



## TRADING TERMS AND CONDITIONS

### C ME MERCHANDISING PTY LTD (ACN 137 174 871)

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#### 1. DEFINITIONS

- 1.1. **The Supplier** is C Me Merchandising Pty Ltd (ACN 137 174 871) of Shop 1, 329-331 Belgrave-Gembrook Road, Emerald VIC 3782.
- 1.2. **The Customer** includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.3. **The Order** is defined as any request for the supply of Goods by the Customer to the Supplier which has been accepted by the Supplier.
- 1.4. **The Goods** are the products and garments, including workwear apparel, uniforms, safety equipment and/or any associated goods provided by the Supplier together with, where applicable, any Value-Added Services.
- 1.5. **The Services** is the delivery of the Goods to the Customer including any loading, packing, unloading or unpacking.
- 1.6. The **Value-Added Services** include, but are not limited to embroidery, screen printing and decoration.
- 1.7. Any Reference to "loss and damage" includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.8. Major failure is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.9. A reference to "GST" refers to goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 1.10. The terms "security agreement", "security interest", "purchase money security interest", "commingled goods", "collateral", "financing statement", "financing change statement" are as defined in the *Personal Property Securities Act 2009 (Cth)*.

#### 2. GENERAL

- 2.1. These terms and conditions together with the Supplier's quotation, credit application form and the Customer's written order or purchase order document (if any) constitutes the agreement between the Supplier and the Customer ("**the agreement**").
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.

- 2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

### **3. QUOTATIONS AND PLACEMENT OF ORDERS**

- 3.1. Any quotation for the supply of Goods and Value-Added Services given by the Supplier will expire after fourteen (14) days, unless otherwise specified by the Supplier.
- 3.2. The Supplier does not represent that it will provide any Goods and Value-Added Services unless such Goods and Value-Added Services are included in the quotation or the Order.
- 3.3. A request for Goods and Value-Added Services may be placed by the Customer with the Supplier either verbally or in writing however the Supplier may require the Customer to provide a written order or purchase order document prior to any Goods being released or dispatched by the Supplier.
- 3.4. As a condition of acceptance, the Supplier may require the payment of a deposit in respect of the Price of the Goods and Value-Added Services and in this event the Supplier may not be deemed to have accepted the Customer's request for the Goods and Value-Added Services unless or until such deposit has been paid.
- 3.5. If the Customer requires a sample of Goods and Value-Added Services before placing the Order, the Customer acknowledges and agrees that it will be liable to pay the Supplier for the sample.
- 3.6. All prices quoted or advertised by the Supplier are based on taxes and statutory charges current at that time. Should these vary during the date of the Order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

### **4. PRICE**

- 4.1. GST will be charged on the Goods and Value-Added Services provided by the Supplier that attract GST at the applicable rate.
- 4.2. At the Supplier's sole discretion the Price shall be either:
  - 4.2.1. The Supplier's quoted or advertised Price for the Order; or
  - 4.2.2. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied.

### **5. PROVISION OF THE GOODS AND SERVICES**

- 5.1. The Supplier reserves its right to:
  - 5.1.1. Decline requests for the supply of any Goods and Value-Added Services requested by the Customer;
  - 5.1.2. Cancel or postpone the delivery of the Goods and Value-Added Services at its discretion.

- 5.2. Delivery of the Goods and Value-Added Services shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer, the Customer's agent or to the carrier as nominated by the Supplier and/or Customer.
- 5.3. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 non-delivery fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage of the Goods.
- 5.4. Unless specified to the contrary in the quotation or the Order, the Supplier does not warrant that it will be capable of delivering the Goods and Value-Added Services on a specific day or at a specific time requested by the Customer.
- 5.5. Subject to otherwise complying with its obligations the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of delivering the Goods and Value-Added Services to the Customer.

#### **Provision of Value-Added Services**

- 5.6. The Supplier may, at the request of the Customer, provide Value-Added Services to the Goods.
- 5.7. If the Customer requests that the Supplier provide Value-Added Services to goods, products and/or garments supplied by the Customer to the Supplier, the Customer will be liable to pay to the Supplier, a surcharge of \$20.00 per item.
- 5.8. In the event that goods, products and/or garments supplied by the Customer pursuant to the preceding clause are provided in an already damaged and/or soiled condition, the Supplier will not be liable to rectify any such condition nor replace any such product, item and/or garment so supplied.
- 5.9. Where the Customer has supplied goods, products and/or garments in accordance with clause 5.7 above, the Customer warrants that any such product, item and/or garment is of an acceptable quality for embroidery, screen printing and/or decoration. In the event that the goods, products and/or garments are damaged during the provision of the Value-Added Services, the Supplier will not be liable to replace any such product, item and/or garment so supplied by the Customer.

#### **6. PAYMENT AND CREDIT POLICY**

- 6.1. **Non-Account Customers** must make full payment to the Supplier on delivery of the Goods unless otherwise specified or agreed between the parties in writing.

