

MAKER & CO

TERMS & CONDITIONS

DEFINITIONS

- 1.1 "Approved Sample" means sample accepted by the Customer in all aspects according to the detailed specifications of the Products Ordered.
- 1.2 "Company" means MAKER & CO AUSTRALIA PTY LTD (ACN 138 704 024).
- 1.3 "Customer" means the party placing the Order with or purchasing Products from the Company.
- 1.4 "FIS" means that Orders will be delivered Free Into Store using the transport mode of Seafreight.
- 1.5 "FIS Free Domicile" means that Orders will be delivered Free Into Store using the transport mode of Airfreight.
- 1.6 "FOB" means that Orders will be delivered Free on Board using the transport mode of Seafreight.
- 1.7 "FOB Free Domicile" means that Orders will be delivered Free on Board using the transport mode of Airfreight.
- 1.8 "Order" means an offer by a Customer to purchase Products from the Company.
- 1.9 "Sales Order Confirmation" means the document generated by MAKER & CO AUSTRALIA PTY LTD management system which provides a Sales order number and specifies the quantity, style, size, colour and price of the Products ordered by the customer.
- 1.10 "Products" includes any goods ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.
- 1.11 "Australian Consumer Law" means Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- 1.12 "PPS Act" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.
- 1.13 "PPSR" refers to the Personal Property Securities Register established under the PPS Act.
- 1.14 "Ts&Cs" means the Company's current Terms & Conditions of Trade.

1. SALE TERMS

- 1.1 These Ts&Cs apply to all agreements between the Company and the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties.
- 1.2 The terms of these Ts&Cs may be varied from time to time by the Company without notice and the Ts&Cs current, as published on the website of the Company, at the time of placing any specific order or part of an order shall apply to such Orders.
- 1.3 The Company may, but shall not be required nor responsible to notify the Customer of the existence or content of any variations of the Ts&Cs.

2. ORDER AND ACCEPTANCE

- 2.1 Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of these Ts&Cs.
- 2.2 Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of these Ts&Cs.
- 2.3 The Company may accept any Order in whole or in part by providing a Sales Order Confirmation. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent. Subject to the conditions set out herein and where consent is given for Orders to be cancelled or varied administrative charges may apply.

3. PRICE

- 3.1 The price of the Products shall be as agreed between the parties or where there is no agreed price such amount as indicated on invoices provided by the Company to the Customer regarding Products ordered.
- 3.2 The Delivery method for products ordered are either FIS, FIS Free Domicile, FOB or FOB Free Domicile as specified on the Sales Order Confirmation.
- 3.3 Unless otherwise agreed FIS and FIS Free Domicile Orders include delivery to the Customer's store or delivery point as set out in the Sales Order Confirmation pursuant to a nominated in writing on the Order and includes GST and other taxes, duties, freight and transport charges.
- 3.4 Unless otherwise agreed FOB Orders include delivery to the delivery point in the port of loading on the Order and excludes taxes, duties, freight and transport charges.
- 3.5 If the Company's cost of supplying the Products increases by more than 10% due to any change in the amount of any GST and other taxes, currency fluctuations, duties, freight and transport charges which may be applicable, the Company may upon written notice at any time before delivery increase the price of the Products by the same amount.

4. SAMPLE DEVELOPMENT SCHEDULE AND COSTS

- 4.1 The Customer shall provide the Company with acceptable quality samples or patterns or detailed specifications of the Products Ordered.
- 4.2 After receipt of patterns, original garments and specification sheets a first prototype will be provided by the Company to the Customer at no cost.
- 4.3 If this first sample does not comply with the Customer guidelines and instructions, a second prototype will be provided by the Company to the Customer at no cost.
- 4.4 Any additional prototypes requested by the Customer that are outside the Customer's original instructions will be charged at the FIS Free Domicile cost price as per the Sales Order Confirmation.
- 4.5 If salesman samples are required by the Customer, they will be charged at the FIS Free Domicile invoice price as per the Sales Order Confirmation plus 100% surcharge.
- 4.6 Pre-production samples will be provided at no cost.
- 4.7 Shipment samples will be provided at the FIS Free Domicile invoice price as per the Sales Order Confirmation.

5. CREDIT GRANTING AND PAYMENT

- 5.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require prepayment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit has been approved for the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company but if no agreement in writing is made then thirty (30) days from the date of the invoice.

6. CREDIT POLICY AND DEFAULT

- 6.1 In the event that the Customer fails to make any payment payable pursuant to the Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.

6.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay for the Products in accordance with invoices issued to the Customer, the Company may at its sole discretion:

- a) cancel any provision of credit to the Customer;
- b) reverse any rebates and discounts allowed;
- c) change credit payment terms including require cash prepayment for any further Products ordered;
- d) provide to a credit reporting agency details of the payment default;
- e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- f) decline to supply Products to the Customer and terminate any other agreement with the Customer; and;
- g) exercise any other rights at law including pursuant to the PPSA.

