

This Contract is between Workwear Direct Pty Ltd ABN 80 609 184 563 (**Supplier**) and the customer (its successors and permitted assigns) (**Customer**) relating to any of Supplier's products (**Products**) or its services including customer service and technical backup (**Services**) or transactions are subject to these terms and conditions of sale (**Terms**). Unless otherwise agreed in writing these Terms apply to and form part of all agreements for the supply of Products and related Services by Supplier to the Customer.

## 1. Title

**1.1** Subject to these Terms, legal and equitable title in the Products shall remain vested in Supplier and shall not pass to the Customer until the Customer has paid the purchase price and all other moneys owed by the Customer to Supplier in full. In the event of default by the Customer of any of these Terms, including the payment of monies due under these Terms, the Customer acknowledges and agrees that Supplier may recover or retake possession of all or any of the Products supplied to the Customer, and the Customer hereby authorises and allows Supplier or its representative, servant, agent or employee to enter without notice and at any time any premises where any of the Products are housed or stored for the purpose of retaking possession of all or any of the Products. Supplier shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Customer as a result of Supplier taking possession of the Products.

**1.2** Until payment in full the Customer agrees to provide adequate insurance for the Products and only to sell the Products in the ordinary course of its business. The Customer acknowledges and agrees that a sale of any Products for less than its cost price, is not a sale in the "ordinary course of business" and it will sell any such Products as fiduciary agent and bailee of Supplier.

**1.3** In the event that the Customer uses the Products in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Products in trust for Supplier. Such parts shall be deemed to be equal in dollar terms to the amount owing by the Customer to Supplier at the time of the receipt of such proceeds.

**1.4** Risk passes to the Customer when Supplier delivers the Products, either to the Customer's store, or to the specified carrier's depot.

## 2. Cancellation of Orders

Supplier will generally accept cancellation of an order where;

- (a)** The Product is a stocked item; or
- (b)** Written advice of cancellation is received prior to dispatch.

Cancellation of orders of Products which have been custom made, custom processed or made specifically to suit Customer specifications (Made to Order) and large quantity orders of Products (Project Lots), will result in the charging of all relevant costs to the Customer's account.

## 3. Prices

Prices quoted exclude GST. Prices listed in our price list are based on current all inclusive manufacturing costs, and are subject to variation without notice if such costs increase or decrease either before or after acceptance of any order. Supplier will endeavour to provide 30 days notice of any price increases. Written quotes and contract prices will stay fixed for the duration of the stated period, unless otherwise negotiated. All orders are accepted for delivery on the condition that Products will be invoiced at the prices provided at the date of dispatch.

## 4. Quotations

Unless otherwise specifically stated all Supplier tenders and quotations: (i) are based on receiving an order; (ii) are effective for that quotation only; (iii) are valid 30 days from the creation date; (iv) exclude GST.

## 5. Payment Terms

Terms of sales are strictly nett 30 days from the date of invoice. Any expenses incurred by Supplier in recovery of debts are to be met by the Customer. This will not apply in cases where non-payment of an account is entirely due to fault on the part of Supplier. Should the Customer default in the payment of any monies due under these terms, then all monies due to Supplier shall immediately fall due and payable and shall be payable on demand, and Supplier shall be entitled to charge interest at the rate of 15% per annum on all overdue accounts from the due date to the actual date of payment.

## 6. Delivery

**6.1** Supplier reserves the right to withhold any delivery if the Customer is subject to any insolvency proceedings, or if Supplier forms the opinion that the customer credit worthiness or credit standing has deteriorated significantly.

**6.2** Supplier will strive to ensure deliveries are made on time, however any times quoted for delivery are to be treated as estimates only and involving no contractual obligations.

## 7. Intellectual Property

The Customer acknowledges that Supplier is the owner and holds all rights, title and interest in the various patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information held by Supplier (Supplier's IP). The Customer will not attempt to seek or claim any interest in Supplier's IP, or assist any other party to assert any interest in Supplier's IP. The Customer acknowledges that any improvement or enhancement of Supplier's IP which may result from work performed by the Customer shall remain the exclusive property of Supplier and the Customer irrevocably assigns to Supplier all right, title and interest the Customer may have in any improvements or enhancements, to Supplier's IP. The Customer will not hinder Supplier in any application or other measure taken by Supplier to protect or exploit improvements to Supplier's IP.

