

PORTWEST, LLC - Terms of trading

1. Interpretation

1.1. Definitions:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in New York are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 14.4.
"Contract"	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
"Customer"	the person or firm who purchases the Goods from the Supplier.
"Force Majeure Event"	an event or circumstance beyond a party's reasonable control.
"Goods"	the goods (or any part of them) set out in the Order.
"Order"	the Customer's order for the Goods, as set out in the Customer's purchase order form.
"Specification"	(a) any specification for the personalization of Goods that in all other respects are standard items as listed in the Seller's catalogue; or (b) any specification for bespoke items, where the Goods ordered are not standard items listed in the Seller's catalogue; in either case that is agreed in writing by the Supplier.
"Supplier"	Portwest, LLC, a Kentucky Limited Liability Company.

1.2 Interpretation:

1.2.1	a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
1.2.2	any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
1.2.3	a reference to writing or written includes faxes and e-mails.

2. Basis of contract

- 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 trade, custom, practice or course of dealing. These Conditions constitute notification of objection to such other terms under KRS § 355.2-207
- The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in:
 - any documents of the Customer; or
 - any framework agreement or other supply agreement to which the Customer and Supplier might be parties,in either case, that is inconsistent with these Conditions.
- Any samples, drawings, or advertising produced by the Supplier and illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They are not part of the Contract nor do they have any contractual force.
- A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 90 days from its date of issue, unless revoked by supplier.

3. Goods

- For standard Goods, the Goods are described in the Supplier's catalogue.
- For personalized Goods, the Goods are described in the Supplier's catalogue, as modified by any applicable Specification. For the purposes of these Conditions, the phrase "personalized Goods" refers to standard products that are included in the

Supplier's catalogue in relation to which the Customer may at its option request the addition of their own name, branding or other similar cosmetic changes which are not amendment to the underlying specification of the item in question.

- For bespoke Goods, the Goods are described in the Specification. For the purposes of these Conditions, the phrase "bespoke Goods" refers to items that are non-standard items that are not in the Supplier's catalogue.
- The Supplier may notify the Customer that an Order placed by it is to be treated as a "specials order". The number of units that may be purchased by the Customer under a specials order shall be subject to such minimum number as the Supplier may specify.
- To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional fees, costs, and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.5 shall survive termination of the Contract.
- The Supplier reserves the right to amend the specification of the Goods and/or the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location").
- The Customer shall accept the Goods when they are tendered for delivery at the Delivery Location. The Customer shall provide such access, personnel, facilities and assistance as may be required to facilitate the safe unloading of the Goods at the Delivery Location.
- Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, the Customer's failure to comply with any of the requirements of clause 4.2, or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to comply with any of the requirements of clause 4.2, or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods
- If the Supplier delivers up to and including 3% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- The Supplier may deliver the Goods by installments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other installment.

5. Quality

- The Supplier warrants that on delivery the Goods shall:
 - conform in all material respects with their description and any applicable Specification; and
 - be free from material defects in design, material and workmanship.
- Subject to clause 5.3, if:
 - the Customer gives notice in writing to the Supplier in accordance with clause 5.4;
 - the Supplier is given a reasonable opportunity of examining such Goods; and
 - the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Customer's remedy for defective goods shall be limited to such repair or replacement of the defective goods.
- The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 - the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding

- the same;
- the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- the Customer alters or repairs such Goods without the written consent of the Supplier;
- the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
- the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4. A claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within 3 days from the date of delivery or (or where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

5.5. EXCEPT AS PROVIDED IN THIS CLAUSE 5, THE SUPPLIER SHALL HAVE NO LIABILITY TO THE CUSTOMER IN RESPECT OF THE GOODS' FAILURE TO COMPLY WITH THE WARRANTY SET OUT IN CLAUSE 5.1.

5.6. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 5.1 ABOVE, SUPPLIER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. FURTHER, SUPPLIER HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTY AGAINST INFRINGEMENT.

5.7. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Return of Goods

- Unless the Goods are defective (meaning that they do not comply with the warranty set out in clause 5.1), then the Supplier will not accept the return of Goods by the Customer unless:
 - such return has been agreed to in writing by the Supplier's returns department, who may provide the Customer with a returns reference number;
 - the Customer pays to the Supplier the handling charge specified by the Supplier;
 - the Customer arranges at its own expense for the relevant Goods to be returned to such location as the Supplier may specify, accompanied by a consignment note quoting any returns reference number; and
 - the Goods are returned in the same condition as they were in when delivered by the Supplier and are fit for resale by the Supplier.
- Unless the Goods are defective (meaning that they do not comply with the warranty set out in clause 5.1), the Supplier will not accept the return of personalized or bespoke Goods.
- Where the Supplier agrees that the Customer may return the Goods, and the Customer complies with the obligations pursuant to clauses 6.1.2, 6.1.3, and 6.1.4, then only that part of the Order which relates to the Goods so returned shall be deemed to be cancelled.
- Save as provided in this clause, no Order may be cancelled by the Customer except with the written agreement of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), cost, damages, charges and expenses incurred by the Supplier as a result of cancellation.

