



## Stewart & Heaton Clothing Co. Pty Ltd

As Trustee for the S&H Unit Trust. ACN 051 578 842 ABN 49 282 169 771  
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### **STEWART & HEATON PROCUREMENT TERMS AND CONDITIONS**

Stewart & Heaton Clothing Co Pty Ltd (**S&H**) requires that the Supplier supply S&H with the goods (**Goods**) and/or the services (**Services**) specified in a S&H purchase order (**Purchase Order**) and the Supplier agrees to provide the Goods and/or Services on the following terms and conditions:

#### **1. Issue and Acceptance of Order**

- 1.1 The Purchase Order is S&H's offer to the Supplier for the Supplier to supply Goods and/or Services described in the Purchase Order to S&H on the terms and conditions contained in this document (**Agreement**). Acceptance of the Purchase Order by the Supplier shall constitute a binding contract between S&H and the Supplier to supply the Goods and/or Services specified in the Purchase Order in accordance with this Agreement.
- 1.2 The Supplier shall not provide Goods and/or Services to S&H without obtaining a numbered Purchase Order from S&H.
- 1.3 The Supplier must ensure that the Purchase Order is clearly marked on all delivery dockets, bills of lading, packages and other documents and correspondence relating to the supply of Goods and/or Services.
- 1.4 If the Supplier is unwilling or unable to accept the offer made by S&H in the Purchase Order under the terms and conditions of this Agreement, the Supplier shall immediately give notice in writing of any variations it requires to be made for acceptance or rejection in writing by S&H, in its absolute discretion.
- 1.5 If the Supplier proceeds with the manufacture or supply of Goods and/or Services without first requesting or receiving S&H's written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions of this Agreement.

#### **2. Warranties**

2.1 The Supplier warrants that the Goods and/or Services:

- (a) are of merchantable quality;
- (b) are manufactured and will be delivered strictly in accordance with the Purchase Order, any drawings, specifications and other instructions of S&H given for the purpose for this Agreement;
- (c) are free from defects in design, materials and workmanship;
- (d) do not and will not infringe the intellectual property rights of any third party;
- (e) comply with the requirements of any relevant legislation, regulations or legally applicable standards;
- (f) are new on delivery to S&H; and
- (g) are in accordance with and will perform in accordance with the Supplier's technical specifications.

2.2 S&H relies on the Supplier's skill and judgment. The Supplier undertakes to advise S&H whenever the Supplier believes that compliance with a specification of S&H would render the Goods and/or Services unsuitable for S&H's requirements.

2.3 All Goods and Services delivered or performed by the Supplier shall be subject to acceptance testing of them by S&H. Any Goods and/or Services tendered, offered or delivered which, in S&H's absolute discretion, do not comply with this Agreement may be rejected by notice in writing to the Supplier.

2.4 S&H may undertake such acceptance testing in respect of the Goods and/or Services in its absolute discretion. In particular: -

- (a) Any Goods rejected by S&H must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection. Upon failure to do so, S&H may, at the Supplier's expense, either store the rejected Goods or return them to the Supplier. S&H will not be liable for any damage to or loss of the Goods while in transit to the Supplier, or while in storage.
- (b) If required by S&H, the Supplier must replace any Goods rejected by S&H with Goods that are in total conformance with this Agreement within such time as reasonably required by S&H. If S&H exercises this right it is without prejudice to any other right or remedy that S&H has by reason of the rejected Goods failing to comply with this Agreement.
- (c) Alternatively, S&H may require the Supplier to refund any purchase price paid by S&H for the rejected Goods and recompense S&H for any loss suffered by S&H in respect of such rejected Goods.
- (d) Goods (or any portion thereof) that have been rejected must not be offered again for acceptance by S&H unless S&H is first notified in writing of the prior rejection when the Goods are re-offered.
- (e) S&H must accept the Goods as soon as reasonably practicable after it is satisfied that the Goods comply with this Agreement.

2.5 S&H's acceptance of the Goods shall be without prejudice to any rights or remedies S&H may have arising from any breach by the Supplier of this Agreement. In particular:-

- (a) S&H may reject the whole or any portion of the Goods if it becomes aware (after acceptance) that they do not comply with this Agreement; and
- (b) the Supplier must, if S&H requires, replace those Goods with Goods that comply with this Agreement at no additional charge to S&H.

