

Graph-Pak Packaging Supplies
ABN 98 063 482 762
STANDARD TERMS & CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions:

- (a) the "Seller" means Graph-Pak Packaging Supplies.
- (b) "Product" means the product(s) and/or material(s) specified overleaf.
- (c) The "Buyer" means the person buying the Product.

2. AGREEMENT

- (a) This Agreement shall be considered by an offer by the Buyer to acquire the Product upon these terms and conditions and acceptance by the Seller of that offer. The Buyer's offer will be taken to be accepted by the Seller only in accordance with clause 4 below. Subject only to condition 2(b) and 2(c) below:
 - (i) these terms and conditions constitute the entire Agreement between the parties in respect of the supply of the product in accordance with this Agreement; and
 - (ii) the parties agree that these terms and conditions shall supersede and replace any other term, condition, agreement, contract, arrangement, understanding, negotiation and correspondence between the parties in respect of the supply of the Product.
- (b) The Seller may include additional terms and conditions into the Agreement by providing a written copy of them to the Buyer. Upon offer and acceptance of this Agreement in accordance with condition 2(a), such additional terms and conditions will form part of the Agreement.
- (c) The terms and conditions contained in this Agreement may only be modified or qualified (or both) by writing, signed on behalf of the Seller.

3. AGREEMENT CONDITIONS

To the extent that any inconsistency or conflict exists as between these conditions and any orders or terms of business offered on behalf of the Buyer the terms of these conditions shall prevail.

4. QUOTATION; PLACEMENT OF ORDER

The Seller's quotations are without obligation. Orders and verbal agreements shall only be accepted by the Seller if and as far as the Seller:

- (a) confirms the same in writing by fax or electronic ordering systems, or
- (b) complies with the same by sending the Product and the invoice.

5. INSURANCE RISK

The risk in the Product shall pass to the Buyer when the Seller delivers the Product in accordance with the terms of this Agreement; thereafter the Seller shall not be liable for the safety of the Product and the Buyer should insure the Product.

6. PRICE

- (a) All orders will be executed at the prices ruling at the time of delivery.
- (b) Unless otherwise stated, the Seller's prices are quoted "free Delivered" to the point of delivery specified overleaf except when additional costs are incurred to meet special requirements of the Buyer in which case these additional costs will be charged to the Buyer.
- (c) When prices are quoted 'c&f', 'cif', 'cif duty paid' or 'free delivered' to any delivery address outside Australia any increase in insurance, packaging or freight costs, import duties, internal taxes or any other charges incidental to the delivery of the Product between the date the Buyer's order is accepted and the date(s) of delivery,

together with all costs of any trans-shipment and/or deviation of voyage, shall be paid by the Buyer.

7. DELIVERY

- (a) Any date quoted for delivery of the Product is an estimate only and unless a guarantee has been given by the Seller in writing providing for liquidated damages for failure to deliver by the quoted date, the Seller will not be liable to the Buyer for any loss or damage howsoever arising even if arising out of the negligence of the Seller. The Buyer will not be relieved of any obligation to accept or pay for the Product by reason of any delay in delivery or despatch. Written advice to the Buyer that the Product is ready for delivery whether in whole or in part will constitute delivery and the terms of payment will apply.
- (b) The Seller reserves the right to deliver by installments, and each installment will be deemed to be a separate agreement. Failure to deliver any installment will not entitle the Buyer to repudiate, rescind or terminate this Agreement.
- (c) Any quotation containing a provision to supply Product "ex stock" is subject to fulfillment of prior orders at the date of receipt of the Buyer's order.

8. TOLERANCE

Unless otherwise agreed in writing:

- (a) All quantities of Product supplied shall be subject to a tolerance either way of 5 percent thereof and the Buyer will pay for the actual quantities of Product delivered. Additionally whilst the Seller will endeavour to supply the Product to the exact size ordered, a tolerance of $\pm 2\text{mm}$ on any dimension shall be permissible, without any adjustment to price and;
- (b) Sales are priced by weight, however, individual lengths of any material will be at the Seller's reasonable discretion.

9. PAYMENT

- (a) Unless otherwise agreed, payment for the product sold by the Seller under this Agreement shall be made by the Buyer no later than thirty (30) days following the month in which the Product was invoiced by the Seller (the "Due Date").
- (b) The Buyer shall pay any expenses incurred by the Seller in enforcing its rights under this Agreement including any fees paid to the Seller's solicitors or collection agents in connection with the enforcement of the Buyer's payment obligations.

