

## Terms of Guarantee - The Charles Parsons Group

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- 1. Contract** (a) If you sign the attached Credit Application these terms apply to all our supplies to you. Each Director who signs the attached Credit Application is also bound by these terms. (b) If you do not sign a Credit Application or these terms but place orders with us after you receive these terms, you are accepting our offer to you to make supplies to you on these terms. (c) These terms replace all other arrangements between us and any terms that you may seek to impose.
- 2. Payment** (a) You must pay us within 30 days of the end of the month for which we give you an invoice, or within the period that we agree with you in writing from time to time. If we do not give you credit you must pay us, at our option, before or when we deliver to you. (b) You must pay a deposit for an order in the amount and at the time we ask. (c) You must pay us in immediately available funds, without set-off, counterclaim or any withholding and free and clear of and without deduction for any taxes. (d) You must pay us interest on all amounts not paid when due at National Australia Bank's Benchmark Business Lending Indicator Rate, from time to time plus 3% per annum from the due date up until the time of actual payment (whether before or after any judgment). We may capitalise interest monthly from the due date. (e) If any GST is payable in connection with a supply under these terms the amount payable for the supply is increased by the same amount of GST that is payable on the supply. (f) We will apply any money you pay us in the order we choose.
- 3. Fees** You must pay us, when we ask any fees and charges, including but not limited to small order handling fees, freight administration fees, any return charges and credit cash administration fees, in the amounts and at the times we publish from time to time.
- 4. Goods** We sell goods to you on the basis of the description we apply to them and no other description applies. You rely on your own knowledge, experience and testing in selecting the goods. You do not rely on our skill or judgment.
- 5. Orders** You authorise your employees and agents to place orders for you. Each time you place an order you warrant that you are solvent and there are no circumstances which suggest that you may not be able to pay us on time. We may accept your orders in full, partially or we may reject them.
- 6. Credit Limit** The Credit Limit is the amount we include in the schedule or we tell you from time to time in writing. We may review the Credit Limit periodically and we may vary it at any time by notice to you. In varying it we will take into account your average purchases from us. You must not exceed the Credit Limit we set for you from time to time and if you do we may refuse to supply you with goods or services on credit or accept orders from you.
- 7. Title and Personal Property Securities Act 2009 ('the Act')**: Until you pay us in full for the goods: (a) we retain full legal and equitable title in them; (b) you hold the goods for us as bailee or fiduciary and you must store them securely and separately from other items and mark them clearly as our goods; (c) you must not dispose of the goods or any interest in them or alter or use them in any manufacturing process; and (d) if you dispose of the goods, alter or use them in a manufacturing process, you must hold the proceeds of sale of the goods or the products they become, on trust for us and pay them to us when we ask. Possession of the goods supplied to you by us is transferred to you on the basis that we may retain a purchase money security interest pursuant to the Act in the goods and we may require the facilitation of a registered Financing Statement under the Act. You agree to execute any documents, provide all necessary information and do anything else required by us to ensure that the security interest constitutes a "Perfected Security Interest" as defined in the Act and which will have priority over all other security interests in the goods. You will, upon demand, pay all of our expenses and legal costs on a solicitor/client basis in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this agreement.
- 8. Risk** Risk in the goods passes to you when they leave our warehouse. You are liable for their loss and must adequately insure them. If we ask you must give us evidence of their insurance.
- 9. Delivery** We will deliver the goods you order to the Delivery Address or the other place you specify in writing at the time of ordering. The goods are taken to be delivered if we or our agent obtain a receipt or delivery docket signed by a person at the destination. If the destination is unattended we may deliver the goods by leaving them at the destination. If we give you a delivery time, it is an estimate only. We will attempt to achieve it, but we are not liable for any delay.
- 10. Faulty Goods** We will rectify our failure to deliver goods of the quantity or description you order if: (a) you notify our Customer Service Section of the failure within 14 days of our delivery giving us the details we request; (b) you have not cut or used the goods; and (c) you return the faulty goods to us promptly or when we ask.
