

TERMS AND CONDITIONS

1. General

The whole of the Agreement between Atomic Fashion Marketing Pty Ltd ACN 070 263 094 ("Atomic") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, materials and/or parts and/or labour and/or services supplied by Atomic under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. All Goods are charged at the price ruling at the date of invoice and any GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 or other government imposts shall be payable by the Customer in addition.

2. Credit Terms

- 2.1. Payment is due on or prior to thirty (30) days from the date of invoice rendered in respect of the supply of the Goods unless otherwise stated in writing by Atomic. Atomic may charge liquidated damages at a rate of 0.06% per day on the unpaid daily balance if payment is not received by the due date.
- 2.2. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Atomic for enforcement of obligations and recovery of monies due from the Customer to Atomic.
- 2.3. Atomic's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Atomic at any time.
- 2.4. Atomic is entitled to set-off against any money owing to the Customer amounts owed to Atomic by the Customer on any account whatsoever.
- 2.5. Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.2, and then to principal.
- 2.6. The Customer agrees that were the Credit facility has not been used for a continuous period of six (6) months by the Customer, the Credit facility will lapse and Atomic in its sole discretion may require the Customer to re-apply for Credit on such terms as Atomic may decide.

3. Delivery & Supply

- 3.1. Any times quoted for delivery and/or supply are estimates only and Atomic shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Atomic reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 3.2. The risk of damage, loss or deterioration of any Goods will pass to the Customer upon the earlier of dispatch or expiry of fourteen (14) days from the date of notification by Atomic to the Customer that the Goods are available for collection.
- 3.3. If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer:
 - 3.3.1 shall be liable for any additional cost, charge and expense incurred by Atomic in complying with the Customer's direction; and
 - 3.3.2 shall pay for the whole of the invoiced value of the services pursuant to Clause 3 notwithstanding the staggered deliveries or that the Customer may not have signed a receipt for the Goods.

- 3.4. Subject to Clause 3.1, the Customer agrees that it will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.
- 3.5. The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when Atomic notifies the Customer that the Goods are available for collection.

4. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Atomic from time to time:-

- 4.1. All sums outstanding become immediately due and payable by the Customer to Atomic if the Customer makes default in paying any other sums due to Atomic, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 4.2. The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Atomic (returning the same to Atomic on request). The Goods shall nevertheless be at the risk of the Customer from the time of delivery/supply and the Customer must insure the Goods from the time of delivery/supply.
- 4.3. The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Atomic provided that there shall be no right to bind Atomic to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Atomic pursuant to the fiduciary relationship.
- 4.4. In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Atomic. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 4.5. Atomic is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

5. Freight

- 5.1. Subject to Clause 3 and 11 and unless otherwise agreed, Atomic will ship by the least expensive route and carrier to all points. If the purchaser chooses a route with a higher charge than the route of Atomic's choice for shipment, Atomic will charge the difference to the Customer.
- 5.2. Atomic does not ship and/or freight goods to Northern Territory, Western Australia, Tasmania, however where the Customer requires goods to be freighted to Northern Territory, Western Australia and Tasmania the Customer shall pay an extra freight charge in relation to those goods.

6. Returns, Cancellations and Claims

- 6.1. The Customer shall not return any Goods to Atomic without obtaining prior authorization from Atomic. Unauthorized returns will not be accepted. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer unless the Goods (i.e. where the Customer has obtained prior authorisation to return them) are returned through Atomic's approved carrier. All Goods must be returned in the original packaging and the Customer

shall be responsible for all damage incurred during return shipment. A credit note will be issued by Atomic only after Goods returned are either collected by Atomic's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Atomic but must await receipt of a credit note.

- 6.2 No cancellations or partial cancellation of an order by the Customer shall be accepted by Atomic unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Atomic, will indemnify Atomic against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.
- 6.3 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Atomic in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

7. Cancellation of Retail Trading Account

An account will be suspended (placed on "Stop Supply") if not paid within 60 days of the statement date.

