

## STANDARD TERMS AND CONDITIONS OF SALE OF JORDAN & COMPANY

### 1. INTERPRETATION

- 1.1 In these Conditions, the following terms shall have the meanings assigned to them hereunder:
- 1.1.1 "The Application for Credit Facilities" means the application to the Company by the Customer for credit facilities in respect of the future business relationship with the Company to which this document is attached and in respect of which the Customer, by applying for such credit terms, agrees to be bound in all and every respect.
  - 1.1.2 "The Company" means Jordan and Co, a division of Feltex Holding (Pty) Limited, Registration Number 1957/001891/07
  - 1.1.3 "The Customer" means any person, firm, company, close corporation or association on whose request or on whose behalf, the Company undertakes any business or delivers any goods or provides any service.
  - 1.1.4 "Goods" means any shoes or other products owned, controlled or handled by the Company whether as principal or agent.
  - 1.1.5 "The Group" means the Company and any company which is a holding company or subsidiary or co-subsidiary of the Company from time to time.
  - 1.1.6 "Signatory" means the person or persons signing the application for credit facilities on behalf of the Customer and binding the Customer to the Standard Trading Terms and Conditions of the Company.
- 1.2 The head notes to these terms and conditions are for the purpose of reference only and shall not govern the interpretation thereof.
- 1.3 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include companies and vice versa.
- 1.4 The terms and conditions shall be binding on and enforceable against the assigns, liquidators, curators or any other legal representative of the Customer as fully and effectually as if they had signed the application for Credit Facilities in the first place and reference to the Customer shall be deemed to include its assigns, curators and any other legal representatives as the case may be.

### 2. PURCHASE PRICE

- 2.1 The price charged will be those ruling at the date of despatch of the goods unless otherwise agreed in writing.
- 2.2 All prices quoted reflect prices before VAT.
- 2.3 In the event that the rate of VAT increases or decreases or VAT is withdrawn, the respective amounts payable shall be adjusted accordingly.

### 3. CONDITIONS OF PAYMENT

- 3.1 Subject to clause 3.2 below, unless otherwise specifically agreed between the Company and the Customer in writing, the Customer shall pay to the Company in cash immediately upon presentation of the account concerned all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on the basis of any claim or counterclaim which the Customer may allege.
- 3.2 In order to qualify for any settlement discount, accounts must be paid within thirty days after the end of the month in which goods are invoiced. Should accounts not be settled within thirty (30) days as aforesaid, post-dated cheques are required in equal installments dated in terms of the credit terms agreed. Such post-dated cheques are to be received by the Company within thirty (30) days after the end of the month in which goods are invoiced.
- 3.3 All and any monies received from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed amount so made to any particular debt or portion of such debt.
- 3.4 The Company shall under no circumstances be precluded from raising any debit or obtaining payment in respect of any fee or disbursements due to it.
- 3.5 The contents of any statement of account rendered by the Company to the Customer shall be deemed to be true and correct, unless disputed in writing and received by the Company within thirty days after the date of dispatch of the statement to the Customer's domicile.
- 3.6 In the event of the Customer:-
  - (a) failing to make payment of any amount owing on due date (as defined in clause 3.2 hereof and as may specifically be agreed in writing between the Company and the Customer) whether to the Company or the Group or failing to furnish post-dated cheques as provided for in clause 3.2 hereof;
  - (b) failing to honour any other obligation within 7 (seven) days of receipt of written notice to do so;
  - (c) committing an act which if committed by a natural person would constitute an act of insolvency in terms of Section 8 of the Insolvency Act, Act 24 of 1936 (as amended);
  - (d) entering into a compromise of whatsoever nature with its creditors;
  - (e) failing to satisfy a judgement granted against it within seven (7) days of date of judgement;
  - (f) passing on any goods acquired from the Company to any third party for resale without the prior written consent of the Company;
  - (g) alienating or losing control of its business or, if a company or close corporation, the shareholding in such entity changing hands without the written consent of the Company first being had and obtained;
  - (h) deviating from its former principal business or acquiring any ancillary or additional business without first informing the Company; then and in that event, the Company shall be entitled forthwith and without notice to the Customer:
    - i) immediately to suspend production and delivery of all orders-on-hand in respect of the Customer;
    - ii) summarily to cancel any credit facilities granted by the Company to the Customer, in which case all amounts owing by the Customer to the Company shall immediately become due and payable;
    - iii) to demand and obtain payment in respect of the full balance outstanding (notwithstanding the dates when such goods were purchased and when the amounts in respect thereof would ordinarily become due);
    - iv) forthwith to repossess all goods in respect of which payment has not been effected;
    - v) claim any damages which may be due by the Customer to the Company flowing from non-payment or any breach of the aforesaid terms and conditions.
- 3.7 The Customer acknowledges that, should payment not conform to the terms agreed between the Customer and the Company, interest may be charged on any overdue amount at the maximum rate of interest allowed in terms of the Usury Act, calculated and debited monthly in arrear.
- 3.8 The Customer agrees that should it be in default in meeting its payments in an amount exceeding the jurisdiction of the Magistrate's Court, the Company shall be entitled nonetheless to institute action against the Customer out of such Court.
- 3.9 The Customer shall be liable for all legal costs as may lawfully be charged on the scale as between an attorney and his own client and all ancillary charges and expenses (including collection commission) which may be incurred in the event of any claim against the Customer being referred by the Company to its attorneys.