6.3 A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.

7. GST

7.1 The Company reserves the right, upon production of a Tax Invoice, to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products.

7.2 Unless expressly included all amounts expressed or described in any agreement or in invoices are GST exclusive.

8. DELIVERY

8.1 Delivery of Products is deemed to have occurred when they have been provided to the Customer or a third party nominated by the Contract at the delivery point accepted by the Company.

8.2 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.

8.3 In the event that the Customer is unable to accept delivery of the Products as arranged, then the Company shall be entitled to charge all reasonable costs and expenses for storage and redelivery.

8.4 The Company will make reasonable efforts to deliver by the time specified by the Customer, however failure to deliver on time shall not entitle the Customer to treat the contract as breached or repudiated. The Company shall not be liable to the Customer for any loss or damage or expense arising from failure by the Company to deliver the Products promptly as agreed or at all.

8.5 In the event the production of the Products or any part thereof is delayed or ceased for any reason whatsoever outside the control of the Company, the Company may notify the Customer that it is unable to fulfil the Order or part thereof within a reasonable time or at all, and allow the Customer to cancel the Order or part thereof that the Company is unable to fulfil without any liability whatsoever including consequential losses. If such cancellation occurs the Company shall repay any deposit or payments made.

8.6 Products delivered within 5 percent of ordered quantities are to be accepted by the Customer as acceptable supply compliant with the order.

9. PASSING OF RISK

9.1 The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.

10. RETENTION OF TITLE TO THE PRODUCTS PENDING PAYMENT

10.1 Orders are accepted on condition that ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit account with the Company or pursuant to these Ts&Cs.

10.2 Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company. The Customer shall store and segregate the Products (at no cost to the Company) in such a way that they can be identified as the Company's property, shall keep the Products properly stored, protected and insured and shall deliver them to the Company upon request. The Company shall be entitled to enter any premises controlled by the Customer where the Products are stored, by any means, to retrieve the Products at any time.

10.3 The Customer will however be entitled to sell such Products within the ordinary course of business on condition that so long as title to such Products remain with the Company, the Company shall legally and beneficially be entitled to the proceeds of sale, that the Customer shall hold on trust for the Company in a separate account and where applicable the Customer will assign or transfer to the Company the claims the Customer has in respect of such sales.

11. PERSONAL PROPERTY SECURITIES

11.1 In this section words in italic shall have the meaning and definitions set out in the PPS Act.

11.2 The Customer acknowledges that by virtue of these Ts&Cs the Company has a *security interest* in the Products for the purposes of the PPS Act and the *proceeds* of sale of such Products and to the extent applicable the PPS Act applies to any agreement pursuant to these Ts&Cs.

11.3 The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering any security interest which the Company has over the Products or the *purchase money security interest* (PMSI) in the Products on the PPSR in order to *perfect the security interest* and comply with the requirement of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Company to undertake the matters set out above. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.

11.4 The Customer and the Company agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Products to the extent, if any, mentioned:

- a) section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
- b) section 129 (disposal by purchase);
- c) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- d) subsection 132(4) (statement of account if no disposal);
- e) section 135 (notice of retention);
- f) section 142 (redemption of collateral);
- g) section 143 (reinstatement of security agreement);

11.5 Pursuant to section 275(6) of the PPS Act, the Customer and Company agree that neither will disclose to any interested person information pertaining to the Company's security interest as set out in section 275(1).

11.6 The Customer undertakes:

- a) promptly to do all things including signing any further documents and providing any further information which the Company may reasonably require to enable it to perfect and maintain the perfection of its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPSR and the Customer warrants that any such information the Customer provides will be complete, accurate and up-to-date in all respects);
- b) it will give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including but not limited to, changes in its address, facsimile number or trading name).

12. CURRENCY

- 12.1 For amounts invoiced in Australian dollars, payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.
- 12.2 For amounts invoiced in US dollars, payments must be made in US dollars into the Company's US dollar account.

13. CREDIT CARD RECOVERY OF COSTS

- 13.1 A service fee may be added by the Company to the price where payment by the Customer is made by way of a credit card.

14. RETURNED CHEQUES

- 14.1 An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice.

15. DEFECTS, CLAIMS AND RETURNS

- 15.1 Products that are in all material aspects the same as the Approved Sample are not defective and not eligible for return.
- 15.2 The Customer accepts that minor defects in the Products do not constitute grounds for a claim or return.
- 15.3 The Company will not give refunds if the Customer changes their mind or makes the wrong decision. Refunds or return will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the Sale of Goods Act NSW or other applicable legislation.
- 15.4 The Customer must inspect and check all deliveries of Products received and within 7 days notify the Company in writing if the Customer considers the delivery is not in accordance with the Customer's Order. If the Company agrees to accept returned Products from the Customer on the basis that the delivery was not in accordance with the Order the returned Products must be returned in the same condition it was delivered to the Company at the location nominated by the Company and with the original delivery document and invoice. All transport, freight, handling and other charges in relation to returning such Products are the responsibility of the Customer.

