

Please read carefully the following Conditions of Sale. The purchase or use of our product implies that you have read, understood and accepted these Conditions of Sale. If these conditions are unclear, contact Instyle Customer Service staff for clarification. Within these Conditions of Sale, 'Instyle' refers to Instyle Contract Textiles Pty Ltd, and the 'Customer' refers to the Purchaser / Applicant.

## **1.0 PAYMENT**

### **1.1 Terms for Non Account (Cash Sale) Customers**

A Customer will trade on a cash sale basis unless they have an existing commercial credit account. Orders should be placed as per below clause 2.0. A proforma invoice will be issued to obtain payment and products are reserved for 7-days.

All products must be paid in full and payment cleared prior to the products being dispatched. Instyle offers the following payment options:

- BPay Instyle bank confirmation required
- EFT Instyle bank confirmation required
- Cheque 4-day cheque clearance period applies
- Bank Deposit 4-day clearance period applies for any payment made at a bank branch
- Credit Card MasterCard, Visa, a 2% processing fee applies, \$5000 transaction limit per order
- Show Room Cash Sales Products supplied as soon as available

#### **1.1.1 Indent orders For Non Account (Cash Sale) Customers**

Indent orders are imported and / or manufactured on the Customers behalf and as such can not be cancelled or altered in any way. An indent letter will be issued with the proforma invoice and a 50% deposit and return of signed indent letter is required to allow your order to proceed. Deposits of 50% for products to be backordered are accepted on the following conditions:

- Once the backordered items arrive in the Instyle warehouse, they will be put on "Pack & Hold" and a proforma invoice issued for the outstanding balance.
- Balance of payment for products on "Pack & Hold" is required within 7-days of the proforma invoice being issued.
- If payment is not received within the period specified above, Instyle reserves the right to charge a warehousing fee of \$25 per day that will be deducted from the deposit and reflected in the outstanding balance due.
- If the balance owing is not paid in full within 21-days of the balance proforma invoice being issued, Instyle may commence legal action to recover outstanding monies. All costs incurred will be added to the debt.
- Products will not be dispatched until payment in full is received.

#### **1.2 Applying for Commercial Credit Facilities**

##### Prior Application Requirements

Instyle requests that a Customer trade on a cash sale basis for 3-cash sale trades totalling \$5,000 within the current 6-month period to establish a trading history before an account application can be issued. The Customer is required to submit with the account application their transaction history. Customers will be advised in writing the outcome of the account application as soon as possible.

#### **1.3 Terms for Approved Accounts Customers**

An indemnity is required for all commercial credit facilities. Accounts are payable within 30-days from date of statement. Overdue accounts are placed on stop at 35-days or at a time determined by Instyle.

The Customer acknowledges that Instyle is a shareholder in Contemporary Leathers Pty Ltd and supplies Contemporary Leathers Pty Ltd with administrative services; therefore information will be shared between the companies. Further, if the Customer owes money to either Instyle or Contemporary Leathers Pty Ltd, outside the stated terms of trade, orders will not be processed for either Instyle or Contemporary Leathers Pty Ltd until full payment is received for both companies.

Accounts are charged at time of despatch and invoices are not to be rolled if delivery falls outside the month charged. The Customer acknowledges that overdue accounts will incur an interest charge for the overdue period after the 35-day due date. The interest charge will be calculated at the following rate:  $(Debt \times 0.101\% \times \text{Over due days} / 365)$ . If terms are not being met Instyle reserves the right to revoke commercial credit facilities.

Account names are checked on a regular basis and as such we may require documents to be re-signed if the name differs from that on the credit application. All business names and trading/as names must be registered. Notification in writing is requested prior to any name change of accounts. The Customer further acknowledges that they shall be liable for the cost to Instyle of collecting or attempting to collect outstanding monies, including commissions paid to agents and legal fees. Any breach of these terms will result in credit facilities being revoked.

## **2.0 ORDERING PROCEDURES** (both cash sale and account customers)

Orders may be placed via email refer [esales@instyle.com.au](mailto:esales@instyle.com.au), or via fax on 61(2) 9317 0244. When placing orders quote:

- Account name
- A.B.N. or A.C.N.
- Official order number
- Product name
- Colour name
- Meterage required
- Delivery instruction

## 2.1 Minimum Orders

Indent lines have particular minimum order quantities and customers should check each product for specific details. Indent orders require written confirmation and cannot be cancelled once ordered.

