

Terms and Conditions of Sale (New Zealand)
The Workwear Group Pty Ltd
Australian Company Number: 004 055 387
Wesfarmers Industrial & Safety NZ Limited NZBN: 942904048093

These are the terms and conditions upon which Wesfarmers Industrial & Safety NZ Limited (trading as the Workwear Group) or its Agents, sell and quote for the sale of goods.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

(a) "Buyer" means the Person or Organisation named in the relevant Sales Invoice, Instrument of Agreement or Quotation.

(b) "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.

(c) "Consumer" has the meaning given in the Consumer Guarantees Act.

(d) "Consumer Guarantees Act" means the Consumer Guarantees Act 1993 (NZ).

(e) "Consumer Law" means the Sale of Goods Act 1908, the Consumer Guarantees Act, and the Fair Trading Act 1986, and any other relevant legislation relating to consumers.

(f) "Excluded Loss" means:

(i) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Buyer and the Seller at the time of the Quotation, Instrument of Agreement, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and

(ii) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.

(iii) cumulative losses exceeding 100% of the Purchase Price paid under this Agreement during the term whether in contract, tort (including but not limited to negligence), equity, product liability, under any warranties or indemnities, by operation of statute or otherwise, to the extent permitted by law.

(iv) losses that are causes or contributed by the Buyer or any other party.

(g) "Exclusive Goods" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.

(h) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.

(i) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.

(j) "GST Law" means the Goods and Services Tax Act 1985, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in New Zealand and any regulation made under that Act.

(k) "Instrument of Agreement" means any instrument of agreement in which these terms and conditions are or are deemed to be incorporated.

(l) "Payment" means any amount payable under or in connection with a Quotation, Instrument of Agreement or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

(m) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

(n) "PPSA" means Personal Property Securities Act 1999 (NZ).

(o) "Purchase Price" means the price for the goods set out in the relevant Quotation, Instrument of Agreement or Sales Invoice.

(p) "Quotation" means the form of quotation (together with any supporting documentation, including range plans or other proposals) submitted by a Seller to the Buyer in which these terms and conditions are deemed to be incorporated.

(q) "Sales Invoice" means the sales invoice issued by a Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.

(r) "Tax Invoice" has the meaning given to that term by the GST Law.

(s) "Taxable Supply" has the meaning given to that term by the GST Law.

(t) "Seller" in relation to any Quotation, Instrument of Agreement or Sales Invoice means Wesfarmers Industrial & Safety NZ Limited (trading as the Workwear Group) or any of its Agents referred to in the Quotation, Instrument of Agreement or Sales Invoice to which the terms and conditions are incorporated.

1.2 Interpretation

(a) Any special conditions specified on a Quotation, Instrument of Agreement or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.

(b) Words importing the singular shall include the plural (and vice versa).

(c) If any provision of these terms and conditions is invalid and does not go to the essence of these terms and conditions, these terms and conditions should be read as if that provision has been severed.

2. GOVERNING TERMS AND CONDITIONS

These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller which are imposed by a statute such as the Consumer Law and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any Purchase Order issued by the Buyer.

3. TERMS OF PAYMENT

Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller named in the Sales Invoice, Instrument of Agreement or Purchase Order on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid. The Buyer must pay the Seller (on a full indemnity basis) any costs (including legal costs) incurred by the Seller in taking steps to recover unpaid or overdue amounts under these terms and conditions.

4. INSPECTION AND ACCEPTANCE

The Buyer shall inspect all goods upon delivery and shall within two (2) Business Days of delivery give notice to the Seller named in the relevant Sales Invoice or of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Consumer Law, the goods shall be deemed to have been delivered to and accepted by the Buyer.

5. RETURNS

Return of goods (other than in situations where the Seller is required to accept a return of goods under the Consumer Law) must be approved by the Seller named in the relevant Sales Invoice or Instrument of Agreement. These authorised returns must be freight prepaid and will only be accepted if (unless otherwise agreed with the Seller) they are:

- in a saleable condition in their original packaging;
- accompanied by documentation evidencing:
 1. the Buyer's name, address and account number,
 2. a return authorisation number and the relevant Sales Invoice number or Instrument of Agreement number under which the goods were originally supplied; and
- reasonable detail regarding the reason for the return of the goods; and
- returned within 14 days of supply.

6. QUOTATIONS

(a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation.

(b) No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Seller in writing, the Buyer acknowledges that such conditions are expressly negated.