- 11. Our Liability** Unless these terms specify otherwise: (a) all warranties and implied terms are excluded to the fullest extent permissible by law, except if the exclusion would avoid this provision. If a warranty is not excluded, our obligation under it is limited, at our option to: (i) in the case of services, supplying the services again or paying the cost of having those services supplied again; and (ii) in the case of goods, replacing the goods or supplying equivalent goods or paying the cost of either, or repairing the goods; (b) we are not otherwise liable to you for any loss or damage in connection with our dealings with you. In no case are we liable to you for any indirect, consequential or special loss or damage including loss of income, profit or economic loss.
- 12. Returns and Cancellations** You may only return goods if we authorise their return in writing. You may not cancel an order unless we agree in writing.
- 13. Not Supply** We may at any time refuse to supply you with goods or services on credit or accept orders from you.
- 14. Default** If you do not pay any amount when due or you otherwise breach a provision of these terms; you have an administrator, receiver or receiver and manager appointed to you or any of your property, a mortgagee takes possession of any of your property, any step is taken to wind you up, you enter into a compromise or arrangement with your creditors or any class of them, you cannot pay your debts when due or you commit an act of bankruptcy, you remain liable to pay all amounts you owe us and in addition we may: (a) terminate any contract with you whether or not the contract has been partly performed by us; (b) claim damages from you in respect of any loss or damage which we suffer as a consequence of our terminating any contract with you, including without limitation any loss or damage we suffer as a consequence of our having partly performed a contract with you; (c) require you to return to us any goods for which payment has not been made; (d) without notice enter into any premises where the goods are stored and do all things necessary to retake possession of them; and (e) retain or sell the goods.
- 15. Intellectual Property** You grant us the right to use the Intellectual Property relating to the goods (and the right to allow other persons to use it) to make the goods you order and if you do not pay for them on time, to market and sell them to other persons without recourse to us. You warrant that you have the right to have us make goods to the specification you order from us and to grant us

these Intellectual Property rights. You will sign all documents we require to give effect to this clause. **Intellectual Property** includes trade marks, copyrights, know-how, and design.

- 16. Indemnity** You must pay us, on demand any loss or damage we suffer or cost or expense we incur because: (a) you cancel an order or return any goods; (b) of your breach of these provisions; (c) you do not pay us on time; (d) of any action we need to take against you; or (e) of any claim that we have infringed any Intellectual Property in connection with the goods.
- 17. Guarantee and Indemnity** (a) The Directors and each of them jointly and severally unconditionally and irrevocably guarantee the due and punctual payment of all money due to us by you, whether alone or jointly, actually or contingently (**Guaranteed Money**) and must pay it to us on our demand without set-off, deduction, condition or withholding. (b) The Directors and each of them jointly and severally unconditionally and irrevocably indemnify us against any loss incurred by us because of any failure by you to pay any of the Guaranteed Money to us on time or because the Guaranteed Money is not recoverable from you or from any Director under this clause and you must pay it to us on demand. (c) Each Director jointly and severally assumes these obligations because we agree to grant credit to you or agree to delay demanding that you pay us immediately. (d) This guarantee is a continuing guarantee and indemnity and is only discharged by the payment of all the Guaranteed Money to us. This guarantee operates as a principal obligation and is not to be treated as ancillary or collateral to any other obligation. (e) Our liability is not affected by anything including: (i) us giving you or a Director time or other indulgence; (ii) the variation or assignment of any agreement; (iii) an agreement or transaction being void, voidable or unenforceable; (iv) any composition of debts by you or a Director; (v) the release of you or a Director including a release by novation; (vi) the release, variation or impairment of or failure or neglect to recover under any security; (vii) the incapacity of you or a Director; (viii) one or more of the persons named as a Director not signing this document; and (ix) us acting to the prejudice of you or a Director. (f) Until the Guaranteed Money has been paid in full to us: (i) we are under no obligation to marshal in a Director's favour any security held by us or any funds or assets that we may be entitled to receive or have a claim on; (ii) a Director may not raise a defence, set-off or counterclaim available to him or her, you or a co-surety against us in reduction of his or her liability under this guarantee; (iii) a Director is not entitled to claim by contribution, subrogation, indemnity or otherwise the benefit of any security or guarantee or document held by us for the payment of the Guaranteed Money. (g) If you or a Director is wound up, dissolved or has a receiver, receiver