

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 12 (LIMITATION OF LIABILITY).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day:	a day other than a Saturday, Sunday or public holiday in England, when clearing banks in London are open for non-automated business.
Charges:	the charges payable by the Customer for the supply of the Services in accordance with clause 8.
Commencement Date:	has the meaning given in clause 2.2.
Collection Location:	Somic's premises at Scaffell Road, Queensway Industrial Estate, Lytham St. Annes, FY8 3HE.
Conditions:	these terms and conditions as amended from time to time in accordance with clause 15.5.
Contract:	the contract between Somic and the Customer for the supply of Services in accordance with these Conditions.
Customer:	the person or firm who purchases Services from Somic.
Customer Default:	has the meaning set out in clause 4.2.
Customer Fabric:	the material, textiles or fabric, whether owned by the Customer or a third party, which are provided by the Customer to Somic to be (but, for the avoidance of doubt, not yet) treated or coated by Somic under the Services, and resulting in the Deliverables.
Customer Property:	has the meaning set out in clause 9.1.
Defective Deliverable(s):	has the meaning set out in clause 6.1.

Deliverables:	the deliverables set out in the Order produced by Somic for the Customer.
Force Majeure Event	has the meaning given in clause 15.1.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order:	the Customer's order for Services as may be submitted verbally or in writing (which may be by way of email or by way of the Customer's written acceptance of Somic's quotation).
Price List:	Somic's price list (as amended by Somic from time to time) as at the date of the Order (such price list available on request).
Services:	the fabric treatment and/or coating services, including the Deliverables, supplied by Somic to the Customer as more particularly detailed in the Specification.
Somic:	Somic Textiles Limited, a private limited company registered in England and Wales with company number 06866449.

- Specification:** the description or specification of the Services as set out in Somic's written confirmation of Order.
- Tolerances:** the maximum wastage tolerance limits set out in the Price List.
- VAT:** has the meaning set out in clause 8.5.
- 1.2 Interpretation:
- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
- (i) is a reference to it as amended, extended or re-enacted from time to time; and
- (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** excludes fax but includes email.
- 2. BASIS OF CONTRACT**
- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Somic has:
- (a) issued written acceptance of the Order; and
- (b) received the Customer Fabric
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Somic, and any descriptions or illustrations contained in Somic's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Somic shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 3. SUPPLY OF SERVICES**
- 3.1 Somic shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Somic shall use reasonable endeavours to provide the Services within 10 Business Days of the Commencement Date, but such date shall be an estimate only and time shall not be of the essence for performance of the Services.
- 3.3 Somic reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Somic shall notify the Customer in any such event.
- 3.4 Somic will insure the Customer Fabrics whilst they are on Somic's premises, at Somic's own expense.
- 3.5 Somic warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4. CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with Somic in all matters relating to the Services;
- (c) provide Somic with such information and materials as Somic may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) ensure that any Customer Fabric which is to be coated in PVC has a maximum width of 158cm (for the avoidance of doubt, prior to such coating);
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

- (f) comply with any additional obligations as set out in the Specification and/or Somic's written acceptance of the Order.
- 4.2 If Somic's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, Somic shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Somic's performance of any of its obligations;
 - (b) Somic shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Somic's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse Somic on written demand for any costs or losses sustained or incurred by Somic arising directly or indirectly from the Customer Default.

5. DELIVERY OF DELIVERABLES

- 5.1 The Customer shall take delivery of the Deliverables by collecting them from the Collection Location within three Business Days of Somic notifying the Customer in writing that the Deliverables are ready for collection, unless otherwise agreed in writing by Somic.
- 5.2 Somic may deliver Deliverables by instalments, which may be invoiced and paid for separately.
- 5.3 If the Customer fails to take delivery of any Deliverables within ten Business Days of Somic notifying the Customer in writing that the Deliverables are ready for collection, then, except where that failure or delay is caused by Somic's failure to comply with its obligations under these Conditions or a Force Majeure Event, Somic shall store the Deliverables until delivery takes place and may charge the Customer for all related costs and expenses.

