

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of O'Neill Europe B.V., a private limited liability under the laws of the Netherlands having its registered office at Oosteinde 32, 2361 HE Warmond The Netherlands and registered in the trade register under number 28036121, and any of its Affiliates, as far as applicable (hereinafter "O'Neill").

1. DEFINITIONS

Contract means all written acceptances, acknowledgements, confirmations, additions and/or changes thereto by O'Neill of any orders and any contract or agreement between O'Neill and Customer regarding the sale by O'Neill and purchase by Customer of the Products including these Terms and Conditions and possible schedules and/or annexes to any such agreement;

Customer means the purchaser of the products from O'Neill;

Products means products and/or related services supplied and to be supplied for by O'Neill to Customer;

Order Confirmation means a written confirmation of the order issued by O'Neill to Customer stating all relevant information of the order which is binding upon Customer;

Terms means these General Terms and Conditions of Sale and Delivery of O'Neill;

Trademarks means all trademarks, names, devices, images, domain names, logos, identifying words or phrases, whether registered or unregistered, that Customer is authorized to use (under license) for the sale of Products, including without limitation, the word "O'NEILL", and the logos, symbols, names, various designs, illustrations, artwork and intellectual property rights related thereto and all ancillary or derivative rights;

2. APPLICABILITY

2.1. These Terms apply to the sale and delivery of the Products to Customer (including any ancillary services).

2.2. By placing an order Customer agrees to these Terms.

2.3 These Terms may be unilaterally amended by O'Neill from time to time without explicit notice to Customer. The most recent version of these Terms can be consulted at any time on the O'Neill website or will be send to Customer upon first request thereto.

2.4. Any adjustment, amendment or cancellation of these Terms by Customer is only accepted when confirmed by O'Neill in writing. The applicability of any other general terms and conditions of Customer or any other third party are hereby expressly excluded.

3. ORDER & ACCEPTANCE

3.1. Any quotations issued by O'Neill to Customer are subject to a Contract. The order by Customer constitutes an offer to purchase the Products. An order is only deemed to be accepted when O'Neill issues an Order Confirmation or any other written confirmation thereof to Customer, at which point a Contract comes into existence.

3.2. Customer is responsible to provide an order that is complete and accurate. Customer shall notify O'Neill in writing of any inaccuracies in the order within ten (10) days of placing the order.

3.3. O'Neill may at any time refuse to accept an order of Customer without giving any reason thereto.

3.4. O'Neill is authorized to correct any manifest mistakes and typographical, clerical, printing or arithmetical errors in all quotations and offers including by changing the information on the Order Confirmation if Customer has already placed an order with O'Neill. Customer hereby confirms that O'Neill may deliver based on a corrected Order Confirmation.

3.5. Customer may cancel an order in writing within ten (10) days of placing the order, unless otherwise agreed upon in writing. If Customer cancels an order after expiry of the ten (10) days of placing the order, Customer shall pay O'Neill seventy five percent (75%) of the order amount by way of contribution to the costs that O'Neill has incurred in preparation of the delivery, without prejudice to O'Neill's other rights pursuant to the law or the Contract, including but not limited to the right to claim performance and/or damages as a result of cancellation of an order to be recovered by O'Neill from Customer.

3.6. No rights can be derived from orders by Customer that are not accepted by O'Neill nor can O'Neill be held liable for any possible damages resulting from unavailability of the ordered Products.

4. PRICES AND PRICE LISTS

4.1. All prices communicated are exclusive of value added tax (VAT) and other government-imposed levies and exclusive of costs of transport.

4.2. The catalogues, price lists and online order portal are intended only for those professionally active in the industry and are considered Confidential Information in respect of article 15.

4.3. Any prices and discounts published or stated in, but not limited to, the catalogues, price lists and online order portal may at any time be changed by O'Neill without notice to Customer. All Products will be accepted on the condition that they will be charged at the prices prevailing at the date of the Order Confirmation.

