

# **GENERAL SALES CONDITIONS OF M/S. SIVANTHI JOE COIRS**

Version 1.0 Effective Date: 01.06.2013

The following General Sales Conditions are part of and applicable to each and every Agreement ("Agreement") between M/s. Sivanthi Joe Coirs, India and existing under the laws of India, and the customer ("Customer"), on the basis of which M/s. Sivanthi Joe Coirs sells goods, to the Customer.

## **A. General**

1. The following General Sales Conditions are part of and applicable to all the offers and agreements of M/s. Sivanthi Joe Coirs and the performance thereof, unless M/s. Sivanthi Joe Coirs agrees in writing that the General Sales Conditions shall not apply, in whole or in part, to an offer or agreement.

2. Except where otherwise provided herein, any references to any number of days shall mean calendar days inclusive of national holidays.

3. M/s. Sivanthi Joe Coirs strives for accuracy in all price lists, price quotations, brochures, order confirmations, invoices and other information provided by M/s. Sivanthi Joe Coirs; however, M/s. Sivanthi Joe Coirs shall not be responsible or liable for any misstatement, typographical error or other similar error under good faith made by M/s. Sivanthi Joe Coirs or a representative of M/s. Sivanthi Joe Coirs which the customer knew or should have reasonably known was a misstatement, typographical error or other similar error.

4. Terms and conditions of Customer shall not apply to the Agreement unless agreed upon by M/s. Sivanthi Joe Coirs in writing.

5. In the event that the Agreement is executed in more than one language, the English language version shall prevail in the case of any discrepancy.

6. The Official language for all the agreement and communications shall be English.

## **B. Offers and Agreements**

1. M/s. Sivanthi Joe Coirs offers shall not bind M/s. Sivanthi Joe Coirs and may be revoked at any time by M/s. Sivanthi Joe Coirs prior to full and unconditional acceptance of such offer by Customer, unless M/s. Sivanthi Joe Coirs explicitly agrees that such offer is irrevocable for a certain period of time.

2. Customer and M/s. Sivanthi Joe Coirs will have entered into an Agreement only if M/s. Sivanthi Joe Coirs:

- Confirms after receiving the order or commences with carrying out the order; or
- If otherwise stated in these General Sales Conditions. The order confirmation is deemed to correctly and completely reflect the Agreement subject to Article A.3., unless Customer provides written objection to M/s. Sivanthi Joe Coirs regarding such order confirmation within seven (7) days of the order confirmation.

3. Any subsequent supplementary agreements or alterations shall bind M/s. Sivanthi Joe Coirs only if these have been confirmed by M/s. Sivanthi Joe Coirs in writing.

4. For deliveries for which no written offers or order confirmations are sent, the invoice for such deliveries will be considered as an order confirmation that, subject to Article A.3., is also deemed to correctly and completely reflect the Agreement.(Clause 3 of A. General)

## **C. Prices**

1. Unless M/s. Sivanthi Joe Coirs otherwise agrees in writing, all prices are quoted subject to price changes.

2. Unless M/s. Sivanthi Joe Coirs otherwise agrees in writing, all prices are exclusive of V.A.T., sales tax, or any other levies imposed by the authorities.

3. Unless M/s. Sivanthi Joe Coirs otherwise agrees in writing, the price for ordered goods shall be the price mentioned in the M/s. Sivanthi Joe Coirs price list in effect at that time.

## **D. Delivery**

1. Delivery terms will be agreed upon, in writing, on a customer-by-customer basis in conformity with the INCOTERMS -2010, as published by the International Chamber of Commerce and in force on the date the Agreement was concluded.

2. The delivery term shall take effect on the date when the Agreement has been concluded. If prepayment or a down payment has been stipulated, then the delivery term shall not take effect until the receipt of the complete down payment or prepayment.

3. Customer shall promptly inspect delivered goods and shall notify M/s. Sivanthi Joe Coirs in writing within fifteen (15) days of delivery at customer's place of any non conformance of or damage to the delivered goods. Failure of Customer to promptly notify M/s. Sivanthi Joe Coirs of any non conformance of or damage to the delivered goods shall be a waiver of Customer's rights in this respect.