### **3. Price and Payment**

3.1 The price payable for Goods and/or Services shall be the price specified on the Purchase Order for the date of delivery of Goods, or the date of commencement of any Services, unless otherwise agreed in writing by the parties.

3.2 The price set out in the Purchase Order is all-inclusive and is the total amount payable by S&H (subject to this Agreement) and includes (without limitation):

- (a) all taxes, duties, charges, levies and fees payable on or in respect of the Goods and/or the Services; and
- (b) all containers, packaging and all charges to the nominated place of delivery,  
unless otherwise specified.

- 3.3 S&H shall not be liable for additional costs or charges or an increase in price unless accepted in writing prior to the specified delivery date of the Goods or the specified commencement date of any Services involving such increased cost or charges or price.
- 3.4 The price specified in the Purchase Order is firm. Failure to notify S&H of an incorrect price may result in the goods being rejected and/or a delay in payment for the goods.
- 3.5 The Supplier must furnish S&H with an invoice which complies with all relevant legislation:
- (a) in respect of each consignment of Goods delivered;
  - (b) as soon as practicable after, and in any event within seven (7) days of each delivery of the Goods and/or Services; and
  - (c) specifying S&H's Purchase Order number, the amount due to the Supplier, the date of delivery of the Goods and/or Services, a description (including the quantity) of the Goods and/or Services delivered (by item if applicable) and the Supplier's address for payment.
- 3.6 Unless otherwise agreed in writing, amounts payable by S&H pursuant to an invoice rendered in accordance with this Agreement must be paid by S&H 31 days from the end of month of the date of the invoice, provided that the Goods and/or Services have been accepted by S&H and that the Supplier has complied with this Agreement in all respects.
- To facilitate compliance by S&H with this clause, S&H must receive all invoices from the Supplier by the 15<sup>th</sup> day of the following month from invoice date.
- If S&H has a bona fide dispute as to the contents of any invoice issued by the Supplier then S&H must give notice of that dispute to the Supplier within 14 days of receipt of the invoice. S&H is not required to pay the invoice until the parties have reached an agreement as to the dispute or until the Supplier has obtained judgment against S&H as to that amount (whichever occurs first).
- 3.7 The tax invoice provided by the Supplier pursuant to this Agreement must show the GST component charged by the Supplier as a separate amount.
- 3.8 If the Supplier does not provide its Australian Business Number on any invoice issued pursuant to this Agreement, then S&H may withhold a proportion of the payment as prescribed in the relevant legislation and remit the appropriate withholding tax as prescribed by the Australian Tax Office at that time.
- 3.9 Supplier invoices must be sent to S&H's head office in Perth, Western Australia .
- 3.10 Where a certified product is supplied against a Purchase Order, a completed and signed Certificate of Conformance must be provided with the delivery documentation in order for payment to be processed by S&H. Failure to supply a Certificate of Conformance or incomplete documentation will delay the processing of payment by S&H until a satisfactory Certificate received & verified by S&H .

#### **4. Delivery**

- 4.1 Goods and/or Services must be delivered by the Supplier by the agreed date.

The 'Requested Ex-Factory Date' in the header section of the Purchase Order is the date S&H deems acceptable for dispatch of the Goods and/or Services.

If the Supplier has proposed a new 'Ex-Factory Date' advised through the order expediting process, then S&H may, in its' absolute discretion:

- (a) Accept the proposed date as the Ex-Factory Date and amend all records accordingly;  
or
- (b) Reject the proposed date and cancel part or all of the Purchase Order, and seek alternate supply arrangements for the Goods and/or Services.