16. DEFECTS DISPUTE RESOLUTION

- 16.1 In the event the parties are unable to reach agreement on the existence or extent of any defects in the Products then either party may, with 14 days written notice to the other party, refer the dispute to the Australian Commercial Disputes Centre (ACDC) to settle the dispute by expert determination on the following basis:
- 16.2 The expert determination shall be conducted in Sydney in accordance with the ACDC Rules for Expert Determination operating at the time of the referral of the dispute;
- 16.3 The terms of the said Rules are deemed incorporated into this agreement subject to the stipulation that the expert to be appointed to determine the dispute shall be an independent professional quality inspector (for example Qualspec International Pty Ltd);

16.4 The expert determination administered by the ACDC is binding upon the parties;

16.5 This clause shall survive termination of this contract; and

16.6 The costs of the ACDC are to be shared equally between the parties.

17. DISPUTED CHARGES

- 17.1 The Customer accepts that minor defects in the Products do not constitute grounds to dispute an invoice or part thereof.
- 17.2 If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the Invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date will be deemed to be correctly charged and accepted by the Customer.

18. RECOVERY

- 18.1 Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, the Company reserves the following rights in relation to the Products until all amounts owed by the Customer to the Company in respect of the Products and all other Products supplied to the Customer by the Company at any time are fully paid:
 - a) legal and equitable ownership of the Products;
 - b) to retake possession of the Products; and
 - c) to keep or resell any of the Products repossessed.
- 18.2 The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

19. WARRANTIES, DISCLAIMER AND LIMITATION OF LIABILITY

- 19.1 The Customer warrants that the samples and patterns and detailed specifications of the Products provided by the Customer to the Company comply with applicable Australian law (including state laws) including but not limited to applicable garment labelling and safety standards.
- 19.2 Provided the Company causes the Products to be made in accordance with the Approved Samples:
 - a) The Customer releases the Company from any obligation or liability to cause the Products to comply with any applicable Australian law (including state laws);
 - b) The Customer shall indemnify the Company against all costs, claims, demands, expenses and liabilities of whatever nature, including without limitation claim for death, personal injury, damage to property (including intellectual property) and consequential loss, including loss of profit which may be made against the Company or which the Company may sustain, pay or incur in connections with the Products.
- 19.3 Except as expressly provided in by these Ts&Cs or as sent out in the Company's acceptance and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of any Products provided under this agreement is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are, subject to clauses 19.4 and 19.5, hereby excluded.

19.4 The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.

19.5 Notwithstanding clause 19.3, if this agreement constitutes a supply of goods to which the exclusion in 19.3 cannot apply then to the full extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:

- i) If the breach relates to supply of goods:
 - a) The provision of a refund or; Replacement of the goods; or
 - b) Repair of the goods;
 - c) The payment to the Customer of the reasonable cost of having the goods repaired or replaced.
- ii) If the breach relates to services:
 - a) The provision of a refund; or
 - b) Re-supply of the service; or
 - c) The payment to the Customer of the reasonable cost of having in the service re-supplied.

19.6 The Customer acknowledges and agrees that in entering into this agreement it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.

19.7 To the full extent permitted by law the Company will not be liable to the Customer for any loss or damage (including loss of profits or any other indirect or consequential loss or damage) arising directly or indirectly from:

- a) the supply or use by the Customer of any Product; or
- b) delayed or non delivery of the Products to for any reason including but not limited to loss, damage, theft of the Products whilst in transit
- c) any breach by the Company of its obligations under this agreement.

20. HEALTH AND SAFETY

20.1 The Customer shall at all times comply with any relevant legislation creating occupational health and safety requirements in connection with the use, handling and storage of the Products.

21. SET-OFF

21.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

22. ASSIGNMENT

22.1 The Customer may not assign or subcontract any contract for the purchase of Products or its obligations under this agreement.

23. FORCE MAJEURE

23.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

24. PRIVACY CONSENT

24.1 The Company may give information about the Customer, its guarantors, directors or proprietors for the following purposes:

- a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- c) for registration on the PPSR; and/or
- d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

25. WAIVER OF TERMS OF AGREEMENT

25.1 The failure by the Company to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

26. PROPER LAW

26.1 The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.

26.2 The parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW and the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's head office.

27. GENERAL

27.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Ts&Cs shall be legally binding upon either party unless in writing and signed by both Parties or permitted in these Ts&Cs.

27.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:

- a) where delivered by hand, on the day of delivery;
- b) where sent by post, two (2) business days after the day of posting; and
- c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.

27.3 If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

27.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

27.5 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.

27.6 Any indulgence or failure by the Company to enforce any terms or rights pursuant to these Ts&Cs or any Agreement made pursuant to same will not constitute a waiver of such terms and Company shall be entitled to require strict compliance with these Ts&Cs at all times.