



## Sydney Packaging

Packaging Sydney ... and beyond!

### SYDNEY PACKAGING PTY LTD

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# SYDNEY PACKAGING - TERMS & CONDITIONS OF SALE

## General

1. The whole of the agreement between Sydney Packaging Pty Ltd ACN 003 436 306 ("Sydney Packaging") and the Customer referred to in the Credit Application ("Customer") is set out in the Credit Application, these Terms and Conditions as amended by Sydney Packaging from time to time ("Terms"), any quotation provided by Sydney Packaging ("Quotation"), and any terms which are implied and which by law cannot be excluded. These Terms shall prevail to the extent of any inconsistency with any Quotation. Words which are defined throughout these Terms (including in the Definitions section at the end) are capitalised and bear those meanings.
2. These Terms apply to every sale of Products to, or order for Products placed by, the Customer and may only be varied by Sydney Packaging in writing. Any order placed by the Customer for the purchase of Products constitutes unqualified acceptance of these Terms to the exclusion of all others. Any other contractual terms (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with the Terms shall not apply nor shall they constitute a counter-offer. These Terms are binding on the parties and their legal successors and assigns, and are enforceable by and against the parties and those successors and assigns.

## Quotations

3. Any quotation is based on information supplied by the Customer and may be varied when artwork and/or a sample is sighted. Sydney Packaging may submit a revised quotation within seven (7) days of sighting artwork and/or sample; and the Customer may only cancel the order, in writing, within seven (7) days of receiving the revised quotation. A quotation shall remain valid and open for a period of thirty (30) days from its date unless otherwise stated. The lead time stated in Quotations runs from the date artwork is approved by the Customer. Proofing/approval of artwork must be communicated to Sydney Packaging in writing.
4. The supply under this agreement is a taxable supply for Products and Services Tax (GST) purposes. GST is in addition to the quoted price as set out and shown in the quotation and is payable by the Customer as provided in the tax invoice to be issued by Sydney Packaging.

## Orders, Pricing and Charges

5. The Customer shall be liable for and upon the placement of each order for the production or supply of Products, including any Products held by Sydney Packaging in their warehouses, being shipped or under manufacture, for the Price of the Products ordered, plus any other fees and charges provided in any applicable Quotation, any taxes (including GST) or duties payable by for the production, supply or delivery of the Products, the applicable freight and carrier charges, and any other fees or charges payable under these Terms; in full, without set-off or deduction. In the event that Sydney Packaging is only able to supply part of the Products in any order, then the Customer shall be liable for the Price for those goods supplied under a separate contract of sale. The Customer shall not be relieved of any obligation to accept any Products or to pay for them, by reason of any delay in their delivery or dispatch.
6. The Customer shall pay any service fees charged by Sydney Packaging for each credit card payment by the Customer that are notified to the Customer at or before the time of credit card payment; however, Sydney Packaging may waive payment of these fees from time to time at its complete discretion.

## Payment & Delivery

7. Subject to these terms, the Customer shall pay for each order upon invoice by Sydney Packaging; and the applicable Quotation shall set out when each order is to be invoiced and delivered, and any terms as to reordering (whether automatic or otherwise). Any deposit paid by the Customer for an order is non-refundable and will be credited against the amount payable by the Customer for that order. Sydney Packaging is under no obligation to deliver the Products until the Customer has paid the invoice for them in full, although Sydney Packaging may decide to extend credit to the Customer from time to time at its absolute discretion.
8. Where the Quotation provides for invoice and delivery of an order ["Invoice and Delivery Order"], Sydney Packaging will issue an invoice to the Customer once the Products are received into the warehouse of Sydney Packaging.
9. Where a Quotation provides for the warehousing and delivery of an order ["Hold and Supply Order"], Sydney Packaging shall arrange for the production and warehousing of the Products, and shall, on reasonable request and with at least 2 business days' notice, deliver the Products [or part thereof] in accordance with the Customer's instructions, provided that:
  - a. for "upfront orders", Sydney Packaging will issue an invoice to the Customer once the Products are received into the warehouse of Sydney Packaging, and invoices thereafter in accordance with the Quotation [such as for any applicable freight and carrier charges];
  - b. for "pay as you go orders", Sydney Packaging will invoice artwork and setup costs upon approval of artwork by the Customer, and thereafter will issue invoices for Products to be delivered to the Customer from time to time;
  - c. unless otherwise agreed in by the parties, Sydney Packaging may dispose of any Products which have not been delivered within 3 months of the date they are received into the warehouse of Sydney Packaging, and may issue an invoice for the Products, and the Customer shall be liable for the unpaid balance of the invoice, and all other invoices, fees, charges and monies relating to the Products, in addition to any costs incurred in disposal of the Products;
  - d. Sydney Packaging may obtain the Customer's instructions to re-order any Products or repeat any orders periodically, such as when the Customer provides instructions for the delivery of any Products, which shall be added to those Products to be warehoused and stored in accordance with Sydney Packaging's Terms as part of the order to which the Customers' instructions apply;
  - e. the Quotation may provide for an automatic re-ordering or repeat of any part of an order ["Automatic Top-Up Order"], in which case:
    - i. upon delivery of certain quantities of Products from time to time, or at set time intervals, the Customer shall be deemed to have re-ordered specific quantities of Products from Sydney Packaging, to promote the maintenance of Product quantities in the warehouse at the levels provided for in the Quotation, which shall be added to those Products to be warehoused and stored pursuant to Sydney Packaging's Terms as part of the order to which the Customers' instructions apply;
    - ii. the Customer shall not be able to vary or terminate an Automatic Top-Up Order without giving 6 months' written notice which is acknowledged in writing by Sydney Packaging;
    - iii. upon termination of the Automatic Top-Up Order, Sydney Packaging may invoice the Customer for any orders which have not been delivered, or which are in production or under manufacture, or in transit to Sydney Packaging or the Customer; which shall be immediately due and payable.

