

T&C'S OF SALE

Terms and Conditions

1. Definitions and interpretation

1.1 "Buyer" means the person purchasing the Goods and includes persons acting on behalf of or stating that they have the authority of the Buyer.

1.2 "Goods" means the goods supplied or to be supplied by the Seller to the Buyer.

1.3 "Guarantor" means the person who agrees to guarantee the obligations of the Buyer to the Seller.

1.4 "Insolvency Event" means, in relation to a party:

(a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed over any of the assets or undertaking of the party;

(b) the party suspends payment of its debts generally;

(c) the party is or becomes unable to pay its debts as and when they fall due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Law;

(d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors, or any class of them;

(e) the party ceases to carry on business or threatens to cease to carry on business;

(f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or

(g) an application or order is made for the winding up or dissolution of the party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other party.

1.5 "Price" means the costs of the Goods as agreed between the Seller and the Buyer and subject to clause 4 of these Terms and Conditions.

1.6 "Seller" means Cole Workwear P/L

1.7 Unless expressed to the contrary, in this document:

(a) words importing the singular include the plural and vice versa, words denoting a gender include the other gender, and if a word or phrase is defined, cognate words and phrases have corresponding meanings;

(b) a reference to a person includes not only a natural person but any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency and that person's successors and permitted assigns;

(c) where a party comprises two or more persons an agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party shall be deemed to include a reference to any one or more of those persons;

(d) "writing" encompasses all means of reproducing words in a tangible and permanently visible form and includes facsimile transmissions;

(e) wherever the word “include” or any form of that word is used it must be construed as if it were followed by “(without limitation)”;

(f) “Business Day” means a day excluding a Saturday, a Sunday or a public holiday in WA.

2. Terms and Conditions

2.1 Any transaction between the Buyer and the Seller will be governed by these Terms and Conditions. These terms and conditions are accepted by the Buyer if the Buyer places an order with the Seller or accepts the Goods from the Seller after receiving a copy of these terms and conditions, whether or not the signature of the Buyer is endorsed hereon.

2.2 These terms and conditions may only be varied or rescinded with the Seller's written authorisation.

2.3 None of the Seller’s officers, employees or agents are authorised to in any way vary these terms and conditions unless in writing signed by the Seller.

2.4 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change and/or places the revised terms and conditions on the Seller’s website.

2.5 These terms and conditions supersede any terms and conditions sought to be imposed upon the Goods by :

(a) the Buyer's general conditions of contract, particularly in regard to insurance, retention sums and liquidated damages; or

(b) by incorporation onto the Buyer's purchase orders, despite the acceptance by signature or otherwise by the Seller of the purchase order.

2.6 Any condition in the Buyer's acceptance or other document created or issued by the Buyer inconsistent with these Terms and Conditions are expressly excluded and does not bind the Seller.

2.7 The Seller reserves the right to stop supply to the Buyer if there is a breach of these Terms and Conditions.

3. Goods

3.1 The Goods are as described on the invoices, quotation, purchase orders or any other forms as provided by the Seller to the Buyer.

3.2 Any quotation provided to the Buyer is valid for 30 days, and must be accepted by the Buyer in writing. At any time prior to acceptance by the Buyer, the Seller may withdraw or vary the quotation by notice to the Buyer in writing.

3.3 The Seller may, at its absolute discretion, elect to treat any request (whether in writing or otherwise) by the Buyer to supply the Goods in accordance with the quotation as binding on the Buyer and commence the supply of the Goods.

3.4 All purchase Orders must have an order number clearly displayed on the form.

3.5 If the Buyer requests further Goods to be provided, in connection with the original Goods or otherwise, the Buyer will be liable to pay the Seller for those further Goods in accordance with clause 4.

3.6 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

3.7 If artwork is not supplied by the Buyer in the correct format as directed by the Seller, the Buyer may be liable for artwork charges, to be billed at \$70 plus GST per hour. Some minor artwork changes may be done at no cost, at the discretion of the Buyer.

4. Price and Payment

4.1 At the Seller's sole discretion, the Price of the Goods shall be:

- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied;
- (b) at the Seller's current prices and rates for the supply of the Goods; or
- (c) the Seller's quoted Price if that quote is accepted in accordance with clause 3.2.

4.2 The Seller may require the Buyer to pay a 50% deposit on the total invoice for the Goods ordered. The amount of the deposit will be stated at the time of the order of the Goods by the Seller and becomes immediately due and payable on the date that the invoice is issued. The Seller is not required to provide or deliver the Goods until any required deposit is paid.

4.3 Payment of the Price is due, unless otherwise stated, strictly 14 calendar days from the date the goods are delivered. Time is of the essence for payment for the Goods. The Seller may from time to time offer to a Buyer other payment terms at its sole discretion.

4.4 The Seller reserves the right to issue monthly progress claims to the Buyer for the proportionate amount of delivered Goods in accordance with the contract.

4.5 Unless expressly stated in any quotation or contract, the cost of samples is not included and will be invoiced as an additional charge to the Buyer.

