Next Retail Limited Standard Terms and Conditions of Purchase

1. Definitions
1.1 In these Conditions the following words have the following meanings:
"Associated Company" means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. "Holding company" and "subsidiary" will have the meanings attributed to them in Section 736 and 736a of the Companies Act 1985;
"Conditions" means these Terms & Conditions of Purchase;
"IP Rights" means patents, trademarks (whether registered or unregistered), design rights (whether registered or unregistered), database rights, copyright, know-how, rental rights, industrial property rights, and similar current and future rights throughout the world (including all renewals and extensions);
"Next" means Next Retail Limited (Company No. 04521150), Desford Road, Enderby, Leicester LE19 4AT;
"Price" means the cost to Next for the Product and shall be inclusive of all labelling, packaging and carriage charges, insurance and delivery charges, duties, impost or levies;
"Products" means the products to be supplied by the Supplier to Next;
"Supplier" means the person, firm or company selling or supplying the Products to Next.

2. Basis of Agreement
2.1 These Conditions shall govern the contractual relationship between the Supplier and Next to the exclusion of any other terms and conditions (including the Supplier's terms and conditions). No variation to these Conditions will be binding on Next unless expressly agreed in writing by Next.

3. Orders and contract
3.1 Unless otherwise agreed in writing and signed by a director of Next, Next does not agree to purchase any minimum quantity of Products.
3.2 For the avoidance of doubt these Conditions do not constitute any exclusive agreement between the Supplier and Next. A binding contract will have been made when the Supplier confirms the order (this may be done verbally, in writing including by email, or by conduct).

4. Delivery
4.1 Delivery will be in accordance with INCOTERMS ® 2010 and in accordance with the INCOTERMS ® rule set out in the Next order. If no such rule is specified in the Next order, then by default the relevant rule shall be DDP at the specified Next UK warehouse INCOTERMS ®.
4.2 The Supplier will strictly adhere to the delivery dates and/or times supplied by Next and with respect to delivery requirements, time is of the essence. The Supplier must confirm any agreed amendments to orders to Next no later than 72 hours before the scheduled delivery date and time.
4.3 A detailed packing note must accompany each delivery.
4.4 The Price of the Products is inclusive of delivery costs (to the address specified by Next), wrapping, packaging, crates, boxes, cartons, boxing etc unless otherwise agreed.
4.5 Unless agreed otherwise by Next in writing all Products will be shipped to Next within 30 days from the date of the order.
4.6 Products are not to be delivered by instalments unless this is agreed in writing by Next and shall be treated as a single contract. In the event that Next agrees in writing to accept delivery by instalments then the order will be treated as a single non-severable contract notwithstanding its delivery by instalments.
4.7 The Supplier shall supply Next in good time before delivery with any instructions or information reasonably required to enable Next to accept delivery.
4.8 Next reserves the right to rescind for late delivery and/or performance if the due date for delivery and/or performance has not been met.
4.9 Next reserves the right to reject any deliveries which do not contain the correct sizes or which do not contain the correct quantity of sizes requested by Next.
4.10 Any replacements due under clauses 4.6 or 4.8 above will be shipped to Next (at the Supplier’s cost) to reach Next within 15 days from the date of Next’s notification to the Supplier unless agreed otherwise in writing.
4.11 Next reserves the right to require Product to be air freighted at the Supplier’s cost to meet the due delivery date or to reduce delay once the contracted delivery date has been missed. For each week (or part of a week) after the due date for delivery in which the correct Products remain un-delivered, Next is entitled at its sole discretion to: a) deduct a percentage of the purchase price of the Products as liquidated damages, being (i) 5% for a delay of up to 1 week; (ii)
10% for a delay of up to 2 weeks; (iii) 15% for a delay of up to 3 weeks; or (iii) 20% or cancellation of entire order for a delay of up to or exceeding 4 weeks and/or b) to cancel stock equivalent to the sales planned for the period of the delay.

5. **Price and Payment**
5.1 The Price of the Products will be agreed between Next and the Supplier and shall be as stated on the Next order.
5.2 Once an order has been accepted the Supplier will not increase its Prices for that order.
5.3 The Price shall be inclusive of any applicable VAT or sales taxes which are payable by Next.
5.4 If Next is liable for any non UK taxes, including United States taxes or federal charges, which apply to the sale of the Products to Next, then the Supplier will notify Next of this in writing before accepting Next's order.
5.5 Next's terms of payment are 30 days from the date of receipt of a correct invoice from the Supplier. The Supplier must not invoice Next until after the Products have been delivered to Next and Next has accepted delivery. Payment does not signify acceptance of the Products. Invoices must state the VAT or other sales tax due and the Next order number to which the invoice relates.
5.6 If Next fails to make any payment in full on the due date in respect of an undisputed invoice then the Supplier may charge Next simple interest on the amount unpaid at the annual rate of 2% above the base rate of the Bank of England.
5.7 Without prejudice to any of Next's rights, Next will be entitled to withhold payment for Products not received within the delivery time specified by Next and/or for any Products which do not meet the quality requirements of section 11 of these Conditions.
5.8 Next shall be entitled to set off any sums due from the Supplier or any of its Associated Companies to Next against any sums payable by Next to the Supplier or to any of its Associated Companies and to withhold payment for such sums.

