

## GENERAL TERMS AND CONDITIONS OF TRADE

### 1. Interpretation

1. In these Terms and Conditions unless the context otherwise requires:

**“Crane Brothers”** means Crane & Sons Limited;

**“Customer”** means the person or entity contracting with Crane Brothers (including the Customer’s successors and permitted assigns) for the supply of Goods and Services and includes any person acting on behalf of or with the authority of the customer;

**“Default”** means each of the events set out in clause 9.1;

**“Goods”** means all goods and inventory supplied by Crane Brothers to the Customer from time to time, including, but not limited to, Made to Measure Garments, Ready to Wear Garments, all clothing and clothing accessories, footwear, neckwear, headwear, eyewear, jewellery, stationary, bags (for travel, work or casual use) and personal accessories;

**“Log In Account”** means a password/username interface Service provided on the Website to facilitate the making of Orders by Customers;

**“Order”** means a written, electronic or verbal order or instruction from the Customer to Crane Brothers with respect to the purchase of Goods and Services from Crane Brothers;

**“Made to Measure Garments”** means any Good which is made or altered specifically to the Customer’s requirements and/or measurements and includes garments which are made to measure, custom made, bespoke or altered in any way;

**“Payment System”** means the electronic payment system provided on the Website via an industry standard payment gateway as a Service to assist Customers with payment for Orders;

**“Privacy Policy”** means Crane Brothers’ privacy policy as posted on the Website and as amended from time to time by Crane Brothers;

**“Ready to Wear Garments”** means any Good which is unaltered or is sold “off the rack” and can be returned to stock in its unaltered form;

**“Services”** means all services performed by Crane Brothers for a Customer including, but not limited to, design, tailoring, measurement, alterations, orders for material/fabric, Website services and all advice;

**“Terms and Conditions”** means these terms and conditions of trade between Crane Brothers and the Customer incorporating these Terms and Conditions, the Privacy Policy, the Website Terms of Use, quotes, applications for credit, and any other terms and conditions between Crane Brothers and the Customer that have been agreed in writing by the parties;

**“Website”** means the website [www.crane-brothers.com](http://www.crane-brothers.com) (or any similar website) owned and operated by Crane Brothers from time to time; and

**“Website Terms of Use”** means Crane Brothers’ website terms of use as posted on the Website and as amended from time to time by Crane Brothers.

- 1.2 The Goods and Services are supplied on these Terms and Conditions. No variation of these Terms and Conditions is permitted unless Crane Brothers has agreed in writing to such variation. These Terms and Conditions prevail over the terms of any purchase order or any other terms of contract submitted by the Customer.

### 2. Acceptance

- 2.1 Any Order received by Crane Brothers from the Customer for the supply of Goods and Services and/or, as the case may be, the signing of any document provided by Crane Brothers to the Customer in relation to the provision of Goods and Services shall constitute acceptance of these Terms and Conditions. For the avoidance of doubt, such acceptance also constitutes acceptance of the Website Terms of Use and the Privacy Policy.

- 2.2 Where any inconsistency exists between the Terms and Conditions and the Website Terms of Use these Terms and Conditions shall prevail.

### 3. Orders and Cancellation

- 3.1 Crane Brothers reserves the right to accept any Order, or part of an Order, and to limit quantities of Goods and Services relating to any Order without being obliged to provide reasons for such actions. In the event that payment for an Order has been made by the Customer and Crane Brothers rejects an Order or part of an Order or limits the quantities of Goods and Services to be supplied under an Order then Crane Brothers shall return the cleared funds paid by the Customer (in the amount of the rejected Order or part Order or the amount overpaid as a result of the limitation of quantities, as relevant).
- 3.2 The Customer may only cancel an Order which is not covered by the Layby Sales Act 1971 if agreed in writing by Crane Brothers. If any Order is cancelled under this clause 3 the Customer shall remain liable to make payment for any costs incurred by Crane Brothers in connection with such order up to the time of cancellation.
- 3.3 Where a Ready to Wear Garment is on layby, the Customer may at any time before the purchase price of the relevant order has been paid in full, cancel the layby by giving Crane Brothers notice to that effect. Crane Brothers may cancel the layby if an instalment is not paid by the agreed date.
- 3.4 If a Customer cancels a Ready to Wear Garment that is on layby, Crane Brothers will deduct selling costs in the Ready to Wear Garment from the funds already paid by the Customer and refund the remaining funds (less selling costs) to the Customer.
- 3.5 Where a Customer wishes to cancel a layby on a Made to Measure Garment, Crane Brothers reserves the right to recoup a loss of value of 50% of the total value of the Made to Measure Garment plus selling costs from the funds already paid by the Customer. The Customer acknowledges that the Made to Measure Garments are being made especially for the Customer and that such Made to Measure Garments have no resale value.