and manager or administrator appointed or enters into a scheme of arrangement or compromise with creditors or becomes a bankrupt or dies: (i) a Director may not, but must if requested by us, prove for every debt, liability or obligation and enforce every security granted to him or her against the estate or assets of you or a co-surety; (ii) we on behalf of a Director may prove for any money which the Director could have claimed but for this agreement; (iii) any asset or other dividend realised by a Director must be accepted and held on trust for payment to us to the extent that the Guaranteed Money has not been paid and discharged in full; (iv) the Directors irrevocably appoint us as their attorney to do all of the things specified in this sub-clause. (h) The Directors' liability continues and extends to all amounts which are paid to us by you but which we are obliged to repay on the ground of preference or otherwise. This sub-clause survives the termination of this agreement. (i) If a claim that all or part of any payment or transaction relating to the Guaranteed Money is void or voidable is upheld, cancelled or compromised our liability is the same as if the payment or transaction or any release made relating to it had not been made and the Directors must do all things necessary to restore to us any guarantee or security held by us immediately before the payment or transfer. The Directors must pay us all costs and expenses, including our legal fees on a full indemnity basis, we incur relating to the claim or any attempt by us to enforce our rights under this guarantee. The Directors hereby to pay as damages the solicitor own client legal fees which we may incur, in enforcing or attempting to enforce a right under this guarantee.
- 18. Charge & Security** In this clause, property means: (i) prior to the Registration Commencement Date pursuant to the Act both real and personal property or (ii) real property after the Registration Commencement Date pursuant to the Act. You hereby charge in our favour all of its estate and interest in any property that it owns now or in the future with due payment to us of all monies owing or may become payable in accordance with this agreement. You irrevocably appoint us (from time to time) as its duly constituted attorney to execute in its name, any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that it may own in Australia to secure any amount advanced on credit, notwithstanding that such sum may not be due for payment. The Customer hereby charges in our favour all monies due and payable to the Customer under any contract held by it in respect of which the Customer purchased goods from us and here-by assigns all rights, powers and remedies conferred upon sub-contractors under any legislation or otherwise as if all monies due and owing by you to us were monies due and owing under the sub-contract. You undertake to disclose all charges or encumbrances granted over its property and agree not to grant any further charges or encumbrances over its property without first obtaining our written consent.
- 19. Notices** All notices in connection with these terms must be in writing and sent to the address, facsimile or email set out in the schedule, or other address, facsimile or email the recipient has notified the sender for the purpose of this provision. A notice sent by post is taken to be delivered 2 days after posting, or if sent by facsimile or email, on completion of the transmission.
- 20. General** (a) Our records are conclusive about the amount you owe us. (b) Any certificate we or one of our employees sign stating the amount you owe us as at any given time is conclusive and you shall not seek to challenge any such certificate. (c) You may not assign any of your rights under these terms. (d) We may add to or vary these terms, except in relation to the agreed price for ordered goods, at any time by giving you at least 7 days notice which notice may be given, among other ways, by publishing such change on our website. Any other change must be in a document signed by you and us. (e) A waiver is only effective if it is in writing. (f) If you are the trustee of a trust, you are liable to us personally as well as in your capacity as trustee. If you are a corporation it shall be a breach of these terms for you to change your directors or for you to change your shareholders if the change results in a change in effective control of you or your business. (g) These terms are governed by Victorian law and you are subject to the jurisdiction of its courts.
- 21. Interpretation** In these terms, headings do not affect interpretation and **GST** means goods and services tax; **we** means any one or more of Charles Parsons & Co Pty Ltd ACN 000 008 668; S&R Fashions Pty Ltd ACN 092 609 866; KS Textiles Pty Ltd ACN 007 013 934; and Rapee Pty Ltd ACN 001 712 938 or those which sign the Credit Application or these terms, as relevant, and **us** and **our** have a corresponding meaning; **you** means the person described in the schedule as **Customer** and **your** has a corresponding meaning; **schedule** means the schedule to the attached Credit Application or these terms, and words assigned a meaning in the schedule have that meaning in these terms. Also, the singular includes the plural and vice versa; person includes a firm or body corporate, an incorporated body, association or authority; a reference to a person includes its executors, administrators, successors and permitted assigns; and where two or more persons are a party, they are bound jointly and severally.