



Terms & Conditions

Open Line Products (April 2024)

Section 1: General Terms & Definitions

- 1.1 “Agreement” shall mean the following documents, or any combination thereof: (i) these Open Line Products Terms & Conditions (“OLP Terms & Conditions”); (ii) Quotation (if provided); and (iii) the Sales Order Confirmation. For the purpose of these OLP Terms & Conditions, all the aforementioned documents shall be considered one, and the parties agree that all the terms and conditions contained in each of these documents shall govern and apply to the transaction.
- 1.2 “Expected Ship Date” shall mean the date in which Seller has placed the Goods in a position for the Buyer or its designated shipping carrier to take physical possession of them. The Expected Ship Date shall be set forth on the Seller’s Sales Order Confirmation.
- 1.3 “Buyer” shall mean the person or organization listed and identified as such within the Quotation and/or Sales Order Confirmation.
- 1.4 “Excusable Delay” has the meaning set forth in Section 11.1.
- 1.5 “Goods,” for the purpose of this Agreement, shall mean products sold by Seller and more specifically described in Seller’s Quotation and/or Sales Order Confirmation.
- 1.6 “Indemnities” has the meaning set forth in Section 15.
- 1.7 “Insolvent” shall mean being unable to pay one’s debts in the ordinary course of business.
- 1.8 “Seller” shall mean Ultrafabrics Inc., a Delaware corporation with its principal place of business located at 303 South Broadway, Suite 201, Tarrytown, NY 10591.
- 1.9 “Seller’s Compliance Policy” has the meaning set forth in Section 17.1
- 1.10 “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.
- 1.11 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 & Acceptance

- 2.1 When Buyer is provided with a Quotation, it shall be considered an offer to sell the Goods specifically identified and described therein in accordance with those terms set forth in the Quotation as well as these OLP Terms & Conditions. A purchase order submitted by Buyer in response to Seller's Quotation shall be considered Buyer's acceptance to Seller's offer. No additional terms or modifications shall be accepted. Notwithstanding the foregoing, 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. Seller shall, at its option, either: (i) notify Buyer in writing that it is rejecting the purchase order; or (ii) issue a Sales Order Confirmation advising Buyer which additional terms, if any, Seller has accepted. Buyer shall have five (5) business days from its receipt of Seller's Sales Order Confirmation to cancel or amend the purchase order. Buyer's failure to cancel the order within said time period shall be deemed its acceptance of those terms referenced in Seller's Sales Order Confirmation. Notwithstanding the foregoing, Buyer may not cancel or amend any purchase order with an Expected Ship Date occurring within ten (10) business days of the date set forth on the Sales Order Confirmation.
- 2.2 When Buyer submits a purchase order without having received a Quotation from Seller, it shall be considered an offer to purchase goods on the terms set forth therein. Seller shall, at its option, either: (i) notify Buyer in writing that it is rejecting the purchase order; or (ii) issue Buyer a Sales Order Confirmation which notifies Buyer of the proposed terms Seller is willing to sell the Goods subject to. If Seller provides Buyer with a Sales Order Confirmation, it shall be considered a counteroffer which Buyer will be deemed to have accepted unless within five (5) days from Buyer's receipt it notifies Seller in writing it is either cancelling the order or rejecting those terms proposed by Seller.

Section 3: Entire Agreement

- 3.1 This writing constitutes the entire agreement between the parties relating to the sale of Goods, and this writing shall prevail over all terms contained in Buyer's purchase order.
- 3.2 No modifications to this Agreement shall be binding on Seller unless expressly agreed to by Seller in writing.

Section 4: Delivery Terms, Title and Risk of Loss

- 4.1 Goods shall be shipped in accordance with the shipping terms set forth in the Quotation or Sales Order Confirmation. For all Goods shipped F.O.B., F.C.A. or Ex Works, title to the Goods shall pass to Buyer on the Expected Ship Date set forth in the Sales Order Confirmation. Accordingly, all risk of loss, injury or destruction to the Goods shall be borne by Buyer on said date. Any such loss, injury, or destruction shall not release Buyer from any of its obligations under this Agreement.

- 4.2 Buyer or its designated shipping carrier shall take physical possession of the Goods no later than the Expected Ship Date. Buyer shall be subject to additional charges or fees for its failure to retrieve the full quantity of Goods by the Expected Ship Date including, without limitation, a demurrage fee of \$75.00 per order, per day.