- 3.6 In the event of a cancellation under clause, 3.5 Crane Brothers will use its reasonable efforts to on sell a Made to Measure Garment. If successful, Crane Brothers will refund the Customer a percentage of the resale cost (less any tax and selling costs). Crane Brothers offers no guarantee that the Made to Measure Garments can be resold.
- 4. Laybys**
- 4.1 Crane Brothers will comply with the Layby Sales Act 1971 (except where the Goods have no resale value in accordance with clause 3.5).
- 4.2 During the agreed layby period, no storage fees will be charged by Crane Brothers. Crane Brothers may extend a layby period in its sole discretion as long as this is negotiated at the time of sale of the Good (e.g. for a special event such as a wedding).
- 4.3 Where Goods are not being delivered to the Customer, all Goods must be collected no later than six weeks after the agreed due date.
- 4.4 The Customer is not able to vary a layby in any way. By way of example, a Customer cannot remove individual Goods from a layby, add further merchandise to an existing layby or convert an existing order into a layby.
- 5. Price**
- 5.1 All prices of Goods and Services are quoted in New Zealand Dollars and are inclusive of GST.
- 5.2 The prices of the Goods and Services are subject to alteration by Crane Brothers without notice subject to clause 5.5.
- 5.3 The Customer agrees to pay all the freight costs on all Goods delivered to the Customer as arranged by Crane Brothers unless Crane Brothers (in its sole discretion) agrees otherwise. For the avoidance of doubt, such freight costs will be factored into the sale price unless otherwise advised by Crane Brothers at the time of sale.
- 5.4 All duties, levies, government charges and taxes, bank fees or any similar charge are for the Customer's account and may be added to the invoice (in Crane Brothers' sole discretion).
- 5.5 Crane Brothers will not increase the price of layby Goods. If the Goods are reduced in price then Crane Brothers will honour the reduction in price on the layby and the Customer will not be expected to pay an original price for the Goods by virtue of placing it on layby.
- 6. Payment**
- .1 For Made to Measure Garments the Customer must pay a minimum 50% deposit on the quoted sale price. The balance of the sale price for Made to Measure Garments must be paid in full over a period of four weeks from the date that Crane Brothers advises the Customer that the Made to Measure Garments are ready for collection/delivery (unless otherwise agreed by Crane Brothers in its sole discretion).
- .2 For Ready to Wear Garments the Customer must pay a minimum 30% deposit on the quoted sale price. The balance of the sale price for Ready to Wear Garments must be paid in full over a period of four weeks from the date of the sale (unless otherwise agreed by Crane Brothers in its sole discretion).
- .3 No alterations or finishing work will be done by Crane Brothers until a minimum of 50% of the sale price of the Goods has been paid to Crane Brothers.
- .4 All Goods must be paid for in full prior to collection from, or delivery by, Crane Brothers.
- .5 All Goods remain the property of Crane Brothers until payment in full is made.
- .6 Where the Customer purchases Goods and Services from Crane Brothers via a Log In Account (in accordance with clauses 6.1 and 6.2) payment shall be made at the time of purchase via the Payment System. Goods will not be shipped for delivery to a Customer that uses a Log In Account until payment in full for such Goods and Services in cleared funds has been received by Crane Brothers.
- .7 In the event that payment is not made by the due date then the Customer is in breach of these Terms and Conditions and Crane Brothers may take action under clause 9. Crane Brothers may also remove any price discounts provided at the time of Order should payment not be forthcoming in the time frame specified in accordance with clauses 6.1 and 6.2.
- .8 Payment shall be made by the Customer in cleared and immediately available funds, without set-off, counter-claim, deduction or withholding, except as is permitted by law.
- 7. Supply and Delivery**
- 7.1 If it is agreed that a Customer is not going to collect the Goods, Crane Brothers is to organise the delivery of Goods (unless otherwise agreed in writing) to the Customer at the Customer's address as notified by the Customer to Crane Brothers at the time of placing the Order. If no address was supplied at the time of placing the Order then it will be for the Customer to collect the Goods from Crane Brothers.
- 7.2 Any completion times or delivery times specified by Crane Brothers shall be approximate only and Crane Brothers shall not be liable for any loss or damage suffered or incurred by the Customer or by any third party as a result of any delay by Crane Brothers in completing or delivering the Goods and Services.
- 7.3 If it becomes impracticable for Crane Brothers to supply or complete any Goods and Services ordered by the Customer, Crane Brothers shall use reasonable endeavours to obtain a substitute product reasonably suited for the Customer's requirements, and may offer to supply that product in substitution, at Crane Brothers' normal price of that substituted product. The Customer shall be free to accept or decline that offer. The Customer shall have no claim against Crane Brothers in the event that it is impracticable for Crane Brothers to supply or complete Goods and Services or a substitute product. For the avoidance of doubt, a substitute product includes fabrics or materials used to make Goods.
- 8. Risk**
- 8.1 All Goods held by Crane Brothers are insured by Crane Brothers.

