

# TERMS AND CONDITIONS OF SALE

"Seller"	means Cospak Pty Ltd ABN 75 099 742 784 or any Related Body Corporate as defined by the Corporations Act.
"Buyer"	means the entity which orders Goods from the Seller or to which Goods are delivered by the Seller.
"Goods"	means the goods purchased or ordered by the Buyer from the Seller.
"GST"	means goods and services tax imposed in Australia by the GST law.
"GST Law"	means a New Tax System (Goods and Services Tax) Act 1999.
"Order"	means an order by the Buyer to the Seller requesting supply of Goods.
"Permitted Security Interest"	means any security interest which the Seller consents to or otherwise agrees in writing with the Buyer will be a Permitted Security Interest for the purposes of these terms and conditions.
"PPSA"	means the <i>Personal Property Securities Act 2009 (Cth)</i> .
"PPSR"	means the Personal Property Security Register.
"PPS Regulations"	means the <i>Personal Property Securities Regulations 2010 (Cth)</i> .
"Purchase Money Security Interest"	that has the meaning prescribed to it in the PPSA.
"Security Interest"	includes any security interest under the PPS Act.

In these terms and conditions, unless the context otherwise requires, the following terms and expressions have the same meanings given to them in the PPSA or the PPS Regulations (as applicable): after-acquired property, circulating asset, collateral, control, commingled goods, financial property, financing change statement, financing statement, possession, purchase money security interest, security agreement and verification statement