## 2.2 Minimum Order Value

Where the invoiced value of products ordered (excluding GST) is less than \$50, the Customer shall in conjunction with the price pay a \$10 surcharge. The surcharge amount may be reviewed / altered at a future date without notice.

## 2.3 Minimum Order Quantity

The minimum cut length Instyle can supply is 0.5m. All orders will be supplied to the nearest 0.1m i.e. an order for 0.75m will be cut and invoiced as 0.8m.

## 2.4 Colour Matching

Due to the nature of the product supplied, it is not always possible to obtain an exact colour match with sample presentations. Although every effort is made to ensure colours correspond to those illustrated in the sample presentations, these are an indication of colour only and variations occur between batches and/or deliveries. Should a close colour match be required it is recommended that a cutting from stock be requested for the Customer's approval. In the case of repeat orders, the Customer must submit with each new order a cutting from a previous order and quote the batch number which will assist in colour matching. Even then colour variations may still occur.

## 2.5 Reservation of Products

Generally reserves on products by special request are held for a period of **7-days only** after which are automatically deleted from our system. If reserves for a particular project are required for a longer period, advise of this requirement when placing your reserve. When ordering for a particular project it is helpful to advise the project so that where a specific reserve has been placed for that particular project, products reserved may be released in satisfaction of the order.

## 3.0 PRICING STRUCTURE

In most instances two prices are quoted for each product, a "cut-length" price and a "roll" price which applies as follows:

- **Cut-Length Price:** Whenever a specific length of fabric is ordered which is less than the full roll length as set out in the price list, the cut-length price is applicable, or where the length exceeds a roll but is delivered to more than one delivery address; and
- **Roll Price:** Whenever a specific length of fabric is ordered which is greater than the full roll length as set out in the price list, the roll price applies.

### 3.1 Freight

Account Customers: A delivery charge per delivery address of \$15, for delivery within the metropolitan areas of the capital cities (except Darwin), will apply. Refer to the 'Delivery Destinations and Applicable Freight Charges' tab on the Instyle web page.

Any deliveries to Darwin, outside metropolitan areas of capital cities and cash sales customers will pay delivery charges at the nominated rates. **The quoted prices are exclusive of G.S.T.**

Freight charges apply for all orders. If your order has more than one destination a charge will apply for each.

### 3.2 Price Changes

Every endeavour will be made to maintain prices at the levels shown in the price list. However, owing to the numerous variables beyond Instyle control, prices are subject to change without notice.

Quoted prices shall be valid for one month only, unless otherwise agreed by Instyle in writing. A copy of the quote should be forwarded with your official purchase order to ensure agreed pricing is charged.

## 4.0 DELIVERY

The Customer acknowledges that the capacity of Instyle to deliver products is subject to external factors, persons and entities beyond the control of Instyle or over whom or which Instyle has no control. Where a time of delivery is estimated by Instyle or an order specifying a time for delivery is accepted by Instyle, the Customer further acknowledges that the estimate is given or the order is accepted subject to the aforesaid limitation. Instyle and the Customer agree that in all circumstances the time for delivery of the products to the Customer is not essential, and without limiting the effect of any other provision of these Conditions of Sale, in no circumstances shall Instyle be liable for any consequential damages suffered by the Customer for late delivery.

## 5.0 INSPECTION OF PRODUCTS ON DELIVERY

### 5.1 Check all Products

It is important that the Receiver check on arrival and before cutting that:

- **The correct product has been received**
- **The colour is correct, and**
- **The quality and quantity are as ordered**

### 5.2 Alteration or Cancellation of Orders

All reasonable requests for changes will be accommodated where possible:

- (a) If the Customer wishes to cancel or alter an order advise Customer Service in writing via email refer [esales@instyle.com.au](mailto:esales@instyle.com.au), or via fax on 61(2) 9317 0244. Confirmed orders may not be cancelled without written consent from Instyle.

**NOTE:** If the order has already been cut a cancellation / restocking fee applies as outlined in clause 5.3 below. If products have already been despatched in addition to the cancellation / restocking fee the Customer is responsible for return freight costs.

- (b) **Indent Products** Where products have been specifically manufactured or imported for the Customer the order cannot be cancelled or altered.
- (c) **Forward Dated orders** Where the Customer requests a delayed delivery date (i.e. products are not to be invoiced and dispatched upon availability) then products will be put on "Pack & Hold" when available, for dispatch on the date nominated by the Customer. Changes / cancellation of orders on "Pack & Hold" are done under the same terms shown in 5.2 (a) and (b) above.