10. The Customer must pay each invoice issued by Sydney Packaging on or prior to the payment date specified in the invoice, or in the manner reasonably specified by Sydney Packaging, and on the payment terms notified to you from time to time; and must not withhold or delay any payment due to Sydney Packaging for any reason whatsoever, including but not limited to any claim which the Customer asserts that it has against Sydney Packaging or any money which it asserts is owed to it by Sydney Packaging.
11. If an invoice has not been paid within ninety (90) days of its due date Sydney Packaging may dispose of the Products, and the Customer shall be liable for the unpaid balance of the invoice, in addition to any costs incurred in disposal of the Products. If Sydney Packaging stores the Products beyond ninety (90) days of the due date of an invoice the Customer shall be liable to pay Sydney Packaging for storage of the Products at the rate of AUD \$35.00 per pallet per month until the Products are delivered to the Customer or disposed of.
12. Interest accrues on the unpaid balance of all overdue invoices at the rate of 10% annum which shall accrue on a monthly basis on the amount on the last day of each month until paid in full. The Customer must pay all of Sydney Packaging's costs, expenses and disbursements incurred in enforcing the Customer's obligations, and in recovering or attempting to recover any outstanding moneys from the Customer, including without limitation investigator's fees, mercantile agents' fees and commission, and legal costs and disbursements on a full indemnity basis.
13. If any moneys owed by the Customer to Sydney Packaging are overdue, or if the Customer becomes bankrupt, commits any act of bankruptcy, enters into a composition or arrangement with its creditors pursuant to laws relating to bankruptcy or insolvency, or has a liquidator, provisional liquidator, administrator, receiver, manager or controller appointed to it, then without derogating from any other rights Sydney Packaging may have: Sydney Packaging may without notice suspend or cancel delivery of any orders or Products, or vary or revoke the terms of the Customer's credit; all invoices, fees, charges and monies relating to all orders by the Customer shall become immediately due and payable to Sydney Packaging as a liquidated debt, notwithstanding any other provision in these Terms or any extended terms agreed to by Sydney Packaging; and Sydney Packaging may continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due.
14. Any delivery times and dates requested by the Customer or agreed to by Sydney Packaging are estimates only, and time shall not be of the essence in this regard. Sydney Packaging will use its reasonable endeavours to make delivery by the estimated times and dates provided however does not represent or warrant that it will be able to do so. Sydney Packaging shall not under any circumstances be liable for any delay or failure in delivering any Products.
15. The delivery of Products shall be deemed to have occurred upon the earlier of delivery to the Customer, and collection from Sydney Packaging's warehouse by the freight company or carrier nominated by Sydney Packaging; and the Customer shall pay all applicable freight or carrier charges, subject to any discount that Sydney Packaging in its complete discretion may allow.
16. All risk in Products shall pass to the Customer upon delivery of the Products. The Customer shall make its own inquiries/investigations, and relies on its own judgment/expertise (not Sydney Packaging's), as to the compliance of the Products with Australian and international laws and standards, and approval by Australian and international authorities.
17. Any claims that Products delivered are incomplete, damaged or defective must be made to Sydney Packaging in writing within 14 days of delivery, failing which the Customer waives/relinquishes all rights/claims as to such incompleteness, damage or defects, and the Products shall be deemed delivered completely and free of any defect or damage.

#### **Cancellations**

18. Each order placed or made by the Customer for the purchase of Products shall be irrevocable and shall not be cancelled unless agreed by Sydney Packaging in writing (in its absolute discretion); and the Customer has paid all invoices, fees, charges and monies relating to the Products, in addition to any costs incurred in disposal of the Products, and all cancellation charges determined by Sydney Packaging for the order. No orders may be cancelled in any event where the Products are not regular stock or comprise stock marked with the Customer's marks, logos and designs, or where production of the Products has been commenced.
19. Where the Customer does not accept any Products following cancellation of any order, the Customer abandons and disclaims any rights in relation to the Products, which Sydney Packaging may dispose of at its complete discretion; and the Customer shall be liable for any costs incurred in disposal of the Products.
20. All invoices, fees, charges and monies relating to all of the Customer's orders with Sydney Packaging [including those for any Products in Sydney Packaging's warehouses, being shipped or under manufacture] shall become immediately due and payable in the event that the Customer is or becomes insolvent, or has an receiver, manager, administrator, liquidator, controlling trustee or trustee in bankruptcy appointed to it or its any of its property, affairs or undertaking; or takes any steps towards entering into an arrangement with its creditors under any laws relating to insolvency; or sells or disposes of its business or undertaking.