6. **Price to be held on trust**
6.1 When the Supplier receives payment from Next, if the Products have not already been accepted by Next then the Supplier will immediately hold those monies (or an amount equal to the price) on trust for Next. Next, as beneficiary of the trust hereby authorises the Supplier to release such monies to the Supplier on acceptance of the Products by Next.

7. **Code of Practice**
7.1 All Product supplied to Next will be manufactured in accordance with the Next Code of Practice Manual. The Supplier is responsible for ensuring any subcontractors engaged in any part of the manufacturing, finishing or packaging processes are compliant with the Next Code of Practice as set out in the Code of Practice Manual, as updated from time to time.
7.2 The Supplier will provide written confirmation to Next of the name and geographical address and location of the manufacturer of Product or any component part of the Product. Next may undertake Code of Practice audits of any premises at which any Products or components of Products are manufactured, created, prepared, washed, or packed and such audits may be by prior arrangement, or at Next's discretion, unannounced.

8. **NEXT Branded Products**
8.1 This section only applies to Products (a) supplied by the Supplier to Next which are not licensed from another brand owner; (b) are designed by, for or on behalf of the Supplier; or (c) are based on designs or specifications supplied by Next.
8.2 In respect of the Products referred to in 8.1 (a) and (b) the Supplier hereby assigns to Next for £1.00, all rights, title and interest in the IP Rights in the Products, with full title guarantee. Next owns the IP Rights in the Products referred to at 8.1 (c).
8.3 The Supplier shall do all such things and sign all such deeds and/or documents as may be required to give effect to the terms of this section.
8.4 The Supplier must not create or sell any confusingly similar or identical Products for or to any third party. The Supplier acknowledges that Next will own all of the IP Rights in all designs created exclusively for Next and/or supplied exclusively to Next. The Supplier must not dispose of any seconds, rejected stock, excess stock or samples unless they have been de-branded in accordance with the Next Disposal Policy. Any such sale by the Supplier without the express written consent of Next and which contains any Next IP Rights will be treated as (a) a breach of contract and (b) a sale of counterfeit products. The Supplier is bound by the Disposal Policy set out in the Supplier Manual as updated from time to time. The Supplier shall be liable to pay liquidated damages to Next for breach of this clause 8 and shall indemnify and keep Next indemnified against and in respect of all and any costs (including legal costs on a full indemnity basis) claims, expenses, liability or losses which Next may incur or suffer (which includes, for the avoidance of doubt, any penalty, fine or costs incurred by Next) howsoever arising as the result of any breach by the Supplier of this clause 8.
9. **Third Party Branded Products (non-NEXT brands)**
In respect of third party branded Products, the Supplier warrants that (a) it is authorised to supply those Products to Next; and (b) the Supplier has obtained all necessary consents and permissions from the brand owners to supply those Products to Next and for Next or any Associated Company to sell those branded products.

10. **Property and Risk**
10.1 Risk in the Products shall pass to Next at the time when the Products are received by Next. The Supplier will not exercise any lien over the Products. Without prejudice to clauses 4.5 and 4.6 title and ownership in the Products shall pass to Next as soon as the Products have been separately identified and set aside for Next.

11. **Warranty & Indemnity**
11.1 The Supplier warrants and represents to Next that all Products will (a) be of satisfactory quality; (b) be free from all defects; (c) be fit for the purpose for which they are ordered; (d) comply with all specifications supplied by Next; (e) comply with all samples and descriptions supplied to Next by the Supplier; (f) not be packaged or presented in any box, carton, bag or otherwise which is incorrect, or not in compliance with all relevant EC and English packaging legislation; (g) contain correct and visible labels including (without limitation) care labels, price labels, composition labels and where required country of origin labels; and (h) be manufactured and labelled in accordance with all Next Sourcing Policies, the Next Supplier Manuals, Technical Manuals, Labelling and Packaging Manual, Code of Practice Manual and Customs Compliance Manual, (copies of which the Supplier acknowledges receipt) as may be updated from time to time and for Suppliers with access to the Next Extranet and/or website www.Nexttrims.com be labelled in accordance with all directions set out therein.