## 8. Competition and Consumer Act 2010 (Cth) (CCA)

**8.1** Where the provisions of the CCA apply, the provisions of these Terms will be read subject to the application of the CCA and in the case of any conflict, the provisions of the CCA will apply.

**8.2** Nothing in these Terms is intended to limit or replace any rights of "consumers" as that term is defined under the CCA.

**8.3** The Customer agrees that if the Customer buys any Products for the purposes of re-supply, manufacture or repair of other goods, the CCA will not apply to such supplies.

**8.4** If the Customer on-sells any Products it agrees that it will not make any representations in relation to the Products which are not:

- (a)** contained on the packaging of the Products;
- (b)** contained in any materials supplied by Supplier;
- (c)** set out in any applicable manufacturer's warranty; or
- (d)** approved in writing by Supplier. If the Customer on-sells the Products to consumers who purchase them for the purposes of re-supply, manufacture or repair of other goods, the Customer agrees to contract out of the CCA in writing with those consumers.
- (e)** The Customer agrees that it will indemnify Supplier against any claim, liability or cost incurred by Supplier as a result of any breach by the Customer of its obligations in clause 8.4(d) above.

## 9. Warranty Claims

**9.1** Except to the extent required by law, all consumer guarantees, representations, warranties, terms and conditions in relation to the Products and Services (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

**9.2** To the maximum extent permitted by law:

- (a)** Supplier shall not be liable in respect of any defective Products unless the Customer notifies Supplier in writing of its claim within 14 days from delivery and gives Supplier reasonable opportunity to investigate the claim. Failure to so notify Supplier in this timeframe shall be deemed to be unqualified acceptance of the delivery;
- (b)** despite clause 9.2(a), Supplier shall have no liability for, and will not accept any claims for Products which, after delivery pursuant to clause 1.4 of these Terms:
- (i)** are not intact and in original condition;
- (ii)** have been altered, improperly stored or handled or suffered damage or deterioration; or
- (iii)** have been affixed, used or applied in any way;
- (c)** except as stated in these Terms, Supplier shall not be liable for any losses or damages incurred by the Customer or any third party in relation to the Products or these Terms including any damage to property;
- (d)** except as set out in these Terms, no other term, condition, warranty, representation and/or understanding whether express or implied, in any way extending to, or otherwise relating to or binding upon Supplier, is made or given by or on behalf of Supplier in respect of the Products.

**(e)** Supplier's liability to the Customer (and any party claiming through the Customer against Supplier) for any claim for loss or damage (including legal expenses) made in connection with the Contract for breach of contract, tort (including negligence), under statute, in equity, at common law or otherwise shall be limited at Supplier's discretion, to the following:

**(f)** replacement of the Products or supply of equivalent Products, or repairing the Products, or crediting the Customer for the price of the Products as at the date of delivery, or paying the Customer the cost of repairing of the Products (with such cost having prior approval by Supplier) where Supplier has supplied Services, Supplier's liability is limited to the provision of the Services again or payment of the costs of having the relevant Services provided again at Supplier's option.

**(g)** Supplier will not be liable for any loss or damaged caused by the negligence of the Customer or any third party acting on behalf of the Customer. This includes any loss or damage caused by the supply by the Customer or third party acting on behalf of the Customer of incorrect manufacturing instructions, drawings or material specifications, and faulty installation or misuse of the Product by the Customer or a third party.

**(h)** Supplier will not be liable for any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise, and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.

#### **10. Exclusions**

Except if and to the extent applicable law requires otherwise the Customer agrees that:

**(a)** without limiting or affecting clause 9.2d), no dealing between Supplier and the Customer shall be or deemed to be a sale by sample;

**(b)** it shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of Supplier shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon;

**(c)** Supplier shall not be liable under these Terms in respect of any Products to the extent that any third party manufacturer is liable under a manufacturer's warranty for such Products (the benefit of which Supplier will, to the extent possible, extend to the Customer); and

**(d)** Supplier shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at Supplier and accepted in writing by Supplier prior to delivery of the Products under these Terms.

