

Section 1: General Terms & Definitions

- 1.1 “Agreement” shall mean the Quote, Price List, or Sales Order Confirmation issued by Seller, or the combination of any of the aforementioned documents, where applicable, which contain the names of the parties, the Goods sold and the price charged, along with these Terms & Conditions which accompany it. For the purposes of this Agreement these documents shall be considered one and hereinafter collectively referred to as “Seller Documents”, and the parties agree that all the terms and conditions contained in each of these documents shall govern and apply to the transaction. Where any conflict exists amongst such documents, or these Terms & Conditions, the last dated or issued document controls.
- 1.2 “Buyer,” as used in this Agreement, is the person or organization listed and identified as such on the front page of the accompanying Quote.
- 1.3 “Expected Ship Date” shall mean the date in which Seller has placed the Goods in a position for the Buyer to take possession, and which is clearly indicated on Seller’s Sales Order Confirmation.
- 1.4 “Goods” for the purpose of this Agreement shall be those items listed and described in the “Item” column of the accompanying Quote.
- 1.5 “Insolvent” for the purpose of this Agreement shall mean being unable to pay one’s debts in the ordinary course of business.
- 1.6 “Seller” is Ultrafabrics Inc., a Delaware corporation with its principal place of business located at 303 South Broadway, Suite 201 Tarrytown, NY 10591.
- 1.7 “Unconscionable” shall be deemed to mean that the enforcement of the entire Agreement or a specific clause of the Agreement will work oppression or cause unfair surprise to one of the parties. Unconscionability shall be determined as of the time when the Agreement is made, but shall not be deemed established by the fact that one of the parties has bargaining power superior to that of the other.
- 1.8 This Agreement shall be deemed an agreement between merchants as that term is defined by the Uniform Commercial Code as adopted by the State of New York.

Section 2: Offer

The Quote shall be considered an offer to sell the Goods specifically identified and described therein and in accordance to the terms and conditions set forth therein, in conjunction with these Terms & Conditions. No additional terms or modifications shall be accepted or controlling.

Section 3: Acceptance

A purchase order submitted by Buyer in response to Seller’s offer shall be considered Buyer’s acceptance to Seller’s offer. Any documents or references accompanying Buyer’s purchase order which contain modifying, superseding, supplementary, or contrary terms and/or conditions will be deemed a rejection of Seller’s offer and considered a counteroffer, the terms of which Seller may only accept in writing by Seller’s duly authorized representative (“Authorized Representative”) in whole or in part at Seller’s sole discretion. Buyer’s further performance under this Agreement in the absence of Seller’s written acceptance to any proposed counteroffer shall be deemed Buyer’s constructive retraction of such counteroffer, and Buyer’s tacit agreement to adhere to Seller’s offer and the terms and conditions accompanying same.

Section 4: Entire Agreement

- 4.1 This writing constitutes the entire agreement between the parties relating to the sale of the specified Goods listed and described in the accompanying Seller Documents, and this writing shall prevail over all terms contained in Buyer's purchase order.
- 4.2 Seller's obligation and performance are hereby expressly limited to terms and conditions expressly referenced in Seller's Documents. No purported acceptance of any purchase order on terms and conditions which modify, supersede, supplement or contradict in any way Seller Documents shall be binding upon Seller and such terms and conditions shall be deemed rejected and replaced by provisions set forth in Seller Documents unless Purchaser's proffered terms or conditions are accepted in writing by an Authorized Representative, notwithstanding Seller's acceptance of payment for any shipment of Goods or similar act of Seller.

Section 5: Term

This Agreement shall continue indefinitely, but may be terminated in accordance with Section 18 of these Terms & Conditions. Should this Agreement be terminated pursuant to said Section, Buyer shall be required to purchase from Seller all remaining goods Seller either has produced or will produce pursuant to any outstanding Purchase Orders submitted by Buyer prior to the agreed upon termination date.