### 4. QUOTATIONS

The Company shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or executory agreement in circumstances where it becomes impractical or uneconomical for the Company to carry out the contract and the Customer shall have no claim whatsoever against the Company for any loss that the Customer may incur as a result of the Company cancelling or resiling from the quotation or executory agreement.

### 5. TRADE DISCOUNTS

No trade discounts whatsoever may be claimed by any Customer unless there is a written agreement to this effect as signed by the Customer and directors of the Company who are specifically authorised to conclude this agreement on behalf of the Company by means of a written resolution to this effect, which resolution is to be attached to this agreement.

### 6. CUSTOMER'S INSTRUCTIONS

- 6.1 The Customer's instructions to the Company shall be in writing and shall be set out on the Company's printed order form as designed for this purpose.
- 6.2 It is recorded that the provisions of clause 6.1 are inserted solely for the benefit of the Company which may waive such provisions in its sole discretion.

### 7. RESERVATION OF OWNERSHIP

- 7.1 It is expressly recorded and agreed that ownership in respect of any order placed by the Customer with the Company shall not pass to the Customer but shall remain vested in the Company notwithstanding the fact that delivery or partial delivery by the Company in respect of such order may have taken place, until and unless payment in respect of the entire order concerned has been effected by the Customer to the Company.
- 7.2 The Company shall be entitled, in its sole discretion and without notice to the Customer, to take possession of any such goods which, although delivered,

have not been paid for and in respect of which payment is overdue.

- 7.3 In the event of the Company availing itself of its right to take possession of goods not paid for, the Customer shall be entitled to receive a credit in respect of the goods so returned being either the price at which the goods are sold or the value thereof as determined by the Company, whichever of the two options the Company may elect.

#### 8. LANDLORD'S HYPOTHEC

- 8.1 It is recorded that all goods in respect of which ownership is reserved and which still vest in the Company do not fall under the Landlord's hypothec and that the Company does not consent to such goods being subject to the Landlord's tacit hypothec.
- 8.2 The Customer undertakes to advise the Landlord of the provisions of this clause as read with the provisions of clause 7 above.

