

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

Competition and Consumer Act 2010

"Company"	means Cospak Plastics Pty Ltd ABN 44 091 864 952
"Purchaser"	means the entity which orders Goods from the Company or to which Goods are delivered by the company
"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.
"Goods"	means the goods purchased or ordered by the Purchaser from the Company.
"Order"	means an order by the Purchaser to the Company requesting supply of Goods.
"Permitted Security Interest"	means any security interest which the Company consents to or otherwise agrees in writing with the Purchaser will be a Permitted Security Interest for the purposes of these terms and conditions.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"PPSR" means the Personal Property Security Register.

"PPS Regulations" means the Personal Property Securities Regulations 2010 (Cth).

"Purchase Money Security Interest" has that 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.

2. OFFER AND ACCEPTANCE

Any quotation made by the Company is not an offer to sell or to provide Goods and/or services and no order given in pursuance of any quotation shall bind the Company until accepted by it in writing or by the commencement of supply or the provision of services. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order and these terms and conditions shall be deemed to be incorporated in any agreement between the Company and the Purchaser. Any terms and conditions contained in any order offer acceptance or other document of the Purchaser and all representations statements terms conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law. Insofar as Goods or services supplied by the Company are not of a kind ordinarily acquired for personal domestic or household use or consumption, and unless the Purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty implied into this contract by the Competition and Consumer Act 2010 is limited:

- in the case of Goods to any one of the following as determined by the Company:
 - the replacement of the Goods or the supply of equivalent Goods; or
 - the repair of the Goods; or
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired;
- In the case of services to any one of the following as determined by the Company:
 - the supplying of the services again, or
 - the payment of the cost of having the services supplied again.

3. DELIVERY

- Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date the Company shall not be liable to the Purchaser for any loss or damage whatsoever arising even if arising out of the negligence of the Company for failure to deliver on or before the quoted date. The Purchaser shall accept and pay for Goods if and when tendered notwithstanding any failure by the Company to deliver by the quoted date. Written advice to the Purchaser that Goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- To the extent permitted by law the Company shall not be liable to the Purchaser or any other person for any direct or indirect consequential loss. Subject to the provisions of the Competition and Consumer Act 2010 that services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied, the Company shall not be liable to any Purchaser or other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of the Company or any other party, strike or any other industrial action be it of the Company or any other party, strike or any other industrial action be it of the Company or other party, or any other cause whatsoever.
- The Company reserves the right to deliver by installments if delivery is made by installments the Purchaser shall not be entitled:
 - to terminate or cancel the contract; or
 - to any loss or damage whatsoever arising for failure by the Company to deliver any installments on or before the quoted date.
- It is agreed that the Company shall not be responsible for delay in manufacture or delivery caused by, or in any way incidental to an act of God, war, fires, breakages of machinery or strikes or arising out of any other unexpected to exceptional cause, or any cause beyond the Company's reasonable control.
- Any quotation containing a provision to supply Goods "ex stock" is subject to fulfillment of prior orders at the date of receipt of the Purchaser's order.

4. CANCELLATION

Subject to the Competition and Consumer Act 2010, any order may only be cancelled, varied or suspended with the written consent of the Company and in the event of such cancellation, variation or suspension the Purchaser undertakes to reimburse and indemnify the Company for any costs expenses or charges incurred by the Company in preparation for and in the execution of an order which, without limiting the generality thereof, shall include an amount equal to 50 per centum of the net profits to the Company of the order had the order not been cancelled, varied or suspended.

5. QUANTITIES

No claim for shortage of delivery or shortfall or excess in capacity or performance of less than ten per cent of that ordered will be made by the purchaser and in any event shall not exceed the invoiced unit price of the Goods in respect of which the claim is made. Excess delivery of up to ten per cent of quantities ordered will be accepted by the Purchaser and payment made for such excess quantities.

6. DESCRIPTION AND SPECIFICATIONS

- Whilst every effort is made to ensure their accuracy, the descriptions illustrations and material contained in any catalogue price list brochures leaflets or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and save where the Company has accepted an order for Goods specified as so described or illustrated, shall not form any part of any order or agreement or amount to any representation or warranty and save as aforesaid, the use of such description or illustration shall not constitute a contract of sale by description. The Company reserves the right to modify the design of Goods without notice.
- The Purchaser warrants that any Goods manufactured constructed or supplied by the Company which are based in whole or in part upon designs drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent or registered designs. The Purchaser shall indemnify and keep indemnified and hold harmless the Company against any action loss cost claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser that any Goods manufactured constructed or supplied by the Company which are based upon any designs drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgment of the Company for the fitness for any purpose of any Goods so manufactured constructed or supplied.