Section 6: General Obligations of the Parties

- 6.1 Buyer will issue purchase orders to Seller from time to time. Each purchase order shall contain a description of the products ordered, the quantities and prices, the shipment schedule, the terms and place of delivery, and reference to the Quote number. Every purchase order issued by Buyer to Seller following the date of this Agreement and bearing such a notation shall be governed by and be deemed to include the provisions of this Agreement regardless of the date contained on the purchase order. In the event of any inconsistency between these Terms and Conditions and the terms of a purchase order, these Terms and Conditions shall prevail.
- 6.2 Buyer shall forward to Seller with every purchase order a proposed release schedule detailing the requested shipment dates for all Goods contained in said purchase order ("Release Schedule"). Seller shall, within one (1) week after receipt of the Release Schedule, inform Buyer of its acceptance or rejection of the proposed shipment dates. No Release Schedule shall be binding unless it has been accepted by Seller in writing, at which point it will be incorporated into and become a part of this Agreement. Should Buyer wish to revise or in any way alter the agreed upon Release Schedule, it may do so by notifying Seller in writing. Any changes in the Release Schedule shall be subject to a six (6) weeks lead time for the shipment of the first installment under the revised schedule.
- 6.3 Should Buyer or Seller fail to agree to a Release Schedule, the mutually agreed delivery date for purposes of purchase orders placed pursuant to this Agreement shall be a date that allows, at the minimum, twelve (12) weeks lead time after Seller's receipt of Buyer's purchase order. Seller shall make its best effort to accommodate any request by Buyer to reduce its lead time, but in no event shall Seller be obligated to comply with Buyer's request or be liable for any damages Buyer may suffer as a result of its failure to accommodate. Any changes in the lead time made at the Buyer's request shall be subject to additional charges which shall be disclosed to Buyer before shipment of the Goods.
- 6.4 In the event of failure of delivery on the delivery date, Buyer will give Seller written notice of delinquency allowing Seller a reasonable time to cure. In no event shall Seller be considered in default of its obligations under this agreement to deliver until six (6) weeks after its receipt of said notice.

- 6.5 Seller shall transfer and deliver to Buyer or make available to Buyer to pick up, as set forth in Seller Documents, Goods that conform with those set forth in the accompanying Seller Documents. Unless otherwise specified in Seller's Documents, all Goods will be shipped F.O.B. Seller's facility. The quantity of the Goods and Expected Ship Date shall be set forth in Seller Documents and shall be deemed the date in which Buyer shall take possession of the Goods. Buyer shall have five (5) business days from receipt of the Sales Order Confirmation to cancel or amend the Purchase Order.
- 6.6 Buyer shall promptly forward payment to the Seller in accordance with the terms of this Agreement and accept from Seller all conforming Goods.

Section 7: Title & Risk of Loss

- 7.1 For all transactions, title to, and all risk of loss, injury or destruction to the Goods, shall be in accordance to the shipping terms set forth on the Seller Documents. Any such loss, injury, or destruction shall not release Buyer from any obligation under this Agreement.
- 7.2 Buyer shall be responsible for taking possession of the Goods no later than the Expected Ship Date set forth on Seller Documents.
- 7.3 Buyer's failure to take possession of the full quantity of the Goods by the Expected Ship Date will subject Buyer to a demurrage fee of \$75.00 per order, per day following the Expected Ship Date. Additional charges may apply.
- 7.4 Should Buyer fail to take possession of the Goods within ten (10) calendar days following the Expected Ship Date, Seller shall have the right to invoice Buyer in accordance with payment terms set forth in Seller Documents, in addition to additional demurrage fees as set forth herein. At such time of invoicing, title to, and all risk of loss, injury or destruction to the Goods shall be borne by Buyer.