4. M/s. Sivanthi Joe Coirs may deliver by installments and invoice separately for each installment, which invoices Customer must pay in accordance with the payment terms fixed by M/s. Sivanthi Joe Coirs.

5. Unless M/s. Sivanthi Joe Coirs agrees otherwise in writing, indicated delivery times shall not be considered as a deadline but as an approximate date of delivery. The non-observance of the delivery date by M/s. Sivanthi Joe Coirs cannot be invoked by Customer to enter a claim for damages, interests or cancellation of the Agreement or the order unless M/s. Sivanthi Joe Coirs has agreed to deliver the goods on a specific delivery date. All Coco Peat products' delivery date is subject to local weather condition; Sivanthi Joe Coirs shall not be responsible for delay in production and supply due to adverse weather conditions such as rainfall, cyclone, floods etc.

6. Customer shall take delivery of the goods in accordance with the agreed upon INCOTERMS-2010. If Customer fails to take receipt of the goods when such goods are presented for delivery by M/s. Sivanthi Joe Coirs or a representative of M/s. Sivanthi Joe Coirs, then the goods will be stored (for Customer's account and risk) while being available to Customer, notwithstanding the right of M/s. Sivanthi Joe Coirs to claim damages or cancel the Agreement. After a period of fifteen (15) days M/s. Sivanthi Joe Coirs may sell these goods in a manner it deems appropriate. Any deficiency between the proceeds of such sale, less additional costs related to such sale, and the amount due from Customer under the Agreement will be for Customer's account and risk without prejudice to M/s. Sivanthi Joe Coirs rights.

## **E. Transport/ Risk of Loss**

1. If Customer has not provided M/s. Sivanthi Joe Coirs with any specific instructions, the manner of transportation, forwarding, packaging and the like, then these terms will be determined by M/s. Sivanthi Joe Coirs. Any specific instruction of Customer concerning the manner of transportation, forwarding, packaging and the like will only be used by M/s. Sivanthi Joe Coirs if Customer confirms that Customer will bear any additional costs thereof.

2. Risk with respect to all goods supplied to the Customer, shall pass to Customer upon delivery.

## **F. Force Majeure**

1. Neither party shall be liable to the other for its failure to perform any of its obligations under the Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to fire, flood, war, embargo, strike, act of God, inability to secure materials and transportation facilities, continued default on the part of suppliers, or the intervention of any governmental authority, in each case not otherwise invoking a breach of the Agreement.

## **G. Limited Warranty and Liability**

1. M/s. Sivanthi Joe Coirs warrants that its goods (excluding data recorded on it) are free from defects in the material and the workmanship at the time of delivery.

2. Unless otherwise specified in writing by M/s. Sivanthi Joe Coirs if within 15 (fifteen) calendar days from the date of delivery at Customer's place, M/s. Sivanthi Joe Coirs is notified by Customer of goods that are found to be defective in material or workmanship, M/s. Sivanthi Joe Coirs' entire liability shall be limited to, at M/s. Sivanthi Joe Coirs' option, either:

- Replacement of the defective good(s), or
- Refund of the purchase price of each defective good within a reasonable time after M/s. Sivanthi Joe Coirs' receipt of written notification of the defect and the returning of the defective good to M/s. Sivanthi Joe Coirs.

3. This warranty does not apply to defect of the goods resulting from Customer's misuse, abuse, neglect or mishandling, improper adjustments, incorrect environments.

4. Except for mandatory laws with respect to liability, M/s. Sivanthi Joe Coirs shall not under any circumstances be liable for any indirect, incidental, special or consequential damages, including, but not limited to, loss of profits, revenue or business or any damages whatsoever.

5. In the event of any levies of importation /Sale etc., the Purchaser shall have the sole responsibility of obtaining the required clearances, and pay taxes or charges, unless otherwise agreed by M/s. Sivanthi Joe Coirs.

6. Consignee/Buyer is liable to provide proof of custom clearance within the validity of the issued documents. In case of non compliance, M/s. Sivanthi Joe Coirs is bound by law to clear the goods for import, pay any import duty or carry out any import customs formalities. The levied tax and all incurred charges will be for consignee's /buyer's account and invoiced accordingly.

