

## 1 Definition

In these Conditions of Sale:

'Goods' means all products and services agreed to be supplied by Associated Fashion Distributors to the Customer under any contract;

'Customer' means any person who acquires Goods from Associated Fashion Distributors under a Contract;

'Contract' means any contract for the supply of Goods entered into between Associated Fashion Distributors and the Customer;

'Associated Fashion Distributors' means Fashionability Pty Ltd ACN 085 690 660 ABN 92 267 895 982 as Trustee for the O'Farrell Family Trust Trading as Associated Fashion Distributors and its agents, servants and employees and any related bodies corporate as defined in the Corporate Law (if such related body corporate is named as party to the Contract);

'Overdue rate' means 2 percent per month calculated daily and charged monthly;

'Quoted Date' means the date of delivery as agreed between the Customer and Associated Fashion Distributors;

'Statutory Provisions' for Contracts undertaken in Australia means the Trade Practices Act 1974, any statutory amended or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation and for Contracts undertaken in New Zealand means the provisions of the Consumers Guarantees Act 1993, the Sale of Goods 1908, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable legislation;

## 2 Statutory Provisions

These Conditions of Sale:

(a) Unless Associated Fashion Distributors otherwise agrees in writing, are the only Conditions of Sale for the supply of Goods by Associated Fashion Distributors to the Customer to which Associated Fashion Distributors will be bound and the Customer agrees that these Conditions of Sale will in all circumstances prevail over the Customer's Conditions of Purchase (if any); and

(b) Supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

## 3 Warranties & Returns

(a) Associated Fashion Distributors warrants that the Goods supplied are of merchantable quality;

(b) Associated Fashion Distributors's liability for breach or sub-clause 3(a) or a condition or warranty implied into the Contract by law including without limitation the Statutory Provisions (other than a condition implied by section 69 of the Trade Practices Act) is limited to any one of the following as determined by Associated Fashion Distributors:

- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods or payment of the cost of having the Goods repaired; or
- (iii) the refund of the price paid by the Customer for the Goods.

The Customer will examine the Goods for defects and shall notify Associated Fashion Distributors of any defects in writing within 7 days of delivery. Returns can only be made if the evidence is clear that the Goods are faulty. A credit authorisation number must be obtained by the customer from Associated Fashion Distributors prior to Associated Fashion Distributors accepting return of any defective goods. A credit authorisation number will only be provided by Associated Fashion Distributors if an adequate explanation as to the nature of any fault is provided. This credit authorisation number must be clearly displayed on the outside packaging containing the returning Goods. If the Customer does not notify Associated Fashion Distributors within 7 days of delivery the Customer shall be deemed to have accepted the Goods.

(c) To the extent the law permits, Associated Fashion Distributors excludes all other liability whatsoever to the Customer arising out of or in any way connected with a Contract including any liability for consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:

- (i) any loss of income, profit or business;
- (ii) any loss in the nature of overhead costs; and
- (iii) any loss of goodwill or reputation.

## 4 Advices

(a) The Customer hereby acknowledges that it has not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by Associated Fashion Distributors in relation to the Goods or their use or application.

(b) Notwithstanding the fact that catalogues, material, specifications or photographs may have been supplied by Associated Fashion Distributors to the Customer no contract shall constitute a sale by sample or by description.

## 5 Delivery

(a) Associated Fashion Distributors will make all reasonable efforts to have the Goods delivered to the Customer on the date agreed between the parties as the Quoted Date, but Associated Fashion Distributors shall not be liable for any failure to deliver or delay in delivery for any reason.

(b) Associated Fashion Distributors shall be deemed to have effected delivery of the goods the subject any contract between Associated Fashion Distributors and the Customer if the Goods are delivered or delivery is attempted at the address requested by the Customer. In the event that the Goods cannot be so delivered to such address delivery shall be deemed to be effected at the time the goods leave the supplier's warehouse.

(c) A freight charge is payable on all orders and will be included in each respective invoice.

## 6 Risk

(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass from Associated Fashion Distributors to the Customer upon delivery to the Customer or his agent or to a carrier commissioned by the Customer.

(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Customer or his agent or to a carrier commissioned by the Customer, the Customer covenants and warrants to Associated Fashion Distributors that, in the storage and handling of the Goods, the Customer and his agents and carriers shall comply with all relevant environmental laws and regulations, and do comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Customer shall ensure that the Customer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

(c) If Associated Fashion Distributors does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Customer that they are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

## 7 Title

(a) Title in and to the Goods will not pass from Associated Fashion Distributors to the Customer until Associated Fashion Distributors receives payment in full for all Goods and all monies owing by the Customer to Associated Fashion Distributors on any account whatsoever.

(b) Until title in and to the Goods has passed to the Customer in accordance with clause 7(a), the Customer holds the Goods as fiduciary agent and bailee and the Customer will store the Goods separately in such a manner that they are clearly identified as the property of Associated Fashion Distributors. Associated Fashion Distributors shall be entitled at any time to demand the return of the Goods and shall be entitled without notice to the Customer to enter the Customer's premises or any other premises upon which the Goods are held in order to search for and remove the Goods.

(c) Notwithstanding that title in and to the Goods may not have passed to the Customer, the Customer may sell the Goods to a customer in the ordinary course of its business. In such circumstances, the Customer sells the Goods as fiduciary agent of Associated Fashion Distributors provided that such sales shall not give rise to any obligations on the part of Associated Fashion Distributors.

(d) If the Customer sells any of the Goods before title in and to the Goods has passed in accordance with clause 7(a), the Customer will hold such part of the proceeds of sale as relates to the price of the Goods sold on trust for Associated Fashion Distributors and will hold such proceeds in a separate account which clearly identifies the proceeds as monies held on trust for and on behalf of Associated Fashion Distributors.