7. Samples

Where the Customer requests (and the Supplier agreed to provide) samples of Goods, the Supplier shall be entitled to invoice the Customer the full price of such samples upon dispatch. Such invoice will be credited provided that the Customer returns the relevant items at its own expense in unused and undamaged condition within 30 days of delivery. If the relevant items are not so returned, the Customer will become immediately liable to pay the amount invoiced.

8. Title and risk

- The risk in the Goods shall pass to the Customer on completion of delivery.
- Title to the Goods shall not pass to the Customer until the earlier of:
 - the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.

- 8.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and
- 8.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time.

- 8.4. Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 8.4.1. it does so as principal and not as the Supplier's agent;
- 8.4.2. title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs; and
- 8.4.3. Supplier shall have a security interest in the proceeds received from the sale of the Goods until Customer has paid Supplier for the Goods.

- 8.5. If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Supplier may have:
- 8.5.1. the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 8.5.2. the Supplier may at any time:
- 8.5.2.1. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 8.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

9. Price and payment

- 9.1. The price of the Goods shall be:
- 9.1.1. the price confirmed in the Seller's order acceptance referred to in clause 2.3, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery; plus
- 9.1.2. any small order charge which is payable in accordance with the provisions set out in the Supplier's price list from time to time.

- 9.2. The price of the Goods includes delivery to the Delivery Location via commercial courier nominated by the Seller, using standard delivery service. Where the Customer requests, and the Supplier agrees to provide, a special delivery service, the Supplier shall notify the Customer of the additional cost and the price of the Goods shall be increased accordingly.

- 9.3. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.3.1. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
- 9.3.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 9.3.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 9.4. The price of the Goods excludes applicable sales tax. In addition to the price of the Goods, Customer shall pay Supplier all applicable sales tax at the time specified for payment of the Goods in clauses 9.6 and 9.7.

- 9.5. The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

- 9.6. The Customer shall pay for the Goods in full and in cleared funds prior to delivery, unless clause 9.7 applies.

- 9.7. Where:
- 9.7.1. the Customer has an approved credit account with the Supplier; and
- 9.7.2. the price of the Goods, when added to the total of all other sums for the time being due from the Customer to the Supplier, falls within the credit limit on such approved account,

the Customer shall pay the invoice in full and in cleared funds no later than 30 days following the end of the month in which the invoice is rendered.

- 9.8. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

- 9.9. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then;

- 9.9.1. the Customer shall pay interest on the overdue amount at the rate of 1% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
- 9.9.2. the Supplier may recover from the Customer all costs, expenses and other liabilities (including legal fees and costs on a full indemnity basis) that the

Supplier incurs in obtaining payment of sums due.

- 9.10. Without the requirement to give prior notice to the Customer, the Supplier may at its absolute discretion withdraw any discount arrangements that are generally applied to purchases made by the Customer.

- 9.11. Without the requirement to give prior notice to the Customer, the Supplier may at its absolute discretion cancel any previously approved credit account or reduce the credit limit on such account.

- 9.12. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. Termination

- 10.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1. the Customer commits a material breach of any term of the Contract and (if such a breach is curable) fails to cure that breach within 30 days of Customer being notified in writing to do so;
- 10.1.2. the Customer 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), 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;
- 10.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

- 10.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1.1 to clause 10.1.4, inclusive, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on or before the due date for payment.

- 10.3. Without limiting its other rights or remedies, the Supplier 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 or before the due date for payment.

- 10.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

- 10.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

- 10.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. Limitation of liability

- 11.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.1.2. fraud or fraudulent misrepresentation; or
- 11.1.3. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

- 11.2. Subject to clause 11.1:
- 11.2.1. the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. Sanctions.

Customer hereby represents and warrants that:

- 12.1. the Customer is not included on any list of restricted entities, persons or organizations published by any member state of the European Union, the United States of America government, the United Nations or other applicable national governments (collectively, the "Sanctions Lists") and neither is it owned or controlled by a person or entity which is included on such Sanctions Lists.

- 12.2. the receipt and/or the transportation and/or the delivery of the Goods to its intended destination and/or end users will not constitute a breach or violation by the Supplier of

any applicable laws and regulations including sanction/embargo/ export control laws (including those of the European Union, the United States of America and the United Nations, where applicable) and will also not expose us to any sanction or penalty imposed by any state, country, international governmental organization or other competent authority.

13. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Contract by giving 14 days written notice to the affected party.

14. General

- 14.1. Assignment and other dealings.
- 14.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

- 14.2. Entire agreement.
- 14.2.1. This 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.
- 14.2.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 14.3. Damages. Supplier shall be entitled to recover from Customer all damages whatsoever that Supplier may incur, including without limitation legal fees and costs and any incidental and consequential damages incurred by Supplier, resulting from or arising out of Customer's breach of these Conditions.

- 14.4. Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

- 14.5. Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.6. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.7. Notices.
- 14.7.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
- 14.7.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.7.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 14.7.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 14.8. Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

- 14.9. 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 the state of Kentucky, United States of America, without giving effect to the choice of law provisions thereof.

- 14.10. Jurisdiction and Choice of Forum. Each party irrevocably agrees that the courts of the State of Kentucky, United States of America, or United States federal district courts sitting in Kentucky, shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.