10. DEFAULT OF PAYMENT, SET-OFF

In the event of default of payment, or the existence of any reasonable grounds for doubting the Buyer's solvency or credit worthiness, the Seller shall be entitled to demand advance payment for outstanding deliveries and to call for immediate payment of all other claims arising from the business connection. The Seller's obligation to deliver shall be suspended as long as the Buyer is in default with any payments due. The Seller is entitled to charge interest in accordance with the applicable statutory provisions. The Seller reserves the right to pursue further claims for damages due to delayed performance. The Buyer may only offset the Seller's claims or assert right of retention in this respect if the counter claim is undisputed or recognized by declaratory judgment. The Seller is entitled to offset all claims the Buyer has against one of their group companies.

11. LIMITATION OF LIABILITY

- (a) To the extent permitted by law, all terms, conditions, warranties or undertakings whether express or implied, statutory or otherwise, oral or written, relating in any way to the sale of the Product or to this Agreement are excluded including without limitation, any warranties of merchantability or fitness for purpose.
- (b) To the extent permitted by the Trade Practices Act 1974 (Cth.) (the "Act") the Seller limits its liability for breach of any warranty or any similar statutory right implied by the Act to any one of the following as determined by the Seller:

- (i) the replacement of the Product or the supply of an equivalent Product; or
 - (ii) the payment of the cost of replacing the Product or of acquiring an equivalent Product;
- (c) As the use of the Product is beyond the control of the Seller, the Seller disclaims all liability to the Buyer for loss, damage or injury (including death) resulting from the use of the Product for a purpose other than its intended purpose or otherwise than in accordance with its directions for use.
- (d) The Buyer shall notify the Seller of any defect as follows;
 - (i) written notice of these defects has been received within twenty-eight (28) days from the date of despatch (expect in the case of sales outside Australia where notice must be received within fourteen (14) days of the date of receipt).
 - (ii) Any defective product has been set aside and made available for inspection by suitably qualified staff from the Seller.
- (e) For the avoidance of doubt, to the maximum extent permitted by applicable law, the Seller shall not be liable to the Buyer or to any third party for consequential, incidental, indirect, punitive or special damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information or any other pecuniary loss), even if the Seller has been apprised of the likelihood of such damage occurring and otherwise regardless of the foresee ability thereof and the Buyer agrees to indemnify and hold harmless the Seller for the same. Except in the case of gross negligence or wilful misconduct, the Seller's liability for damages arising out of this agreement in no event shall exceed the amounts stated in (b)(i) or (b)(ii) of this clause at the Seller's discretion, regardless of whether a claim is based on contract, tort, strict liability, product liability or otherwise.

12. BUYER'S DEFAULT

- (a) Without prejudice to the Seller's rights to accept any cancellation of this Agreement by the Buyer:
 - (i) if the Buyer is overdue with any payment, or
 - (ii) if the Buyer has unreasonably failed to take delivery of the Product, or
 - (iii) if the Buyer exceeds his credit limit whether or not this limit has been advised, then in any such case the Seller shall immediately become entitled (without prejudice to its other claims and rights under this Agreement) to suspend this Agreement.
- (b) Furthermore, the Seller shall be entitled to suspend this Agreement:
 - (i) if the Buyer is involved in any legal proceedings in which its solvency is involved or is deemed to be unable to pay its debts, or
 - (ii) if the Buyer is a company and any resolution is passed to wind it up or a receiver is appointed, or
 - (iii) if the Buyer ceases or threatens to cease to trade or in the reasonable opinion of the Seller, serious doubts arise as to the Buyer's solvency.

13. CANCELLATION

Subject to any relevant Act of Parliament and without limiting the entitlement of a consumer to rescind an agreement as provided in any such Act, any order may only be cancelled, varied or suspended with the written consent of the Seller and in the event of such cancellation, variation or suspension, the Buyer undertakes to reimburse and indemnify the Seller for any costs, expenses, charges incurred by the Seller in preparation for and in the execution of an order which, without limitation, will include an amount equal to 50% of the net profits of the order for the Seller had the order not been cancelled, varied or suspended.

14. TITLE

Until payment for the Product has been received in full by the Seller including any interest:

- (a) the property in and ownership of the Product remains with the Seller and the Buyer agrees to hold the Product as bailee for the Seller;
- (b) the Seller may at any time (without prejudice to any other rights it may have under this Agreement or at law or in equity) terminate this Agreement and the bailment without notice to the Buyer and thereupon take possession of the Product, and
- (c) the Seller shall be entitled to enter the premises at which the Product is being stored for the purpose of taking possession of the Product.