5. DELIVERY AND RISK

5.1. O'Neill delivers the Products (as per the 2020 Incoterms) at the agreed location as specified in the Order Confirmation or in any other written confirmation by O'Neill.

5.2. The risk of the Products passes to Customer upon valid and/or physical delivery thereof, i.e. arrival on the premises of Customer or a third party designated by Customer.

5.3. Where damage to or loss of the Products occurs in transit or error occurs in dispatch and invoicing Customer:

- i. records this on the delivery note at the time of delivery;
- ii. gives written notice of such damage, loss, or mistake (as the case may be) with reasonable particulars thereof to O'Neill and the carrier (if different then O'Neill)

within five (5) working days after receipt of the delivery or in accordance with such other shorter time limit as the carrier may specify;

- iii. if requested by O'Neill, provides O'Neill with pictures of the damage; and
- iv. if requested by O'Neill, promptly returns any damaged Products, or Products received in error, to O'Neill's premises or to such other place as informed by O'Neill to Customer.

5.4. The quantity of Products as recorded by O'Neill on dispatch from O'Neill's place of business and/or warehouse(s) is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence to the contrary.

5.5. If the Products are not delivered directly by O'Neill, but are delivered directly to Customer by the manufacturer, supplier and/or are collected by Customer from a third party, O'Neill will not be liable for any damage to, or loss of, the Products of any nature whatsoever, irrespective of the time of occurrence, or the cause, of such damage or loss.

5.6. Customer is obligated to accept delivery of the Products at the agreed location or locations at the time of delivery by or on behalf of O'Neill, or at the time of making the Products available to Customer in accordance with the Order Confirmation. If Customer fails to comply with this obligation, all costs ensuing from such failure will be for the expense of Customer.

5.7. The mere fact that the delivery period, as agreed upon in the Order Confirmation or in any other written confirmation, is exceeded cannot be deemed to constitute failure on the part of O'Neill. In such event Customer will be authorized to demand delivery within a reasonable time, failing which Customer will be authorized unilaterally to dissolve the Contract by registered letter pursuant to non-performance of all or part of the Contract, however without any right arising on Customer's part to claim damages. In any event, Customer shall not be authorized to dissolve all or part of the Contract if Customer itself is in default.

5.8. If Customer shall collect the Products from O'Neill itself, Customer shall do so within seven (7) days of O'Neill's (pick up) notice. If Customer fails to collect the Products within seven (7) days, O'Neill is entitled to resell the Products. In no event is O'Neill liable for any damages that Customer may suffer as a result of not collecting the Products timely.

6. TITLE

6.1. Until the agreed price is paid in full on any basis whatsoever, and without prejudice to any advanced due date, including interest and costs:

6.1.1. title and entitlement to the Products will not pass to Customer (despite delivery of the relevant Products and passing of the risk thereof), unless otherwise agreed upon in writing;

6.1.2. O'Neill is at all times entitled to reclaim and resell the Products as O'Neill property (if in the possession or control of Customer) without any authorization of

Customer or the court to that effect being required. With respect to the exercise of its rights pursuant to the present subparagraph, O'Neill, its employees or agents shall have free and unhindered access to the premises and/or other locations of Customer where the Products are located using any necessary and appropriate means of transport. Furthermore, in such event any claims that O'Neill may have will be immediately due and payable; and;

6.1.3. Customer is to keep the Products in appropriate custody and without any cost for O'Neill. O'Neill may at all times collect and inspect the Products kept in custody during regular business hours, after reasonable notice to Customer. Customer is to keep the Products in custody so as to make it clear that they are O'Neill property, is to take out full insurance for the Products against fire and theft, and is to notify its insurers that the Products are O'Neill property.

6.2. O'Neill expressly reserves the right to invoke its right of reclamation (*Recht van Reclame - art. 7:39 BW*).

6.3. Customer is authorized to sell the Products on behalf of O'Neill in the ordinary course of its business or as otherwise agreed upon in writing, provided that Customer's right to resell the Products shall be automatically cancelled if any of the events referred to in Article 14 occur and/or Customer fails to pay any amount to O'Neill when due pursuant to an Contract.