Section 8: Payment

- 8.1 Unless a credit line has been established pursuant to Section 8.2 below, no shipment to Buyer of any Goods covered by this Agreement shall be made until Seller receives full payment for the Goods by cash, check, or certified fund. If Buyer makes payment by non-certified check, shipment of the Goods will not occur until the check is honored by the drawee bank or other financial institution and the payment is remitted to Seller's bank or other financial institution. Failure to tender payment as required shall constitute a breach of this Agreement and justify Seller's withholding or stopping delivery of the Goods.
- 8.2 Buyer may request that a credit line be established for its benefit, the terms and approval of which shall be decided at Seller's sole discretion. Buyer agrees to furnish to Seller upon demand any requested financial and credit information pertaining to the Buyer's business enterprise for the establishment and/or continuation of any credit line. If a credit line is established, Buyer will be invoiced for all Goods produced under this Agreement at the time Buyer takes possession of the Goods, or as otherwise set forth herein. Payment terms for all invoices shall be net thirty (30) days from the date of invoice. Payments shall be sent to the address specified in the applicable invoice or paid via EFT or ACH to the bank account specified by Seller. All past due invoices shall be subject to a Late Fee of 1.5% per month (18% annually) from the due date until paid in full.
- 8.3 If Buyer fails to make payment according to the terms of this Agreement, Seller shall be under no obligation to make further shipments, and may elect at any time to cancel all or any part of the unfulfilled orders, and proceed for the collection of the amount unpaid on shipments previously made.

Section 9: Adjustment to Price

- 9.1 If the cost of production or procurement of the Goods to Seller shall increase during the term of this Agreement, Seller shall have the right, on giving thirty (30) days written notice to Buyer, to increase the price payable under this Agreement. All Goods ordered prior to said notice, and/or prior to the expiration of said thirty (30) day period, shall not be subject to the price increase. Upon written request, Seller shall furnish the Buyer with documentation of the increased cost of production, but under no circumstances shall Seller's delay in doing so excuse Buyer from the payment of the increased price.
- 9.2 The contract price is based upon the taxes and tax rates currently imposed upon Seller's production and/or procurement, sale and transportation of Goods. If any new taxes are imposed upon the Seller's production and/or procurement, sale, or transportation of Goods, or in the event the rates of existing taxes on such operations are increased, the contract price shall be increased to the extent of Seller's increased tax liability.

Section 10: Right of Inspection

- 10.1 Buyer shall have seven (7) business days to inspect the Goods commencing from the date of their arrival at Buyer's facility. Any objection to the condition, quality, grade, or general conformity of the Goods must be made in writing and received by Seller within said time period. Said writing must specify in detail the basis of Buyer's objection and advise of its intention to accept or reject the Goods in their present form. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the Goods by Buyer.
- 10.2 Upon Seller's receipt of notification from Buyer of its rejection of non-conforming Goods, Buyer shall wait for Seller to provide it with instructions regarding their disposal which shall be given in a reasonable time, but shall in no event exceed six (6) weeks. Buyer may not return Goods unless written authorization is received from Seller. Parties acknowledge that the Goods are not perishable and are of such kind that they will not decline in value. If Seller fails to give instructions to Buyer regarding the disposition of rightfully rejected Goods within said six (6) week period, Buyer shall have the right to either:
- (i) store the Goods for the account of Seller; or
 - (ii) ship the rejected Goods back to the Seller at the expense of Seller.
- 10.3 Seller shall have six (6) weeks to cure any objection raised by Buyer due to receipt of defective and/or non-conforming Goods before Seller incurs any liability to Buyer.
- 10.4 Any use of the Goods, including, but not limited to, the cutting of the material, shall be deemed and construed as an acceptance of the Goods and as conclusive evidence that the Goods are as represented unless Buyer receives written authorization from Seller before doing so.
- 10.5 If Buyer has accepted the Goods tendered under this Agreement in any manner described in these Terms & Conditions, or prescribed pursuant to Section 2-606 of the Uniform Commercial Code as adopted by the State of New York, Buyer shall have no right to revoke its acceptance of the Goods.

Section 11: Assignment & Delegation

- 11.1 Seller may, at its sole option and without the Buyer's consent, assign or delegate any of its rights or obligations under this Agreement and such assignment or delegation in itself shall not be sufficient grounds for any legal claim or action by Buyer.