- 4.2 Delivery of completed Purchase Orders for Goods and/or Services are preferred. However S&H may, in its' absolute discretion, accept partial deliveries of Goods and/or Services.
- 4.3 All deliveries must be accompanied by Delivery Documentation that clearly states the following regarding the goods being delivered
- (a) S&H Purchase Order number
  - (b) Description of goods
  - (c) Quantity supplied.
- 4.4 Subject to clause 5.2 and S&H's right to reject any defective Goods, title shall pass to S&H on delivery to S&H or its agent at the nominated place of delivery. The Goods will be deemed to have been delivered only when they have been delivered and unloaded at the nominated place of delivery in accordance with the requirements of this Agreement.
- 4.5 The Supplier shall pack the Goods to ensure that no loss or damage results from weather or transportation.
- 4.6 S&H shall specify the "Shipment Method" of delivery required in the Purchase Order header. Where the Supplier arranges transportation of the Goods, risk remains with the Supplier until the Goods are delivered to the nominated place of delivery. Where S&H nominates that delivery be made to a specific carrier, risk will pass on delivery of the Goods to such carrier.

## **5. Timeliness**

- 5.1 Time is of the essence in the performance of the obligations under this Agreement. If Goods are received outside the Agreed Ex-factory Date specified on the Purchase Order, the Supplier acknowledges that S&H may:
- (a) return part or all of any shipment received; and
  - (b) charge the Supplier with any loss or expense suffered by S&H arising as a result of the Supplier's failure to deliver as agreed.
- 5.2 Without prejudice to S&H's rights contained in clause 5.1, if any circumstances arise that may delay delivery of Goods, the Supplier must immediately notify S&H of the circumstances in writing and propose a revised delivery date, which S&H may accept or reject in its absolute discretion. The exercise by S&H of its rights under this clause 5 are without prejudice to any claim for damages or other rights it may have against the Supplier.
- 5.2 The Supplier acknowledges that S&H may terminate this Agreement if the Supplier does not provide the Goods and/or Services within the Agreed Ex-factory Date and S&H shall not be liable to pay for any Goods and/or Services which are delivered outside of the Confirmed Delivery Date (unless otherwise agreed in writing).

## **6. Inspection**

- 6.1 On request and after being given reasonable notice, the Supplier must arrange for S&H's representative to have access to the premises or processes of the Supplier (or any of the Supplier's sub-contractors which S&H has permitted to undertake works pursuant to this Agreement) for the purpose of inspecting any materials, Service, work in progress or finished Goods being supplied to or manufactured for S&H.
- 6.2 Such inspection is not deemed to be acceptance by S&H of the materials, work, Services or Goods inspected and does not affect any obligation of the Supplier under this Agreement.

## **7. Indemnities**

- 7.1 The Supplier must indemnify and keep indemnified S&H from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by S&H and arising directly or indirectly out of or in connection with:

- (c) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods and/or Services under this Agreement and will assume the defence of any and all such suits and will be liable for all costs and expenses;
- (d) the failure of the Goods and /or Services to conform to or fulfil any term or condition of this Agreement;
- (e) the Supplier's performance or non-performance (including the performance or non-performance of any of its employees, contractors or agents) of this Agreement including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or supplier of goods, except where such injury, death, damage or loss arises solely from the wilful misconduct of S&H or S&H employees or agents.

## **8. Notices**

8.1 Any notice delivered in connection with this Agreement shall be deemed to be sufficiently given if sent by email to the email address provided by each party to the other for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addresses to or delivered at the registered office of the relevant party. E-mail notifications will be valid if they can be demonstrated to the satisfaction of S&H to be reliable, accurate and authentic.

## **9. Warranty Period**

9.1 Unless otherwise agreed in writing, the Warranty Period for all Goods and/or Services offered by the Supplier shall be for a period of twelve (12) months from date of completion of work under this Agreement.

9.2 The Warranty Period shall be applied against faulty workmanship or materials supplied under this Agreement, notwithstanding fair wear and tear, provided these Goods and/or Services have been used in the manner to which they were intended.

9.3 If required by S&H in its absolute discretion, the Supplier shall rectify any omission or defect in the Goods and/or Services that exist at the date of completion or which become apparent prior to the expiration of the Warranty Period.

## **10. Intellectual Property Rights**

10.1 The property rights for all patterns and samples shall remain exclusively with S&H. These patterns and samples are to be used solely for S&H.

10.2 The Supplier must not make any unauthorized copies of patterns and samples.

10.3 S&H reserve the right to withdraw all patterns and samples from the Supplier if requested.

10.4 Upon completion of supply of Goods and/or Services, the Supplier must return to S&H all patterns or samples provided by S&H for the purpose of supply of those Goods and/or Services.