(c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

(d) Where, due to the act or request of the Buyer, the initial supply of Goods commences more than 3 months after the date of acceptance of a Quotation or an Instrument of Agreement, Seller is entitled to submit a revised schedule of prices in relation to the supply of such Goods. Such schedule of revised prices (**Price Revision Notice**) must set out the basis for any price variation as between the initial Quotation/Instrument of Agreement and the Price Revision Notice. Unless the Buyer provides written notice of its objection to such revised prices within 5 Business Days of receipt of the Price Revision Notice, the Buyer will be taken to have accepted the amendment to such prices on the terms set out in the Price Revision Notice. The Buyer is not entitled to unreasonably object to any price revisions undertaken in accordance with this clause.

7. GST

The parties agree that:

(a) the Purchase Price is inclusive of GST;

- (b) all other Payments have been calculated without regard to GST;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- (d) any reference to a cost or expense in these terms and conditions excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

8. PASSING OF PROPERTY AND RISK

- (a) Goods supplied by a Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller named in the relevant Sales Invoice or Instrument of Agreement on the insurance policy and shall produce a certificate of currency to this effect to that Seller upon request.
- (b) Property in the goods supplied by a Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.
- (c) Until the goods have been paid for in full:
 - (i) the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller which supplied them; and
 - (ii) the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (d) The Buyer irrevocably authorises each Seller at any time to enter onto any premises upon which:
 - (i) the Seller's goods are stored to enable the Seller to:– inspect the goods; and/or – if the Buyer has breached these terms and conditions, reclaim the goods;
 - (ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.
- (e) The Buyer and each Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.
- (f) Each party consents to the other perfecting any security interest under these terms and conditions which arises by operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other party to enable it to do so.
- (g) The Buyer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to these terms and conditions or any transactions undertaken hereunder. The Buyer further agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA will not apply. The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest under these terms and conditions.

9. SUPPLY

Each Seller reserves the right to suspend or discontinue the supply of goods to the Buyer on reasonable grounds without being obliged to give any reason for its action.

From time to time, the Seller may decide (in its absolute discretion) to cease stocking particular goods (**Discontinued Goods**). Where the Seller knows that Discontinued Goods are currently the subject of an order, Instrument of Agreement or Quotation with the Buyer, the Seller will:

- provide reasonable notice to the Buyer of its decision to cease stocking Discontinued Goods;
- use reasonable endeavours to ensure that quantities of Discontinued Goods that are the subject of an order at the date of giving notice under paragraph (a) will be supplied to the Buyer in accordance with that order;
- offer to supply the Buyer with any similar goods to the Discontinued Goods that the Buyer has continued to stock (the price and terms of such supply to be agreed between the parties),

10. PART DELIVERIES

Each Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

11. TRAINING

A Seller's Quotation or Sale Invoice is made on a supply only basis. Any training in the use of the goods or other fitting services (if any) are at the expense of the Buyer unless otherwise specified in writing by the Seller.

12. DIMENSIONS, LABELLING, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- (a) To the extent permitted by statute, any performance data provided by the Seller, a supplier or manufacturer is an estimate only and should be construed accordingly.
- (b) Unless agreed to the contrary in writing, each Seller reserves the right to supply an alternative brand or substitute product that has

characteristics that are materially consistent with the goods offered when necessary.

- (c) Buyer must not, without Seller's written consent, alter, remove or obliterate any labels which are attached to or incorporated in the goods.

13. SHIPMENT AND DELIVERY

- (a) Upon acceptance of an order by a Seller that Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, that Seller will notify the Buyer.
- (b) A delivery charge may apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

14. MINIMUM ORDER VALUE

The Seller reserves the right to:

- refuse to supply goods where the value of the goods ordered in by the Buyer is less than the Seller's minimum supply value (as notified by the Seller to the Buyer from time to time); or
- (with the consent of the Buyer) increase the aggregate price payable for the goods ordered by the Buyer such that the price is at least equal to the Seller's minimum supply value.

15. CONTINGENCIES

(a) The Seller is entitled to conduct a review of all pricing set out in any unfilled Instrument of Agreement on or before the end of each 12 month period covered by that Instrument of Agreement.

(b) Whilst it is the intention of the Seller to hold pricing constant, the Seller reserves the right to revise pricing where:

1. goods are imported or have import content and an exchange rate variation occurs, an increase in import duty occurs or another similar charge is introduced or increased;
2. any legislation, regulation or governmental policy is introduced with the effect of increasing the Seller's input costs; and/or
3. the price of commodities used in the production of the goods increases in a manner that causes an increase in the Seller's input costs.

(c) In all cases justification for price variations will be provided.

16. FORCE MAJEURE

If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

17. DEFAULT OF BUYER

If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal. The costs of collection of any amounts outstanding under any Sales Invoice (together with the fees of any mercantile agent or lawyer engaged by the Seller) following such refusal to supply become due and payable by the Buyer immediately upon notice of such refusal to supply being provided to the Buyer by the Seller.

18. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by a Seller. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be). Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

19. WARRANTY AND LIABILITY OF SELLER

(a) Buyer shall immediately notify the Seller in writing of any defect in the goods supplied by the Seller. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that Seller to do so. The provisions of this clause 19(a) do not constitute a warranty in relation to the quality or fitness of the goods, or require the Seller to repair or replace goods, or offer a refund in relation to goods, in circumstances other than those set out in Consumer Law (to the extent that the Consumer Law applies to the goods).

(b) Except as expressly set out in this Agreement and the Consumer Law, the Seller makes no warranties or other representations under this Agreement. The Seller's liability in respect of these warranties,

representations, undertakings and guarantees is limited to the fullest extent permitted by law.

(c) Without limiting clause 19(b), where the Seller sells goods to the Buyer, and the Buyer purchases them as a Consumer (as defined under the Consumer Law), then the Consumer Law provides certain guarantees in relation to the goods. The rights of the Buyer buying goods as a Consumer include those set out in clause 19(d) below.

(d) Where goods are supplied to Consumers under these terms and conditions, that supply is subject to guarantees that cannot be excluded under the Consumer Law. In these circumstances, the Buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

(e) Where the Buyer is acquiring, or holds itself out as acquiring, goods for the purposes of a business in accordance with the Consumer Guarantees Act, the Buyer acknowledges the Consumer Guarantees Act will not apply to the supply of goods under these terms and conditions and the Buyer will not assert any rights or claims against the Seller under the provisions of the Consumer Guarantees Act. The Buyer acknowledges that this paragraph (e) is fair and reasonable.

(f) To the extent permitted by law and subject always to paragraph (d), the liability, if any, of the Seller arising from (i) breach of any implied conditions or warranties, (ii) failure to comply with a statutory guarantee under the Consumer Law, or (iii) otherwise in connection with these terms and conditions (including, in negligence or any other tort or otherwise howsoever), shall at the Seller's option be limited to:

(i) the replacement of the goods or resupply of the goods by the Seller, or the cost of replacement or resupply of the goods; or

(ii) the repair of the goods, or the cost of repair of the goods.

(g) Subject to clause 19(c) and otherwise to the extent permitted by law, the Seller shall not in any circumstances be liable to the Buyer under or in connection with these terms and conditions, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of these terms and conditions, for or in respect of any Excluded Loss.

(h) The Seller makes no express warranties in relation to the suitability for any purpose of goods or materials supplied by a Seller.

20. EXCLUSIVE GOODS

Where the Seller manufactures Exclusive Goods for the Buyer:

(a) The parties agree that the Seller may hold an inventory of stock in respect of Exclusive Goods, based on the Seller's good faith forecast of the Buyer's future Exclusive Good purchasing levels.

(b) If:

(i) the Buyer discontinues or ceases to purchase a particular Exclusive Good; or

(ii) the Goods supply arrangement to which these terms and conditions are to apply to ceases, expires or is otherwise terminated, the Buyer must purchase all Exclusive Goods (together with any fabric inventory

or works in progress held exclusively or predominantly for the purpose of manufacturing Exclusive Goods) from the Seller upon demand.

(c) If Exclusive Goods are required to be purchased by the Buyer as a result of this clause 20, the Seller must prepare and submit to the Buyer a Sales Invoice detailing the current holding of Exclusive Goods to be purchased by the Buyer.

(d) The price payable by the Buyer for the Exclusive Goods (other than fabric inventory or works in progress) under the Sales Invoice must be no more than the maximum price per Good previously charged to the Buyer under the relevant Instrument of Agreement the Instrument of Agreement or any previous Quotation or Sales Invoice. The price payable in respect of all fabric inventory or works in progress comprising Exclusive Goods will be cost to the Seller plus 10%.

(e) Payment for Exclusive Goods will be in accordance with clause 3 of these terms and conditions.

21. INTELLECTUAL PROPERTY

Nothing in these terms and conditions creates any right, title or interest in any intellectual property right (including trademark, copyright, patent or registered design) (**Intellectual Property**) in favour of the Buyer with respect to any good supplied under these terms and conditions.

Unless the parties otherwise agree in writing, the ownership of all Intellectual Property supplied or created by the Seller in connection with or as a result of the performance of these terms and conditions will vest in the Seller.

The Buyer indemnifies the Seller from and against all losses, claims, liabilities, demands and expenses (**Claims**) arising from or relating to the use or infringement any third party's Intellectual Property to the extent that such Claim relates to or is in connection with any Intellectual Property provided to the Seller by the Buyer in connection with these terms and conditions.

22. ALTERATION TO CONDITIONS

A Seller may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variations.

23. VIENNA SALES CONVENTION

To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

24. GOVERNING LAW

These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws New Zealand and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of New Zealand.