- 11.2 Buyer shall have a right to assign its rights or delegate its performance under this Agreement only after first obtaining the written consent of the Seller. Buyer acknowledges that Seller has a substantial interest in having Buyer perform or control the acts required by this Agreement and that any unauthorized assignment or delegation would increase the burden or risk involved and would impair its chance of obtaining performance and/or payment. Any assignment or delegation by Buyer without the express authorized consent of Seller shall be considered a material breach of this Agreement.

Section 12: Nondisclosure

- 12.1 Each party agrees to regard as highly confidential all information developed by or communicated to it in the course of or in connection with its performance under this Agreement. Each party agrees that it will not, without the prior express and written consent of the other party, make any oral or written disclosures of any such confidential information, either during or after the term of this Agreement. However, such information may be disclosed to employees of the parties and other authorized persons who may be designated to perform work pursuant to this Agreement.
- 12.2 The parties further agree that all data, drawings, specifications or other technical information furnished directly or indirectly, in writing or otherwise, to each other pursuant to this Agreement, shall in no event become the property of the other party and shall be used only in fulfilling the obligations imposed by the Agreement and shall not be duplicated or disclosed to others or used in whole or in part for any other purpose.

Section 13: Trademark and Patents

- 13.1 Buyer has no knowledge of any trademark or patent rights that third parties may claim in the Goods. Seller makes no warranty that the Goods will not infringe the trademark, patent, copyright, trade secret or other property rights of third parties.
- 13.2 Buyer agrees to indemnify and defend Seller and hold Seller harmless from all legal expenses that may be incurred, as well as all damages and costs that may finally be assessed against Seller, in any action for patent, trademark, or copyright infringement, or any claim for violation of any trade secret, for which Seller becomes liable as a consequence of manufacturing the Goods covered by this Agreement in conformity with specifications and detailed designs furnished by Buyer, or from Buyer's use, sale or distribution of those Goods.
- 13.3 In connection with its sale or distribution of the Goods, Buyer may describe itself as an authorized distributor of Seller's products, but upon termination of this agreement, Buyer shall immediately cease using such designation and all materials provided to it by Seller in any form, including but not limited to print and electronic media.
- 13.4 Buyer acknowledges Seller's ownership of the marks used in the Agreement to identify the Goods. Buyer may use such marks on a non-exclusive basis solely in connection with its sale, distribution, advertisement and promotion of the products manufactured from the Goods. Buyer may not transfer, assign, sublicense, or otherwise grant rights with respect to said marks to any third parties. All use of such marks on products manufactured from the Goods will inure to the benefit of Seller. Buyer will not, during or after the term of this Agreement, attack Seller's title in and to such marks or their validity.
- 13.5 Buyer will not use such marks as common descriptive names or alone as nouns, but rather as adjectives immediately preceding the generic noun that describes the product offered under the marks (e.g., ULTRALEATHER polyurethane coated fabric). Buyer will not use the marks in plural form, possessive form or in all lowercase letters.

- 13.6 Buyer shall not use such marks as all or a portion of a corporate name or as all or a portion of any trade name or other designation used by it to identify its business. Buyer will not combine the marks with any other mark to form another trademark and will not obtain any Internet domain names containing the marks or any variation thereof.

Section 14: Casualty to Goods

If there is casualty to the Goods covered under this Agreement which occurs without fault to either party (including negligence and willful misconduct) and before risk of loss has passed to Buyer, then:

- a) If the loss is total, the contract is avoided;
- b) If the loss is partial or the Goods have so deteriorated as to no longer conform to the Agreement, Buyer may demand inspection and either
 - (i) treat the Agreement as avoided; or
 - (ii) accept the Goods with due allowance from the contract price for the deterioration or the deficiency in quantity, the sum of which must be mutually agreed to between the parties.