7. It is the Customer's responsibility to ensure that the goods are suitable for the purpose to which they are intended to be used. No representation or warranty is given as to the suitability or fitness of the goods for any particular purpose and the Customer shall satisfy itself in this respect and shall be totally responsible therefore. If the Customer has any specific requirements for the use of the goods the Customer must notify these requirements to M/s. Sivanthi Joe Coirs in writing before purchasing the goods. If the Customer is unsure as to the suitability of any goods for a particular purpose it should consult the M/s. Sivanthi Joe Coirs prior to purchase.

8. Coco Peat is organic material. Fungi occur naturally found in the environments. It spreads by means of microscopic spores borne on the wind and is found everywhere life can be supported. It is naturally possible for the same to form. Most fungi are not harmful for the plants and disappear after aerating and loosening up the material. It is impossible to prevent the formation of fungi, since even after theoretical heat treatments they can form (hence, it is also called "heating fungus").

Sivanthi Joe Coirs shall not be held liable for occurrence of such fungi since the spores borne on the wind and is found everywhere life can be supported. Sivanthi Joe Coirs will not accept DNA tests on the Coco Peat materials for these fungi is found everywhere in the world and may be formed anywhere and the same is not under Sivanthi Joe Coirs' control.

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#### **H. Complaints**

1. Without prejudice to other provisions in these General Sales Conditions, all complaints shall be lodged with M/s. Sivanthi Joe Coirs in writing within fifteen (15) days from the date of delivery of goods at Customer's place. Any complaint(s) must accurately describe the nature and the grounds for the complaint(s).
2. After the expiry of the above terms, the Customer is deemed to have accepted the delivered goods or the invoice as the case may be. Any complaints after the expiry of the above terms will not be handled by M/s. Sivanthi Joe Coirs.
3. Pending any investigation to be carried out by M/s. Sivanthi Joe Coirs, the Customer shall store the goods or, if M/s. Sivanthi Joe Coirs should request, return such goods to M/s. Sivanthi Joe Coirs. The goods shall be stored or transported at the Customer's risk unless agreed otherwise by M/s. Sivanthi Joe Coirs in writing.

#### **I. Retention of title**

1. Customer will not receive title to any goods until Customer has paid, in full, the purchase price and all other related charges with respect to such goods.
2. As long as legal title has not been transferred to Customer, Customer is prohibited from granting to a third party any security or other interest in the goods, except to the extent that the sale or transfer of the goods is conducted in the normal course of business.
3. If Customer should fail to fulfill his payment obligations towards M/s. Sivanthi Joe Coirs, or if M/s. Sivanthi Joe Coirs reasonably fears that Customer will fail to fulfill such obligations, M/s. Sivanthi Joe Coirs shall be entitled (and irrevocably authorized by Customer) to repossess the delivered goods subject to retention of title. After repossession, Customer will be credited for the market value of the repossessed goods, which will not, at any rate, be higher than the original purchase price, less any costs involved in the repossession.

#### **J. Payment by the Customer**

1. All the payments shall be done fully in advance immediately when Sivanthi Joe Coirs sends Proforma Invoice to its customers, or as per written terms and conditions agreed by Sivanthi Joe Coirs Agreement. The date of actual cash payment or the date of payment indicated in M/s. Sivanthi Joe Coirs' bank, shall be considered as the payment date of the applicable invoice. Customer is not entitled to set-off.
2. Any payments effected by Customer shall always first serve to settle any interest and costs payable, and then the oldest invoices outstanding even if Customer claims that the payment relates to a later invoice.

#### **K. Default by Customer**

- The below are the criterias where M/s. Sivanthi Joe Coirs has the powers to cancel an Order, when the customer is at default.
1. Notwithstanding M/s. Sivanthi Joe Coirs' rights arising under the Agreement, or arising from law, M/s. Sivanthi Joe Coirs is at any time entitled to consider the Agreement to be dissolved, without the need for declaring Customer in default or the need for any judicial intervention, or to suspend its obligations or to fully demand any amount payable by Customer and to repossess for cause to be repossessed anything that has been delivered but not yet been paid for:
    - a) If Customer is declared bankrupt or initiates bankruptcy proceedings; cedes its property; applies for or is granted a moratorium of payment; or loses a considerable portion of his property by seizure or forfeiture;
    - b) If Customer should decease or be placed under legal restraint;
    - c) If Customer does not perform any of its material obligations arising under the Agreement, or arising from law;
    - d) If Customer should cease or transfer his business or a considerable part thereof including contributing his business towards a company to be formed or already existing, or should change the purpose of his business.