#### **11. Returns**

**11.1** Supplier will always endeavour to accept returns in order to offer the best service, however, except in the case of defective Products (in which case clause 9 of these Terms will apply) standard stocked items will only be accepted for return with our prior agreement, and only if the Products and packaging are in original condition, and free from damage and blemishes, and no more than 3 weeks have passed since the delivery date.

**11.2** To process any claims or returns relating to standard stocked items, Supplier needs to be advised of the original invoice number and the reason for the credit request, within 30 days from the date of invoice. Products ordered in error by the client will be subject to a minimum handling charge of 15% of the value of the Products. Despite any other provisions of these Terms (and except in the case of defective Products, in which case clause 9 of these Terms will apply) Products Made to Order are not returnable.

#### **12. Default**

**12.1** The Customer will be in default if any of the following occurs:

**(a)** Customer breaches these Terms; and/or

**(b)** payments for the Products or Services has not been received by Supplier by the due date of payment; and/or

**(c)** the Customer is subject to any insolvency proceedings.

**12.2** If the Customer defaults, Supplier may:

**(a)** treat the whole of the Contract and any other agreement with the Customer as repudiated and sue for breach of contract; and/or

**(b)** claim the return of any Products in the Customer's possession where title has not passed to the Customer, and/or

**(c)** refuse to supply any Products or Services to the Customer; and/or

**(d)** without notice to the Customer withdraw or vary any credit Supplier has provided to the Customer; and/or

**(e)** without notice to the Customer make all monies owing by the Customer to Supplier on any account immediately due and payable.

#### **13. Personal Property Securities Act 2009 (Cth) (PPSA)**

**13.1** The Customer acknowledges and agrees that, by accepting these Terms, the Customer grants Supplier a security interest over the Products and their proceeds (by virtue of the retention of title in these Terms) until such Products are paid in full and title has passed from Supplier to the Customer.

**13.2** The Customer undertakes:

**(a)** to provide to Supplier on request all information reasonably required by Supplier to register a financing statement or financing change statement on the Personal Property Securities Register; and

**(b)** to advise Supplier in writing of any proposed change to its name or address at least 7 days before the changes takes effect.

**13.3** The Customer:

**(a)** waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;

**(b)** waives its rights and, with Supplier's agreement, contracts out of Customers rights under paragraphs (a), and (l) to (q) inclusive of section 115(1) of the PPSA; and

**(c)** agrees that where Supplier has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

**13.4** The Customer must pay any costs incurred by Supplier including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any Products supplied to the Customer.

**13.5** Unless the context requires otherwise, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA.

#### **14. No Reliance**

The Customer acknowledges and agrees that it has not relied on any prior representation or promises made by Supplier except as set forth herein.

#### **15. Force Majeure**

Supplier shall not be responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure or carriers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, government tariffs and quotas, compliance with any law, regulation or other governmental or court order whether or not valid, or other causes beyond the control of Supplier, irrespective of whether the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure of Supplier's machinery, or failure of a supplier to Supplier.

#### **16. No Waiver**

No failure or delay by Supplier in exercising any right, power or privilege to which it is entitled shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. These Terms and obligations and acknowledgments hereunder may only be waived or modified by Supplier by an agreement in writing between the parties hereto.

#### **17. Severance**

In the event of any part of these Terms becoming void or unenforceable, then that part shall be severed from and the remaining terms and provisions hereof shall remain in full force and effect.

#### **18. Applicable Law**

These Terms shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of Victoria and any court which may hear appeals there from.

#### **19. Survival**

The clauses in these Terms headed Intellectual Property, Warranty Claims, Competition and Consumer Act 2010 (Cth), Personal Property Securities Act 2009 (Cth), No Reliance, and Force Majeure shall survive the termination or expiration of these Terms.