15. SECURITY, PACKAGING

When storing and processing the Product, the Buyer shall observe the applicable statutory provisions as well as any security guidelines or specific information provided by the Seller that they are aware of, and shall pass on such information to their customer when reselling the goods. The Seller's Product may only be stored and transported in approved packaging and means of transport with the required identification label. Non-returnable packaging shall be disposed of by the Buyer properly and at their, own cost. If packaging is reused, the Seller's product markings and the Seller's company markings on the packaging are to be obliterated. In case of delivery of the Seller's goods in reusable pallets and end plates the Buyer shall store and allocate such pallets and end plates for the Seller's re-collection.

16. RETENTION OF TITLE

By way of security for all claims to which the Seller is entitled vis-à-vis the Buyer by reason of the present and any future business relations, the Seller shall retain ownership of the Product supplied until such time as all balances against the Buyer have been settled. The Seller's title shall also extend to cover the new products created when the Seller's Products are processed. Such processing shall be done on the Seller's behalf as manufacturer. In the event the Seller's products are processed, linked or mixed with other things not belonging to the Seller, the Seller shall acquire co-ownership therein, in the ratio of the invoiced value of the goods subject to reservation of title in proportion to the invoiced value of the other materials. If goods subject to reservation of title are sold along with other items for an overall price, such assignment shall be limited to the proportionate amount of the Seller's invoice (including sales tax) for the goods subject to reservation of title included in such sale. If, under the statutory regulations applicable in the Buyer's country, retention of title is not permissible to a given extent, then the scope of the Seller's aforementioned rights shall be restricted to that which is legally permissible.

17. INDUSTRIAL PROPERTY RIGHTS, TRADE MARKS, PUBLICITY

When using the Seller's Product the Buyer has to observe all existing industrial property rights (in particular patents). The trade marks that are protected for the Seller or that the Seller is permitted to use may only be used in connection with products manufactured by the Buyer with the Seller's express written consent. The Seller reserves all industrial property rights in respect of all information that the Seller supplies the Buyer with when advising on application or other matters. Prior to the disclosure of such information to third parties (including affiliated companies of the Buyer) the Buyer shall obtain the Seller's written approval. Any references by the Buyer to existing business relations with us for publicity purposes need the Seller's express approval.

18. TRADEMARKS

The Buyer undertakes:

- (a) not to use in relation to the Product or goods made there from any trademarks (whether or not registered) of the Seller or its holding company or a subsidiary of either if the Product has been processed, treated or used in any manner of which the Seller or such other company (as appropriate) has not approved in writing or if the Product is sold by the Seller unbranded; and

- (b) to ensure that the stipulation contained in Condition 10(a) is specifically advised to the Buyer's trade buyers for the Product and to obtain corresponding undertakings from each buyer.

19. PERSONAL INFORMATION

- (a) The Buyer agrees that the Seller may use or disclose any personal information about the Buyer for the following purposes:
 - (i) supplying the Product to the Buyer;
 - (ii) notifying the Buyer about goods or services supplied by the Seller; and
 - (iii) market research in relation to goods or services supplied by the Seller.
- (b) The Buyer agrees that the Seller may disclose any personal information about the Buyer to its contractors, advisers and agents (including, without limitation, its legal advisers and debt collection agents) for a purpose specified in paragraph 11(a) above.
- (c) The Buyer acknowledges that the Buyer may access any personal information about the Buyer held by the Seller unless such access may be refused under the Privacy Act 1988 (Cth).

20. NATURE OF RELATIONSHIP

Nothing in this Agreement shall be construed as creating or altering any partnership, joint venture, fiduciary or agency relationship between the parties, or as authorizing either party to act as agent for the other.

21. FORCE MAJEURE

- (a) We are not liable for failure to comply with this agreement if the failure (directly or indirectly) arises out of any circumstances which are not within our reasonable control. If such circumstances occur, we may delay or cancel delivery of the goods or reduce the quality to be delivered.
- (b) The following are examples of situations beyond reasonable control: strikes; lock-outs; accidents; war; terrorism; fire; flood; explosion; shortage of power; breakdowns of plant or machinery; shortage of raw or other materials from normal sources of supply; act of God; and any order or direction of any local, State or Federal Government, Government, Government authority or instrumentality (within the Commonwealth of Australia or elsewhere).
- (c) We are not obliged to remedy such circumstances. We are especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

22. GOVERNING LAW AND JURISDICTION

- (a) This Agreement is governed by and will be construed according to the laws of the State of New South Wales ("State").
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State, including federal courts located in the State, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Agreement.
Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.
The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded.

23. SEVERABILITY

If any provisions of these Standard Terms and Conditions of Sale are or will become invalid this shall not affect the validity of any other provisions.