- 1. GENERAL**
  - (a) The Order constitutes an offer by the Buyer to purchase goods from the Seller in accordance with these terms and conditions.
  - (b) The Order shall be deemed to be accepted on the earlier of:
    - (i) The date of the Seller's signature on the Order; or
    - (ii) Any act by the Seller consistent with fulfilling the Order.At which point and on which date a contract shall come into existence.
  - (c) The Buyer and Seller shall be bound by these terms and conditions. No term or condition contained in Buyer's order shall add to amend or delete any of these terms and conditions unless expressly agreed in writing by a duly authorised officer of Seller. Additional terms and conditions may be entered into from time to time at Seller's discretion but do not diminish the enforceability of the terms and conditions contained within this document.
  - (d) It is Buyer's responsibility when accepting this contract or ordering to ensure the Goods ordered conform to Buyer's requirements and are suitable and sufficient for Buyer's purpose.
  - (e) Seller will not accept return of or give credit for any Goods supplied under this contract.
  - (f) Any quotation by Seller is not and shall not be construed as an offer capable of acceptance or as creating an obligation to sell.
  - (g) It is the Buyer's responsibility to obtain any approvals licence or permits necessary for the performance of this contract by the Buyer.
  - (h) All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by Seller or contained in catalogues, price list or advertisement are by way of general description only of the Goods and shall not form part of this contract.
  - (i) It is the Buyer's responsibility to provide all information necessary to enable performance of the contract and Buyer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
  - (j) For Orders of a specified quantity of Goods with a non-specified delivery date, in the event that the Buyer does not specify a date within six (6) months of the date of the Order then the delivery date for the Order shall be deemed to be six (6) months from the date of the Order unless otherwise agreed in writing between the Buyer and the Seller.
  - (k) If a Buyer cancels or alters any Order or part Order for Goods with specifications requested by the Buyer or standard Goods with non-standard materials at any time after the Seller has received the Order then without prejudice to any other rights the Seller has against the Buyer the Seller reserves the right to charge the Buyer costs and charges for materials already acquired for the Order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.\*
- 2. PRICE**
  - (a) Prices quoted are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.
  - (b) Prices quoted are exclusive of GST and the Buyer is required to pay any GST payable by the Seller in respect to the supply of Goods at the same time that the price is required to be paid by the Buyer to the Seller.
  - (c) Prices quoted and this contract are based on present rates and costs of material including resin, labour, freight, currency exchange rates 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 occurring during the term of this contract before delivery of the Goods to the Buyer. Otherwise prices quoted shall not be subject to change within 30 days from the date of quotation.
  - (d) In the event of the suspension of manufacture or supply on the Buyer's instruction, or lack thereof, or due to the inability of Buyer to accept the Goods for any reason on or after the date on which they are ready for delivery, Buyer shall be liable for all extra costs and losses thereby incurred by Seller.
  - (e) The Seller shall be entitled to recover from the Buyer an part of the cost of manufacturing a mould for the supply of Goods ordered by the Buyer in the event that the actual quantities ordered by the Buyer are less than the quantity specified as a minimum order necessary to recover the cost of the mould for those Goods, such part being the total cost of manufacture of the mould multiplied by the amount by which the actual quantities of Goods ordered falls short of the minimum order quantity then divided by such minimum order quantity.
- 3. TERMS OF PAYMENT**
  - (a) The Seller may require a deposit on Order and any balance of the price owing must be paid either before or on delivery of the Goods to the Buyer unless the Seller has agreed to provide the Goods to the Buyer on credit terms.
  - (b) Prices quoted are strictly net and payment in full shall be made in accordance with these terms and conditions of sale and within the times stated on either the quotation or the invoice with respect to the Goods sold by the Seller to the Buyer. If the times for payment are stated on both the quotation and the invoice, then the invoice shall prevail to the extent of any inconsistency.
  - (c) Default interest shall be paid by Buyer on overdue accounts calculated on daily balances from the day following the day upon which payment should have been made, at the rate of eighteen (18%) per cent per annum and without any demand being necessary.
  - (d) The Buyer shall upon demand indemnify the Seller or all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by the Seller in exercising any right or remedy available to it upon default by the Buyer, which sum will also carry interest at the rate specified above if unpaid within one (1) calendar month of demand having been made.
- 4. RETENTION OF TITLE, DELIVERY, RISK AND PROPERTY**
  - (a) Unless otherwise agreed in writing the Goods shall be delivered to Buyer ex store or works of Seller.
  - (b) Seller may at its discretion agree to act as agent for Buyer for delivery beyond store or works and all costs of carriage and insurance shall be paid by the Buyer.  
The Seller shall not be liable for any damages caused to the Goods whilst they are in transit. The Buyer shall at the Buyer's expense provide labour, cranes or forklift and reasonable access to point of delivery for offloading of Goods without delay.
  - (c) Where the Seller agrees to deliver the Goods to the premises of the Buyer and where the Seller contracts with a carrier to do so, delivery of the Goods to the carrier in all circumstances constitutes delivery to the Buyer.
  - (d) Delivery of Goods to Buyer or to the carrier at the point of delivery shall constitute delivery to Buyer and upon delivery to Buyer risk of loss shall pass to Buyer.
  - (e) As long as the Buyer owns the Seller any part of the sale price for Goods supplied at any time the Seller shall retain the legal title in all Goods supplied and not yet used or resold. The Buyer shall keep such Goods stored separately during the time he has them in such a way that Goods remain identifiable and shall hold such Goods as bailee for the Seller. When such Goods are filled or used, even with loss of identity, legal title to the resultant product shall vest in the Seller.