4.6 New Accounts are subject to the following terms at the discretion of the Seller:

(a) The first 3 months of regular trading the orders must be paid 14 days after the Goods are received by the client;

(b) For the 4th month the Buyer may fill out a credit application form and apply for a 30 day account from the date of invoice for the Goods. This is subject to the following exceptions:

(i) Government departments within a contract who produce their own purchase order will be given a 30 day account;

(ii) Corporate bodies who produce a purchase order will be given a 14 day account from date of invoice, after the first 3 months they can then apply for a 30 day account from the date of invoice.

4.7 All credit accounts must be maintained on a 30 day nett basis from the date of invoice. Failure to do so will result in the Buyer's supply being stopped and all future orders will require payment in full before the Goods are dispatched.

4.8 If the Buyer is a company, the directors of that company agree in consideration of the Seller supplying the Goods, all of the directors of the Seller irrevocably guarantee the performance of the Buyer with respect to all of these Terms and Conditions. The directors further indemnify the Seller against any loss, damage or costs incurred by Seller as a result of the Buyer's default of these Terms and Conditions.

5. Supply of Goods

5.1 Supply of the Goods will be made to the address nominated by the Buyer.

5.2 The Buyer must make all arrangements necessary to:

(a) take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Sellers address; and

(b) permit the Seller to supply the Goods, including providing rights of access to the site where the Goods are to be delivered.

5.3 Without prejudice to any other rights and remedies which it may have, the Seller may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Seller that it will fail or refuse to take or accept delivery at the time specified or at any other times that the Seller (or its Carrier) is able to deliver the Goods. The Seller accepts no responsibility for any damage whatsoever to the Goods whether attributable directly or indirectly to the Seller, its employees, agents or contractors. Notice by the Seller that the Goods have been stored in accordance with this clause shall constitute delivery of the Goods.

5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.5 Any dates for delivery are estimates only and the Seller shall not be liable for and the Buyer indemnifies the Seller from any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5.6 The Seller reserves the right to deliver the Goods in instalments and each instalment shall be deemed to be a separate contract subject to these Terms. Should the Seller be unable to deliver one or more instalments this shall not entitle the Buyer to repudiate the entire contract for the Goods.

5.7 The Buyer, with the written permission of the Seller may cancel an order. In the event of a cancellation of an order by the Buyer, the Buyer agrees:

(a) After the acceptance of an order a cancellation fee in the amount of \$100.00 or 10% of the purchase price, whichever is higher, may apply; and

(b) The Buyer will be liable for any shipping, sampling &/or artwork costs and other disbursements involved in preparing the order;

(c) The Buyer will be liable for the full amount if the Goods have already been customized to the specifications of the Buyer, or if the Goods have already been paid in full by the Seller, or if they are being delivered to the Buyer;

(d) The Buyer will not be liable for cancellation fees if the Goods are not in stock, or if the Goods have not been ordered with the Supplier/Manufacturer.

6. Risk

6.1 Notwithstanding that the Seller retains property in the Goods until the Price has been paid in full, all risk for the Goods passes to the Buyer upon dispatch from the premises of the Supplier or Manufacturer where the Goods are being supplied from to either the Buyer, their agent or to the first carrier nominated by the Buyer or by the Seller's Carrier.

6.2 The Seller will arrange insurance at the written request of the Buyer for the value of 2% of the total value of the invoice.

6.3 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price of the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable.

6.4 The delivery to the Buyer's insurer of these terms and conditions by the Seller is prima facie evidence of the Seller's rights to receive the insurance proceeds.

6.5 All orders will be shipped using the Seller's account and billed with the Buyer's order at published rates for that carrier. The Buyer can make alternate arrangements, but they must provide to the Seller within a reasonable time the name of the carrier and the Buyer's account number. The Seller will not be held responsible for any errors in the details supplied to the by the Seller. If that carrier cannot be used for the particular order, then the Buyer agrees to allow the Seller to use their own nominated carriers.

7. Defects and Returns

7.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

7.2 The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these conditions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7.3 For defective Goods which the Seller has agreed in writing that the buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:

(a) the Buyer has complied with the provisions of clause 7.1; and

(b) the Seller will not be liable for Goods which have not been stored or used in a proper manner, and subject to clause 8.

7.4 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight.

7.5 A variation of 2% above or below the quantities of the Goods ordered will be deemed as full supply of the Goods.

7.6 Colours of items pictures on the Seller's website or in catalogues are only indicative. If exact PMS colour matching is required the Buyer must request a full pre-production sample (non refundable & at their cost) before placing an order.

8. Warranty

8.1 Subject to clause 8.2 the Seller warrants that if any defect in any workmanship supplied by the Seller becomes apparent and is reported to the Seller within a time frame, as determined by the Seller from time to time, of the date of delivery (time being of the essence) then the Seller may (at the Seller's sole discretion):

(a) in the case of Goods:

(i) repair the defective Goods free of charge;

(ii) replace the defective Goods or defective parts thereof; or

(iii) credit to the Buyer such amount as the Seller, in its absolute discretion, considers reasonable having regard to the price paid for the Goods and the use of the Goods enjoyed by the Buyer, and

8.2 The conditions applicable to the warranty given by Clause 8.1 are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Buyer to properly maintain any Goods; or

(ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller;
or

(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) damage caused to the Goods by any third party; or

(vi) fair wear and tear, any accident, act of God or act of war.

