

# TERMS AND CONDITIONS

## 1. General

The whole of the Agreement between Apack Pty Ltd ACN 064 250 693. ("Apack") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, materials, parts, labour and/or services supplied by Apack under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. All Goods are charged at the price ruling at the date of invoice and any GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 or other government imposts shall be payable by the Customer in addition.

## 2. Credit Terms

- 2.1 Payment is due on or prior to thirty (30) days from the date of invoice rendered in respect of the supply of the Goods unless otherwise stated in writing by Apack. Apack may charge liquidated damages at a rate of twelve percent (12%) per annum calculated monthly in arrears if payment is not received by the due date.
- 2.2 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Apack for enforcement of obligations and recovery of monies due from the Customer to Apack.
- 2.3 The Customer agrees that it will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date and notwithstanding that the Goods may not yet be delivered.
- 2.4 Apack's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Apack at any time.

## 3. Quotations, Orders, Delivery & Supply

- 3.1 Where the Customer has requested a quotation from Apack for the provision of Goods, such quotation provided by Apack shall be open for acceptance by the Customer for thirty (30) days from the date of the quotation.
- 3.2 All orders for Goods by the Customer are to be in writing to Apack and such order is subject to acceptance by Apack.
- 3.3 Any times quoted for delivery and/or supply are estimates only and Apack shall not be liable for failure to deliver/supply, or for delay in delivery/supply or for any foreseeable economic loss occasioned upon the Customer by Apack's failure to deliver and/or supply the Goods. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Apack reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 3.4 The Parties agree that delivery to the Customer shall be deemed to have occurred once the Goods are free on board upon Apack's nominated carrier.
- 3.5 The Customer acknowledges and agrees that it is responsible for and will insure the Goods for delivery. Freight will be charged where applicable.

## 4. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Apack from time to time:-

- 4.1 All sums outstanding become immediately due and payable by the Customer to Apack if the Customer makes default in paying any other sums due to Apack, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 4.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Apack (returning the same to Apack on request). The Goods shall nevertheless be at the risk of the Customer from the time of

delivery/supply and the Customer must insure the Goods from the time of delivery/supply.

- 4.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Apack provided that there shall be no right to bind Apack to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Apack pursuant to the fiduciary relationship.
- 4.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Apack. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 4.5 Apack is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

## 5. Returns, Cancellations and Claims

- 5.1 The Customer shall not return any Goods to Apack without obtaining prior authorisation from Apack. Unauthorised returns will not be accepted. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer unless the Goods (i.e. where the Customer has obtained prior authorisation to return them) are returned through Apack's approved carrier. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by Apack only after Goods returned are either collected by Apack's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Apack but must await receipt of a credit note.
- 5.2 No cancellations or partial cancellation of an order by the Customer shall be accepted by Apack unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Apack, will indemnify Apack against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.
- 5.3 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Apack in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

## 6. Tolerances

- 6.1 The Customer acknowledges that the Goods may be subject to variation and that the acceptances of tolerances in the variation of the Goods as follows is acceptable:-
  - 6.1.1 Colour tolerances and minor deviations in colour shade, tone or tint of the Goods.
  - 6.1.2 Quantity, thickness, weight and/or length tolerances and minor variations of up to plus or minus 10% in the Goods.
- 6.2 The Customer agrees and expressly acknowledges that any tolerances or variations in the Goods as noted in clause 6.1 shall not be a reason for or permit the Customer to return or reject delivery of the Goods.

## 7. Privacy Act 1988 ("Privacy Act")

To enable Apack to assess the Customer's application for credit, the Customer authorises Apack:-

- 7.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer

and its guarantors pursuant to Section 18K(1) of the *Privacy Act*; and

- 7.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and
- 7.3 To give to a credit reporting agency information including identity particulars and application details

AND in accordance with Section 18N(1) of the *Privacy Act* the Customer authorises Apack to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.

The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) *Privacy Act*), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.

## 8. Notification

The Customer must notify Apack in writing within seven (7) days of:-

- 8.1 Any alteration of the name or ownership of the Customer.
- 8.2 The issue of any legal proceedings against the Customer.
- 8.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 8.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Apack for all Goods supplied to the new owner by Apack until notice of any such change is received.

## 9. Warranties

- 9.1 No warranties except those implied and which by law cannot be excluded are given by Apack in respect of goods or services supplied. Where it is lawful to do so, the liability of Apack for a breach of a condition or warranty is limited to the repair or replacement of the goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods, the supplying of the services again or the payment of the cost of having the services supplied again, as determined by Apack.
- 9.2 The Customer acknowledges and agrees any express warranties or guarantees provided by the Manufacturer of the Goods are to be claimed as against the Manufacturer only and that Apack makes no undertaking as to upholding any warranties or guarantees expressly provided by the Manufacturer.
- 9.3 The parties agree and acknowledge that the greatest extent permissible by law, Apack is expressly released by the Customer from all liability whatsoever in relation to any third party claims for damages, injury or loss howsoever arising in relation to the Goods for which the Customer may become liable for and which the Customer may seek recovery for from Apack.

## 10. Force Majeure

Apack shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to Apack shall be paid immediately and, unless prohibited by law, Apack may elect to terminate the Agreement.

## 11. Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of Apack all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by Apack to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a solicitor own client basis) incurred by Apack and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

## 12. Legal Construction

- 12.1 These Terms shall be governed by and interpreted according to the laws of Victoria and Apack and the Customer consent and submit to the jurisdiction of the Courts of Victoria.
- 12.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.