

GENERAL

- 1. Unless expressly modified or varied in writing by the Seller, the Terms and Conditions set forth below will apply to the Contract of Sale and will be deemed to be a security agreement pursuant to the Personal Property Securities Act 1999 (“the Act”), and will be deemed to be incorporated in and form part thereof.
 - 2. This contract constitutes the entire agreement between the Buyer and the Seller in respect of the goods and will supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing, agreements and all other communications, between the parties. It may not be released, discharged, changed or modified except by instrument in writing signed by a duly authorised representative of each of the parties. The terms of this contract will prevail notwithstanding any variance with the terms and conditions of any documents submitted by the Buyer.
 - 3. Each order will constitute a separate contract between the Buyer and the Seller.
 - 4. All quotes are valid for 28 days and thereafter are null and void.
 - 5. All orders are subject to acceptance and confirmation by the Seller.
 - 6. No orders may be cancelled by the Buyer following confirmation and acceptance advice given by the Seller.
 - 7. All indent and custom prices for products produced off-shore are subject to variations in the exchange rate and that the price ruling at the date of purchase order confirmation will be payable.
 - 8. All orders are subject
 - a. to payment in full on confirmation of the order by the Buyer,
 - b. unless a supplementary agreement in writing has been executed by both the Buyer and the Seller.
- Payment will not be deemed to have occurred until any cheque, bill of exchange or promissory note has been honoured for the benefit of the Seller.
- 9. All orders must be received in writing from the Buyer to the Seller.
 - 10. The Buyer agrees that custom orders and off-shore production can have delays from time to time and agree that Customclothing.co.nz provides time lines and delivery dates in good faith.
 - 11. The Purchaser indemnifies Customclothing.co.nz in respect of any loss arising from any breach by the Buyer of these terms including without limitation, legal expenses on a solicitor and own client basis.
 - 12. Failing to comply with our trading terms will result in any credit facility being withdrawn.

SALE BY DESCRIPTION

- 13. The goods are sold on description as set out on the order notwithstanding that a sample may have been submitted.

RISK

- 14. Risk in the goods will pass to Buyer at the contractual point of delivery but will otherwise remain at the Seller’s risk up to that point. The contractual point of delivery shall be the place the Seller is required to deliver the goods in accordance with the terms of the contract of sale.

RETENTION OF TITLE

- 15. The Buyer hereby gives the Seller a security interest in all of the Buyer’s present and after acquired property in accordance with the Act. The present and after acquired which has not passed to the Buyers, will be referred to as the collateral.
- 16. Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:
 - a. These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 (“PPSA”) and
 - b. A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;
- 17. The Buyer undertakes to:
 - a. Sign any further documents and/or provide any further information such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - b. Not register a financing change statement (in accordance with Regulation 8) or a change demand (in accordance with Regulation 9) without the prior written consent of the Seller;
 - c. Give the Seller not less than fourteen days prior written notice of any proposed change in the Buyers name and/or any other change in the Buyers details. (Including but not limited to, changes in the Buyers address, facsimile number, or business practice): and Immediately advise the Seller of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 18. Unless otherwise agreed to in writing by this Seller the Buyer waives its right to receive a verification statement in accordance with the Section 148 of the PPSA.
- 19. At the Buyers expense the Seller will, once the Act has come into effect, execute a registrable charge securing the payment of the price by the Buyer against the collateral, to be discharged by the Seller on the receipt by the Seller of the purchase price.

FORCE MAJEURE

- 20. If either party is prevented from or delayed in carrying out any of the provisions of this agreement by reason of force majeure, acts of God, war, civil disorder, accidents, labour disturbances, breakdown of plant or equipment, lack of or failure of transportation facilities, sources of labour, materials, power of supplies, import or export restriction or by reason of any law, order proclamation, regulation, ordinance, demand or requirement of any government or department thereof, or by reason of any other cause whatsoever beyond the reasonable control of the party the party so prevented or delayed will be excused from such performance to the extent and during the period of such prevention or delay. Any obligations to pay money owing will in no event be excused.

CLAIMS

- 21. All claims for damage or adjustments for short or incorrect delivery are to be made by the Buyer in writing within seven (7) days of receipt of the goods. The Seller will accept no returns after fourteen (14) days of receipt of the goods.
- 22. Claims will not be accepted unless supported by invoice or packing slip.
- 23. The Buyer shall not be entitled to return goods which have been altered or otherwise processed or damaged in any way.
- 24. Displays, worn or misused goods will not be accepted.
- 25. Merchandise returned which is surplus to the Purchasers requirement will be subject to a ten (10) percent restocking administration fee.
- 26. Only merchandise that is in its original condition will be accepted.
- 27. All samples supplied to the Buyer by the Seller shall be returned to the Seller in their original condition or else the Seller will invoice the buyer for their full retail value.

CONSEQUENTIAL LOSS

- 28. The Buyer will keep from harm and indemnify the Seller against all claims made by third parties against the Seller regarding the on-sale of the Sellers goods by the Buyer where such claims arise from any actions, inactions or negligence of the Buyer.
- 29. Any claim against the Seller will not exceed the price paid for the goods complained of.
- 30. The Seller will not be liable for any consequential loss arising out of delay or failure to supply the goods or any of them, currency fluctuations or otherwise arising out of this contract.
- 31. No damages or compensation shall be recoverable by the Buyer unless the Buyer gives notice of the claim in writing to the Seller within fourteen (14) days of the receipt of goods.

ARBITRATION

- 32. If any dispute or difference will arise between the parties hereto in any way arising out of the terms hereof or in connection with any purchase and the goods the subject of such difference or dispute are within New Zealand, such dispute or claim will be referred to the arbitration of a single arbitrator, if the parties can agree on one or otherwise two arbitrators, one to be appointed by each party and an umpire to be appointed by the appointment of arbitrators and any such reference shall be a submission to arbitration within the meaning of the Arbitration Act 1996 and its Amendments.