(b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

(c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyers claim.

(d) To the full extent permitted by law, the Seller excludes all:

(i) implied warranties in respect of the Goods that would otherwise be implied by law into the contract; and

(ii) liability for any damage, whether direct, indirect, special or consequential, arising in any way out of the use of or in relation to the Goods.

(e) Where any law, including the Australian Consumer Law or the Fair Trading Act, would operate to render the terms of clause 8.2(d) ineffective or illegal, the Supplier's liability for breach of any

warranty or any term implied by law into the contract is limited to the lowest of the cost of replacing the Goods, acquiring equivalent Goods or having the Goods repaired.

9. Buyers Disclaimer

9.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement, and that the Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

10. Default & Consequences of Default

10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 15.5% per annum calculated daily and shall accrue at such a rate after as well as before any judgement.

10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection incurred by the Seller and any agent engaged by the Seller for that purpose.

10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in material breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of the Seller's other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

10.4 If any account remains unpaid at the end of the second month after supply of the goods the following shall apply: An immediate amount of the greater of \$100.00 or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

10.5 In the event that the Buyer suffers an Insolvency Event, then without prejudice to the Seller's other remedies at law

(a) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(b) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

11. Title

11.1 Property in the Goods shall not pass from the Seller to the Buyer until:

(a) the Buyer has paid all amounts owing for the particular Goods; and

(b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and in addition the Buyer agrees to:

(i) hold the Goods as bailee and on trust the Seller as fiduciary;

(ii) store the Goods separately and apart from its own goods and those of any other person, and shall keep appropriate records for the Goods so that they can at all times be identified as the property of the Seller;

(iii) not remove, deface, obliterate any identifying plate, mark or packaging number of any Goods;

(iv) refrain from selling the Goods, except on the normal commercial basis.

11.2 It is further agreed that:

(a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.

(b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

(c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

(d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's rights of ownership in respect of the Goods shall continue.

(e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller;

(f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.

(g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

(h) In the event that the Buyer sells or parts with possession of the Goods prior to title in the goods passing to the Buyer, the Customer agrees to hold as trustee for the Seller, in a separate trust account, any amount received by the Buyer from a third party for any of its Goods equal to the amount then owing by the Buyer to the Seller.

12. Security and Charge

12.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever, then if the Buyer fails to pay the Price for the Goods in accordance with clause 4 hereof, the following provisions will apply:

(a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer acknowledges and agrees that in order to give effect to this mortgage and/or charge, it will be necessary to sign further documents in registrable form to permit the mortgage and/or charge to be perfected by the lodgement for registration, and the Buyer agrees to sign all such documents forthwith upon provision by the Seller.

(b) The Buyer will be liable for any stamp duty payable on any security.

(c) The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(d) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(e) To give effect to the provisions of this clause 12 the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's

and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Sellers nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13. Goods and Services Tax

13.1 In this clause,

(a) "GST" means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST law;

(b) "GST law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth); or

(c) an Act imposing, or relating to the imposition or administration of such a tax.

(d) "Invoice" means a tax invoice under the GST law.

(e) "Supply" means the same as in the GST law.

13.2 This clause applies if a party to this Agreement becomes liable to pay GST ("the Supplier") in relation to a Supply made under this Agreement ("a taxable supply") to another party to this Agreement ("the Recipient").

13.3 In addition to any amounts payable by the Recipient to the Supplier under this Agreement, the Recipient must pay to the Supplier the amount of GST payable on a taxable supply. The GST is payable at the same time as paying the amount on which the GST is calculated.

13.4 Immediately upon receipt by the Supplier of the payment referred to in sub-clause (c) hereof, or not later than such other time as the GST law may require, the Supplier must issue an Invoice or invoices to the Recipient for the amount of GST referable to the taxable supply containing such particulars as are required by the GST law.

14. Intellectual Property Rights

14.1 The Buyer has no intellectual property rights (including copyright) on any designs, patterns and drawings which are provided by the Seller in connection with Goods supplied.

14.2 Where the Seller has followed designs and specifications provided by the Buyer, the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses in respect of which Seller may become liable through the use of those specifications including those arising from infringement of any patent, trademark, copyright, registration design or any other right of any third party.

15. General

15.1 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

15.2 The Buyer shall not set off against the Price amounts due from the Seller.

15.3 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

15.4 If any provision of these Terms and Conditions are held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.

15.5 An obligation of two or more persons binds them jointly and severally.

15.6 These Terms and Conditions and the transactions contemplated by these Terms and Conditions are governed by and construed in accordance with the law in force in the State of Western Australia. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Western Australia and courts of appeal from them for determining any dispute concerning this document or the transactions contemplated by these Terms and Conditions. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.