

Definitions

1. "Seller" means Self Help Workshop Inc (trading as Self Help Workplace and Encore Clothing) (ABN 46 307 410 837) and its successors;
2. "Customer" means the customer specified in:
 - a. the Application for Commercial Credit; or
 - b. the person placing an Order, or on whose behalf the order is placed, with the Seller,and means, in the case of a corporation, its officers, employees, servants, agents and permitted assigns and, in the case of a natural person or persons, their and each of their respective heirs, personal legal representatives and permitted assigns.

Where the Customer is a consumer the definition of Consumer in the Competition and Consumer Act 2010 applies;
3. "Order" means the purchase order for any goods and services issued by the Customer to the Seller from time to time containing, but not limited to a description of the Goods and/or Services on the invoices, quotation, work authorisation or purchase order;
4. "Terms" means these terms and conditions of sale and an Order and all recitals, terms, clauses, schedules, tables, annexures or exhibits to it, as amended by the parties from time to time;
5. "PPSA" means the Personal Properties Securities Act 2009;
6. "Price" will mean the price payable for the Goods and/or Services, which is exclusive of GST, as agreed between the Seller and the Customer and set out in the Order;
7. "Application for Commercial Credit" means an application made by the Customer for a commercial credit account with the Seller and has the meaning given in the Application for Commercial Credit;
8. "GST" has the meaning given to that term under *A New Tax System (Goods and Services) Act 1999 (Cth)*;
9. "Goods" means the goods described in the Order;
10. "Services" means the goods described in the Order;

Acknowledgements & Acceptance

11. Each party separately acknowledges for the benefit of each other party that:
 - a. they have entered into these Terms after mature consideration, reflection, and exercise of independent judgment;
 - b. they have read and understood the provisions of these Terms and that the provisions are just, equitable, fair, reasonable and satisfactory to them;
 - c. they have entered into these Terms of their own free will and volition and that no coercion, force, or undue influence has been used in the execution of these Terms either by the other party or by any other person or persons;
 - d. they have either obtained independent legal advice, or are aware of their right to do so, and have chosen not to do so; and
 - e. neither has relied upon any representation or promise in making this Contract except for those expressly stated in these Terms.
12. Any Order received by the Seller from the Customer will constitute acceptance of all of the terms and conditions of these Terms.
13. The parties agree that these Terms are binding and can only be amended with the written consent of the Seller.

Price and Payment

14. Invitations to quote a price for a future purchase order by the Customer are without obligation on the Customer and only imply an invitation to the Seller to submit a price quote for the Goods and/or Services. The submission of an Order by the Customer to the Seller is irrevocable unless otherwise stated in the Order.
15. The Seller reserves the right to change the Price in the event of a variation to the quotation, purchase order or work authorisation.
16. Time for payment for the Goods and/or Service will be stated on the Order. If no time is expressly stated in the Order payment will be due thirty (30) days following the date of issue of the Order.

17. The Seller reserve the right to charge interest on the balance of any invoices not paid in full within 30 days. The interest rate will be set at the statutory interest rate on 10%.

Delivery of Goods

18. Delivery of the Goods will take place when the Customer takes possession of the Goods.
19. The failure of the Seller to deliver the Goods will not entitle either party to treat the contract as repudiated.

Retention of Title

20. The risk in the goods passes to the Customer on delivery to the Customer or into custody on the Customer's behalf provided that if the Member fails to accept delivery or requests a delay in delivery, risks to the Goods will be borne by the Customer from the time of such failure or request (as the case may be) and the member indemnifies the Seller and the supplier from any claim, loss or expense whatsoever arising from the Customer's failure or request.
21. Property in and title to the Goods supplied by the Seller to the Customer remains with the Seller until the Customer has paid the Seller both the purchase price for the Goods and any other money that the Customer may owe the Seller at any time on any account.
22. The Customer may sell or otherwise dispose of the goods supplied by the Seller in the ordinary course of the Customer's business.
23. Where the Customer disposes of the Goods before payment to the Seller, the sale proceeds of such disposal are the property of the Seller and the Customer holds the proceeds on trust for the Seller. Further, the Customer, in disposing of the Goods before payment to the Seller, does so as the Seller's fiduciary agent.
24. The Seller may enter the Customer's premises or elsewhere within business house and seize any goods which have not been paid for by the due date without the Seller having to give notice to the Customer and the Customer waives the right to receive any statutory or PPSA Notice.
25. While the goods remain the property of the Seller, the Customer agrees:
- to store the Goods separately at the Customer's premises so they can be easily identified;
 - to only dispose of the Goods in the ordinary course of the Customer's business;
 - to not cause the Goods to lose their identifiable character or be intermingled with any other goods in any way by any process of its own or by a third party, except with the Seller's prior written consent;
 - other than the disposal of the Goods in the ordinary course of the Customer's business, that it has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation that Seller owes to the Customer;
 - that it cannot claim any lien over the Goods;
 - to not create any absolute or defeasible interest in the Goods in relation to any third party except with the Supplier's prior written consent;
 - to provide the Seller with access to the premises where the Goods are stored to enable the Seller to inspect and/or seize the Goods.
26. The Customer, by its acceptance of delivery of the Goods adopts and accepts the trading terms set out in these terms and conditions.