Section 5: Payment

- 5.1 For all transactions in which Buyer has not established a credit line with Seller, an invoice for the Goods shall be issued simultaneously with the Sales Order Confirmation. Full payment for all invoices must be received on or before the Expected Ship Date. Payments tendered by check shall not be considered received until such time it is honored by the drawee bank and the payment is rendered to Seller's financial institution. Failure to tender payment as required herein shall constitute a breach of this Agreement. Neither Buyer nor its designated shipping carrier shall have a right to pick up the Goods from Seller's facility until full payment is received by Seller. Likewise, orders scheduled to be sent directly to Buyer will not be shipped until such time Seller receives full payment. Buyer shall also be subject to a demurrage fee in accordance with Section 4.2 herein for all Goods being held at Seller's facility as a result of Buyer's failure to timely render full payment.
- 5.2 If Buyer has established a credit line with Seller, an invoice for the Goods shall be issued at the time the Buyer or its designated shipping carrier takes physical possession of them. Should Buyer fail to take possession of the Goods within ten (10) calendar days of the Expected Ship Date, Seller shall have the right to immediately invoice Buyer for the Goods and any applicable demurrage fees. 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.

Section 6: Right of Inspection

- 6.1 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.
- 6.2 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.

- 6.3 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.
- 6.4 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.
- 6.5 If Buyer has accepted the Goods tendered under this Agreement in any manner described in these OLP 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 7: Assignment & Delegation

- 7.1 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.
- 7.2 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 8: Nondisclosure

- 8.1 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.

8.2 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 9: Trademarks & Patents

9.1 Buyer has no knowledge of any trademark or patent rights that third parties may claim in the Goods. Seller makes no warranty with respect to the freedom of the Goods from claims of infringement by third parties arising from trademark, patent or other property rights in the Goods covered.

9.2 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 or trademark infringement 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.

Section 10: 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 voided;
- 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 voided; 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 11: FORCE MAJEURE

11.1 Seller shall not be liable for any delay or non-delivery of the Goods for so long as such delay/non-delivery is due to, in whole or in part, any unforeseeable circumstances or events beyond Seller's reasonable control, including, without limitation: embargos, seizures, acts of God (including, without limitation, fires, floods, earthquakes and severe weather), epidemics, pandemics, quarantine restrictions, civil unrest, lack of the usual means of transportation, strikes, inability to obtain necessary labor or materials, civil or military authority, insurrection, acts of terrorism, war, or the adoption or enactment of any foreign or domestic law, ordinance, regulation, ruling or order directly or indirectly rendering impossible or commercially impractical the production or delivery of the Goods under this Agreement (an "Excusable Delay"). For the avoidance of doubt, the foregoing list

shall not be considered exhaustive and an Excusable Delay shall be deemed to include: (i) any unforeseeable circumstances, whether similar or dissimilar to any of the listed events contained herein, that are beyond the Seller’s reasonable control; and (ii) the incapability of Seller to obtain the Goods from its manufacturer due to unforeseen circumstances which directly impact said manufacturer’s ability to produce or timely ship the Goods.

11.2 If any delivery under this Agreement is suspended or delayed by reason of an Excusable Delay, 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. Buyer shall not be permitted to terminate the Agreement or cancel an order for goods because of the Seller’s inability to perform due to an Excusable Delay.

Section 12: Warranties

12.1 Seller warrants that the Goods covered under this Agreement shall be free from any defects in materials or workmanship for the period of time set forth in the schedule immediately below. 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, normal 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.

Warranty Schedule

Product	Application	Warranty Period (From Date of Shipment)
Uf Select Products	All Applications	2 Years
All Non-Uf Select Products OR All Other Products Exclusive of Uf Select	Aircraft, Rail, or Vertical Solutions (e.g. Cubical Walls, Vertical Panels, etc.)	2 Years
All Non-Uf Select Products	All Other Applications	5 Years

- 12.2 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.
- 12.3 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. Replacement material provided by Seller in accordance with this warranty shall be warranted only for the remainder of the original product warranty period.
- 12.4 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 Section 12.5 directly below.
- 12.5 It is understood and agreed that Seller's liability and Buyer's sole remedy under this warranty is to provide replacement Goods without charge. Defective products will only be replaced after Seller has inspected the Goods in question and determined that they are defective. Seller shall not be responsible for any other costs associated with the replacement of the defective Goods, including, without limitation, the costs associated with measuring or with the labor to have the defective material removed/replaced. 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 13: Limitation of Remedies

- 13.1 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 funds. 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.

13.2 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 in the jurisdiction governing this Agreement. 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 SECTION 13.3 DIRECTLY BELOW.

13.3 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.

13.4 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 14: Termination

Except in case of an actual breach of an obligation or duty under this Agreement, or as otherwise provided under this Agreement, neither party shall have the power to terminate this Agreement unilaterally; both parties must act together to terminate this Agreement and termination may be accomplished only by a writing signed by both parties.

Section 15: 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 16: 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 17: Anti-corruption Policy

17.1 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").

17.2 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 18: Governing Law & Jurisdiction

18.1 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.

18.2 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 19: Precedence

In the event of a conflict between the Quotation, Sales Order Acknowledgement, or these OLP Terms & Conditions, the order of precedence will be: (i) Sales Order Acknowledgment; (ii) Quotation; and (iii) these OLP Terms & Conditions.

Section 20: Headings

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