6.3. Nothing in this article:

6.3.1. represents, or may be construed as, an appointment of Customer as an O'Neill agent; or

6.3.3. entitles Customer to issue any warranties or representations to third parties in respect of the Products that bind O'Neill, unless O'Neill has authorized Customer in writing to do so.

6.4. The rights and remedies conferred on O'Neill in this article apply in addition, and without prejudice, to all other rights or remedies that O'Neill may have under the Contract, without limitation thereto.

6.5. The total price shall not be deemed paid until payment has been made in accordance with the relevant conditions.

7. PERFORMANCE

7.1. If O'Neill is to supply or deliver any Products in accordance with periodical delivery schedules or a similar notice of delivery requirements to Customer, Customer will not be entitled to cancel or change any such delivery schedule or delivery requirement without the prior consent of O'Neill, and O'Neill will be entitled to reimbursement of any and all additional costs and expenses incurred as a result of such cancellation or change.

7.2. If performance of the Contract is suspended at Customer's request, or delayed as a result of default on the part of Customer including but not limited to Customer refusing to take delivery of, and/or collect,

the Products for a period of seven (7) days or longer after the agreed delivery date, O'Neill shall be entitled to full payment by Customer of the agreed price of the Products ordered, including but not limited to any possible costs of storage and insurance. In addition, O'Neill's obligation to deliver is cancelled.

7.3. O'Neill is entitled to cancel any or part of an (accepted) order for Products that have not yet been produced by or on behalf of O'Neill. O'Neill is authorized to replace the Products ordered with similar Products' upon written notice, provided that Customer has not objected within fifteen (15) workdays of the date of O'Neill's notice. In no event shall O'Neill be liable for any damage that Customer may suffer as a result of the cancelled order or replaced Products.

7.4. O'Neill will not be liable to Customer, and will not be deemed to be in default in the performance of the Contract, in the event that any delay or default is attributable to a cause beyond O'Neill's reasonable control ("force majeure"). Without prejudice to the general applicability of the foregoing, force majeure in any event includes: (i) natural disaster, explosion, flood, storm, fire or accident, war or threat of war, sabotage, riot, civil commotion or requisition; (ii) import or export regulations or bans; (iii) strike, lockout or other trade conflict (involving employees of O'Neill or third parties); (iv) problems in obtaining raw materials, labour, fuel, machine parts; (v) power failure or defects in machinery and equipment.

7.5. If the temporary situation of force majeure exceeds a period of one (1) month, either party may dissolve the Contract, without any right arising to claim damages. In the event of dissolution any performance rendered under the Contract will be settled on a pro rata basis.

8. ACCEPTANCE OF PRODUCTS

8.1. Without prejudice to Customer's rights under Article 10, Customer shall be deemed to have accepted the Products as being in conformity with the Contract, and Customer shall be under an obligation to pay for the Products, unless O'Neill receives a written notice of rejection within five (5) working days of delivery, containing an exact description of the reason for rejection of the Products, save in the circumstances referred to in Article 10.

8.2. Without prior written notice by O'Neill, Customer is obliged to accept and pay for any delivered Product quantity that is three percent (3%) up and three percent (3%) down. For any Product deliveries that are in excess of the aforementioned percentages, O'Neill shall send a prior notice to Customer with an offer and the request to accept and pay for any Product quantities in excess. If Customer does not accept any Product quantities in excess, Customer returns the excess Products to O'Neill's premises or to such other place as the O'Neill may from time to time notify to Customer.

8.3. Once accepted by Customer, Products can no longer be returned.

8.4. If, after notice of rejection, Customer behaves as the owner of the Products or Customer's behaviour is inconsistent with such rejection or the title and entitlement to the Products vesting in O'Neill, Customer will be deemed to have accepted the Products and shall be under an obligation to pay the agreed price. The foregoing provision will also apply as soon as Customer has edited, altered or adapted all or part of the Products or mixed them with other items.