6. ACCEPTANCE OF DELIVERABLES

- 6.1 The Customer may reject any Deliverable that does not comply with clause 3.1 or is outside the Tolerances (**Defective Deliverable**) provided that written notice of rejection is given to Somic within ten Business Days of delivery of the Deliverable, and provided that none of the events listed in clause 6.3 apply.
 - 6.2 If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted such Deliverable.
 - 6.3 Somic shall not be liable for a Defective Deliverable in any of the following events:
 - (a) the Customer makes any further use of the Deliverable after giving notice in accordance with clause 6.1;
 - (b) the defect arises as a result of Somic following any drawing, design or specification supplied by the Customer;
 - (c) the Customer alters or repairs the Deliverable without the written consent of Somic; or
 - (d) the defect arises as a result of the Customer's wilful damage, negligence, or abnormal storage.
 - 6.4 If the Customer rejects a Deliverable under clause 6.1, then subject to the Customer returning such Deliverable to Somic within 5 Business Days of serving the notice of rejection in accordance with clause 6.1 and Somic verifying the alleged defect, Somic shall reimburse the Customer for the price paid by the Customer for the section of Customer Fabric comprising the Defective Deliverable (subject to the Customer providing Somic with reasonably satisfactory evidence of such price paid).
 - 6.5 Once Somic has reimbursed the Customer in accordance with clause 6.4, it shall have no further liability to the Customer for such Defective Deliverable.
 - 6.6 Somic shall not be liable where the Customer's complaint or rejection is based on wastage levels and such levels do not exceed the Tolerances.
- 7. TITLE AND RISK**
- 7.1 Risk in the Deliverables shall pass to the Customer on delivery of the Deliverables.
 - 7.2 Title to the Deliverables shall pass to the Customer on delivery of the Deliverables subject always to Somic's right to a lien over the Deliverables in accordance with clause 9.

8. CHARGES AND PAYMENT

8.1 The Charges for the Services shall be calculated on the basis of the length of Customer Fabric, in accordance with the Price List, or shall be as otherwise agreed between Somic and the Customer, and Somic shall be entitled to charge the Customer any travelling or other expenses reasonably incurred by Somic in connection with the collection of the Customer Fabric from the Customer and/or the shipping or transport of the Deliverables to the Customer.

8.2 The Charges are based on:

- (a) the Customer Fabric being supplied to Somic on 40m rolls (approx.);
- (b) the Deliverables being supplied to the Customer on 20m (approx.) rolls; and
- (c) the Customer complying with the obligations set out in clause 4.1.

Somic will advise the Customer of the additional charges that will apply where the Customer Fabric, or the Deliverables, differ from that set out above or in circumstances where the Customer has not complied, or is not intending to comply, with the obligations set out in clause 4.1.

8.3 Somic shall invoice the Customer upon delivery of the Deliverables or within three Business Days of Somic notifying the Customer in writing that the Deliverables are ready for collection, whichever is the earlier (or, where the Contract is terminated under clause 13, upon such termination in accordance with clause 14.1(a)).

8.4 The Customer shall pay each invoice submitted by Somic:

- (a) within 30 days of the date of the invoice (or in accordance with any credit terms agreed by Somic and confirmed in writing to the Customer); and
- (b) in full and in cleared funds to a bank account nominated in writing by Somic, and

time for payment shall be of the essence of the Contract.

8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Somic to the Customer, the Customer shall, on receipt of a valid VAT invoice from Somic, pay to Somic such additional amounts in respect of VAT as are chargeable on the supply of the Services at

the same time as payment is due for the supply of the Services.