## 8 Price

(a) Prices are net and exclusive of all taxes, state and federal.

(b) Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by Associated Fashion Distributors at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

(c) Where a transaction tax, including a goods and services tax (GST) and any transaction taxes that come into existence after the date of these Conditions of Sale, applies to any supply made under these Conditions of Sale, Associated Fashion Distributors may recover from the Customer an additional amount on account of that transaction tax.

## 9 Force Majeure

Deliveries may be totally or partially suspended by Associated Fashion Distributors during any period in which Associated Fashion Distributors may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Associated Fashion Distributors reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Associated Fashion Distributors shall not incur any liability to the Customer in respect of such suspension.

## 10 Payment And Default

(a) Unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery or as otherwise identified on any statement of account issued by Associated Fashion Distributors.

(b) If any of the events set out in (i) to (v) below occur, Associated Fashion Distributors may at its option withhold further deliveries or cancel the Contract without notice to the Customer and without prejudice to any other action or remedy which Associated Fashion Distributors has or might otherwise have had and all moneys owing and outstanding to Associated Fashion Distributors on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:

- (i) the Customer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- (ii) the Customer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets;
- (iii) the Customer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- (iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Customer;
- (v) the Customer experiences any analogous event having substantially similar effect to any of the events specified above.

(c) Notwithstanding sub-clause 10(a) hereof Associated Fashion Distributors may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore

review, alter or terminate the Customer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Associated Fashion Distributors shall be final and Associated Fashion Distributors accepts no liability or responsibility for any loss, howsoever arising, incurred by the Customer due to the operation of this condition.

(d) In the event of the Customer failing to effect payment on the due date and in the manner herein before specified then notwithstanding anything to the contrary herein contained, the Customer shall pay to Associated Fashion Distributors interest on the whole of the monies so due and payable, calculated from the date of default up to and including the day upon which cleared funds are received in Associated Fashion Distributors' nominated bank at the 'Overdue Rate'.

(e) An account keeping fee of \$5.00 plus GST will be charged to the customers account for every statement issued over forty-five (45) days.

(f) If any of the events set out in clause 10(b) (i) to (v) occur the Customer will:

- (i) charge in favour of Associated Fashion Distributors all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any monies payable by the Customer to Associated Fashion Distributors;
- (ii) execute a mortgage or other instrument of security in form requested by Associated Fashion Distributors.

## 11 Waiver

The failure of Associated Fashion Distributors at any time to insist on performance of any provision of these Conditions of Sale is not a waiver of Associated Fashion Distributors' rights at any time later to insist on performance of that or any other provision.

## 12 Severance

If any provision of these Conditions of Sale or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Conditions of Sale shall not in any way be affected or impaired.

## 13 Intellectual Property

(a) Copyright in all photographs, drawings, designs, specifications, catalogues and other similar works supplied to the Customer by Associated Fashion Distributors is vested in Associated Fashion Distributors and the Customer shall not copy or reproduce or allow the copying or reproduction of any such works without the prior written consent of Associated Fashion Distributors.

(b) The Customer shall not use the Associated Fashion Distributors name and/or any names or marks attached to any item the subject of this contract for advertising or promotional purposes in any manner or medium whatsoever without the prior written consent of Associated Fashion Distributors.

## 14 Cancellation

A Contract is not cancellable without the consent of Associated Fashion Distributors. Subject as aforesaid, such cancellation must be written and must be received by Associated Fashion Distributors not more than fourteen (14) days after the date of the Contract.

## 15 Governing Law

The supply of Goods in Australia under these Conditions of Sale is governed by the law of the State of New South Wales. The Sale of Goods (Vienna Convention) Act 1986 (New South Wales) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract. The supply Goods in New Zealand under these conditions of sale is governed by the law of New Zealand.

## 16 Consumer Guarantees Act 1993 (New Zealand only).

These terms and conditions shall be subject to the provisions of the Consumers Guarantee Act 1993, the Sale of Goods 1908, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable legislation.

## 17 Personal Properties Securities Act 1999 ("PPSA") (New Zealand only).

The Customer consents to Associated Fashion Distributors registering a financing statement under the PPSA in respect of the Goods supplied (for which express purpose credit has been extended) in accordance with clause 5 of these terms and conditions to create a purchase money security interest ("PMSI") (as that term is defined in the PPSA). The Customer agrees to the debiting of its accounts by Associated Fashion Distributors with the cost of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI (including Associated Fashion Distributors' full solicitor/own client costs). So far as permitted by s107 of a PPSA, the Customer will have no rights under s114, s120 and s133 of the PPSA including the right to receive any notices. The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by Associated Fashion Distributors. The Customer agrees to Associated Fashion Distributors exercising its rights under s109 and s120 concurrently and to Associated Fashion Distributors retaining any repossessed Goods immediately so that Associated Fashion Distributors' rights under s123 of the PPSA shall become effective immediately upon repossession. The Customer agrees that repossession and retention of the Goods under s120 - 123 will only satisfy so much of the Customer's debt to Associated Fashion Distributors as is equivalent to Associated Fashion Distributors' estimation of the market value of the Goods as they are to be used by Associated Fashion Distributors at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Customer has in the Goods. The Customer will indemnify Associated Fashion Distributors for any claims brought by a third party against Associated Fashion Distributors as a result of Associated Fashion Distributors' repossession and retention of the Goods. The Customer acknowledges that Associated Fashion Distributors may allocate any monies it receives from the Customer towards debts, changes and expenses in any priority it determines to maintain the PMSI in the Goods.