The Seller has:-

  - (i) the right to re-entry and inspection to support the property reservation; and
  - (ii) the power to repossess when payment is overdue.
  - (f) If the Buyer resells the Goods aforesaid before all moneys payable by the Buyer to the Seller have been paid, the Buyer agrees that it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or received, such proceeds to be kept in a separate account.
  - (g) Seller may at its discretion deliver the Goods ordered by instalments (in which case each instalment is considered a separate agreement for sale) without any liability whatsoever.
  - (h) If after fourteen (14) days from the date on which the Goods are ready for despatch, delivery is delayed for any reason beyond Seller's reasonable control, Seller may store the Goods at its premises or elsewhere and the cost of storage, handling and insurance shall be payable by Buyer on demand by Seller.
  - (i) No delivery may be deferred except with the written consent of Seller.
  - (j) It is further accepted, acknowledged and agreed that:
    - (i) the retention of title clause herein constitutes a security agreement for the purposes of the PPSA which creates a Security Interest in all Goods including any Commingled Goods. It is the intention of the Seller and the Buyer that upon registration of the Seller's Security Interest on the PPSR a Purchase Money Security Interest will result; and
    - (ii) until such time as ownership of the Goods shall pass from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods to the Seller. Upon such notice the Buyer's rights to obtain ownership or any other interest in the Goods shall cease.
- 5. INSPECTION AND ACCEPTANCE**
  - (a) Upon delivery of Goods Buyer shall inspect Goods at their expense and give written notice to Seller within seven (7) days of delivery of an non-conformity to description or the terms and conditions of this contract. Failure to give such notice shall constitute an irrevocable acceptance of the Goods by the Buyer.
  - (b) The Seller reserves the right to apply a restocking fee of 25.00 or 15% of Invoice value (whichever is greater) for Goods returned that have resulted from an error in purchasing by the Purchaser.
- 6. FORCE MAJEURE**

Seller shall not be liable for failure or delay to supply the Goods due in any substantial part 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 Seller, 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 Buyer to terminate this contract and Seller's obligations to Buyer shall be suspended without liability on the part of Seller while such cause exists.
- 7. INTELLECTUAL PROPERTY**

Seller shall not be liable to Buyer or otherwise for any infringement or unauthorised use of any patent, trademark, design, copyright, or any other industrial property right arising out of performance of this contract. In case any dispute or claim is made in respect thereof Seller may terminate this contract by notice in writing to the Buyer without any liability on the part of the Seller.
- 8. DEFAULT**

Upon the happening of any of the following events:

  - (a) Buyer going into administration, receivership or liquidation or;
  - (b) Buyer assigning its property for the benefit of creditors or having receiver or official manager appointed to any of its assets; or
  - (c) Buyer failing to make any payment to Seller on the due date; or
  - (d) Buyer being in breach of any of these terms and conditions,

then in any such event Seller shall without prejudice to any other remedies have the right to:

  - (e) cease production of the Goods; and/or
  - (f) decline to deliver the Goods or any balance of the Goods still due under this contract; and / or
  - (g) stop any Goods in transit; and / or
  - (h) otherwise cease to perform any of its obligations to Buyer; and / or
  - (i) terminate the contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by Buyer and / or damages; and / or
  - (j) enter into any premises and repossess any Goods already delivered and whether or not property in such Goods has passed to Buyer in respect of which entry Buyer shall indemnify and keep indemnified Seller for all damages for which Seller may be responsible; and / or
  - (k) recover from Buyer the contract price together with default interest in accordance with Clause 3(c) of all Goods delivered and for freight storage handling and any other expenses incurred by the Seller; and / or
  - (l) to sell elsewhere and charge Buyer with any resultant loss.
- 9. WARRANTY AND LIABILITY OF SUPPLIER**

To the extent permitted by law, liability of Seller for breach of this contract by the Seller or negligence of the Seller or for breach of any conditions or warranty implied by the Competition and Consumer Act, 2010 and / or the Sales of Goods Act 1896 (as amended) shall be limited to one of the following at the Seller's option:

  - (i) the replacement of the Goods or the supply of equivalent Goods; or
  - (ii) the repair of the Goods; or
  - (iii) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
  - (iv) the payment of the cost of having the Goods repaired.
  - (b) To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negated.
  - (c) Buyer shall assume all risk and liability resulting from the use of the Goods either alone or in conjunction with other Goods or materials even if Seller had or should have had prior knowledge of use to which the Goods would be put.
  - (d) To the extent permitted by law, the Seller is not liable to the Buyer for any indirect or consequential losses, loss of profits or use, any rectification costs or third party claims in connection with providing the Goods.
- 10. MISCELLANEOUS**
  - (a) This contract shall be governed and construed in accordance with the law of the State in which the Goods are delivered.
  - (b) All notices to be served upon Buyer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Buyer. Buyer shall be deemed to have received any notice two (2) days after posting.
  - (c) Buyers shall not assign any rights or obligations under this contract without the prior written consent of Seller.
  - (d) No conduct by the Seller with respect to any default of Buyer in the performance of any obligation or condition of this contract shall be deemed to be a waiver of that or any other obligations or condition.
  - (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 Buyer, Buyers shall be bound to Seller jointly and severally.
- 11. CREDIT ASSESSMENT**
  - (a) If any Goods are supplied to the Buyer on credit, Seller may need to disclose to a credit reporting agency certain information about the Buyer when assessing the Buyer's application for credit and managing the Buyer's account with Seller. The Buyer authorises Seller to disclose such information to a credit reporting agency.
  - (b) The Buyer agrees that Seller may obtain information about the Buyer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Buyer's application to purchase the Goods on credit and collecting any overdue amounts.
  - (c) Seller may refuse to supply the Goods to the Buyer on credit on the basis of Seller's credit assessment of the Buyer.
- 12. PRIVACY**
  - (a) The Buyer acknowledges the Privacy Policy of the Seller on the Seller's website and agrees to Seller collecting, using and disclosing personal information of the Buyer for various purposes, including to:
    - (i) assess creditworthiness in the above paragraph "Credit Assessment";
    - (ii) supply the Goods to the Buyer and the management of the Buyer's account;
    - (iii) communicate to the Buyer about the Goods which Seller or its partners or affiliates may provide to the Buyer;
    - (iv) implement these Terms and any Sales Contract; and
    - (v) comply with relevant laws.
- 13. SECURITY INTEREST**
  - (a) The Buyer hereby acknowledges that these terms and conditions of sale constitute a security agreement which creates a Security Interest in favour of the Seller and in all Goods supplied by the Seller to the Buyer and all after acquired Goods supplied to the Buyer by the Seller (or for the Buyer's account) to secure the payment from time to time for Goods, including future advances. The Buyer agrees to grant to the Seller a Purchase Money Security Interest.
  - (b) The Buyer gives the Seller a Security Interest in all of its present and after acquired property in which Goods supplied or financed by the Seller have been attached or incorporated, including any Commingled Goods and in any proceeds of sale of the Goods.
- 14. GENERAL COVENANTS:**
  - (a) Until such time as payment in full has been received by the Seller from the Buyer in respect to an Order, the Buyer covenants to the Seller not to create, cause or permit to exist any other Security Interest over any Goods the subject of the applicable Order, other than a Permitted Security Interest and covenants that it shall comply with the terms of each Permitted Security Interest binding on it in respect of the relevant Goods from time to time and shall ensure that:
    - (i) there is no increase in the amount secured under a Permitted Security Interest (excluding any part of a Permitted Security Interest which is a purchase money security interest); and
    - (ii) there is no variation to a Permitted Security Interest that increases the collateral the subject of the Permitted Security Interest, other than in the case of a purchase money security interest, without obtaining the prior written consent of the Seller.
  - (b) The Buyer covenants to the Seller that it shall sign anything and do anything the Seller requires to further or more effectively secure the Seller's rights over the applicable Goods or under these terms and conditions. This includes anything the Seller requires in order for it to:
    - (1) register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the relevant Goods created by these terms and conditions and/or any Order;
    - (2) remove any financing statement which is registered against the Buyer or in relation to a Security Interest which is not a Permitted Security Interest; and
    - (3) obtain possession or control of any Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPS Act.
  - (c) The Buyer 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 Seller under the PPSA to the extent permitted by the PPSA and agrees to that as between the Seller and the Buyer, to the extent permitted by the PPSA, the Buyer will have no rights under (or by reference to) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.