Section 15: FORCE MAJEURE

- 15.1 Seller shall not be liable for any delay or non-delivery directly or indirectly resulting from, in whole or in part, any foreign or domestic laws or regulations, embargoes, seizure, act of God, civil or military authority, insurrection, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly rendering impossible or impractical production or delivery of Goods under this Agreement, lack of the usual means of transportation, fires flood, severe weather, explosions, epidemics, quarantine restrictions, strikes, inability to obtain necessary labor, materials, or manufacturing facilities or other accident, contingency or condition beyond Seller's reasonable control including such delay or non-delivery to Seller by the manufacturer of the Goods resulting from any such event, accident, contingency or condition.
- 15.2 If any delivery under this Agreement is suspended or delayed by reason of any one or more of the occurrences or contingencies described above, then any and all deliveries so suspended or delayed may, at Seller's option, be made after such event or condition has ceased to exist.

Section 16: Warranties

- 16.1 Seller warrants the Goods supplied pursuant to this Agreement against original defects in materials or workmanship for a period of two (2) years from the date of shipment. This warranty is non-transferable and is limited to the original Buyer. This warranty does not cover claims for conditions or damages caused by shipping, abuse, accidents, alterations, misuse, neglect, reverse crocking/ dye transfer, excessive wear and tear, or other physical damage, or from failure to exercise due care in the measurement, installation, cleaning or maintenance of the fabric. This warranty also does not cover claims for scuffs, scratches, scrapes, tears and abrasive or excessive wear and will not cover claims for damage due to repair, alteration, or modification of the product by anyone other than Seller, unless such repair, alteration or modification is authorized by Seller in writing.
- 16.2 If a sample was provided to Buyer prior to its execution of this Agreement, Seller warrants that the Goods ordered and delivered shall conform to said sample in respect to color, texture, and pattern, with the exception of slight variations that typically occur in the materials' production and that are commercially acceptable and in accordance with usage of trade.

- 16.3 To obtain performance of any obligation under this warranty, Buyer must immediately contact Seller upon the discovery that it has a warranty claim under the provisions of this Agreement. Buyer must comply with all instructions of the Seller in processing its warranty claim, including, but not limited to, providing Seller with all documentation and material it requests within thirty (30) days. Buyer's failure to comply with any request made by Seller within said time period shall be deemed an abandonment of its warranty claim and bar Buyer from making any future warranty claims with respect to those Goods.
- 16.4 THE WARRANTY PRINTED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PURCHASE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM COURSE OF DEALING ARE DISCLAIMED. Some states do not allow limitations on implied warranties, so the above limitation may not apply to you, but nevertheless any claim for breach of an implied warranty in those states which do not permit their disclaimer shall be governed by the terms contained in Paragraph 16.5 directly below.
- 16.5 It is understood and agreed that Seller's liability and Buyer's sole remedy under this warranty is to replace the defective Goods without charge. Defective products will only be replaced after Seller has inspected the Goods in question and determined that such Goods are defective. Seller shall not be responsible for the costs associated with the measuring or installing of the replacement product. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, INABILITY TO USE THE PRODUCT OR OTHER ASSOCIATED PRODUCTS/EQUIPMENT, THE COST OF SUBSTITUTE EQUIPMENT, AND CLAIMS BY THIRD PARTIES) RESULTING FROM THE USE OF THIS PRODUCT.

Section 17: Limitation of Remedies

- 17.1 If Buyer becomes insolvent as that term is defined in this agreement, or files for protection under applicable bankruptcy laws, whether voluntary or involuntary, Seller may refuse to ship the Goods covered by this Agreement except for those paid for in cash or by certified fund. Seller may also stop delivery of Goods in transit. Seller shall also be entitled to reimbursement for the reasonable and proper cancellation charges it accrues as a result of Buyer's insolvency.
- 17.2 Should Seller fail to make delivery, or otherwise breaches or repudiates this Agreement, Buyer's sole remedy for any and all losses or damages shall be limited to the recovery of the difference between the contract price and the market price as provided in Section 2-712 of the Uniform Commercial Code as adopted by the State of New York. IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE RETURN OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, INABILITY TO USE THE PRODUCT OR OTHER ASSOCIATED PRODUCTS/EQUIPMENT, THE COST OF SUBSTITUTE EQUIPMENT, AND CLAIMS BY THIRD PARTIES). THE PURCHASE PRICE STATED IN THIS AGREEMENT IS GIVEN IN CONSIDERATION IN LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED AS DEFINED AND DESCRIBED IN MORE DETAIL IN PARAGRAPH 17.3 DIRECTLY BELOW.
- 17.3 For the purposes of this Agreement, a cause of action for the breach of this Agreement shall accrue when the breach occurs, whether or not the parties are aware of the breach at that time. For breach of warranty claims, the cause of action shall accrue on tender of the Goods.