#### 9. TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement which are governed by these terms and conditions.

#### 10. DELIVERY

- 10.1 Whilst every effort will be made to deliver the goods as advised on the Company's order form, the Company does not guarantee delivery on any specific date and shall not be liable for any damage caused in respect of late and/or incomplete delivery and/or non-delivery.
- 10.2 In the event of the Company delivering goods to a carrier, freight or forwarding agent, which carrier or agents has been nominated by the Customer for onward delivery to the customer, delivery shall be deemed to have taken place on delivery by the Company to the carrier, freight or forwarding agent, and such carrier or agent shall be deemed to be the Customer's agent for this purpose.
- 10.3 The Customer shall, upon signing the Company's delivery note on an unqualified basis, be deemed to confirm that proper delivery has taken place in respect of all goods charged.
- 10.4 Where the delivery note has been signed by the Customer with a qualification, the Company shall not be liable for any discrepancies unless the Customer has specified on the delivery note the exact nature of the discrepancy between the goods charged and the goods delivered.
- 10.5 Any claim in respect of such discrepancy must be made in writing to the Company within ten days of receipt of goods.
- 10.6 It is recorded and agreed that goods are never sold on consignment or delivered on a consignment basis notwithstanding any contrary agreement concluded by the Customer with any agent or any other representative of the Company and despite any representations to the contrary which may have been made or alleged to have been made on behalf of the Company.

#### 11. PASSING OF RISK

Notwithstanding the fact that ownership of the goods sold by the Company to the Customer shall not pass to the Customer until the full purchase price thereof has been paid, the risk in the goods shall pass to the Customer on delivery thereof.

#### 12. RETURN OF GOODS AND PASSING OF CREDITS

No goods may be returned by the Customer to the Company and no credits may be passed in favour of the Customer whether in respect of the return of such goods or for any other reason unless authorised in writing by a director of the Company or other representative of the duly empowered by written resolution of the board of directors of the Company to do so.

#### 13. LIMITATION OF COMPANY'S LIABILITY

- 13.1 The Company shall not be liable for any claim of whatsoever nature for damages or otherwise which arose from all or any of the following cases:-
- 13.1.1 Any negligent act or omission or statement by the Company or its servants, agents and nominees, and/or
  - 13.1.2 any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or
  - 13.1.3 any damage caused as a result of the failure of the Company to effect delivery timeously or at all for any reason whatsoever, notwithstanding the fact that the Company may have been negligent in this regard;
  - 13.1.4 any latent defect in any of the goods delivered by the Company;
  - 13.1.5 any representation or warranty made or alleged to have been made at any time in respect of the goods sold by the Company to the Customer;
  - 13.1.6 any damages or injury suffered by the Customer arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate unless such a claim arises from a grossly negligent, reckless or fraudulent act on the part of the Company or its servants.
- 13.2 Notwithstanding anything to the contrary herein contained, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent or otherwise.

#### 14. DISPUTES

- 14.1 Should there be any dispute of any nature whatsoever between the Company and the Customer in regard to any aspect, matter or thing relating to or governed by these terms and conditions and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations to the Company as though the Company had performed properly and to the Customer's satisfaction.
- 14.2 The Customer shall not be entitled to withhold payments of any amounts by reason of any dispute with the Company of whatsoever nature. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen, and it is only payment to the Company which released such rights and makes them available to the Customer in respect of any claims which it may have against the Company.
- 14.3 In any dispute between the Company and the Customer, the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreements between it and the Customer and the onus shall be on the Customer to prove the contrary.

#### 15. NO CLAIM AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claim will be made against any director, servant or employee of the Company which imposes or attempts to impose on him any liability in connection with the delivery of any goods or the rendering of any services which are the subject of these terms and conditions and the Customer hereby waives all and any such claims.