- 8.2 All Goods in transit are covered by Crane Brothers marine insurance policy as well as the Carriage of Goods Act 1979 until delivery is effected in accordance with clause 8.3.
- 8.3 Notwithstanding that Crane Brothers retains ownership of the Goods until payment is made in full, all risk in the Goods passes to the Customer on delivery to the Customer's address in accordance with clause 7.1 (or deemed delivery) or upon uplift by the Customer (as applicable).
- 8.4 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Crane Brothers is entitled to receive all insurance proceeds payable in respect of the Goods. This is without limitation to Crane Brothers' other rights against the Customer under these Terms and Conditions and at law.

## 9. Default and Consequences of Default

- 9.1 Each of the following shall constitute a Default by the Customer:
- (a) Non payment of any sum by a due date;
  - (b) The Customer intimates that it will not pay any sum by a due date;
  - (c) Failure by the Customer to comply with any obligations imposed on it under these Terms and Conditions, the Website Terms of Use and the Privacy Policy;
  - (d) Where Crane Brothers has reasonable cause to believe that the information which the Customer has supplied pursuant to the Privacy Policy is incorrect or no longer correct, and the Customer fails to satisfactorily correct this information within five business days of a request being made by Crane Brothers;
  - (e) Any Goods are seized by any other creditor of the Customer;
  - (f) Any Goods are materially damaged after delivery to the Customer and before payment in full has been made by the Customer;
  - (g) The Customer is declared bankrupt, is placed in liquidation or voluntary administration or a receiver or administrator is appointed to any of the Customer's assets; or
  - (h) A material adverse change in the financial position of the Customer occurs (as reasonably determined by Crane Brothers).
- 9.2 If a Default occurs all amounts owing by the Customer shall be immediately due and payable and Crane Brothers shall be entitled to enforce all rights available to it under these Terms and Conditions, at the cost, risk and responsibility of the Customer in all respects.
- 9.3 If the Customer fails to make payment of any amount by the due date, interest (calculated daily from the due date until the date that payment is made in full to Crane Brothers) shall accrue and be payable on the overdue amount at the rate of 2% per calendar month. Such interest shall compound monthly at such a rate after as well as before any judgment.

- 9.4 If the Customer defaults in payment of any amount when due, the Customer shall indemnify Crane Brothers from and against all costs and disbursements incurred by Crane Brothers (including solicitor/client costs on a full indemnity basis and collection agency costs), arising from, or consequent on, enforcement and/or collection of the overdue amount.
- 9.5 If a Default occurs, then without prejudice to any other rights of Crane Brothers under these Terms and Conditions or at law Crane Brothers may, in its sole discretion:
- (a) Suspend or terminate the supply of Goods and Services to the Customer and any of Crane Brothers' other obligations under these Terms and Conditions.; and/or
  - (b) Cancel all or any part of any Order of the Customer which remains unperformed.
- 9.6 Crane Brothers will not be liable to the Customer for any loss or damage the Customer suffers as a result of any exercise by Crane Brothers of its rights under this clause 9.
- 9.7 Crane Brothers' rights under clause 9 are in addition to and not in substitution for any other rights Crane Brothers may have at law.

## 10. Consumer Guarantees Act 1993

- 10.1 Where the Customer is not a "Consumer" (as that term is defined in the Consumer Guarantees Act 1993) or where the Customer acquires or holds themselves out as acquiring Goods for the purpose of a business then:
- (a) The provisions of the Consumer Guarantees Act 1993 shall not apply; and
  - (b) The only warranties, guarantees or undertakings Crane Brothers gives to the Customer in relation to the Goods and Services (whether in relation to quality, fitness for purpose or otherwise) are those which are expressly stipulated by Crane Brothers to the Customer in writing.
- 10.2 Where the Customer is a "Consumer" (as that term is defined in the Consumer Guarantees Act 1993), and is not purchasing Goods for the purpose of a business, then notwithstanding anything contained in these Terms and Conditions the Customer shall have the rights conferred on Consumers by the Consumer Guarantees Act 1993.

## 11. Returns

- 11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of such inspection notify Crane Brothers of any alleged defect, shortage in quantity, damage or failure to comply with any quotation or description agreed in writing by Crane Brothers ("the Alleged Defect"). The Customer will supply information to Crane Brothers by email to [info@crane-brothers.com](mailto:info@crane-brothers.com) or calling 09 377 5335 regarding the Alleged Defect and the corresponding invoice number for the Goods affected.
- 11.2 The Customer shall afford Crane Brothers an opportunity to inspect the Alleged Defect within a reasonable time of the Customer notifying Crane Brothers of the Alleged Defect.

11.3 If the Customer shall fail to comply with clauses 11.1 and 11.2, the Goods provided shall be deemed to be free from any defect, damage or failure to comply with any description or quotation.

11.4 For any Alleged Defect which Crane Brothers has agreed in writing that the Customer is entitled to reject the Goods, Crane Brothers' liability is limited to either (at Crane Brothers' discretion) replacing or repairing the relevant Goods or providing the Customer with a credit note.

11.5 Returns of Goods will only be accepted by Crane Brothers if:

- (a) The Customer has complied with the provisions of clause 11.1 or Crane Brothers has agreed in writing to accept the return of the Goods; and
- (b) The Goods are returned at the Customer's cost within five (5) days of delivery (or deemed delivery); and
- (c) The Goods are returned in the condition in which they were delivered.

## 12. Intellectual Property

12.1 The Customer acknowledges that Crane Brothers is the sole owner (or licensee) of all intellectual property (including all trade marks, brands, trade names, business know how, ideas, methodologies, routines, systems and processes) which:

- (a) Relates to or arises, directly or indirectly, out of the Goods and Services supplied or completed by Crane Brothers;
- (b) Is developed or contributed to by Crane Brothers in relation to any information, or documentation supplied by Crane Brothers to the Customer;
- (c) Includes all information and materials on the Website; and
- (d) Arises as a result of Crane Brothers performing any other work for the Customer.

.2 The Customer acknowledges that the intellectual property referred to at clause 12.1 is to remain the sole property of Crane Brothers (or its licensors) and that Crane Brothers does not give the Customer any ownership of, or any other intellectual property interest in the same except where Goods and Services are supplied to a Customer for the purpose of resale then the Customer will be deemed a licensed reseller of those Goods to the public in New Zealand.

## 13. Log In Account use

.1 This clause 13 governs the use of Log In Accounts on the Website used by Customers. The Customer acknowledges that it is responsible for its Log In Account.

.2 When setting up a Log In Account each Customer must create a username and a password for the purpose of making Orders for Goods and Services.

.3 The Customer is the sole controller of any data inputted through use of the Log In Account, and it is the Customer's sole responsibility to ensure the necessary compliance with and to adopt all security measures required in relation to the Log In Account.

.4 The Customer is solely responsible for maintaining and safeguarding access to the Log In Account. Should the Customer suspect its Log In Account has been compromised, it is the Customer's sole responsibility to take immediate action to protect its Log In Account. In addition, the Customer must notify Crane Brothers immediately and Crane Brothers will be entitled to take such action as it considers appropriate (which may, without limitation, include closing the Log In Account or changing the username and/or passwords).