#### **L. Interest and Costs**

1. If payment has not been effected within the terms as agreed upon, then Customer is legally in default and owes interest in the amount of 1.5% of the outstanding amount per month (or part thereof) as from the due date.
2. In the event that Customer fails to comply with any obligation under the Agreement, Customer shall, in addition to any other remedy sought, be required to pay all collection costs, including legal fees and expenses for internal and external advise, which collection costs shall be deemed to be equal to at least fifteen percent (15%) of the outstanding invoice amount. Customer shall pay the actual collection costs in the event such actual collection costs are higher than fifteen percent (15%) of the outstanding invoice amount.

#### **M. Indemnification**

1. Customer shall indemnify M/s. Sivanthi Joe Coirs for any damage M/s. Sivanthi Joe Coirs may suffer as a result of the claims of third parties that pertain to goods delivered by M/s. Sivanthi Joe Coirs, including, but not limited to:
  - Claims of third parties or employees of M/s. Sivanthi Joe Coirs pertaining to damages suffered in the performance of the agreement that are a result entirely or part of the misfeasance or nonfeasance of Customer or of unsafe conditions in its company;
  - claims of third parties or employees of M/s. Sivanthi Joe Coirs suffering damages that are the result of a defect in goods delivered by M/s. Sivanthi Joe Coirs which Customer has used, modified or resold with additions or in connection with the goods of Customer, unless Customer proves that such defect is not a result of the aforesaid use, modification or re-sale.

#### **N. Intellectual property rights**

1. M/s. Sivanthi Joe Coirs is entitled to all intellectual property rights related to M/s. Sivanthi Joe Coirs goods, by ownership or by license, and nothing in the Agreement or under these General Sales Conditions may be construed as the granting of a license to the Customer under any intellectual property right, directly or indirectly.
2. Without the prior written approval of M/s. Sivanthi Joe Coirs, the Customer shall not modify or alter the goods or their packaging and shall not add its own trademarks or trade names or make other modifications to M/s. Sivanthi Joe Coirs packaging or goods or otherwise infringe or harm M/s. Sivanthi Joe Coirs' intellectual property rights.

#### **O. Miscellaneous**

1. Customer shall not assign or delegate its rights or delegate this Agreement or any of its rights or duties under this Agreement without M/s. Sivanthi Joe Coirs' prior written consent, which consent shall not be unreasonably withheld.
2. If any article, term, provision or clause in this Agreement is found or held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and M/s. Sivanthi Joe Coirs and Customer shall negotiate in good faith, a substitute, valid and enforceable provision that most nearly reflects the original intent of M/s. Sivanthi Joe Coirs and Customer in entering into this Agreement.
3. All M/s. Sivanthi Joe Coirs' offers and Agreements, and the performance thereof, and any questions, claims, disputes or litigation concerning or arising from the Agreement, shall be governed and construed in accordance with and subject to the laws of India, excluding the International Convention on the Sale of Goods.
4. With respect to the interpretation of international commercial terms, the latest confirmed "INCOTERMS-2010".

#### **P. Arbitration**

Before any legal action against M/s. Sivanthi Joe Coirs every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement or the subject matter thereof shall be referred to the arbitration, to an arbitrator nominated by M/s. Sivanthi Joe Coirs and the decision of the arbitrator shall be final and binding on the parties., any dispute, controversy or claim arising out of or relating to the goods validity, interpretation, breach thereof ("Dispute"), including claims seeking redress or asserting rights under applicable Indian laws, shall, be resolved and finally settled in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 as may be amended from time to time or its reenactment. Exclusive venue for such arbitration shall be Tuticorin, Tamilnadu, India.

#### **Q. Laws**

##### **Governing Law:**

Except as detailed herein, this Agreement shall be governed by and interpreted in accordance with the Indian Laws, without regard to the conflict of law's provisions therein.

##### **Jurisdiction:**

All disputes that might arise between Customer and M/s. Sivanthi Joe Coirs shall be settled by the Courts of Tuticorin, Tamilnadu, India.