved of its contractual obligations).

5.9 Nothing in these Conditions shall affect or limit the liability of the Company for fraudulent misrepresentation, death or personal injury arising out of the negligence of the Company or its employees in the course of their employment.

6 DELIVERY

6.1 Whilst the Company shall use all reasonable endeavours to ensure the Goods are transferred to the Carrier within any estimated delivery dates or times given for delivery of the Goods by the Customer these are indications given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of the Contract nor shall the Company be under any liability for any delay and the provision of Conditions 5.4 and 5.5 shall apply.

6.2 The Company reserves the right to arrange delivery of the Goods to the Carrier in installments and to invoice in respect of each installment which shall be treated as a separate contract and the Customer shall not be entitled to repudiate the whole Contract as a result of any breach of these Conditions by the Company in respect of any installment.

6.3 The quantity of any consignment of Goods as recorded by the Company upon despatch to the Carrier from the Company's premises shall be conclusive evidence of the quantity received by the Customer at its premises or at the Customer's nominated destination on delivery unless the Customer can provide conclusive evidence proving the contrary both to the Company and the Carrier in accordance with Condition 5.7.

6.4 If for any reason the Customer or persons at the nominated destination will not accept delivery of any of the Goods when they are delivered by the Carrier, or the Carrier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) the Goods will be returned to the Company but shall be deemed to have been delivered; and

(b) the Company may continue to store the Goods as previously until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation and additional storage and insurance);

(c) If, after a period of 14 days, the Customer still has not taken and/or arranged for delivery of the Goods the Company may sell the Goods at the best price readily obtainable and (after deduction of all its costs and expenses) account to the Customer for the excess over the price for the Services or charge the Customer for any shortfall below the price for the Services.

7 EMPLOYEES AND SUB-CONTRACTORS

The Company shall be entitled to sub-contract all or any part of the Services and in this event these Conditions shall apply to such Services. The Company shall be entitled to sub-contract with others for the security, cleaning, maintenance, repair and other services and works at the premises where the Goods are located.

8 CHANGE OF CUSTOMER

Subject to the previous consent in writing of the Company the Customer may give written authority for the Goods or any part thereof to be transferred by the Company to the account of another party but subject to the Customer ensuring before the effective date of the transfer that such other party notifies the Company in writing that it is to become the Customer for the purposes of the Services and is to be bound by these Conditions and by any notice given under Condition 4.2(a). Further, the Customer agrees to continue to pay the Company's charges until receipt by the Company of the other party's acceptance of these Conditions.

9 CHARGES AND PAYMENTS

9.1 Subject as mentioned following any price quoted is valid for 30 days only or until earlier acceptance by the Customer.

9.2 Without prejudice to the rights of the Company under this Condition 9 the Company shall have the right to charge the Customer cost plus 15% of cost for any materials it purchases or services it purchases at the request of the Customer.

9.3 The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increases in the cost to the Company which is due to any fact beyond the control of the Company (such as without limitation, foreign exchange, fluctuation in currency, regulations, operation of duties, significant increase in cost of labour, materials or other costs of manufacture) provided always if such increase shall represent more than 5% of the cost of the Goods (excluding VAT) the Customer shall have the right to cancel the Contract by giving notice to the Company of such its decision within two weeks of the date of the Company's notice of increase. If the Company receives no such Customer's notice within the said period the Customer shall be deemed to accept the increased price.

9.4 Any change in delivery date, quantities, specifications or the Services in relation to the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information shall entitle the Company to make any consequential adjustment in price except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between the Customer and the Company.

9.5 The prices are exclusive of VAT that is chargeable in addition to the price.

9.6 The cost of despatching Goods by Carrier or otherwise at the request of the Customer will be charged to the Customer in addition to which the Company reserves the right to pass on any supplementary charges incurred in arranging Special Delivery through the Carriers at the Customer's request. Details are available on request through the Sales Office of the Company.

9.7 All transport work carried out by the Company is subject to a fuel surcharge - the exact level of the surcharge depends on the price of fuel at the time the work was undertaken and is set at the Company's discretion. Full details of the current fuel surcharge are available by request.

10. TERMS OF PAYMENT AND LIEN

10.1 Payment is due from the Customer to the Company within 14 days of the date of the invoice. Time for payment shall be of the essence.

10.2 Where the date for delivery is not required by the Customer for 14 days the Company reserves the right to invoice from the date of order and to require payment with invoice.

10.3 The Company reserves the right to demand immediate cash payment in the event of the Company having reasonable grounds to believe that the Customer may be having financial difficulties.

10.4 The Company reserves the right to accept or reject any request by the Customer for a credit account. Any credit account is subject to prior agreement in writing between the Company and the Customer and subject to such terms and conditions as the parties agree and any continuance of such arrangement is at the absolute discretion of the Company and the Company reserves the right to cancel such arrangements without notice.