Section 18: Seller's Remedies

- 18.1 If Buyer refuses to accept or repudiates delivery of the Goods sold to Buyer under this Agreement, Seller shall be entitled to damages in the amount of the purchase price of the Goods, together with any incidental damages authorized by Section 2-710 of the UCC, if applicable. It is understood that the Goods covered by this Agreement are not reasonably resalable due to their special design. Therefore, Seller may recover the purchase price of the Goods without attempting to first effect their resale.
- 18.2 Should Buyer default in any provision of this Agreement, including any extensions of or amendments mutually entered into between the parties, Seller shall have the right to declare the unpaid balance of the purchase price immediately due and owing.

Section 19: Termination

Except in the case of an actual breach of an obligation or duty under this Agreement, either party shall have the right to terminate this Agreement upon giving thirty (30) days' written notice to the other party by certified or registered mail. Should Buyer terminate this Agreement pursuant to this Section, it shall be required to purchase from Seller all remaining Goods Seller either has produced or will produce pursuant to any outstanding purchase orders submitted by Buyer prior to its notice of termination. A notice of termination shall not be effective until received by the party notified.

Section 20: Liability

Buyer shall indemnify and defend Seller, its subsidiaries and affiliates and their respective officers, directors, employees and agents ("Indemnities") from and against all liabilities, claims, damages, penalties, fines, forfeitures, suits and expenses incident thereto (including costs of defense and reasonable attorneys' fees), which Indemnities may incur, become responsible for, or pay out as a result of any third-party claims under theories of tort, product liability, negligence, warranty, contract, or statute, arising out of the use, storage, sale, processing or other disposition the Goods covered by this Agreement after their delivery to Buyer.

Section 21: Unconscionability

If any clause of this Agreement is held unconscionably by any court of competent jurisdiction, arbitration panel, or other official finder of fact, the clause in question shall be modified to eliminate the unconscionable element and as so modified, the clause shall be binding on the parties. The remaining provisions of the Agreement shall not be affected by the modification of any unconscionable clause.

Section 22: Anti-corruption Policy

- 22.1 Seller has adopted an anti-corruption policy whereby neither Seller nor any of Seller's officers, employees, agents, representatives or other persons acting on Seller's behalf is permitted to offer or authorize the making of or receive directly or indirectly any payment, gift, promise, entertainment or other advantage that would violate any anti-bribery law, rule, regulation or good business practice, the details of which policy may be found on Seller's website ("Seller's Compliance Policy").
- 22.2 Buyer agrees to comply with and observe Seller's Compliance Policy in all of Buyer's dealings with Seller and Seller's officers, employees, agents, representatives and other persons acting on Seller's behalf, and to report promptly to Seller's senior management any known or suspected violation of Seller's Compliance Policy.

Section 23: Governing Law & Jurisdiction

- 23.1 This Agreement is to be construed and enforced in accordance with the laws of the State of New York, including the New York Uniform Commercial Code in effect at the time this Agreement is entered into.
- 23.2 Each party hereby irrevocably submits to the jurisdiction of all federal and state courts located in the State of New York and consents to venue in Westchester County, New York for any action, suit or proceeding arising in connection with this Agreement.

Section 24: Headings

- 24.1 Headings used in this Agreement are for convenience only and shall not effect the interpretation of the Agreement.