.5 A Log In Account will be deemed inactive if there has been no successful login to the Log In Account for a twelve (12) month period. Inactive Log In Accounts will be deleted from Crane Brothers' system without notice. Upon deletion of a Log In Account, any stored information may be lost and may become permanently unrecoverable.

.6 Each time the Log In Account is accessed with the Customer's username and password Crane Brothers will act on any instructions given to it or transactions initiated and allow access to the Log In Account, whether or not the person using the username and password is authorised to issue or initiate the instructions or transactions or access the Log In Account. Crane Brothers need not and will not make any further inquiries to verify the authorisation, instructions or transactions or any access to the Log In Account and will assume that the Customer has authorised all access to the Log In Account.

.7 A password must be kept confidential and must not be disclosed to anyone else including family and friends, nor other affiliates of the Customer, nor written down nor stored in a file on a computer, or autosaved as passwords.

.8 A password must not relate to any known personal information about the Customer, including, but not limited to, birthdates, telephone numbers, drivers license number or family member's names, and must exclude obvious or sequential numbers and letters.

.9 The security of a password is totally the responsibility of the Customer. To the extent permitted by law, Crane Brothers will not be held accountable nor responsible for any claim or loss that results directly or indirectly, from any unauthorised use or misuse of the password. The Customer will be required to indemnify Crane Brothers for any loss suffered by Crane Brothers from any such wrongful use or misuse of the password.

.10 As soon as the Customer discovers that its password has been lost or stolen, or there has been an unauthorised use of the Log In Account, or another person knows (or might know) the password, the Customer must either:

- (a) Notify Crane Brothers by calling its phone service on 09 377 5335, emailing Crane Brothers at [info@crane-brothers.com](mailto:info@crane-brothers.com) or calling into the Crane Brothers office at Level 2, 5 High Street, Auckland; or
- (b) Change the password by using the Log In Account, and following the directions given on the Website.

.11 Any breach of the Terms and Conditions, Website Terms of Use or the Privacy Policy may result in the suspension and/or termination of the Log In Account in the sole discretion of Crane Brothers.

.12 Crane Brothers reserves the right to terminate or suspend a Log In Account at any time without any requirement to give prior notice to the Customer.

#### **14. Limitation of Crane Brothers' Liability**

14.1 To the extent legally permitted, and subject only to clause 10:

- (a) All warranties and representations implied by customary practice, at law, or under statute, are excluded;
- (b) Crane Brothers' liability in connection with any Goods and Services is limited to the refund of all sums actually paid by the Customer to Crane Brothers for the relevant Goods and Services. In no event shall Crane Brothers' liability to the Customer exceed such amount; and
- (c) Crane Brothers shall not be liable in contract, tort (including negligence), or otherwise for any direct or indirect damage, economic loss, or consequential or other loss whatsoever in respect of or arising out of Goods and Services provided by Crane Brothers, use of the Website, infringement of any intellectual property or any act or omission of Crane Brothers.

14.2 The information on the Website or contained with the Goods and Services is supplied on the condition that the Customer will make its own determination as to the accuracy and usefulness of the information. Crane Brothers is not responsible for decisions the Customer makes as a result of information on the Website or contained with the Goods and Services or any subsequent loss or damage to any person as a result of the decisions of the Customer.

#### **15. Indemnity**

15.1 The Customer irrevocably and unconditionally agrees to indemnify Crane Brothers from and against all losses, costs (including solicitor/client costs on a full indemnity basis), expenses, claims, proceedings and actions suffered or incurred by, or brought against, Crane Brothers as a result of or in connection with any breach of the Terms and Conditions, the Website Terms of Use or the Privacy Policy.

#### **16. Miscellaneous**

- .1 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.
- .2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.
- .3 Crane Brothers may assign its rights under these Terms and Conditions and under any contract formed with the Customer and may sub-contract all or any part of its rights and obligations, in each case without the Customer's consent.
- .4 Crane Brothers reserves the right to review and amend these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which Crane

Brothers uploads the amended or revised Terms and Conditions on the Website.

- .5 Crane Brothers shall not be liable for any default or breach of these Terms and Conditions due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond Crane Brothers' reasonable control.