7. ACCESS

In respect of any work done on the Purchaser's premises or elsewhere other than at the Company's premises it shall, subject to any written agreement to the contrary, be

the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable to the Company failing which the Company shall be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

8. MINIMUM CHARGE

The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company at the date of the invoice.

9. WAIVER

Failure by the Company to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Company may have and shall not and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

10. GUARANTEE AND WARRANTY

To the extent permitted by Law, representations promises statements warranties and conditions regarding any Goods or services supplied by or on behalf of the Company are expressly excluded. The Company shall not be liable for any loss or damage whatsoever and whatsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the Goods manufactured, work executed or services provided by or on behalf of or in any arrangement with the Company or occasioned by the Purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of the Company its servants or agents.

As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Purchaser, the Purchaser shall within fourteen days notify the Company in writing of the same.

The Company's liability shall be limited in all circumstances to the repair or replacement or monetary compensation at the option of the Company of any Goods manufactured by it which are returned only upon the written authority of the Company.

The Company shall not be liable in any circumstances for any:

- defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation repair or alteration (other than by the Company) or accident;
- Any transport installation removal labour or other costs;
- Goods not manufactured by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the Purchaser and the benefit of any claim made by the Company and accepted by the manufacturer of such Goods under a warranty given by the manufacturer.
- Technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the manufacture construction or supply of Goods for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

11. CONTAINERS

Containers (which expression shall include but shall not be limited to, stillages, formers and pallets) in or on which Goods are delivered and for which a deposit charge is made, remain the property of the Company. On the containers return in good order and condition the deposit will be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in good order and condition shall only be refunded in part having regard to their actual condition. Containers will be deemed to be not returned by the Purchaser until received into the Company's stores.

12. INSOLVENCY & DEFAULT

- If the Purchaser makes default in any payment due hereunder:
 - a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
 - a receiver or receiver and manager is appointed of the property or any part of the property of the Purchaser;
 - the Purchaser makes or proposes to make any arrangement with its Creditors;
 - the Purchaser is placed under official management;
 - execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and is not within seven days satisfied, then, and in any such event the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder PROVIDED HOWEVER that the Company may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter to rely upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

13. TITLE LIEN

- Title to the Goods to be delivered will not pass to the Purchaser until payment in full for the Goods has been received by the Company. Until the date of final payment the Purchaser shall store the Goods so that they are clearly identified as the property of the Company.
 - In addition to any lien to which the Company may, by statute or otherwise, be entitled, the Company shall in the event of a Purchaser's insolvency, bankruptcy or winding up be entitled to a general lien on all property or Goods belonging to the Purchaser in its possession (although such Goods or some of them have been paid for) for the unpaid price of any other Goods sold and delivered to the Purchaser under this or any other arrangement understanding or contract.
 - It is further accepted, acknowledged and agreed that:
 - 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 Company and the Purchaser that upon registration of the Company's Security Interest on the PPSR a Purchase Money Security Interest will result; and
 - until such time as ownership of the Goods shall pass from the Company to the Purchaser, the Company may give notice in writing to the Purchaser to return the Goods to the Company. Upon such notice the Purchaser's rights to obtain ownership or any other interest in the Goods shall cease.

14. INSURANCE

In the event that the Goods are covered by insurance taken out by the Company, the Company will only be liable to the extent of any indemnity provided.

15. RISK

Unless otherwise agreed in writing all Goods shall be at the Purchaser's risk upon delivery to the Purchaser his carrier or agent.

16. PAYMENT

- Unless otherwise agreed in writing payment terms are not cash 30 days from the end of the month in which the Goods are delivered to the Purchaser his carrier or agent.
- If the Company does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the Goods and the terms of payment shall apply from such date. The Purchaser shall be liable for storage charges payable monthly on demand, storage being at the Purchaser's risk.

17. PRICE

- Unless otherwise expressly agreed in writing the price of the Goods shall be that price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of any excise, or sales taxes or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the Goods or any part thereof, of the manufacture, use, sale of or delivery thereof.
- Unless otherwise specified any prices quoted do not include transportation costs. Goods shall be supplied ex works.
- The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustment at the option of the Company.