11.2 Next reserves the right to serve notice requiring the Supplier to collect Product which Next considers to breach the above warranty or, at its sole election, to rework the Product in accordance with clause 12.5. The costs of collection shall be borne by the Supplier and failure to collect the Product within 14 (fourteen) days of the notice being sent will result in storage charges being applied to the Product at the current applicable rate and in accordance with clause 12.7 after 28 (twenty-eight) days of notice being served on the Supplier, with the disposal of the Product by Next at the Supplier's cost.

11.3 Any Product supplied to Next by the Supplier and accepted into stock but which is found after acceptance to be defective will result in all Product being inspected by Next and if any such Product is found to have a manufacturing defect this will result in (a) Next debiting the Supplier for the Price of the defective item(s); and/or (b) Next withdrawing the Product line from sale and carrying out further inspections and reworking by Next at the Supplier's cost in accordance with clause 12.5; and/or (c) Next claiming damages resulting from the defective Products.

11.4 A debit note will be issued direct by Next’s Accounts Department for any rejected/reworked stock.

11.5 The warranties referred to in clause 11.1 above shall be extended to the period of extended warranty purchased by Next (if any).

11.6 Where possible, the Supplier will pass on to Next the benefit of any Product warranties from the original equipment manufacturer (known as OEMs). These will be in addition to any warranties contained in these Conditions. The Supplier shall indemnify and keep Next indemnified against and in respect of all and any costs (including legal costs on a full indemnity basis) claims, expenses, liability or losses which Next may incur or suffer (which includes, for the avoidance of doubt, any penalty, fine or costs incurred by Next) howsoever arising as the result of any breach by the Supplier of this clause 11. The Supplier should take out and maintain adequate insurance to cover any claims arising out of the supply of defective Products.

12. **Rejected Product**
12.1 Next will have a reasonable time to inspect the Products after receipt into its UK warehouse and reserves the right to reject orders which are incomplete or which do not comply with the warranties set out in clause 11.

12.2 Next reserves the right to reject defective Product notwithstanding any inspection that has been carried out by Next or its agents during or after the manufacture of the Product before it has been received by the Next UK warehouse.

12.3 Rejection of Product deliveries will be based on an inspection of a sample and not the whole batch delivered.

12.4 A debit equivalent to the Price of the Product rejected and all freight, shipping, handling and administration charges and duty paid by Next, shall be raised immediately for Product that is rejected in accordance with clause 12.1

12.5 Rejected Product which does not comply with the warranties in clause 11 may at Next's discretion be sent for rework by Next or an independent subcontractor. The actual cost of the rework will be
charged to and payable by the Supplier and an additional administration charge will be charged to and be payable by the Supplier. Any Product that cannot be reworked will be rejected and dealt with in accordance with clause 11.3 above.

12.6 In the event that Product is rejected and sent for rework by Next then the date of delivery shall be deemed to be the date the reworked Product is received by Next and the damages set out in clause 4.12 above may become payable.

Next reserves the right to dispose of rejected Product which has not been collected by the Supplier within 28 days of notification by Next of its rejection. The costs relating to such disposal shall be payable by and will be debited from the Supplier.

13. Licence to use Next’s IP Rights

13.1 Next grants to the Supplier a limited, non-exclusive, non-transferable, revocable licence to use specifically those of Next IP Rights as are contained in the specification and labels for Products ordered by Next solely for the purpose of allowing the Supplier to supply the Products to Next in accordance with Next's instructions. This licence will be deemed revoked on termination of this contract. The use of Next's patterns, designs drawings, specifications or labels by the Supplier shall not confer on the Supplier any right in any of Next’s IP Rights except as expressly set out in this clause. The Supplier shall not do any act or thing which might be contrary to Next’s IP Rights and in particular will not challenge Next’s ownership or the validity of any such rights or seek or apply to register any of Next’s IP Rights (and in particular those subsisting in or relating to any of the Products whether or not conceived, originated, developed or produced by the Supplier) or represent in any way that it owns or has any right to or in any such products or designs. The Supplier agrees to not (a) show Next designs to any of the Supplier's other customers and (b) allow other UK retailers to have access to Next designs or products.


14.1 The Supplier will indemnify Next and keep Next indemnified against any and all actions, claims, proceedings, costs (including legal costs on a full indemnity basis), expenses and damages (including any compensation, compromise or settlement of any claim paid by Next) arising from or in connection with any action, allegation or claim that Product infringes the IP Rights of any third party.

14.2 Clause 14.1 will not apply in respect of Product manufactured in accordance with Next specifications or in connection with any Next owned trade marks.