9. PAYMENT

9.1. Unless otherwise agreed upon in writing, the agreed price of the order is to be paid within thirty (30) days of the date of O'Neill's invoice.

9.2. For purposes of the Contract the agreed payment term constitutes a firm deadline, and failure to pay within the specified term entitles O'Neill to suspend further delivery of the Products, not limited to the applicable order, pending payment and/or to dissolve the Contract and deliver the Products to third parties, without prejudice to any other remedies that O'Neill may have.

9.3. Customer has no right to any discount, set-off or suspension.

9.4. If at any time O'Neill should doubt Customer's creditworthiness, O'Neill will be entitled, before continuing performance, to require that Customer shall pay in advance or provide proper security in the amount of any claims due or otherwise payable that O'Neill may now or in the future have against Customer under the Contract, at O'Neill's discretion, and without prejudice to O'Neill's other rights pursuant to the Contract or the law.

9.5. If Customer fails to make full payment of the amounts due within the agreed term, Customer will pay interest equal to one percent (1%) per month on the outstanding amount from the due date of the relevant amount until the date of payment, without prejudice to O'Neill's other rights. In addition, all reasonable costs to obtain payment out of court will be payable by Customer, including but not limited to costs of debt collection agencies, bailiffs and lawyers, including costs of warnings, notices of default, and reminders to be sent, the amount of which is set at a minimum of fifteen percent (15%) of the total amount outstanding, without prejudice to O'Neill's right to recover the actual costs from Customer.

9.6. Any payment made by Customer will at all times first be applied to payment of all interest and costs due, and subsequently to payment of those invoices due and payable that have been outstanding the longest, even if Customer states that the payment relates to a later invoice.

10. DEFECTS AND SHORTCOMINGS

10.1. O'Neill reserves the right to request evidence (e.g. photo's) of and/or inspect all allegedly defective Products before offering replacement.

10.2. O'Neill does not, save in the case of defective Products, accept any return shipments of Products:

- i. that were manufactured specially and correctly to order;
- ii. that are not in clean or saleable condition;

- iii. later than seven (7) days after their delivery.

10.3. In the event Customer could not reasonably discover the defect until a later date (i.e. hidden defects), the relevant written claims are to be in O'Neill's possession within five (5) days of discovery of the defect.

10.4. O'Neill is not liable for any loss of, or damage to, Products returned by a carrier selected by Customer.

10.5. In the event the returned Products are defective in O'Neill's opinion, and the defect is attributable to defects in materials or workmanship or any other factor for which O'Neill is responsible, O'Neill may, at its sole decision, replace the relevant Products or credit Customer for their value.

10.6. In any event, Products are not deemed defective if they only show discrepancies of minor significance in terms of quality, dimensions, colour, design, weight and/or finishing which are customary in the course of trade, except Products that are second choice, holed, stained or Products without care and brand label.

10.6. O'Neill is not liable, either in contract or otherwise, for any defects or non-conformity of the Products as compared to a specification or sample, or for any personal injury, damage or loss as a result of any such defects.

10.7. O'Neill is not liable for any defects if:

- i. Customer or its customers make(s) any further use of such Products after giving notice of the defect; or
- ii. the defect arises because Customer failed to follow O'Neill's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
- iii. Customer alters or repairs such (allegedly) defect Products without the written consent of O'Neill.

11. LIMITATION OF LIABILITY

11.1. Any liability on O'Neill's part, in contract, in tort, or otherwise, in respect of defects in the Products, or in relation to breach of the present Contract or any obligation vis-à-vis Customer in connection with the present Contract, is limited to the total net price of the value of the defective Products sold pursuant to the relevant Contract.

11.2. In no event will O'Neill be liable, on any legal basis whatsoever, for trading loss or consequential damage, including but not limited to loss of turnover, profits or goodwill.