Inspection and return

27. All Goods are received subject to inspection within three (3) days after delivery or before delivery at the Customer's discretion irrespective of date of payment. Signed delivery dockets do not mean acceptance by the Customer of goods delivered but does constitute acceptance by the Customer of the number of packages or cartons delivered.
28. The Customer must promptly notify the seller of any defects, damage or failure to comply with the description of the goods agreed to by the parties ("Defects") appearing, and hold goods so found to be Defective for the Seller's instructions and at the Seller's risk for a reasonable period.

29. Upon notifying the Seller of any Defects, the Customer must provide the Seller with an opportunity to inspect the Goods. If the Customer fails to comply with this provision the Goods will be deemed free from any Defect to the extent permitted by the law.
30. If, in the seller's sole discretion, the seller agrees in writing with the Customer that the Goods are Defective, the Seller's liability as to the Defective Goods will be limited to one of the following (determined in accordance with the Seller's sole discretion):
 - a. replacement of the Goods; or
 - b. repairing of the Goods.

Defects

31. The Customer will notify the Seller of any alleged defect, damage or failure to comply with the description or quote within 3 days of receiving the goods. The Customer will afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer will fail to comply with these provisions the Goods will be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
32. Where the Customer is a consumer as defined in the Australian Competition and Consumer Law Act 2010 then the Customer may be entitled to a refund.

Default

33. Each of the following events listed in this clause is a Default Event:
 - a. The Customer fails to:
 - i. pay or repay in accordance with the Customer's obligations under the these Terms any part of the Price; or
 - ii. comply with any provision under these Terms or with any condition of any waiver or consent by the Seller under or in connection with any agreement.
 - b. The Customer becomes Insolvent.

Enforcement

34. In addition to any other rights provided by law agreement between the parties at any time after a Default Event has occurred:
 - a. each Security Interest arising under these Terms becomes immediately enforceable;
 - b. the Seller may at any time, by notice to the Customer, declare all or any part of the Price to be due and payable immediately, on demand or at a later date as the Seller may specify in the notice;
 - c. has all other rights conferred by law in relation to the Goods and/or Services; and
 - d. The Seller reserves the right to recover all costs associated with recovering unpaid tax invoices and any associated costs arising from the Sellers exercise of the rights conferred on the Seller in the event a Default Event occurs, including but not limited to fees associated with the engagement of a collections service, legal costs and disbursements, administrative costs and any other services used by the Seller to recover overdue amounts.

Cancellation

35. 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 Customer. On giving such notice the Seller will repay to the Customer any sums paid in respect of the Price. The Seller will not be liable for any loss or damage whatever arising from such cancellation.
36. In the event that the Customer cancels delivery of Goods and/or Service the Customer will be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

Personal Property Securities Act 2009 (PPSA)

37. The Customer acknowledges and agrees that this Agreement is a security agreement for the purposes of the PPSA and that the Seller will register its Security Interest in the Goods and their proceeds as a purchase money security interest on the Personal Property Securities Register and the Customer agrees to provide all assistance reasonably required by the Seller to facilitate this.
38. Where the PPSA applies to action taken by the Seller in relation to the Goods, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA.
39. The Customer waives its rights under section 157 of the PPSA to receive notice of a verification statement.
40. The Customer waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
41. The parties agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this agreement.
42. The Customer shall unconditionally ratify any actions taken by Seller under this clause 6.
43. This clause 6 will survive the termination of the agreement to the extent permitted by law.
44. For the purposes of these Terms and Conditions "Security Interest" means:
 - a. a PPSA Security Interest;
 - b. any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including a bill of sale, assignment, title retention arrangement, trust or power held as security; and
 - c. that the Security Interest relates to the Goods and all Proceeds of any kind under these Terms and Conditions.
45. In these Terms and Conditions, unless the context requires otherwise, the following terms have the meanings given to them in the PPSA: control; financing statement; personal property; registration; and verification statement.

Warranties

46. The goods must:
 - a. be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller; and
 - b. be of merchantable quality and to be free from defect in material and workmanship.

General

47. The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
48. The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
49. Neither party will be liable for any default due to an event beyond the reasonable control of either party.
50. No waiver by any party of any default in the strict and literal performance or compliance with any other provision, condition or requirement of these Terms is deemed to be a waiver of the strict and literal performance of or compliance with any other provision, condition or requirement in these Terms nor be a waiver of or in any manner release any other party from strict compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under these Terms in any manner impair the exercise of any right accruing to it after completion.
51. These Terms constitute the entire agreement between the parties about the subject matter of this Deed. It supersedes and extinguishes all prior agreements, understandings, representations, warranties, covenants or agreements previously given or made between the parties about the subject matter.
52. These Terms are governed by and construed in accordance with the law of Tasmania and the Commonwealth of Australia and each of the parties submit to the jurisdiction of the Courts of the State of Tasmania and the Courts of the Commonwealth of Australia.

Legislation

53. Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA") in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.