

# IWS Australia Pty Ltd

## Buying Group

ABN: 27 154 481 035

## New Members

**THIS CONTRACT** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2018

**BETWEEN** IWS Australia Pty Ltd of 520 Swift Street ALBURY New South Wales 2640 ('IWS')

**AND** The party listed in the Schedule ('New Member')

### BACKGROUND

- A. IWS has established a buying group for the purchase of various clothing, foot wear, PPE and associated items for resale at retail.
- B. The terms of operation of the IWS Buying Group are set out in the rules.
- C. The New Member wishes to join the IWS Buying Group.

### OPERATIVE PART

- 1. In this Contract 'Rules' means the rules of the IWS Buying Group attached to this Contract as amended from time to time.
- 2. IWS agrees that the New Member shall be a member of the IWS Buying Group.
- 3. The New Member agrees to be bound by the Rules.
- 4. IWS agrees to continue operating the IWS Buying Group under the Rules.

## The Schedule.

New Member details:

<b>Member Company Name:</b>	
<b>Member Name:</b>	
<b>Address of Company:</b>	
<b>Trading Name:</b>	
<b>Address of Store:</b>	
<b>Director/s:</b>	
<b>ABN:</b>	

## Execution.

Signed for and on behalf of:

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IWS Australia Pty Ltd

**Name:**

**Title:** Director

**Date:**

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**Member Company Name:**

**Member Name:**

**Title:**

**Date:**

In the presence of:

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**Name:**

**Title:**

**Date:**

# IWS Australia Pty Ltd Buying Group

## Operating Rules

In these Rules IWS means IWS Australia Pty Ltd of 49 Wynyard Street, Tumut, New South  
Wales

### BACKGROUND

- D. IWS has established a buying group for the purchase of various clothing, foot wear, PPE and associated items for resale at retail called the IWS Buying Group.
- E. IWS and the Current members want to amend the terms of their Contract by replacing that Contract with these rules.
- F. IWS wants to admit new members to the IWS Buying Group.
- G. Membership of the IWS Buying Group entitles its members to purchase goods from Preferred Suppliers on certain terms and conditions (in these rules referred to as 'IWS Trading Contracts').

### RULES

#### 1. INTERPRETATION

These rules are governed by the laws of New South Wales and the members submit to the non-exclusive jurisdiction of the courts of that state. In the interpretation of these rules:

- 1.1 Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or Contracts also mean those documents or Contracts as changed, novated or replaced, and words denoting one gender include all genders;
- 1.2 Grammatical forms of defined words or phrases have corresponding meanings;
- 1.3 If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day; and
- 1.4 Obligations under this Contract affecting more than one party bind them jointly and each of them severally.

1.5 In these rules:

- 1.5.1 'Current member' means those members of the IWS Buying Group who were members at 1 March 2016.
- 1.5.2 'New Member' means those members who join the IWS Buying Group after 1 March 2016.
- 1.5.3 'Members' means all Current members and new Members.
- 1.5.4 'Preferred Supplier' means a Preferred Supplier with whom IWS holds a Trading Contract.
- 1.5.5 'Retail Outlet' includes sales made over the internet from a location that is not a retail store.

**2. MEMBERSHIP**

- 2.1 Membership of the IWS Buying Group provides access for each member to the buying power, national branding and the additional benefits generated through the collective volume and expertise of the members.
- 2.2 A member becomes a member of the IWS Buying Group when the member executes an Contract to belong to the Group, to abide by these rules and pays the membership fee.
- 2.3 Financial reports for IWS are not made available to members.
- 2.4 A member will, when joining the IWS Buying Group, pay to IWS the non-refundable current annual membership fee. At 1st July 2018 the current annual membership fee is \$2,689.42 + GST per retail outlet conducted by the member. Direct Debit by Monthly payments.
- 2.5 IWS will adjust membership fees annually at 1 July in line with CPI increases measured at the preceding March quarter.
- 2.6 Members will pay the current annual membership fee per retail outlet conducted by the member.
- 2.7 Annual membership fees will be due on the 1st July each year and will be payable monthly by direct deposit.
- 2.8 A new member who pays the annual membership fee on joining will receive a credit on the next year's membership fee for that period of the previous year that the member was not a member.
- 2.9 Members with a second retail outlet will enjoy a 25% discount for that retail outlet and members with three or more retail outlets will enjoy a discount for each store equivalent to 50% of the total fee payable for the first store.
- 2.10 Membership starts on the date a member joins the IWS Buying Group.

### **3. THE OBLIGATIONS OF IWS**

- 3.1 IWS has and will continue to negotiate IWS Trading Contracts with Preferred Suppliers of clothing, foot wear, PPE and associated items for resale at retail. The IWS Trading Contracts will disclose payments by a Preferred Supplier to IWS and will set the terms upon which the Preferred Supplier will supply goods to members.
- 3.2 The IWS Trading Contract with each Preferred Supplier will include terms governing such of the following issues as IWS considers appropriate for each Preferred Supplier:
- Rebates Pricing
  - Payment terms
  - Settlement discounts
  - Advertising assistance
  - Freight arrangements
  - Long term incentives
- 3.3 IWS will make available to members a list of Preferred Suppliers and the terms of the IWS Trading Contract negotiated with each Preferred Supplier.
- 3.4 IWS will update the list as changes occur.
- 3.5 IWS will allow members to use the IWS Trading Contracts it has negotiated with Preferred Suppliers.
- 3.6 Each quarter IWS will account to members for any rebates received from Preferred Suppliers due to members. IWS will provide to each member a report detailing the rebate and the purchases from each Preferred Supplier. IWS will make payments of the rebates by direct deposit to the bank account nominated by the member. Members acknowledge that it can take up to 85 days after the end of a quarter for reports and payments to be made.
- 3.7 IWS will do all things reasonably required to obtain payment from each Preferred Supplier of any rebates or other amounts due to IWS pursuant to its IWS Trading Contract. The member expressly acknowledges that IWS will not be liable to the member in the event of any failure to pay or other loss suffered due to the act or omission of a Preferred Supplier.

### **4. THE OBLIGATIONS OF MEMBERS**

- 4.1 Members will comply with the rules of membership as advised from time to time by IWS.
- 4.2 Members will attend at least two (2) out of three (3) of the member Conference/Trade Fairs that are organised by IWS and held in/about September each year.
- 4.3 Members will ensure that any trading account held with any Preferred Supplier is properly maintained in accordance with its terms and conditions and in particular that all amounts payable are paid by their due dates.
- 4.4 Members will not attempt to vary the terms and conditions of trading that it enjoys with any Preferred Supplier under an IWS Trading Contract.
- 4.5 Members agree that all rebates due from a Preferred Supplier will be paid to IWS and paid by IWS to the member in accordance with these rules.

- 4.6 Members will not use the IWS name or logo without prior permission from IWS.
- 4.7 Members will not reveal to any other person or corporation (except if required by law) any information regarding or relating in any way to an IWS Trading Contract and in particular regarding the terms and conditions applicable to each Preferred Supplier. This obligation will apply during the period of membership and for 2 years after it ends.
- 4.8 Members will use their best efforts in the conduct of their business to maximise the sales of goods that are available to them from the Preferred Suppliers under the IWS Trading Contracts.
- 4.9 Members will directly Contract with each Preferred Supplier that it chooses to purchase from on terms including those negotiated as part of an IWS Trading Contract.
- 4.10 Members will indemnify and keep indemnified IWS against any liability to any Preferred Supplier by a member in any way arising out of the member's arrangement with any Preferred Supplier.
- 4.11 Members agree that in respect of all payments made by the Preferred Supplier to IWS in respect of rebates, long-term incentives or other member payments:
- IWS can issue tax invoices in respect of those supplies;
  - The member will not issue tax invoices in respect of those supplies; and
  - The member is registered for GST and will notify IWS immediately upon ceasing to be so registered.
- 4.12 IWS is registered for GST and will notify the member immediately upon ceasing to be registered or upon ceasing to satisfy the requirements of the determination or other approval enabling it to so issue tax invoices.
- 4.13 IWS is appointed the agent of all members for the purposes of rebate administration and Preferred Suppliers may issue adjustment notes to IWS in respect of supplies made to members.
- 4.14 All members will redirect approaches from other suppliers to IWS. No negotiations will be made by members on behalf of IWS.

## **5. PREFERRED SUPPLIERS**

- 5.1 IWS will notify each Preferred Supplier once a member has joined the IWS Buying Group, and each member will then liaise directly with those Preferred Suppliers in relation to ordering, deliveries, credit facilities, price lists and promotional or advertising material that may be available.
- 5.2 Each member will satisfy the trading requirements of each Preferred Supplier the member decides to buy from. For a credit trading facility this may require:

- A signed credit application
- A signed Directors Guarantee
- A bank guarantee supporting credit limit.

- 5.3 All negotiations in relation to products offered by Preferred Suppliers will be conducted by IWS.
- 5.4 IWS will make all decisions for altering or introducing new Preferred Suppliers to the IWS Buying Group.
- 5.5 The price lists and discount structures which relate to the Preferred Suppliers will remain confidential at all times and will not be shown to any non-member.
- 5.6 All supply Contracts will run for a minimum twelve-month period. Existing supply contacts can be extended annually at the discretion of IWS. Alternatively, tenders will be called from all current and potential Preferred Suppliers.

## **6. PREFERRED SUPPLIER NON-PERFORMANCE**

- 6.1 There may be occasions where a Preferred Supplier fails to meet the expectations of some or all members relative to supply to their product range. Where these performance issues with any Preferred Supplier exist or continue, an IWS Preferred Supplier Non-Performance Notification form should be used.
- 6.2 These forms should be used in the following situations:
- 6.2.1 When a problem exists with any Preferred Supplier and a satisfactory resolution or commitment has not been reached or received after direct contact has been made by the member to that Preferred Supplier.
- 6.2.2 When following a satisfactory Contract in relation to any issue or problem raised with any Preferred Supplier has been reached and the Preferred Supplier has failed to carry out that Contract.
- 6.2.3 Where any problem or issue with a Preferred Supplier is considered substantial and warrants notification to IWS for its follow up and action.
- 6.3 These forms are to be emailed by any member to the appropriate Preferred Supplier and to IWS. The Preferred Supplier should be asked to investigate the issues raised by the member and to provide a response on the bottom section of the form and to email that response to both the member and IWS.
- 6.4 Members will keep all forms submitted and received back from Preferred Suppliers on file at their business.

6.5 This procedure will ensure a quick response from Preferred Suppliers while ensuring IWS is aware of any such issues and where necessary initiate the appropriate actions.

6.6 Members will make all relevant staff aware of this procedure.

## **7. AREAS OF OPERATION**

7.1 In major metropolitan and regional areas there may be multiple members and their areas for membership may be shared or their boundaries overlap in certain regions. This will only occur with the approval of the IWS where it is considered that this would not adversely affect those members by placing them in close proximity and direct competition to each other. Should such a situation occur, and where discussions between all parties concerned fail to resolve the issues of concern, the IWS reserves the right to, where possible, review the boundaries for the relevant member's area of operations and/or consider to and consequently withdraw the membership of one of the parties involved.

7.2 Any such decision will be made in the best interests of the IWS Buying Group.

## **8. IWS CONFERENCES**

8.1 IWS will hold meetings annually with members to enable members to discuss the operation of the IWS Buying Group generally and the IWS Trading Contracts in particular.

8.2 A meeting will be held in approximately September each year and a second meeting in approximately February /March. Each meeting may be in a different location, chosen with consideration to the varied locations of members.

8.3 All travel and accommodation expenses incurred in relation to conferences are the responsibility of each individual member company to organise and pay.

## **9. GROUP PRINCIPLES**

9.1 All members will at all times protect and promote the image of IWS, the IWS Buying Group its members and its products.

9.2 All business transactions and marketing activities will be conducted in a professional and ethical manner to ensure the outstanding reputation of IWS and the IWS Buying Group is maintained in the market place.

## **10. MAINTAINING GROUP MEMBERSHIP**

10.1 Membership of IWS is granted based on the current company structure of ownership, control and business operations of a member at that time. Any changes in part or in whole of the ownership of the member does not automatically transfer membership of IWS.

10.2 Where a transfer of shareholding in a member company occurs, then that company will be required to apply for new membership by preparing a submission that discloses the new company structure to IWS.



10.3 An assessment will then be made based on this submission and a new letter of offer prepared for signing by all parties if membership is granted.

10.4 Should the control of the member or the main focus of the business operations change in such a way that it becomes detrimental and in direct competition to any other member, then IWS may, where prior discussions have failed to resolve the issue, review and if necessary withdraw the membership of the member involved.

## **11. CANCELLATION OF MEMBERSHIP**

11.1 IWS may cancel the membership of any member for breach of these rules.

11.2 The procedure for the cancellation of membership for breach of these rules will be:

11.2.1 A verbal warning will be issued to the member by IWS clearly explaining the breach and restating that all aspects of the rules need to be complied with for future membership to continue. A specified time frame will be set after discussions with the member for the non-compliance to be rectified.

11.2.2 Should the member repeat the breach then written notification by IWS will be forwarded to that member, clearly outlining the breach and advising the member that any future breach may jeopardise future membership. A specified time frame will be set by IWS after discussions with the member and included in the written notification for the breach to be rectified.

11.2.3 Should a further breach occur IWS may send written notification to that member that membership of IWS Buying Group has been cancelled effective from that date.

11.3 Where membership of IWS Buying Group has been cancelled, all rights and privileges which are attributable to membership will immediately cease.

11.4 In the event that the membership of IWS Buying Group is cancelled, all signage and promotional material which promotes this name will be removed from the member's premises, and all information and price lists obtained through membership will be returned to IWS and remain strictly confidential.

11.5 IWS may withhold any rebates accrued during membership for that member, and

- Use those rebates to offset any direct costs incurred by IWS during that membership; and
- Pay all or part of the rebates to any Preferred Supplier owed money by that member for goods purchased under any IWS Trading Contract.

11.6 Where a member resigns from IWS Buying Group the requirements listed above in 11.4 will apply to that member and be effective from the date the written resignation is received.

## **12. CHANGES TO THE RULES**

12.1 These rules may be amended by IWS at any time when IWS decides that it is in the best interests of the IWS Buying Group to do so.

- 12.2 IWS will give written notification to members of the amended rules.
- 12.3 The amendments will take effect on the expiry of one calendar month from the date the written notification is sent to members.
- 12.4 A member who is not agreeable to the amended rules may resign their membership.
- 12.5 Any member who continues to place orders with Preferred Suppliers pursuant to IWS Trading Contracts will be taken to have agreed to the amendments to the rules.

### **13. GENERAL**

- 13.1 Members are not the agent, servant, partner, employee or legal representative of IWS for any purpose at all. Nor is IWS the agent, servant, partner, employee or legal representative of any member for any purpose.
- 13.2 IWS will not be liable for, and the member will keep IWS indemnified against any loss, liability, claim, demand, expense, penalty, and damage or cost arising from or incurred as a result of the member's relations with any Preferred Supplier, customer, other members or any third parties.
- 13.3 Members will not make any representations, statements or warranties about their membership or the IWS Buying Group without the prior written permission of IWS.
- 13.4 Members will not make purchases or incur any debt or liability whatsoever on behalf of IWS and members will not use IWS's name or logo at all in the conduct of its business without the prior written authority of IWS.
- 13.5 Members will provide to IWS their street address, postal address, email address, phone number and facsimile number and shall keep that information updated from time to time.
- 13.6 A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:
  - 13.6.1 Delivered personally; or
  - 13.6.2 Posted to their address when it will be treated as having been received on the second business day after posting; or
  - 13.6.3 Faxed to their facsimile number when it will be treated as received when it is transmitted; or
  - 13.6.4 Sent by email to their email address when it will be treated as received when it enters the recipient's information system.