



# Terms and Conditions of Sale

## 1. TERMS AND CONDITIONS TO APPLY

WEARX Pty Limited (ABN 20 158 413 122 ) ("WEARX") and the addressee named herein ("Buyer") agree that these terms and conditions ("Sale Conditions") shall apply to the supply of all goods sold and services provided ("Goods") by WEARX to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to WEARX.

## 2. QUOTATIONS/TENDERS

If WEARX has provided any quotation or tender specifically for the Goods ("Quotation"):

- (b) (a) these Sale Conditions shall apply to the Quotation;
- (c) (b) the price in the Quotation shall be WEARX's current price as at the date of Quotation and the price actually payable for the Goods shall be WEARX's current price as at the date of the Buyer's acceptance of the Quotation; and
- (d) (c) subject to paragraph (b), the Quotation shall remain valid for acceptance by the Buyer for thirty (30) days after the date of the Quotation.

## 3. ORDERS

If the Buyer has made an order for the Goods without there being a Quotation provided by WEARX ("Order"):

- (e) (a) the Order is subject to acceptance in writing by WEARX; and
- (f) (b) the price actually payable for the Goods is WEARX's current price as at the date of WEARX's acceptance of the Order.

## 4. VARIATION OR CANCELLATION

After the Buyer's acceptance of the Quotation or WEARX's acceptance of the Order, as the case may be:

- (g) (a) no change in the specification of the Goods shall bind WEARX, unless WEARX expressly agrees to the change in writing; and
- (h) (b) if the Buyer cancels the Order for the Goods, the Buyer will pay WEARX any loss, damage or expenses incurred by WEARX in relation to the supply or proposed supply of the Goods.

## 5. CHARGES AND TAXES

Unless otherwise expressly stated, the price of the Goods excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, goods and services, excise or other taxes, and the Buyer shall pay and indemnify WEARX for those charges or taxes. If WEARX expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.

## 6. PAYMENT

- (a) The Buyer shall pay for the Goods within thirty (30) days from the date of the invoice issued by WEARX for the Goods. Time shall be of the essence in respect of payment for the Goods.
- (b) If payment is not made by the due date for payment, the Buyer shall pay to WEARX on demand interest at the rate of one and a half (1.5%) percent calculated and capitalised monthly until paid. This will not affect the other rights of WEARX. WEARX is entitled to recover from the Buyer, in addition to the price, any GST on the supply of the Goods except to the extent that the prices expressly include GST.
- (c) All losses, expenses and costs (including legal fees) on an indemnity basis, consequent upon the Buyer's failure to pay on the due date, are recoverable from the buyer by WEARX as liquidated damages.
- (d) The goods supplied remain the property/title of WEARX until paid for in full.

## 7. GST

- (a) Where a party to the Sale Conditions makes a Taxable Supply under or in connection with the Sale Conditions or in connection with any matter or thing occurring under the Sale Conditions to another party to the Sale Conditions, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Buyer the amount of any GST on the Taxable Supply.
- (b) Where a party to this Agreement is entitled, under or in connection with the Sale Conditions or in connection with any matter or thing occurring under the Sale Conditions, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.
- (c) In these Sale Conditions:
  - "GST" means the tax payable on Taxable Supplies under GST Legislation;
  - "GST Legislation" means A New Tax System (Goods and Services Tax) Act 1999 ("Act") and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
  - "Input Tax Credit" has the meaning given in the Act; and
  - "Taxable Supply" has the meaning given in the Act.

## 8. DELIVERY

- (i) (a) WEARX will use all reasonable endeavours to deliver the Goods on or before the agreed date for delivery ("Delivery Date"), but:
  - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of WEARX; and
  - (ii) WEARX will not be liable for any loss, damage or other liability (whether in contract, tort [including negligence] or otherwise) and whether directly or indirectly arising from the Goods not being delivered by the Delivery Date for any reason.
- (b) WEARX may, with the agreement of the Buyer, deliver any of the Goods to the Buyer in instalments and in which case WEARX may separately invoice the Buyer for payment for each delivery instalment (which shall be taken to be the subject of a separate and distinct contract between the parties).
- (c) Any of the Goods returned are only accepted with the prior written approval of WEARX and may be subject to a 10% handling/restocking fee. Goods specifically manufactured by WEARX to the Order are non-refundable.