- 7.1 Accounts on Stop Supply will be subject to:
- 7.1.1 Cancellation of current month order hold, within 5 working days following stop supply application.
 - 7.1.2 At once or indent orders cannot be processed when an account is on stop supply.
 - 7.1.3 Credit facilities will be subject to consideration of permanent closure if the account is placed on stop supply.
 - 7.1.4 Legal action to recoup debt. Legal action will automatically invoke permanent closure of the account.
- 7.2 An account may be subject to closure if:
- 7.2.1 Payment is not received by Atomic within the trading terms.
 - 7.2.2 Trading is below \$3000 per annum.
 - 7.2.3 Any Atomic trading term is not observed.
 - 7.2.4 Atomic shall not be liable to any party for any loss or damage, which may result directly from the closure of the account.

8. Distribution of Atomic Product

Orders are accepted only on the basis that:-

- 8.1 The goods may only be resold to consumers at retail level and may not be resold at wholesale level or to any other trader that is known or suspected to be purchasing for resale and
- 8.2 The goods may only be resold to consumers or displayed at the individual store or stores of the consumer at the address or addresses of which are specified to Atomic at the time the account is approved for opening by Atomic, displayed for sale, or any other way used at any other retail store or stores of the customer without the prior written consent may be withheld at the sole discretion of Atomic.
- 8.3 Accounts that onsell or supply to non-approved outlets will be subject to immediate and permanent closure of account facilities.
- 8.4 Sale of Atomic product by mail order or Internet is prohibited unless written consent is provided by Atomic.

9. Acceptance of Orders

- 9.1 All orders are deemed to be accepted by Atomic after the expiration of 30 days from the receipt of order subject to availability.
- 9.2 Indent and/or at once orders for delivery in a nominated month may be dispatched at any time during the 1-31 of that month.
- 9.3 The minimum order level for indent orders is \$1000 and the minimum for at once is \$250.
- 9.4 Surcharges of \$10 apply for at once orders less than \$250.
- 9.5 Indent orders cannot be cancelled for deferred.
- 9.6 All custom product orders cannot be cancelled, adjusted or transferred.
- 9.7 Atomic reserves the right to part delivery.

10. Quotations and Pricing

- 10.1 Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by Atomic by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). Atomic will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 10.2 Any quotation by Atomic shall not constitute an offer. Quotations will remain valid for **DAYS** days from the date of the quotation.
- 10.3 Unless otherwise specified by Atomic, the prices exclude:-
 - 10.3.1 Any statutory tax, including any GST, duty or impost levied in respect of the Goods and which has not been allowed for by Atomic in calculating the price.
 - 10.3.2 Costs and charges in relation to insurance, packing (other than the standard packing of Atomic), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
- 10.4 Any variations in the invoice or contract price as a consequence of currency fluctuations shall be payable by the Customer.
- 10.5 The contract between Atomic and the Customer shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department with regard to either classification or value of duty or landing charges occasioned thereby. Any such impositions shall be to the account of the Customer.

11. Privacy Act 1988 ("Privacy Act")

To enable Atomic to assess the Customer's application for credit, the Customer authorises Atomic:-

- 11.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1) of the *Privacy Act*, and
- 11.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and
- 11.3 To give to a credit reporting agency information including identity particulars and application details

AND in accordance with Section 18N(1) of the *Privacy Act* the Customer authorises Atomic to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.

The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) *Privacy Act*),

assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.

12. Notification

The Customer must notify Atomic in writing within seven (7) days of:-

- 12.1 Any alteration of the name or ownership of the Customer.
- 12.2 The issue of any legal proceedings against the Customer.
- 12.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 12.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Atomic for all Goods supplied to the new owner by Atomic until notice of any such change is received.

13. Warranties

- 13.1 No warranties except those implied and that by law cannot be excluded are given by Atomic in respect of Goods supplied. Where it is lawful to do so, the liability of Atomic for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by Atomic.
- 13.2 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify Atomic from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against Atomic.

14. Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of Atomic all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by Atomic to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a solicitor own client basis) incurred by Atomic and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

15. Legal Construction

- 15.1 These Terms shall be governed by and interpreted according to the laws of Queensland and Atomic and the Customer consent and submit to the jurisdiction of the Courts of Queensland.
- 15.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.