11.3. Customer will indemnify O'Neill against any third-party claims in respect of damage relating to the Products supplied by O'Neill or otherwise relating to the Contract entered into between Customer and O'Neill.

12. RETURN SHIPMENTS

12.1. Customer is obliged to notify O'Neill in writing before returning any of the rejected or defective Products and Customer may not send any return shipments without O'Neill's authorization. All return shipments are to be accompanied by a completed

return form to be designated by O'Neill, stating the return shipment authorization number. If the rejected or defective Products will be collected by O'Neill from Customer at a location and time subsequently to be agreed, Customer will arrange proper presentation of the Products, failing which a surcharge equal to twenty five percent (25%) of the agreed price will be charged by way of compensation of costs.

12.2. Returned Products that were returned due to their defectiveness but do not show any defects are not accepted. Any unsold Products by Customer cannot be returned.

12.3. In the event that O'Neill has incurred any costs arranging the collection of defective Products at the agreed location of Customer and the Products are not deemed to be defective according to article 11 then all costs shall be charged to Customer.

13. PRODUCT RECALLS

13.1. In the event a defect in the Products supplied (including their packaging) comes to the knowledge of either party, then the relevant party will immediately notify the other party of such defect, stating:

- the nature of the defect;
- the relevant Product(s);
- any other information that may be relevant.

13.2. In such event, O'Neill will be authorized to decide whether or not to take measures, including but not limited to discontinuing supplies, blocking stocks (both on the premises of Customer and on those of its buyers), and/or recalling Products. Customer shall render its reasonable cooperation in the implementation of such measures.

13.3. Customer is under an obligation to keep all information confidential in respect of measures factually taken or measures that may be taken.

14. BREACH OF CONTRACT AND TERMINATION

14.1. Without prejudice to rights of O'Neill at Law or in contract (including but not limited to any termination rights), O'Neill is entitled to suspend its obligations and/or to dissolve all or part of the Contract with immediate effect without liability to Customer and without giving any notice to Customer, if:

- i. Customer is in breach with any provision of this Contract or any of its obligations hereunder;
- ii. Customer is misusing or putting O'Neill's good name, its affiliates, business or trademarks into disrepute;
- iii. there is an error, deception or misrepresentation in the conclusion of the Contract by Customer;
- iv. Customer is granted a provisional or definitive moratorium on payment of its debts, Customer's bankruptcy is filed for or granted, or Customer's business is wound up or discontinued;
- v. at O'Neill's reasonable discretion, it is likely that Customer is not able to perform its payment obligations or is otherwise not, or no longer, creditworthy;

- vi. Customer, if applicable, exceeds a credit limit granted by O'Neill;
- vii. Customer offers the Products outside the points of sale agreed with O'Neill.

14.2. In the event O'Neill dissolves the Contract wholly or any part thereof based on the foregoing provisions, then Customer will forfeit to O'Neill an immediately payable penalty equal to fifty percent (50%) of the outstanding order value of the Contract.

14.3. If at the time of dissolution Customer has already received services in connection with the performance of the Contract, such services and the associated payment obligation or obligations will not be undone, unless O'Neill is in default in the performance of such services. Any amounts that O'Neill has already invoiced prior to dissolution in respect of what O'Neill has already performed or delivered for purposes of performance of the Contract will remain due in full, subject to the provisions of the foregoing sentence, and will become immediately due and payable upon dissolution.

14.4. Customer may not dissolve the Contract without O'Neill's consent which, if granted, will be deemed to have been granted on the express condition that Customer will indemnify O'Neill against any loss, damage, claims or actions that may result from such dissolution, unless agreed otherwise in writing. The foregoing provisions will not be applied in the event O'Neill did not respect any of its obligations under the agreement.

14.5. In the event of dissolution of the Contract all mutual claims will be immediately due and payable.

15. CONFIDENTIALITY

15.1. Customer keeps confidential any information, furnished or disclosed to Customer by O'Neill whether in writing or orally, relating to O'Neill's business, its customers, its Products, trade secrets and the quotation and its terms ("Confidential Information"). Any information in the public domain at the time of disclosure, and/or information that is required to be disclosed by law or by court order are not considered Confidential Information.