##### **Credit**

- 6.2. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed credit application form.
- 6.3. On the acceptance by the Supplier of a completed credit application form, **Account Customers** must make full payment to the Supplier within thirty (30) days from the date of issue of the Supplier's invoice for the Goods and Value-Added Services, unless otherwise specified in the credit application form or agreed between the parties in writing.
- 6.4. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
- 6.5. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 6.6. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

##### **Account Customer's Privacy**

- 6.7. The Customer agrees:
  - 6.7.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
  - 6.7.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
  - 6.7.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the *Privacy Act 1988*).

**7. DEFAULT**

- 7.1. In this clause the “**default date**” is:
  - 7.1.1. The day after the date of delivery of the Goods to the Non-Account Customer; or
  - 7.1.2. The day after the date by which payment of the Supplier’s invoice(s) was due to be made by the Account Customer to the Supplier.
- 7.2. In this clause the “**outstanding balance**” is:
  - 7.2.1. The Price of the Order, less any payments made by the Non-Account Customer prior to the default date; or
  - 7.2.2. The sum of the Supplier’s invoices to the Account Customer less any payments made by the Account Customer prior to the default date.
- 7.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier’s bank.
- 7.4. A signed statement from a duly authorised representative stating the amount due by the Customer is sufficient proof of the amount owing by the Customer to the Supplier unless proven otherwise by the Customer.
- 7.5. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
  - 7.5.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
  - 7.5.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
  - 7.5.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier’s debt collection agency (“**the agency**”) charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency’s prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\begin{array}{r}
 \textit{Total Debt including} \\
 \textit{Commission and GST} \\
 = \\
 \textit{Original Debt} \times 100 \\
 \hline
 100 - \textit{Commission \% charged by the agency (including} \\
 \textit{GST)}
 \end{array}$$

*(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on [www.prushka.com.au](http://www.prushka.com.au)).*

- 7.5.4. Any charges reasonably made or claimed by the Supplier’s or the agency’s lawyer for legal costs on the indemnity basis.

**8. RISK AND LIABILITY**

- 8.1. The Customer will ensure that there is sufficient and accurate information to enable the Supplier to execute the Order, including any special instructions for the storage, packing or delivery of the Goods.

- 8.2. The Supplier takes no responsibility and will not be liable for any loss and damage or costs as a result of the Goods and/or Value-Added Services being faulty or not fit for purpose due to insufficient or inaccurate information provided by the Customer.
- 8.3. The Customer accepts all risk in relation to the Goods (including all risks associated with unloading or unpacking) when the Goods pass into the Customer's care or control; or that of its nominated carrier or agent.
- 8.4. The Supplier takes no responsibility for representations made in relation to the Goods and Value-Services by any third party or any delay in the delivery of the Goods by a third party carrier nominated by the Customer.
- 8.5. The Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay, or failure to provide the Goods and/or Value-Added Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 8.6. Subject to the Supplier's warranty for defective Goods and Value-Added Services, the Supplier's liability for any loss and damage associated with, arising from or in connection with the supply of the Goods and Value-Added Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

## 9. WARRANTY

- 9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

### Warranty for Goods and Value-Added Services

- 9.3. Provided that the Customer reports any defect in any Goods and Value-Added Services supplied, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify the defect within a reasonable period of time.
- 9.4. The Supplier provides the following warranty to Customers in respect of Goods and Value-Added Services supplied:  
*"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*
  - *To cancel your service contract with us; and*
  - *To a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failure with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."*

- 9.5. In respect of all claims under warranty, the Supplier reserves its right to inspect Goods and Value-Added Services alleged to be defective.
- 9.6. To the extent permitted by law the Supplier's liability in respect of defective Goods and Value-Added Services that does not constitute a major failure will be limited to:
  - 9.6.1. The resupply by the Supplier of the defective Goods and Value-Added Services; or
  - 9.6.2. The refund of the Price paid by the Customer in respect of the defective Goods and Value-Added Services.

- 9.7. The Supplier shall not be liable to compensate the Customer for any reasonable delay in rectifying Goods and Value-Added Services found to be defective or in assessing the Customer's claim.
- 9.8. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

#### **Claims made under Warranty**

- 9.9. Claims for warranty should be made in one of the following ways:
  - 9.9.1. The Customer must send the claim in writing to the Supplier's address Shop 1, 329-331 Belgrave-Gembrook Road, Emerald VIC 3782.
  - 9.9.2. The Customer must email the claim to the Supplier to [info@c-me.com.au](mailto:info@c-me.com.au).
  - 9.9.3. The Customer must contact the Supplier on the Supplier's business number 0434 022 833.