### **5.3 Return of Products (no length less than 5m accepted unless products are faulty or incorrectly supplied by Instyle)**

No return will be accepted without prior written approval from Instyle. Unless there is a problem with the product i.e. defects, or error on Instyles behalf the Customer is liable for the cost of return shipment of the product to Instyles Sydney warehouse and subject to a cancellation / restocking fee of \$50 plus G.S.T. for products under \$350.00 in value (ex G.S.T) or 15% of invoice amount for products over \$350 in value (ex G.S.T). If a return is requested outside of the specified return period (as below) a 25% restocking fee is applicable, subject to approval of the return by Instyle.

A return can only be accepted under the following circumstances:

- Instyle is notified within 7-days of receipt of products.
- The product is returned in the same condition as supplied and products are securely wrapped for transportation. The return of products will **NOT** be accepted after the product has been cut, treated, marked and/or altered in any way.
- Products that have been specifically manufactured or imported for the Customer or discontinued lines are not returnable.
- Instyle, in its absolute discretion, agrees to accept the return.
- When Instyle has agreed in writing to accept a return the products are required to be returned within 14-days of this written agreement.

### **5.4 Seven Days Reasonable & Sufficient For Examination**

The Customer acknowledges that a period of 7-days after the date of delivery of the products is a reasonable and sufficient period within which to examine the products for all purposes.

## **6.0 CLAIMS**

### **6.1 Procedure for Claims to Be Strictly Complied With**

The Customer must notify Instyle in writing if the products are defective in whole or in part:

- (a) Within 7-days after the date of delivery (in which respect time shall be of the essence); and
- (b) Prior to the products being cut, treated, marked and/or altered in any way.
- (c) No refund or credit will be given or allowed by Instyle to the Customer unless the Customer complies with the provisions of paragraphs (a) and (b) and the products are returned as follows;
  - In the same condition as supplied to the Customer;
  - Strictly in accordance with the directions of Instyle; and
  - To Instyles Sydney warehouse within 14-days after Instyle has agreed in writing to the return.

### **6.2 Quality**

All quotations are without guarantee, expressed or implied that the products will be suitable for a specific purpose although such purpose may be known to Instyle. Nor is any guarantee given by Instyle as to the performance of any products supplied hereunder. The Customer acknowledges that the products are manufactured from natural materials and variations may occur from one roll to another and within individual rolls. Instyle will not be liable for any colour variations and/or fabric imperfections after the products have been cut, marked or used in any other way. The Customer accepts that all products purchased are supplied as "run of production" and are not individually selected unless specifically stated on the Customers official order form. If the Customer requires any products to be individually selected and to be suitable for a particular purpose, Instyle must be notified in writing on the order form stating the requirement and also of the purpose for which the products are to be used. Notwithstanding any such notification the Customer acknowledges that variations in the material substances from which products are manufactured preclude any warranty that all products supplied will be fit for the purpose notified. Any samples shown to the Customer are intended to indicate the general colour only and all agreements are entered into without guarantee expressed or implied that the products delivered will colour match with the samples.

### **6.3 Limitation of Liability**

Where Instyle is in breach of any term, warranty or condition, whether contained in these Conditions of Sale or implied by statute, law or otherwise and which has not been excluded from these Conditions of Sale, the Customer acknowledges and agrees that Instyles liability for damages shall be limited to whichever of the following Instyle, at it's sole discretion, decides:

- (a) The replacement of the products.
- (b) The repair of the products.
- (c) The payment of the cost of replacing products or acquiring equivalent products.
- (d) Or the payment for the repair of the products.

**IMPORTANT** - Notwithstanding, to the extent lawfully permitted, Instyles liability is further limited to a sum not exceeding the invoice price of the products, and the Customer acknowledges that all products are supplied on this basis.

### **6.4 Instyle Not Liable For Consequential Damages**

The Customer further acknowledges and agrees that in no circumstances shall Instyle be liable for any consequential losses or damages suffered or incurred by the Customer as a consequence of a breach by Instyle of any term or condition on its part to be performed or of any warranty notwithstanding that Instyle may have been given notice by the Customer of the prospective consequential losses or damages the Customer may suffer or incur as a consequence of such breach.