15.2. Customer can disclose Confidential Information only to its employees that need to know such information to perform the services as agreed upon in the Contract.

15.3. Customer shall not, without O'Neill's prior written consent, publicly make any reference to O'Neill, whether in press releases, advertisements, sales literature or otherwise.

16. INTELLECTUAL PROPERTY

16.1. Customer will at all times refrain from any acts that may impair the distinctiveness or the reputation of O'Neill's Trademarks. Customer will only use O'Neill's Trademarks to the extent agreed upon under this Contract or otherwise permitted by law.

16.2. Customer will not use any signs, including trademarks and trade names, which are similar to O'Neill's trademarks and/or trade name.

16.3. Customer may not alter the Products supplied to it in any way whatsoever, including but not limited

to modification or removal of the affixed trademarks, etc.

17. CORPORATE SOCIAL RESPONSIBILITY

17.1. Customer confirms to comply with the Corporate Social Responsibility ("CSR") Guidelines of O'Neill which shall be sent to Customer upon request. Customer shall provide evidence of compliance thereof upon the O'Neill's first request.

17.2. Customer shall work collaboratively with O'Neill to increase transparency of the distribution chain and the origin of the Products.

17.3. O'Neill is permitted to carry out an audit in order to inspect Customer's compliance with the CSR Guidelines.

18. DATA PROTECTION AND PERSONAL DATA

18.1. O'Neill declares to comply with the legal provisions of the European General Data Protection Regulation 2016/679 (GDPR) when processing personal data. In this respect, reference is made to the privacy statement of O'Neill that can be consulted [online](#).

19. TRADE COMPLIANCE

19.1. Customer confirms that it is subject to and responsible for compliance with the export control and economic sanctions laws of the European Union and other applicable jurisdictions and Customer therefore agrees that:

- i. Products will not be directly or indirectly sold, (re-)exported, imported or transferred to Russia, Belarus and/or any other territories that are subject or target of economic sanctions of the EU or any other applicable jurisdictions;
- ii. Customer shall require its own customers to agree to terms no less restrictive than those contained in this article; and
- iii. Customer will defend and indemnify O'Neill and its Affiliates against any third party claim resulting from a breach of any of the foregoing obligations of article 19.

20. NO CONTINUED PERFORMANCE CONTRACT

20.1. Unless otherwise agreed upon in writing, O'Neill and Customer expressly agree that either party is at all times authorized to discontinue placing orders or to refuse to accept orders from the other party, as applicable, without any liability arising to pay damages (for example in connection with lost profits or investments made), irrespective of the term of the relationship, the dependence of the parties and/or the expectations that the parties may have had in respect of possible future orders, and any other relevant circumstances.

21. NO WAIVER OF RIGHTS

21.1. O'Neill's rights and remedies under the Contract will not be impaired, forfeited or waived, for example, as a result of O'Neill granting an extension, or as a result of any default or delay on O'Neill's part to enforce or exercise the relevant rights or remedies.

22. SEVERABILITY

22.1. The voidness or voidability of any of the provisions in these Terms will not affect the validity and enforceability of the other provisions.

23. APPLICABLE LAW

23.1. The Terms, the Contract and all agreements relating thereto or resulting there from are governed by, and construed in accordance with, the laws of the Netherlands. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.

23.2. Any disputes relating to the Contract between O'Neill and Customer, or the performance thereof, that cannot be resolved by mutual consultation between the parties, will be submitted to the competent court in The Hague, the Netherlands. In derogation of the foregoing, O'Neill may submit a dispute to the competent court in the district where Customer has its registered office.

23.3. These Terms and Conditions are drawn up in the English language on the express condition that all words, terms and expressions used herein shall be construed and interpreted in accordance with Dutch law.