## 9. RISK AND PROPERTY IN GOODS

- (a) The Goods shall be entirely at the risk (including loss or damage) of the Buyer from the time of delivery of the Goods ex WEARX works (the carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by WEARX).
- (j) (b) WEARX retains full title to the Goods until WEARX receives payment in full for those Goods and all other amounts owed by the Buyer to WEARX.
- (k) (c) Until the Buyer pays WEARX in full for the Goods, the Buyer shall:
  - (i) keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to WEARX;
  - (ii) not resell, encumber or dispose of the Goods;

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- (iii) not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to WEARX in their original state; and
- (iv) hold the proceeds of any resale, disposal or other dealing with the Goods in breach of this clause separate from its own funds and in trust for WEARX and account to WEARX for those proceeds on demand.

## 10. INTELLECTUAL PROPERTY

All patent, design rights, trade marks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Buyer to WEARX) shall vest for all time in WEARX. The buyer shall not use, alter, modify, sell, exploit or otherwise deal with any Intellectual Property of WEARX without written consent from WEARX to do so and on such terms and conditions as WEARX shall determine.

## 11. WARRANTIES

Subject to clause 9(a), WEARX warrants that the Goods will, subject to WEARX's general tolerance standards (available at the Buyer's request), conform to the specification for the Goods expressly agreed to in writing by WEARX, and be free from defects in materials or workmanship.

## 12. LIABILITY

The Buyer agrees that:

- (l) (a) WEARX shall not be liable for any error, omission or inaccuracy in the drawings or the specifications provided or approved by the Buyer except to the extent set out in clause 11 or prohibited by law, WEARX makes no warranty or representation in relation to the Goods and any conditions or warranties otherwise implied by statute or any other law are expressly excluded;
- (m) (b) the Buyer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of WEARX in connection with the Goods (including their capabilities, use or operation) or the Sale Conditions;
- (n) (c) except to the extent prohibited by law, the only remedy of the Buyer against WEARX for any loss, damage or liability (whether in contract, tort [including negligence] or otherwise) of the Buyer in connection with the Sale Conditions, the Goods, WEARX's supply of the Goods or WEARX's failure to supply the Goods to the Buyer in accordance with the Sale Conditions shall be limited to WEARX, at its option, replacing or repairing the Goods at the point of manufacture of the Goods; and
- (o) (d) WEARX shall otherwise have no liability to the Buyer (whether in contract, tort [including negligence] or otherwise).

## 13. DEFECTIVE GOODS

- (p) (a) Within fourteen (14) days after the delivery of the Goods to the agreed delivery location, the Buyer shall both complete any inspection or testing required by it to confirm the Goods comply with the Sale Conditions and notify WEARX in writing of the extent to which the Goods do not comply with the Sale Conditions.
- (q) (b) The Buyer shall not use the Goods (other than to the extent reasonably necessary for the inspection and testing) before the Buyer completes the inspection and testing and satisfies itself that the Goods comply with the Sale Conditions, or, if the Buyer notifies WEARX under paragraph 12(a) that the Goods do not comply with the Sale Conditions, WEARX has had a reasonable opportunity to inspect and test the Goods after WEARX receives that notice.
- (c) If the Buyer does not comply with this clause, the Buyer shall be taken to have unconditionally accepted that the Goods comply with the Sale Conditions.

## 14. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

Where WEARX incurs any extra costs in relation to the supply of the Goods, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods caused by or as a consequence of any act or omission of the Buyer, WEARX shall be entitled to increase the price by the amount of the extra costs incurred.

## 15. BUYER'S INDEMNITY

The Buyer indemnifies WEARX, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising from any:

- (a) loss of or damage to any property or the death of or injury to any person in connection with the supply or use of any of the Goods; or
- (b) WEARX infringing any patent, design right or other intellectual property supplied by the Buyer.

## 16. SUBCONTRACTING

Unless otherwise agreed in writing WEARX may, without the Buyer's consent, engage subcontractors to carry out the whole of or any part of supply or manufacture of the Goods.