## **7.0 WARRANTIES, REPRESENTATIONS, FITNESS**

### **7.1 Exclusion of Implied Terms Etc**

To the fullest extent lawfully permitted and so that this provision is not rendered void, all terms, warranties, conditions or liabilities implied or imposed by statute, law or otherwise are hereby negated and/ or excluded.

### **7.2 No Warranties Etc Given by Instyle Contract Textiles Pty Ltd**

The Customer acknowledges that without limiting the effect of any other provision of these conditions, Instyle does not warrant:

- Suitability - that the products will be fit or suitable for the purpose for which the Customer is acquiring the same, unless stated on sample presentations or given in writing;
- After treatments - that the products may be treated in any way including without limitation, treatment such as fire retardants, soil resistant finishes, sprays, finishes, dips, backings or coatings without damaging the products or otherwise affecting their durability, performance or finish.

## **8.0 RISK & TITLE**

### **8.1 Risk**

The risk in the products shall pass to the Customer upon delivery to the Customer or to any carrier or agent acting on the Customer's behalf. For the purpose of this provision, when Instyle has agreed to deliver the products to the premises of the Customer, its carrier or agent, as the case may be, delivery shall be deemed to have been effected upon the entry of the carrier onto such premises and thereafter the products shall be at the Customer's risk, including without limitation during the off-loading of the products from Instyle's carrier. Or in the event of the products being picked up from the premises of Instyle, the risk in the products shall pass to the Customer on leaving the premises of Instyle.

### **8.2 Property / Ownership**

Property in the products shall not pass to the Customer until full payment has been received by Instyle. The Customer agrees that Instyle is authorised to enter the Customer's premises and repossess the products (or any Instyle products in lieu, even if previously paid for) if the Customer fails to comply with the terms of payment. Until property in the products passes the Customer shall:

- Store the products so that they are clearly identified as the property of Instyle and
- So much of the proceeds of the resale of the products as is owing to pay directly to Instyle and;
- Maintain any claim against a sub-purchaser for the benefit of Instyle.

## **9.0 MISCELLANEOUS**

### **9.1 Customer's Warranty**

The Customer warrants that performance by Instyle pursuant to an order placed by the Customer will not infringe any registered trade mark or design and undertakes to indemnify and keep indemnified Instyle against all claims, demands, actions proceedings, liabilities, losses and expenses for actual or alleged infringement.

### **9.2 No Waiver**

Any time or other indulgence granted to the Customer shall not affect Instyle's strict rights except to the extent to which Instyle expressly waives such rights in writing but no waiver in respect of any breach shall affect Instyle's strict rights in respect of any other breach by the Customer.

### **9.3 Legal Action**

Should it be required, all costs shall be added to the debt incurred and shall be paid in full by the Customer.

**Jurisdiction**, any contract for the supply of products, made between Instyle and the Customer shall be governed by and construed in accordance with the laws from time to time in force in N.S.W. & Instyle and the Customer hereby submit to the non-exclusive jurisdiction of the courts of N.S.W.

The Customer acknowledges that Instyle shall be entitled to charge interest on overdue accounts at the sum equal to the interest calculated daily on the amount outstanding from time to time at the rate/s set out in Schedule J to the NSW Supreme Court Rules 1970: and the sum equal to the costs (including without limitation legal costs on a common fund basis) incurred by Instyle in attempting to recover the amount due.

### **9.4 Retention of Title**

- (a) Title in the products shall not pass to the Customer until payment is made in full to Instyle. Until payment in full is made, the Customer shall retain the products as Instyle fiduciary agent and bailee.
- (b) The Customer may resell the products but only on market terms and pending any such resale or utilisation in any manufacturing process, the products must be insured, and securely stored separate from other products and clearly marked as being Instyle products.
- (c) The Customer shall hold in trust for Instyle all proceeds from the resale of Instyle products or where Instyle products have been incorporated into other product/s such part of the proceeds from the sale of the products as relates to Instyle products (which part shall be deemed to equal in dollar terms the amount owing by the Customer to Instyle). Such proceeds shall be deposited to a separate account until the liability to Instyle has been discharged.

### **9.5 Design Rights**

The designs depicted in Instyle samples, price list and web site are propriety to Instyle and Instyle reserves the exclusive right to manufacture or distribute them. Any reproduction of these designs, in any form, including but not limited to fabric, carpet, laminate, glass, infringes Instyle rights and that infringement will be prosecuted.