
Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means T2M Fashion Pty Ltd (ABN 54 164 232 357) or Y Alia & S Tal (In Partnership) (ABN 96 371 312 356) T/A God Made Me Funky, its successors and assigns or any person acting on behalf of and with the authority of T2M Fashion Pty Ltd (ABN 54 164 232 357) or Y Alia & S Tal (In Partnership) (ABN 96 371 312 356) T/A God Made Me Funky.
- 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 Supplier 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 (plus any GST where applicable) for the Goods as agreed between the Supplier and the Buyer in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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 consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Supplier.
- 2.3 The Buyer acknowledges and accepts that orders are subject to sufficient availability of the Goods.
- 2.4 The Buyer acknowledges that the supply of Goods on credit shall not take effect until the Buyer has completed a credit application (inclusive of a personal guarantee and indemnity form where requested) with the Supplier and it has been approved with a credit limit established for the account. In the interim, the Buyer may purchase Goods on the basis of paying a deposit of up to twenty percent (20%) of the Price with the balance payable on delivery.
- 2.5 In the event that the supply of Goods request exceeds the Buyers credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.

3. Electronic Transactions (Victoria) Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Buyer shall give the Supplier 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 Supplier as a result of the Buyer's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Supplier's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Buyer; or
 - (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list.
- 5.2 At the Supplier's sole discretion, a deposit may be required.
- 5.3 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 Supplier, which may be:
- (a) on delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is forty-five (45) days following the date of any invoice given to the Buyer by the Supplier.
- 5.4 Payment may be made by credit card (a surcharge may apply per transaction), or by any other method as agreed between the Buyer and the Supplier.
- 5.5 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Buyer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier 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.

6. Delivery of Goods

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.
- 6.2 At the Supplier's sole discretion, the cost of delivery is in addition to the Price.
- 6.3 Any time specified by the Supplier for delivery of the Goods is an estimate only. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Supplier will not be liable for any loss or damage incurred by the Buyer as a result of delivery being late. In the event that the Buyer is unable to take delivery of the Goods as arranged then Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

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7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.3 If the Buyer requests the Supplier to leave Goods outside the Supplier'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.
- 7.4 The Buyer acknowledges and accept that:
- (a) whilst fabric manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
 - (b) the Supplier cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned garments will be identical to any samples; and
 - (c) the manufacturing process for garments require seams and that the appearance of these may be affected by light source and in particular the construction of the chosen garment.

8. Title

- 8.1 The Supplier and the Buyer agree that ownership of the Goods shall not pass until:
- (a) the Buyer has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Buyer has met all of its other obligations to the Supplier.
- 8.2 Receipt by the Supplier 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.
- 8.3 It is further agreed that, until ownership of the Goods passes to the Buyer in accordance with clause 8.1:
- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Supplier and must pay to the Supplier 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 Supplier and must pay or deliver the proceeds to the Supplier 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (e) the Buyer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
 - (f) the Supplier 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 Supplier.
 - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Buyer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Buyer.
- 9.3 The Buyer undertakes to:
- (a) promptly 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 Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
 - (e) immediately advise the Supplier 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.
- 9.4 The Supplier and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by the Supplier, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Buyer must unconditionally ratify any actions taken by the Supplier under clauses 9.3 to 9.5.

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- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of the Supplier 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 Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 10.3 The Buyer irrevocably appoints the Supplier and each director of the Supplier 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. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Buyer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Buyer must allow the Supplier to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Buyer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Buyer has paid for the Goods.
- 11.7 If the Buyer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Buyer by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 11.1; and
 - (b) the Supplier has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Buyer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Buyer failing to properly maintain or store any Goods;
 - (b) the Buyer using the Goods for any purpose other than that for which they were designed;
 - (c) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Buyer failing to follow any instructions or guidelines provided by the Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 12. Default and Consequences of Default**
- 12.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Buyer owes the Supplier any money the Buyer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 12.3 Further to any other rights or remedies the Supplier may have under this contract, if a Buyer has made payment to the Supplier, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.
- 12.4 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 Buyer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Buyer will be unable to make a payment when it falls due;
 - (b) the Buyer has exceeded any applicable credit limit provided by the Supplier;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

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13. Cancellation

- 13.1 Without prejudice to any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Goods to the Buyer. The Supplier will not be liable to the Buyer for any loss or damage the Buyer suffers because the Supplier has exercised its rights under this clause.
- 13.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods within forty-eight (48) hours of an order being made by giving written notice to the Buyer. On giving such notice the Supplier shall repay to the Buyer any money paid by the Buyer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 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.

14. Privacy Act 1988

- 14.1 The Buyer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Buyer in relation to credit provided by the Supplier.
- 14.2 The Buyer agrees that the Supplier may exchange information about the Buyer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Buyer including the Buyer's repayment history in the preceding two (2) years.
- 14.3 The Buyer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 14.4 The Buyer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 14.5 The Supplier may give information about the Buyer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Buyer including credit history.
- 14.6 The information given to the CRB may include:
- (a) personal information as outlined in 14.1 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Buyer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Buyer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Buyer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Buyer has committed a serious credit infringement;
 - (h) advice that the amount of the Buyer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 14.7 The Buyer shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Buyer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
 - (b) that the Supplier does not disclose any personal information about the Buyer for the purpose of direct marketing.
- 14.8 The Supplier will destroy personal information upon the Buyer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 14.9 The Buyer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Information Commissioner at www.oaic.gov.au.

15. Service of Notices

- 15.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 15.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

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16. General

- 16.1 The failure by either 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. 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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 16.3 Subject to clause 11, the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld).
- 16.5 The Buyer agrees that the Supplier may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Supplier to provide Goods to the Buyer.
- 16.6 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.
- 16.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.