8.6 If the Customer fails to make a payment due to Somic under the Contract by the due date, then, without limiting Somic's rights and remedies (including those under clauses 9 and 13), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. LIEN

9.1 Somic shall have a general and particular lien on the Customer Fabric, Deliverables (whether fully or partly completed) and/or other property of the Customer in its possession (**Customer Property**) as security for payment of all sums claimed by Somic from the Customer (including any accrued interest under clause 8.6).

9.2 The Charges shall continue to accrue on any Customer Property detained under lien. If an invoice for the Charges is not paid in full on its due date for payment, Somic may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Customer Property if the amount outstanding is not paid in full within 8 weeks. If the amount due is not paid by the expiry of such period, Somic may sell or otherwise dispose of some or all of the Customer Property, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Customer Property to the Customer after deduction of all amounts due to Somic and the expenses incurred by Somic for the sale or disposal of such Customer Property of the Customer. Somic shall not be liable for the price obtained for the sale or disposal of the Customer Property.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Deliverables (other than Intellectual Property Rights in any Customer Fabric) shall be owned by Somic.

10.2 Somic grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable

- licence to modify the Deliverables for the purpose of receiving and using the Deliverables in its business.
- 10.3 The Customer may sub-license, assign or otherwise transfer the rights granted in clause 10.2 to its customers.
- 10.4 The Customer grants Somic a fully paid-up, non-exclusive and royalty-free licence to modify any Customer Fabric for the purpose of providing the Services to the Customer.
- 11. DATA PROTECTION**
- Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, (ii) the retained EU law version of General Data Protection Regulation ((EU) 2016/679) (UK GDPR), and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
- 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in this clause 12 shall limit the Customer's payment obligations under the Contract.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.4 Subject to clause 12.3 (Liabilities which cannot legally be limited), Somic's total liability to the Customer in respect of:
- (a) rejection of Deliverables under clause 6.1 shall not exceed a sum equal to the price paid by the Customer for the section of Customer Fabric comprising the Defective Deliverable (as evidenced by the Customer to Somic's reasonable satisfaction);
 - (b) all other loss or damage shall not exceed the amount paid or payable to Somic under the relevant Order.
- 12.5 Subject to clause 12.2 (No limitation of customer's payment obligations) and clause 12.3 (Liabilities which cannot legally be limited), this clause 12.5 sets out the types of loss that are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 12.6 Somic has given commitments as to compliance of the Services with relevant specifications in clause 3.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.7 Where the Customer wishes to make a claim against Somic in respect of an event (other than in relation to rejection of Deliverables, in which case, clause 6 shall apply), it must notify Somic in writing of such intention within the notice period, otherwise, Somic shall have no liability for that event.
- 12.8 The notice period for an event for the purpose of clause 12.7 shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 30 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.9 This clause 12 shall survive termination of the Contract.
- 13. TERMINATION**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, Somic may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment
- 13.3 Without affecting any other right or remedy available to it, Somic may suspend the supply of Services under the Contract or any other contract between the Customer and Somic if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 13.1(c) or clause 13.1(d), or Somic reasonably believes that the Customer is about to become subject to any of them; or
 - (c) Somic reasonably believes that the Customer is about to become subject to any of the events listed in clause 13.1(b).
- 14. CONSEQUENCES OF TERMINATION**
- 14.1 On termination of the Contract:
- (a) the Customer shall immediately pay to Somic all of Somic's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Somic shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, then Somic may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not sell or use them for any purpose.
- 14.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 15. GENERAL**
- 15.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (each being a **Force Majeure Event**).
- 15.2 **Assignment and other dealings.**
- (a) Somic may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Somic.
- 15.3 **Confidentiality.**
- (a) Each party undertakes that it shall not during this Contract and for a period of 2 years after its termination or expiry, at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of

- the other party, except as permitted by clause 15.3(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 15.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 15.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deleted under this clause 15.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified as follows:
- (i) Somic – email: sales@somic.co.uk;
- (ii) Customer – as specified in the Order, or as otherwise notified to Somic by the Customer in writing.
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

- (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 15.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15.9 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

15.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.