

## Terms and Conditions

### 1. Definitions

- a) "Seller" means Kaiwaka Clothing Limited, its successors or any person acting on behalf of and with the authority of Kaiwaka Clothing Limited
- b) "We", "Our" or "Us" refers to Kaiwaka Clothing Limited
- c) "Customer" means the person/s buying the goods as specified in any invoice, document or order, and if there is more than one customer is a reference to each customer jointly and separately
- d) "Goods" means all goods or services supplied by Kaiwaka Clothing to the customer at the customer's request.
- e) "Price" means the price payable for the goods as agreed between the seller and the customer in accordance with clause 4 below.

### 2. Acceptance

- a) The customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the customer signs Kaiwaka Clothing's account application form, places an order or accepts delivery of the goods.
- b) These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of the inconsistency with any other document or agreement between the customer and Kaiwaka Clothing.

### 3. Change in Control

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

### 4. Price and Payment

- a) At Kaiwaka Clothing's discretion, the price shall be either;
  - As indicated on Kaiwaka Clothing's current pricelist, or
  - As indicated on any invoice provided by Kaiwaka Clothing to the customer or
  - Kaiwaka Clothing's quoted price (subject to clause 4b) which will be valid for the period stated in the quotation or otherwise for the period of 30 days.
- b) Kaiwaka Clothing reserves the right to change the price if a variation to the seller's quotation is requested.
- c) Kaiwaka Clothing reserves the right to request a deposit before the dispatch of the goods if required.
- d) Kaiwaka Clothing expects to receive the payment when or before the invoice falls due. We have the right to stop credit the customer's account if payment is not received on the due date.
- e) Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between Kaiwaka Clothing and the seller.
- f) Unless otherwise stated, the price does not include GST. In addition to the price, the customer 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.
- g) If the customer requests printing/embroidery on their goods, Kaiwaka Clothing will process a quote for the customer.
- h) If the customer is returning the goods for repair, they will need to include \$10 or a courier bag to cover the return freight.

### 5. Delivery of Goods

- a) 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 Customer's nominated address even if the customer is not present at the address.
- b) The cost of the delivery is in addition to the price unless an agreement has been formed between the seller and customer.
- c) The seller may deliver the goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- d) The seller will dispatch the goods the same day if the seller receives the order before 3.00pm. If the goods are out of stock, then on the same working day or the following working day, the customer will be notified of the expected date of delivery.

### 6. Risk

- a) Risk of damage to or loss of the goods passes to the customer on delivery and the customer must insure the goods on or before delivery.
- b) If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the customer, Kaiwaka Clothing 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.
- c) If the customer requests the seller to deliver the goods to an unattended location then such goods shall be left at the customer's sole risk.
- d) Any time or date given by the seller to the customer is an estimate only. The customer 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 customer as a result of the delivery being late.

### 7. Title

- a) Kaiwaka Clothing and the customer agree that ownership of the goods shall not pass until:
  - The customer has paid the seller all amounts owing to the seller; and
  - The customer has met all of its other obligations to the seller.
- b) Receipt by the seller in 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.
- c) It is further agreed that:
  - Until ownership of the goods passes to the customer in accordance with clause 7a. that the customer is only a bailee of the goods and must return the goods to the seller, at customer's expense, on request;
  - The customer holds the benefit of the customer's insurance of the goods on trust for the benefit of the seller and must pay to the seller the proceeds of any insurance in the event of the goods being lost, damaged or destroyed;
  - The customer 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 customer sells, disposes or parts with possession of the goods then the customer 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;
  - The customer should not convert or process the goods or intermix them with other goods but if the customer does so then the customer 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;
  - The customer irrevocably authorises the seller to enter any premises where the seller believes the goods are kept and recover possession of the goods;
  - The seller may recover possession of the goods in transit whether or not delivery has occurred;

- The customer shall not charge or grant an encumbrance or lien over the goods nor grant nor otherwise give away any interest in the goods while they remain the property of the seller; and
- The seller may commence proceedings to recover the price of the goods sold notwithstanding that ownership of the goods has not passed to the customer.

8. Personal Property Securities Act 1999 (“PPSA”)

- a) Upon assenting to these terms and conditions in writing the customer acknowledges and agrees that:
  - These terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - A security interest is taken in all goods previously supplied by the seller to the customer (if any) and all goods that will be supplied in the future by the seller to the customer.
- b) The customer undertakes to:
  - 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 reasonable require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - 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;
  - Not register a financing change statement or a change demand without the prior written consent of the seller; and
  - Immediately advise Kaiwaka Clothing of any material change in its business practises of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- c) Kaiwaka Clothing and the customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- d) The customer waives its rights as a debtor under sections 116,120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- e) Unless otherwise agreed to in writing by the seller, the customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- f) The customer shall unconditionally ratify any actions taken by the seller under clauses 8a. to 8e.

9. Security and Charge

- a) In consideration of the seller agreeing to supply the goods, the customer 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 customer either now or in the future, to secure the performance by the customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- b) The customer 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.
- c) The customer irrevocably appoints the seller and each director of the seller as the customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the customer’s behalf.

10. Customer’s Disclaimer

- a) The customer 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 customer by the seller and the customer acknowledges that the goods are bought relying solely upon the customer’s skill and judgement.

11. Defects

The customer shall inspect the goods on delivery and shall within seven 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 customer shall 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 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 customer is entitled to reject, the seller’s liability is limited to either (at the seller’s discretion) replacing or repairing the goods.

12. Returns

- a) Returns will be accepted with the following charges provided that the goods are returned at the customers cost and in original condition;
  - \$3 Restocking/Handling Fee – charged on all items
  - If the goods are out of their original packaging, they will incur an additional \$2 charge per item on the Restocking/Handling Fee
  - If the goods require cleaning, they will incur an additional \$7 charge per item on the Restocking/Handling Fee
- b) Custom made items or goods made to the customer’s specifications are under no circumstances acceptable for credit or return.
- c) The returned goods will be credited at the purchase price less the charges.
- d) Kaiwaka Clothing will accept worn garments back for inspection or repair.

13. Warranty

- a) NZ
  - Kaiwaka Clothing provides a lifetime warranty on the workmanship of garments respect of non-split seams. This includes a discretionary Free Repair Service which allows the customer to return their goods for inspection or repair. Additionally, if the customer/end user damages their ‘Kaiwaka’ garment, repairs will be covered by our Free Repair Service.
- b) AUSTRALIA
  1. In respect of individual consumers, Kaiwaka Clothing recognises the Australian consumer guarantee laws as they apply to Australia-based customers and the express warranties contained therein. Kaiwaka Clothing extends the same Repair Service as outlined in 13.a) above to individual consumers, subject only to customers returning the goods to base at postage cost and at the discretion of Kaiwaka Clothing if Kaiwaka Clothing are able to offer a more cost-effective solution to the customer.
  2. Kaiwaka Clothing recognises that the Australian consumer guarantee laws do not apply to wholesale customers, but does extend the same Repair Service as outlined in 13.b)1. Australian wholesale customers and their onward customers.
  3. Kaiwaka Clothing further recognises the responsibilities of wholesale customers to their onward customers, and that in the event of product failure the wholesale customers must use their best efforts to satisfy the onward customers’ wishes in line with Kaiwaka Clothing’s commitment to customer satisfaction.

14. Consumer Guarantees Act 1993

If the customer is acquiring goods for the purposes of a trade or business, the customer acknowledges that the provisions of the Consumers Guarantees Act 1993 do not apply to the supply of goods by the seller to the customer.

15. Intellectual Property
  - a) Where the seller has designed, drawn or developed goods for the customer, then the copyright in any designs and drawings and documents shall remain the property of the seller
  - b) The customer 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 customer's order and the customer agrees to indemnify the seller against any action taken by a third party against the seller in respect of any such infringement.
16. Default and Consequences of Default
  - a) Interest on overdue payments may be levied at a rate of 1% per month on overdue amounts. Such charges to be calculated daily until the amount due has cleared the Seller's bank account or received in cash.
  - b) Interest charges are levied solely at the discretion of the Directors of Kaiwaka Clothing Limited.
  - c) If the customer owes the seller any money the customer 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 of a solicitor and own client basis, the seller's collection agency costs and bank dishonour fees).
  - d) Without prejudice to any other remedies the seller may have, if at any time the customer 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 customer. The seller will not be liable to the customer for any loss or damage the customer suffers because the seller has exercised its rights under this clause
  - e) 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 customer which remains unfulfilled and all amounts owing to the seller shall, whether or not due for payment, become immediately payable if;
    - Any money payable to the seller becomes overdue, or in the seller's opinion the customer will be unable to make a payment when it falls due;
    - The customer 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
    - A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer
17. Cancellation
  - a) 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 shall repay to the customer any money paid by the customer for the goods. The seller 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).
  - b) Cancellation of orders for goods made to the customer's specifications, or for custom made items, will definitely not be accepted once production has commenced.
18. Privacy Act 1993
  - a) The customer authorises the seller or the seller's agent to:
    - Access, collect, retain and use any information about the customer; (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the customer's creditworthiness; or For the purpose of marketing products and services to the customer
    - Disclose information about the customer, whether collected by the seller from the customer 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 customer.
  - b) Where the customer is an individual the authorities under clause 18a. are authorities or consents for the purposes of the Privacy Act 1993.
  - c) The customer shall have the right to request the seller for a copy of the information about the customer retained by the seller and the right to request the seller to correct any incorrect information about the customer held by the seller.
19. General
  - a) 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.
  - b) 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.
  - c) The seller shall not be entitled to set off against, or deduct from the price, any sums owed or claimed to be owed to the customer by the seller nor to withhold payment of any invoice because part of that invoice is in dispute.
  - d) The seller may license or sub-contract all or any part of its rights and obligations without the customer's consent.
  - e) The customer 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 customer of such a change. The customer will be taken to have accepted such changes if the customer makes a further request for the seller to provide goods to the customer.
  - f) 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.
  - g) The customer 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.