### **10. TERMINATION AND CANCELLATION**

#### **Cancellation by Supplier**

- 10.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
  - 10.2.1. Any money payable to the Supplier becomes overdue for payment; or
  - 10.2.2. 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
  - 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **11. RETURN OF GOODS**

- 11.1. The Supplier will not accept a return of Goods with Value-Added Services, unless the Goods and/or Value-Added Services are faulty.
- 11.2. Where the Goods have been supplied without Value-Added Services, the Supplier may, at its discretion accept the return of Goods it has supplied to the Customer and that the Customer has accepted on the basis that Goods are no longer required by the Customer or are otherwise unwanted subject to:
  - 11.2.1. The request for the return of Goods being made by the Customer within fourteen (14) days of acceptance of the Goods by the Customer;
  - 11.2.2. The Price of the Goods having been paid in full by the Customer; and
  - 11.2.3. The Goods being returned and accepted by the Supplier in their original condition, with all tags and labels still attached and being fit for resale;
- 11.3. For the purposes of clause 11.2, the Customer acknowledges that it may incur a restocking fee of twenty per centum (20%) of the Price paid in respect of any Goods so returned and the Supplier may:
  - 11.3.1. Withhold any applicable re-stocking fee from any refund due to the Customer in respect of the Goods so returned;

- 11.3.2. Apply any refund due to the Customer in respect if Goods so returned as credit to the trading account of the Customer less the applicable re-stocking fee.
- 11.4. The Customer is at all times responsible for the Goods until accepted as returned by the Supplier pursuant to this clause and the Customer accepts that it will bear any relevant freight or associated cost of returning any Goods.

## **12. RETENTION OF TITLE FOR GOODS**

- 12.1. Legal and equitable title in the Goods shall remain with the Supplier pending full payment of the Price of the Goods to the Supplier; and the Customer warrants that it:
  - 12.1.1. Holds the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested;
  - 12.1.2. Is responsible for the Goods and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession;
  - 12.1.3. Will maintain insurance in respect of the full replacement value of the Goods;
  - 12.1.4. Will store the Goods separately and in such a manner that the Goods are clearly identifiable as the property of the Supplier;
  - 12.1.5. Will not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.
- 12.2. The Customer may sell and/or use the Goods in the ordinary course of business.
- 12.3. If the Goods are sold by the Customer before the Customer has paid the Price in full to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for any such proceeds.
- 12.4. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

## **13. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ("PPSA")**

- 13.1. This agreement is a security agreement for the purposes of the PPSA, which has the effect of creating a security interest in favour of the Supplier over all present and after acquired Goods supplied by the Supplier to the Customer to secure the payment of the Price of the Goods including future advances.
- 13.2. The security interest that the Supplier acquires is a purchase money security interest ("**PMSI**") over all present and after acquired Goods including any commingled goods.
- 13.3. The PMSI will continue to apply as an interest in the collateral for the purposes of the PPSA with priority over registered or unregistered security interests.
- 13.4. The Supplier may register the PMSI on the Personal Property Securities Register ("**PPSR**") without providing further notice to the Customer.
- 13.5. The Supplier is not required to disclose information pertaining to the Supplier's security interest to an interested party unless required to do pursuant to the PPSA or under the general law.
- 13.6. The Customer covenants and undertakes:
  - 13.6.1. To sign any documents and/or provide further information reasonably required by the Supplier to register a financing statement or a financing change statement on the PPSR;
  - 13.6.2. To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;
  - 13.6.3. Not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of the Supplier;

- 13.6.4. To provide the Supplier with seven (7) days written notice of any change or proposed change to the Customer's business name, address, contact details or other changes in the Customer's details registered on the PPSR;
- 13.6.5. To waive any rights of enforcement under section 115 of the PPSA for collateral not used predominantly for personal, domestic or household purposes;
- 13.6.6. To waive any rights to receive verification statement in respect of any financial statement or financing change statement under section 157 of the PPSA.

**14. SECURITY AND CHARGE**

- 14.1. The Customer hereby charges in favour of the Supplier all his/her estates and interests in real property, including present and future estates or interests, to secure the obligations of the debtor under the agreement.
- 14.2. The Customer consents to the Supplier lodging a caveat or registering a mortgage over the real property to secure the obligations of the debtor under the agreement.
- 14.3. The Customer irrevocably appoints the Supplier as the duly constituted attorney of the Customer and to execute in his/her name any documents, including any mortgage of real property or caveat in registrable form.

**15. ENTIRE AGREEMENT**

- 15.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 15.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 15.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 15.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.

**I/We understand and agree to be bound by the Terms and Conditions set out herein.**

NAME: .....	NAME: .....
POSITION HELD:.....	POSITION HELD:.....
SIGNATURE: .....	SIGNATURE: .....
DATE: ...../...../20...	DATE: ...../...../20...



**DEED OF GUARANTEE AND INDEMNITY**

We each of the undersigned, for ourselves, our respective executors and administrators jointly and severally agree that if at any time the Customer shall default in any part of its performance of this Agreement, we will on demand by the Supplier pay, to the Supplier the whole of the monies owed by the Customer to the Supplier and we will keep the Supplier indemnified against all losses, costs, charges and expenses whatsoever which the Supplier may incur by any default on the part of the Customer. This is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on the part of the Supplier enforcing payment of any of the monies owed.

**We acknowledge, by signing this Guarantee, that we have read and understood the Terms and Conditions and that we have been advised to consult our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Deed.**

**EXECUTED AS A DEED** on this                          day of                          20                          .

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 1:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

.....

SIGNATURE: .....

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 2:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

.....

SIGNATURE: .....