18. TOOLING AND DIES

- All patterns, dies, moulds or other tooling manufactured or obtained by the Company on behalf of the Purchaser shall be at the sole cost of the Purchaser.
- The Company shall use its best endeavours to maintain all such items in good order and condition unless the Company in its sole discretion determines that the effective working life of such items has expired in which case the Company shall notify the

Purchaser accordingly. The Purchaser shall insure such items against all risks whilst in the Company's custody.

- The Company shall not be responsible for any loss damage or injury occurring to such items unless such loss damage or injury has been occasioned by the negligence of the Company. Any claim for such loss damage or injury shall not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive.
- The Company may dispose of such items as it sees fit after the expiration of three months written notice to the Purchaser of its intention to dispose if during such period the Purchaser fails to claim possession of them.
- The Company shall not be responsible for any loss damage or injury occurring to any patterns, dies, moulds or other tooling supplied by the Purchaser unless such loss damage or injury has been occasioned by the negligence of the Company. Any claim for any such loss damage or injury shall not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive. The Purchaser shall insure such items against all risks whilst in the Company's custody. The Company shall return such items to the Purchaser on completion of the contract or as otherwise directed by the Purchaser.
- The Purchaser shall not be entitled to claim possession of any items under paragraphs (d) or (e) above until payment in full of the price of any Goods sold by the Company under this contract or any other arrangement understanding contract or and any moneys owing by the Purchaser to the Company in relation to such items and in addition to any right of lien to which the Company may by law be entitled, the Company shall be entitled to a general lien on all such items in the Company's possession for the unpaid price of any Goods sold by the Company under this or any other contract and any moneys owing by the Purchaser to the Company in relation to such items.

19. MISCELLANEOUS

- This contract shall be governed and construed in accordance with the law of the State in which the Goods are delivered.
- All notices to be served upon Purchaser shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Purchaser. Purchaser shall be deemed to have received any notice two (2) days after posting.
- Purchaser shall not assign any rights or obligations under this contract without the prior written consent of Company.
- No conduct by the Company with respect to any default of Purchaser 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.
- 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 Purchaser the Purchaser shall be bound to Company jointly and severally.

20. CREDIT ASSESSMENT

- If any Goods are supplied to the Purchaser on credit, Company may need to disclose to a credit reporting agency certain information about the Purchaser when assessing the Purchaser's application for credit and managing the Purchaser's account with Company. The Purchaser authorises Company to disclose such information to a credit reporting agency.
- The Purchaser agrees that Company may obtain information about the Purchaser from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Purchaser's application to purchase the Goods on credit and collecting any overdue amounts.
- Company may refuse to supply the Goods to the Purchaser on credit on the basis of Company's credit assessment of the Purchaser.

21. PRIVACY

- The Purchaser acknowledges the Privacy Policy of the Company on the Company's website and agrees to Company collecting, using and disclosing personal information of the Purchaser for various purposes, including to:
 - assess creditworthiness in the above paragraph "Credit Assessment";
 - supply the Goods to the Purchaser and the management of the Purchaser's account;
 - communicate to the Purchaser about the Goods which Company or its partners or affiliates may provide to the Purchaser;
 - implement these Terms and any Sales Contract; and
 - comply with relevant laws.

22. SECURITY INTEREST

- The Purchaser hereby acknowledges that these terms and conditions of sale constitute a security agreement which creates a Security Interest in favour of the Company and in all Goods supplied by the Company to the Purchaser and all after acquired Goods supplied to the Purchaser by the Company (or for the Purchaser's account) to secure the payment from time to time for Goods, including future advances. The Purchaser agrees to grant to the Company a Purchase Money Security Interest.
- The Purchaser gives the Company a Security Interest in all of its present and after acquired property in which Goods supplied or financed by the Company have been attached or incorporated, including any Commingled Goods and in any proceeds of sale of Goods.

23. GENERAL COVENANTS:

- Until such time as payment in full has been received by the Company from the Purchaser in respect to an Order, the Purchaser covenants to the Company 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:
 - 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
 - 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 Company.
- The Purchaser covenants to the Company that it shall sign anything and do anything the Company requires to further or more effectively secure the Company's rights over the applicable Goods or under these terms and conditions. This includes anything the Company requires in order for it to:
 - 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;
 - remove any financing statement which is registered against the Purchaser or in relation to a Security Interest which is not a Permitted Security Interest; and
 - 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.
- The Purchaser 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 Company under the PPSA to the extent permitted by the PPSA and agrees to that as between the Company and the Purchaser, to the extent permitted by the PPSA, the Purchaser 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.