10.5 The Company reserves the right with prior notice to the Customer in writing and subject to any amendment not being detrimental to the Customer (unless the Customer is having financial difficulties as provided under Condition 10.3) to amend the terms of payment.

10.6 The price of the Goods and any other costs or charges payable by the Customer under these Conditions shall be paid by the Customer without regard to any equity, set-off or counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to the sum payable by the Customer to the Company.

10.7 If the Customer fails to make payment on the due date:-

(a) The Company may charge interest on the amount outstanding on any account from the due date of payment until the actual date of payment calculated at the rate of 2% above the base rate of Barclays Bank plc for each calendar month during all or part of which a payment is overdue and in the event of any account being pursued by legal action on such account in addition to any legal charges payable.

(b) The Company may suspend or cancel any Services and retain the Goods in accordance with Condition 10.8.

(c) The Company may require payment for any other Services due in advance but without prejudice to any other remedies available to the Company.

10.8 If the Customer fails to pay all or part of its outstanding account at the due date and any Goods of the Customer remain in the possession of the Company thus creating a general lien, by operation of law, the Company shall have the right, upon giving 14 days notice of its intention to do so, to sell the Goods, and failing repayment during that period to sell sufficient quantity of the Goods to discharge the amount due including any accrued interest, costs, expenses or losses of the Company. If any sums remain after such discharge this shall be paid to the Customer. Nothing in this Condition shall create a contractual lien.

11 TERMINATION

11.1 The Company shall have the right to terminate the Contract and the Conditions immediately if:

(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 or the Insolvency Act 1986 or the Buyer ceases to trade.

(c) The Customer breaches the Contract or these Conditions and in the case of a remedial breach, fails to remedy the same within 30 days of notice of the breach from the Company to the Customer.

11.2 Following termination and provided all amounts due including all costs or expenses incurred as a result of the termination of the Contract or these Conditions and payable in accordance with these Conditions is paid. The Goods shall be removed by the Customer from the custody or control of the Company at such date as may have been agreed between the parties. In the absence of such agreement, and otherwise where reasonably necessary, the Company may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice.

11.3 In the event of failure by the Customer following termination to give the Company adequate instructions for delivery of the Goods or to remove any of the Goods from the custody or control of the Company (following notice in accordance with Condition 11.2 having been given) at the due time, the Company may (assuming it has not already done so under Condition 10.8 due to non-payment), without prejudice to its other rights and

remedies against the Customer, give notice in writing to the Customer of the Company's intention to sell or otherwise dispose of the Goods at the Customer's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable goods within 3 days from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed the Company shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Customer's entire risk and expense by the best method reasonably available, and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all reasonable expenses and all amounts due to the Company from the Customer on any account.

12 GENERAL

12.1 Each exclusion or limitation in these Conditions exists separately and cumulatively and if any provision of these Conditions is held by any court, tribunal or administrative body of competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of these Conditions and/or the remainder of the provision in question shall not be affected thereby.

12.2 When reasonably necessary and at the discretion of the Company the Goods may be carried, stored or handled with other compatible goods or transferred between stores of the Company.

12.3 Any notice or statement of account given by the Company to the Customer shall be duly given if left at or sent by first class post to the last known address of the Customer or by facsimile to the last notified number and such notice or account shall if posted be deemed to have been given 2 working days after posting and, if by facsimile, or email, the next working day.

12.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13 GOVERNING LAW

All the Contracts between the Company and the Customer shall be governed in all respects by the laws of England and the Customer hereby submits to the exclusive jurisdiction of the English courts.

14 FORCE MAJEURE

The Company shall not be liable to the Customer or be deemed to be in breach of the Contract or these Conditions by any reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Goods or the Services if the delay or failure was due to any cause beyond the Company's reasonable control and without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the reasonable control of the Company:-

- (a) Act of God, explosion, flood, tempest, fire or accident.
- (b) War or threat of wars sabotaging civil disturbance or requisition.
- (c) Acts restrictions, regulations, bylaws, prohibitions or measures of any kind.
- (d) Import and export regulations or embargoes.
- (e) Strikes, lockouts or other industrial actions or trade disputes, whether involving employees of the Company or any third party.
- (f) Difficulty in obtaining raw material, labour, fuel parts or machinery.
- (g) Unavailability of materials from the usual source of supply.

In such circumstances the Company shall be entitled at its option to give notice to the Customer declaring that the Company is unable to complete the work in the time specified. Provided that if the event continues for a period in excess of 3 months the Customer shall be entitled to give the Company notice to terminate the Contract.

15 WAIVER

No failure, forbearance, delay or indulgence by the Company in enforcing its rights shall prejudice or restrict such rights and no waiver of any such rights or any breach of any contractual term shall be deemed to be a waiver of any other right or of any later breach.

Signed:

On behalf of:

Date: