

TERMS AND CONDITIONS

- 1 GENERAL**
- (a) These terms and conditions apply to all orders placed with and products and services (**Products**) supplied by Cospak Limited (**Supplier**). Any quotation or tender by the Supplier shall be deemed to be subject to these terms and conditions.
- (b) Unless otherwise agreed, these terms and conditions constitute the whole contract between the Supplier and the Customer and shall supersede all previous communications either oral or written. All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by the Supplier or contained in any catalogues, price lists or advertisements are by way of general description only of the Products and shall not form part of this contract.
- (c) No term or condition contained in the Customer's acceptance or order shall add to, amend or delete these terms and conditions or any of them unless expressly agreed in writing by the Supplier.
- (d) Notwithstanding clause 1(a) the Supplier may alter or replace these terms and conditions at any time. All orders placed subsequently by the Customer shall be upon the altered or replaced terms and conditions.
- 2 PRICES AND ORDERS**
- (a) Unless otherwise agreed, prices are subject to alteration without notice and the price payable by the Customer shall be the price ruling at the time the Products are delivered in accordance with clause 4 and prices quoted are based on present rates and costs of material, labour, freight, insurance, customs agents and carriers' fees, government tariffs, duties and taxes and shall be subject to increase in respect of any variation in such rates or costs or the method of assessment of the same.
- (b) Prices quoted are based on the full quantities specified and do not necessarily operate pro rata for any greater or lesser quantities.
- (c) Prices are stated exclusive of GST. Unless stated otherwise, in addition to the price stated, the Customer shall pay any GST or other taxes, insurance, freight and handling charges in relation to the sale and delivery of the Products.
- (d) Any quotation by the Supplier is not and shall not be construed as an offer capable of acceptance or as creating an obligation to sell.
- (e) No order shall be binding on the Supplier until accepted in writing by the Supplier or a person authorised on its behalf.
- (f) The Supplier will not accept return of or give credit for any Products supplied under this contract.
- (g) If the Customer cancels or alters any order or part order for special Products or standard Products with special materials at any time after the Supplier has received the order then the Supplier reserves the right to charge to the Customer the cost of any special Products or materials already acquired for the order together with the costs of any labour and tooling expended to the date of such cancellation or alterations. No returns of special Products will be accepted.
- (h) In the event of the suspension of manufacture or supply on the Customer's instruction, or lack thereof, or due to the inability of the Customer to accept the Products for any reason on or after the date on which they are ready for delivery, the Customer shall be liable for all extra costs and losses thereby incurred by the Supplier.
- (i) The Supplier shall not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acceptance, acknowledgement or invoice and the same shall be subject to correction.
- (j) Orders supplied are subject to variation in quantity of up to 10%. No order may be cancelled or payment withheld or delayed where the quantity of Products delivered is within such variance.
- 3 TERMS OF PAYMENT**
- (a) Payment in full shall be made in accordance with the terms and within the times stated on each invoice. Payment must be made in cash without deduction or setoff of any kind and in such other manner as the Supplier shall stipulate from time to time.
- (b) The Supplier may at any time after the Products are delivered in accordance with clause 4 require immediate payment (without the need to make formal demand) or withhold deliveries if the Supplier considers the Customer to be a credit risk.
- (c) Where any payment is not made on the due date, then without prejudice to any other rights or remedies available to the Supplier under these terms and conditions or at law or in equity or otherwise the Supplier may charge interest, by way of liquidated damages, on all overdue accounts at the rate of eighteen percent (18%) per annum calculated on a daily basis from the date on which payment was due until payment is made in full, such interest to accrue both before and after judgment.
- (d) The Customer shall upon demand reimburse the Supplier for all costs (including legal costs on a solicitor/client basis), expenses or other sums reasonably incurred by the Supplier in exercising any right or remedy available to it consequent upon default by the Customer, which sum shall also carry interest at the rate specified above if unpaid within one (1) calendar month of demand having been made.
- (e) The Supplier may in its sole discretion determine the allocation of any payments received from the Customer and, where the Customer defaults in its obligations under these terms and conditions, the Supplier may reallocate such payments as it thinks fit.
- 4 DELIVERY, RISK AND PROPERTY**
- (a) Subject to the provisions of clause 6, the Supplier shall use its best endeavours to deliver the Products at the time requested by the Customer. Unless otherwise agreed in writing the Products shall be delivered to the Customer ex store or works of the Supplier.
- (b) The Supplier may at its discretion agree to act as agent for the Customer for delivery beyond store or works in which case all costs of carriage and insurance shall be paid by the Customer. The Customer shall at the Customer's expense provide labour, cranes or forklifts and reasonable access to point of delivery for offloading of Products without delay as and when required by the Supplier or the carrier.
- (c) Where the Supplier agrees to deliver the Products to the premises of the Customer and where the Supplier contracts with a carrier to do so, delivery of the Products to the carrier in all circumstances constitutes delivery to the Customer.
- (d) Risk of loss in the Products shall pass to Customer upon delivery and the Supplier shall not be liable for any damages caused to the Products whilst they are in transit.
- (e) The Supplier may at its discretion make and invoice partial deliveries against an order and each such delivery shall be a separate sale under these terms and conditions.
- (f) As long as the Customer owes the Supplier any part of the price of Products supplied at any time the Supplier shall retain the legal title in all Products supplied. The Customer shall hold the Products as bailee for the Supplier provided that the Customer shall be entitled to use or resell the Products in its ordinary course of business. The Customer shall keep the Products stored separately during the time the Customer has them in such a way that the Products remain identifiable. The Supplier may enter any premises upon which the Products may be located to inspect and/or take possession of the Products at any time after payment is due.
- (g) If all or any of the Products are wholly or partially attached to, intermingled with or incorporated in any other products the Customer assigns all legal and equitable title to such other products to the Supplier as security for all amounts owed by the Customer to the Supplier and the Supplier may at its sole discretion take possession of and sell or otherwise dispose of such other products or disconnect, retrieve or sever the Products in order to remove them without being liable for any loss or damage caused or any liability incurred thereby and the Customer indemnifies the Supplier for any claims for loss or damage that may be made against the Supplier as a result of the exercise by the Supplier of its rights pursuant to this clause.
- (h) If the Customer resells the Products or any of them before payment is made it shall hold the sale proceeds in trust for the Supplier in a separate bank account such that the sale proceeds are identifiable and traceable and shall account to the Supplier for all moneys owed by the Customer to the Supplier. If the Customer resells the Products or any of them so as to create a debt owed to the Customer, the Customer assigns all legal and equitable title to that debt to the Supplier and the Customer irrevocably appoints the Supplier as its attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in the name of the Customer for the benefit of the Supplier.
- (i) The Customer acknowledges that these terms and conditions create a security interest in all present and after acquired Products and any proceeds of the sale of the Products as security for all of the Customer's obligations to the Supplier pursuant to the Personal Property Securities Act 1999 (**PPSA**) and that the Supplier may register a financing statement to perfect its security interest in the Products in accordance with the provisions of the PPSA.
- (j) The Customer shall provide all information, executed or arrange for the execution of all documents and do all other things that the Supplier may require to ensure that the Supplier has a perfected first ranking security interest in the Products under the PPSA.
- (k) The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Supplier under the PPSA and agrees that as between the Supplier and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125,
- 129, 131, 132, 133 and 134 of the PPSA and where the Supplier has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- (l) The Customer shall immediately upon request by the Supplier, procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers as the Supplier may at any time require.
- (m) The Customer shall immediately notify the Supplier of any change in the Customer's name, address details and any other information provided to the Supplier to enable the Supplier to register a financing change statement if required.
- (n) In addition to any lien to which the Supplier may be entitled by statute or common law, the Supplier shall in the event of insolvency of the Customer or winding up be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in possession of the Supplier at the time such lien arises, to cover the unpaid price of any Products supplied by the Supplier to the Customer.
- 5 INSPECTION AND ACCEPTANCE**
- Upon delivery of Products the Customer shall inspect Products at its expense and give written notice to the Supplier within seven (7) days of delivery of any non-conformity to description or these terms and conditions. Failure to give such notice shall constitute an irrevocable acceptance of the Products by the Customer.
- 6 FORCE MAJEURE**
- The Supplier shall not be liable for failure or delay to deliver the Products due to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier of the Supplier, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority. No such failure or delay shall entitle the Customer to terminate this contract and the Supplier's obligations to the Customer shall be suspended without liability on the part of the Supplier while such cause exists.
- 7 INTELLECTUAL PROPERTY**
- (a) The Supplier owns all copyright and any other industrial property rights in and to all work, art, film, tooling, drawings, specifications, models, photographs, documents and software produced by it in connection with the supply of the Products and services.