14.3 In the event that Product infringes any IP Rights of a third party Next will have the right to cancel all orders immediately without liability to the Supplier.

15. Compliance with Declaration Requirements

15.1 All Product supplied to Next will be manufactured and supplied in compliance with the Next Customs Compliance Manual as updated from time to time. The Supplier is responsible for ensuring that any subcontractors they engage as part of the manufacturing, finishing or packaging processes, are compliant with the terms of the Next Customs Compliance Manual. The Supplier will be liable for any costs or losses incurred by Next as a result of inaccurate declarations made by the Supplier in connection with any Product.

15.2 The Supplier will accurately declare to Next in respect of all Product: (i) the country of origin and will supply a certificate of origin in relation to each Product; (ii) whether the Supplier can fulfil all orders immediately without liability to the Supplier.

16. Default and Termination

16.1 Next shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 16.2 below if the Supplier: (a) breaches these Conditions and, if the breach is capable of remedy, has not remedied the breach within 7 days of receiving notice requiring the breach to be remedied; (b) persistently breaches any one or more clauses of these Conditions in respect of one or more orders placed with the Supplier; and/or (c) ceases or threatens to cease to carry on business, is unable to perform its obligations under these Conditions due to its financial affairs, is unable to pay its debts as and when they fall due, proposes to compound with its creditors, applies for any order for insolvency, or has a bankruptcy petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction.

16.2 If any of the events set out in clause 16.1 above occurs in relation to the Supplier then Next may cancel, terminate and/or suspend any contract with the Supplier without liability to the Supplier (including but not limited to, any orders which have been placed by Next).

16.3 If any of the events in clause 16.1(c) occur then: (a) the Supplier will immediately, at the request of Next, deliver to Next all Products which have been ordered by Next (and which have not been
cancelled by Next); and (b) the Supplier grants to Next an irrevocable licence to enter the premises where the Products are stored and Next shall have the right to collect the Products. The Supplier will indemnify Next and keep Next indemnified against any and all costs (including legal costs on a full indemnity basis), actions, claims, damages, expenses and losses suffered by Next as a result of or in connection with the Supplier’s breach of this contract.

17. **Use of Next name and brands**
The Supplier will not, without the prior written consent from a director of Next, make reference to its relationship with Next for external advertising, promotion, sales, marketing, presentations or any other purpose. The Supplier must not use any of Next’s IP Rights for any external advertising, promotion, sales, marketing or presentations.

18. **Confidentiality**
The Supplier will not, without Next’s written consent, disclose or allow to be disclosed any confidential information about Next (e.g. Next’s design drawings, specifications, samples, mock-ups, sizing standards and order forms). This restriction shall remain in force for a period of 5 years from the date of the Next Order. This restriction does not apply to any information (a) known to the Supplier before the information was disclosed by Next and not subject to any duty of confidentiality; or (b) already lawfully disclosed into the public domain; or (c) which is required to be disclosed by law. All documents will be returned to Next or destroyed on demand.

19. **Liability**
19.1 Next will not be liable to the Supplier whether in contract or in tort (including negligence) for any indirect, special or consequential losses or for any loss of profit, loss of opportunity, damage to goodwill, loss of sales or loss or revenue. Next does not exclude any liability to the Supplier for any death or personal injury caused by the negligence of Next or its agents or for losses resulting from fraud by Next.

20. **Anti-bribery**
20.1 The Supplier undertakes to Next not to give, offer, agree or promise to give, or authorise the giving directly or indirectly, of any money or other thing of value to anyone as an inducement or reward for favourable action or forbearance from action or the exercise of influence.
20.2 The Supplier undertakes to Next to: (i) comply with Next’s anti-bribery policy in force from time to time (ii) adhere to all applicable anti-bribery and/or corruption laws and measures (iii) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it shall take to comply with this clause 20, and permit Next to inspect those records as reasonably required; Failure to comply with the provisions of any anti-bribery and/or corruption laws and/or any breach of Next’s anti-bribery policy shall entitle Next to terminate this Agreement immediately for material breach.

21. **General**
21.1 The Supplier shall indemnify Next in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Next as a result of or in connection with:
21.1.1 breach of any warranty given by the Supplier in relation to the Product;
21.1.2 any claim that the Products infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by Next;
21.1.3 any liability under the Consumer Protection Act 1987 in respect of the Product.
22. No waiver by Next of any breach of these Conditions shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
23. The Supplier will not assign any of its rights or obligations under these Conditions. All third party rights are excluded and no third party shall have any right to enforce these Conditions. This contract is governed by English law, will be interpreted in accordance with the English language and subject to the exclusive jurisdiction of the English courts.