## 17. DEFAULT, INSOLVENCY AND TERMINATION

If the Buyer:

- (r) (a) commits a substantial breach of the Sale Conditions including unreasonably refusing to accept any of the Goods or failing to pay for any of the Goods, in accordance with the Sale Conditions; or
- (s) (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,

WEARX may, without affecting WEARX's other rights:

- (t) (c) immediately terminate the sale of any of the Goods, by notice in writing to the Buyer;
- (u) (d) refuse, suspend or withhold any further supply of the Goods;
- (v) (e) enter upon (personally or by its agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Buyer), in which case the sale of those Goods shall be taken to be terminated and WEARX shall have no liability to the Buyer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (w) (f) terminate any credit arrangement with the Buyer, by notice in writing to the Buyer (in which case outstanding amounts will become immediately due and payable by the Authorised Officer as Guarantor);
- (x) (g) forfeit any deposit paid for the Goods; or
- (y) (h) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to WEARX or damages incurred by WEARX as a result of the termination of the sale.

## 18. DUTIES, LEVIES, AND TAXES

The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods supplied and shall make any and all

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payroll deductions and withholdings required by law and hereby indemnifies and holds harmless WEARX from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

## 19. GOVERNING LAW

The laws of the State or Territory in which the office of WEARX which issued the Quotation or accepted the Order shall apply to the Sale Conditions and the parties submit to the jurisdiction of the courts in that State.

## ADDITIONAL TERMS AND CONDITIONS FOR MANUFACTURE

### 20. MANUFACTURED GOODS

Where the Goods are to be manufactured by WEARX to a specification prepared by or on behalf of the Buyer ("**Manufactured Goods**") clauses 20 to 24 of these Sale Conditions shall also apply.

### 21. PRICE FOR MANUFACTURED GOODS

Unless otherwise expressly agreed in writing by WEARX, the price for Manufactured Goods is subject to adjustment:

- (z) (a) in accordance with the price variation formula notified by WEARX to the Buyer with the Quotation for the Manufactured Goods or upon acceptance of the Order for the Goods; and
- (aa)(b) for increases in the cost of labour after the date of the Quotation or acceptance of the Order.

### 22. BUYER'S PATTERNS

Where any patterns or core boxes are to be provided by or on behalf of the Buyer for use by WEARX in the manufacture of the Manufactured Goods ("Buyer's Patterns"):

- (bb)(a) despite clause 12, WEARX shall have no responsibility and will not be liable for any non-conformity of the Buyer's Patterns to any drawings or specifications for the Manufactured Goods;
- (cc) (b) the Buyer must satisfy itself as to and ensure that the Buyer's Patterns meet the requirements of WEARX relating to the Buyer's Patterns;
- (dd)(c) the Buyer acknowledges that WEARX will not insure the Buyer's Patterns and despite clause 12 WEARX shall have no liability (whether in contract, tort [including negligence] or otherwise) to the Buyer for or in connection with any loss of or damage to the Buyer's Patterns or any other goods or materials in WEARX's possession in connection with the Manufactured Goods; and
- (ee)(d) the Buyer agrees to pay WEARX, in addition to the price payable for the Manufactured Goods any costs incurred by WEARX in storing the Buyer's Patterns or carrying out repairs or alterations to the Buyer's Patterns.

### 23. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by WEARX prior to their supply to the Buyer, the Buyer shall pay the costs of that testing (including the cost of certificates) or inspection in addition to the price for the Manufactured Goods, and the results of tests (including as to weight, size, quantity or composition of Manufactured Goods) and inspections shall be final and binding on the Buyer.

### 24. BUYER'S INFORMATION

Where the Buyer has provided to WEARX any design, specification, process, method of working, or any other information in connection with the Manufactured Goods ("Buyer's Information"):

- (ff) (a) WEARX shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Buyer's Information;
- (gg) (b) the Buyer grants to WEARX an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;
- (hh) (c) the Buyer indemnifies WEARX, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against WEARX in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and
- (ii) (d) despite clause 12, WEARX shall have no liability to the Buyer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.

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