- (b) If any Products are supplied to the Customer's design the Customer warrants that the manufacture and supply of such Products will not infringe the intellectual property rights of any third party and the Customer indemnifies the Supplier against any liability in the event that the manufacture and supply of the Products does infringe the intellectual property rights of any third party. In case any dispute or claim is made in relation thereto the Supplier may terminate this contract by notice in writing to the Customer without any liability on the part of the Supplier.
- 8 DEFAULT**
- Upon the happening of any of the following events:
- (i) the commission by the Customer of any act of bankruptcy or the Customer going into liquidation or a petition being presented for the sequestration of the Customer's estate or for the winding up of the Customer; or
- (ii) the Customer being a company is deregistered; or
- (iii) the Customer assigning its property for the benefit of creditors or having a receiver or official manager appointed to any of its assets; or
- (iv) the Customer failing to make any payment to the Supplier on the due date; or
- (v) the Customer being in breach of any of these terms and conditions.
- then in any such event the Supplier shall without prejudice to any other rights or remedies it may have, exercise any one or more of the following rights:
- (i) cease production of the Products;
- (ii) decline to deliver the Products or any balance of the Products still due under this contract;
- (iii) stop any Products in transit;
- (iv) otherwise cease to perform any of its obligations to the Customer;
- (v) terminate this contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by the Customer and / or damages;
- (vi) enter into any premises and possess any Products already delivered and whether or not property in such Products has passed to the Customer in respect of which entry the Customer indemnifies the Supplier for all damages for which the Supplier may be responsible;
- (vii) recover from the Customer the contract price together with default interest in accordance with Clause 3(c) in respect of all Products delivered and for freight storage handling and any other expenses incurred by the Supplier;
- (viii) to sell elsewhere and charge the Customer with any resultant loss.
- 9 WARRANTIES AND LIABILITY OF SUPPLIER**
- (a) To the fullest extent permitted by law all warranties or liabilities imposed or implied whether by law or by statute are expressly excluded. The Customer specifically acknowledges that where it is acquiring the products for business purposes the provisions of the Consumer Guarantees Act 1993 are excluded.
- (b) The Supplier and the Customer agree that they are both in trade and that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are excluded and will not apply.
- (c) The Customer shall assume all risk and liability resulting from the use of the Products either alone or in conjunction with other products or materials even if the Supplier had or should have had prior knowledge of the use to which the products would be put.
- (d) Where the Customer is supplying the Products to a third party for business purposes the Customer shall ensure that in its terms of trade it contracts out of any liability under the Consumer Guarantees Act 1993 and the Customer indemnifies the Supplier in respect of any failure to do so.
- (e) In no case shall the Supplier be liable to the Customer or any other person for any indirect or consequential loss or damage of any kind arising out of or attributable to any breach by the Supplier of these terms and conditions, any warranties or conditions, negligence or otherwise.
- (f) Regardless of the legal basis of any claim of any kind made against the Supplier, the Supplier's maximum liability to the Customer under any circumstances shall not exceed the purchase price paid or payable for the Products supplied by the Supplier which gave rise to that claim.
- 10 CUSTOMER'S RESPONSIBILITIES**
- The Customer is responsible for:
- (a) ensuring that the Products ordered conform to the Customer's requirements and are suitable and sufficient for the Customer's purpose; and
- (b) obtaining any approvals, licences or permits necessary for the performance of this contract; and
- (c) providing all information necessary to enable performance of this contract and for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information; and
- (d) insuring any property that is provided to the Supplier in order to manufacture and supply the Products; and
- (e) ensuring that the Products are used for their intended purpose and within recommended guidelines; and
- (f) filling or arranging for a third party to fill Products supplied and to seal them and ensuring that any contents are compatible with the Products supplied; and
- (g) ensuring that any closure used fits the packaging and does not leak; and
- (h) ensuring that any label required by law is affixed to the Products and that any such label complies with all applicable laws.
- 11 MISCELLANEOUS**
- (a) All notices to be served upon the Customer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Customer. The Customer shall be deemed to have received any notice two (2) days after posting.
- (b) The Customer shall not assign any rights or obligations under this contract without the prior written consent of the Supplier.
- (c) No waiver by the Supplier of any default of the Customer in the performance of any obligation or condition of this contract shall be deemed to be a waiver of that or any other obligation or condition.
- (d) If any provision of this contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- (e) The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one Customer, each Customer shall be bound to the Supplier jointly and severally.
- (f) Unless the Supplier otherwise elects any dispute between the Supplier and the Customer shall be resolved by arbitration in accordance with the Arbitration Act 1996.