#### 16. DEED OF SURETYSHIP

- 16.1 The Signatory by his signature hereto (which appears below) hereby binds himself in his private and individual capacity as surety for and co-principal debtor in solidum with the Customer in favour of the Company for the due performance of any obligation of the Customer and for the payment by the Customer to the Company of any amounts which may at any time become owing by the Customer to the Company from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims for damages and any actions against the Customer acquired by way of cession.
- 16.2 This suretyship shall be a continuing covering guarantee/surety which may only be cancelled, in writing, by the Company and then only provided that all sums then owing by the Customer (whether due or not) to the Company have been paid in full. The Signatory hereby renounces the benefits of the legal exceptions "non causa debiti" (non-existence of the principal debt), "ordinis seu excussionis et divisionis" (the benefits of excussion and division) and "cession of actions" the force, meaning and effect of which he declares himself to be fully acquainted with.
- 16.3 The Signatory furthermore binds himself irrevocably to all of the Company's Standard Trading Terms and Conditions to which the customer has been bound by virtue of his signature as appears hereunder.
- 16.4 All admissions and acknowledgements made by the Customer shall be binding on the Signatory. Initial \_\_\_\_\_

#### 17. CESSION OF BOOK DEBTS

- 17.1 The Customer does hereby irrevocably and in rem suam cede, pledge, transfer all of its rights, title and interest in and to all claims, debts and book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons or entities (the Customer's debtors) without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer to the Company.
- 17.2 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then and in that event, the cession shall operate as a cession of all the Customer's reversionary rights.
- 17.3 The Customer agrees that the Company shall be entitled, at any time, to give notice of this cession to all or any of the Customer's debtors.

17.4 The Customer further agrees that the Company shall, at any time, be entitled to inspect any of the Customer's books and/or records and take possession of such books and cessions in order to give effect to this cession.

**18. DOMICILIUM**

The Customer chooses as its domicilium citandi et executandi for all purposes hereunder the address reflected under its name whilst the Company chooses as its domicilium the address of Industrial Centre, Malherbe Street, Cape Town.

**19. PERMISSION TO CONDUCT CREDIT SEARCHES**

By signature hereto, the Customer grants permission to the Company to make all and any enquiries and to conduct all and any investigations as may be necessary in order to ascertain, determine and monitor the creditworthiness of the Customer whether in respect of the current application for credit facilities on the part of the Customer or at any time thereafter. In this regard, the Customer undertakes to authorise its banker(s) and any other financial institution which may have any information pertinent to the creditworthiness of the Customer to provide all such information concerning the Customer as the Company may reasonably require.

**20. GENERAL**

20.1 If any provision of these terms and conditions is unenforceable then such provision shall be severed from the remaining terms and conditions, which shall not be affected and shall remain of full force and effect.

20.2 No indulgence, leniency or extension of time which the Company may grant or show to the Customer shall in any way prejudice the Company or preclude the Company from exercising any of its rights in the future.

20.3 The Company makes no warranties or representations to the Customer save as may be specifically provided for herein. The Customer acknowledges that the Company is in no way bound by any statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any other person acting or purporting to act for and on behalf of the Company whether negligently or otherwise, unless such statement, representation, guarantee, promise, undertaking, warranty or inducement is reduced to writing and signed on behalf of both the Customer and an employee of the Company duly authorised to represent the Company by written resolution of the board of directors of the Company to this effect.

20.4 The Company shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this Application for Credit Facilities and Deed of Suretyship to any third party without prior notice to the Customer.

20.5 No alteration, cancellation, variation of, or addition hereto shall bind the Company or Customer unless reduced to writing and signed by or on behalf of the Customer and the Company.

**21. DECLARATION BY SIGNATORY**

The Signatory to this application on behalf of the Customer agrees and warrants that:-

21.1 He has authority to represent the Customer in contracting with the Company and to sign this application on behalf of the Customer.

21.2 The information contained in the Customer's application is true and correct in all respects and that no material facts have been omitted which may adversely affect this application.

21.3 Should any material change to the above information take place subsequent to the signing of this Application for Credit, he shall notify the Company in writing forthwith of the full details of such change.

21.4 He has read the above terms and conditions and, in particular, the terms of the Deed of Suretyship set out in clause 16 hereto and the sub-paragraphs thereto.

21.5 Both he and the Customer are bound by all the terms and conditions as set out herein.