## **11. Insurance**

11.1 The Supplier warrants that it has obtained and maintains all relevant insurance cover required by law and by this Agreement including (but not limited to):

- (a) Public and Products Liability Insurance with a minimum limit of not less than ten million dollars any one occurrence;
- (b) Workers Compensation Insurance in accordance with the law of the State in which the work is performed;

- (c) Motor Vehicle Third Party Injury and Property Damage with a minimum limit of not less than ten million dollars any one occurrence; and
- (d) Sufficient product insurance to cover raw materials, required for the manufacture of Goods, supplied by and belonging to S&H and stored by the Supplier. These raw materials must be stored separately from the Supplier's own stock and/or other customers stock and be clearly marked and identifiable. The physical locations of S&H owned stock must be disclosed by the Supplier at all times.

11.2 As and when requested by S&H, the Supplier must provide copies of the Current Certificate of Currencies of insurance.

11.3 If the Supplier fails to effect or maintain any relevant as required by law or under this Agreement, S&H may effect or maintain such insurance and recover from the Supplier as a debt or set off against any product payable to the Supplier, any premium so paid by S&H.

## 12. Termination

12.1 S&H may terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of the Contract.

12.2 Without prejudice to any right or remedy contained in this Agreement, S&H may terminate this Agreement by notice in writing if the Supplier:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of the Bankruptcy Act or the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of the Bankruptcy Act or the Corporations Act;
- (d) has an administrator appointed over all or any of its assets or undertaking;
- (e) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (f) takes any relevant step or has any step taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution of it, or enters an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any relevant application, order or proceeding is not withdrawn within 21 days; or
- (g) is found to have breached any relevant Fair Work Australia employment laws.

12.3 If Goods to be supplied under this Agreement are standard stock of the Supplier, S&H may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without any further obligation except payment (subject to the other terms of this Agreement) for the Goods shipped or delivered prior to termination.

12.4 If this Agreement requires Goods to be manufactured to S&H's specification, then at any time prior to completion of the work performed in fulfillment of this Agreement, S&H may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier must cease all relevant work, except as may be otherwise directed by S&H. Upon termination under this sub-clause, S&H must pay to the Supplier an amount equal to:

- (a) the completed pro-rata amount of the contract price; and
- (b) five percent (5%) of the amount calculated in paragraph (a). The amount described in paragraph (a) shall be agreed by both parties and must reflect the amount completed or committed at the date of termination provided at that date the Supplier is not in breach of any terms of this Agreement, and provided that such amount does not exceed the total

contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.

12.5 Termination of this Agreement does not affect any accrued rights or remedies of either party.

### **13. Breach**

13.1 If the Supplier breaches this Agreement, or if it advises S&H that it is not or will not be able to perform all or any of its obligations under this Agreement, then without limiting any other right or remedy S&H may have, S&H may:

- (a) if it is permitted to do so under this Agreement, terminate this Agreement by notice in writing to the Supplier; and/or
- (b) acquire the Goods and/or Services (or their nearest reasonably available substitute) from a third party or third parties.

13.2 Indemnity for breach

- (a) Any additional cost to S&H of acquiring substitute Goods and/or Services from a third party will be an amount due by the Supplier to S&H immediately upon S&H making demand for that amount.
- (b) The Supplier must pay to S&H the whole of any cost of expense, loss or damage suffered or incurred by S&H as a result of the Supplier's breach of this Agreement.

### **14. Statutory and Employment Obligations**

14.1 The Supplier warrants that it complies with all statutory Occupational Health & Safety regulations and applicable employment conditions for the State or Territory of Australia in which they operate.

### **15. General**

15.2 This Agreement is governed by and construed according to the laws of Western Australia and the parties submit to the jurisdiction of the Courts of Western Australia.

15.3 A party will effectively waive its rights under this Agreement only if it waives those rights in writing signed by that party.

15.4 The Supplier must not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining S&H's prior written consent which may be granted unconditionally or upon such conditions as S&H thinks fit, and may be withheld by S&H in its absolute discretion.