

GearUp NZ Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" means GearUp NZ Limited, its successors and assigns or any person acting on behalf of and with the authority of Fashion Biz Limited.
- 1.2 "Buyer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Seller.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Change in Control

- 3.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, address, contact phone or fax number/s, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

4. Price and Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Buyer; or
- (b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Seller in the cost of taxes, levies, materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
- 4.3 At the Seller's sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) for certain approved Buyer's, due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed to between the Buyer and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition the Buyer must pay any other taxes and duties

that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.
- 5.2 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.3 At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.4 The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.5 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- Any time or date given by the Seller to the Buyer is an estimate only. The Buyer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Buyer as a result of the delivery being late.

Risk

Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.

If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.

Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Buyer to confirm the accuracy and reliability of the same in light of the use to which the Buyer makes or intends to make of the Goods or Services.

The Buyer acknowledges that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by the Seller to match colour and shade of the Goods, the Seller shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.

The Buyer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 4.2. The Seller also reserves the right to halt all Services until such time as the Seller and the Buyer agree to such changes.

Accuracy of Buyers Plans and Measurements

- 7.1 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Buyer. The Buyer acknowledges and agrees that in the event that any of this information provided by the Buyer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- In the event the Buyer gives information relating to measurements and quantities of the Goods required to

complete the services, it is the Buyer's responsibility to verify the accuracy of the measurements and quantities, before the Buyer or Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Buyer's failure to comply with this clause.

Title

The Seller and the Buyer agree that ownership of the Goods shall not pass until:

- (a) the Buyer has paid the Seller all amounts owing to the Seller; and
- (b) the Buyer has met all of its other obligations to the Seller.

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.

It is further agreed that:

- (a) until ownership of the Goods passes to the Buyer in accordance with clause 8.1 that the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request.
- (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
- (e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

Personal Property Securities Act 1999 ("PPSA")

Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the 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.

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) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
- (d) 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.

Fashion Biz Limited – Terms & Conditions of Trade

- 9.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 9.1 to 9.5.
- 10. Security and Charge**
- 10.1 In consideration of the Seller agreeing to supply the Goods, the Buyer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Buyer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 10.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Buyer's behalf.
- 11. Buyer's Disclaimer**
- 11.1 The Buyer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgment.
- 12. Defects**
- 12.1 The Buyer shall inspect the Goods on delivery and shall within thirty (3) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. 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.
- 13. Returns**
- 13.1 Returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 12.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Buyer's cost within fourteen (14) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.2 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 13.3 Goods returned that have had embroidery or screen-printing carried out on them will only be credited if the Goods are found to be faulty and the Buyer has complied with the provisions of clause 13.1.
- 14. Warranty**
- 14.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition,
- representation or warranty other than that which is given by the manufacturer of the Goods.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.
- 16. Intellectual Property**
- 16.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 16.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 16.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.
- 17. Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 17.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 18. Cancellation**
- 18.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1993**
- 19.1 The Buyer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Buyer;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Buyer.
- (b) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 19.2 Where the Buyer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.
- 20. Unpaid Seller's Rights To Dispose of Goods**
- 20.1 In the event that:
- (a) The Seller retains possession or control of the Goods; and
- (b) Payment of the Price is due to the Seller; and
- (c) The Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
- (d) The Seller has not received the Price of the Goods,
21. then, whether the title in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
- 22. General**
- 22.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 22.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential 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 (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 22.6 The Buyer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. The Buyer will be taken to have accepted such changes if the Buyer makes a further request for the Seller to provide Goods to the Buyer.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 The Buyer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from the Seller on request.