#### **Returns**

21. The Customer shall not return any Products to Sydney Packaging for any reason unless:
  - a. Prior written authorisation, and a return authorisation number, is obtained from Sydney Packaging's Service Manager; and
  - b. The Products are returned without damage and in perfect condition, in the original packaging with the return authorisation number clearly posted on the packagefailing which (and in any event) Sydney Packaging may reject the return of the Products, and the invoiced price for the Products shall remain owing, due or payable by the Customer.
22. The Customer shall pay all freight charges for any returned Products, and shall be responsible for any damage to the Products during return shipment. All returns must be sent to: Sydney Packaging Pty Ltd, 16 Day St North, Silverwater NSW 2128, or such other address that is notified by Sydney Packaging in writing to the Customer. In any event, the Customer must pay a re-stocking fee of 5% of the invoiced amount of each item of Products that is returned that is not faulty or defective.

#### **Title to and Ownership of Products, Property and the Personal Property Securities Act 2009**

23. Title to and ownership of the Products shall not pass from Sydney Packaging or to the Customer, and Sydney Packaging retains all legal and equitable rights in relation to the Products, until the Customer has paid Sydney Packaging all moneys which it is, or may be, actually or contingently liable to pay Sydney Packaging, by way of cleared funds and without set-off; and until that time:
  - a. The Customer shall hold the Products as Sydney Packaging's fiduciary and agent, and the Customer shall only resell the Products in that capacity, in the ordinary course of business and on commercially reasonable terms. The Customer has no right to commit Sydney Packaging to any contractual relationship or liability to any third party, and shall account to Sydney Packaging immediately after Products are on-sold and the proceeds of sale received, even though any credit period may not have expired;
  - b. Pending resale of the Products the Customer shall keep the Products separate from its own and those of third parties, properly stored, protected and insured, and in such a manner that the Products are clearly identifiable as the property of Sydney Packaging. The Customer shall receive all proceeds, including insurance proceeds and proceeds of proceeds, of any dealing with the Products, in trust for Sydney Packaging, shall keep such proceeds in

a separate account until all actual or contingent liability to Sydney Packaging has been discharged, and shall account to Sydney Packaging for such proceeds.

- c. Sydney Packaging may enter upon any premises and retake possession of the Products, and for this purpose the Customer and its legal assigns irrevocably authorises Sydney Packaging or its nominees to enter on and into any premises where the Products are located, and without notice to search for and remove any of the Products. The Customer indemnifies Sydney Packaging, and shall keep Sydney Packaging indemnified against, any Loss or Claim arising from or in connection with, or relating to, any such entry and removal.
24. These Terms create a Security Interest in the Products, and the Proceeds arising from any dealings with the Products, which secures payment of the Price, any interest and credit charges payable for the purchase of the Products, and all moneys which the Customer is, or may be, actually or contingently liable to pay Sydney Packaging, which attaches to the Products or takes effect immediately upon delivery of the Products to the Customer.
  25. Sydney Packaging is not obliged to give any notice, or provide copies of any documents, required to be given to the Customer or others under the PPSA, including notice of a verification statement, unless the obligation to give that notice or provide that document cannot be excluded.
    - a. Sydney Packaging may take any steps at its complete discretion to register, protect, perfect, record, or better secure its position or any Security Interest in respect of any Products under the PPSA, and may by notice to the Customer at any time, require the Customer to take all steps, provide information, produce documents and obtain consents, execute any notice, consent, document or amendment to these Terms or do any other thing, that is reasonably necessary to:
    - b. ensure that any Security Interest of Sydney Packaging under these Terms or in relation to any Products is enforceable;
    - c. register, protect, perfect, record or better secure Sydney Packaging's position in respect of these Terms or in relation to any Products;
    - d. preserve the priority of any Security Interest of Sydney Packaging under these Terms or in relation to any Products; or
    - e. overcome any defect or adverse effect arising in relation to the PPSAand the Customer must comply with the requirements of that notice, within the time stated in the notice, at the Customer's cost and expense. The Customer must reimburse Sydney Packaging for any costs incurred by it in connection with anything the Customer is required to do under this clause.
  26. The Customer must notify Sydney Packaging immediately if the Customer's name, address, identifying number or any other information provided by the Customer for any order of Products changes.

#### **Warranties and Exclusion of Liability**

27. The Customer acknowledges that the Products are acquired for commercial or business purposes, and not for personal, domestic or household purposes.
28. To the fullest extent permitted by law, any express or implied warranty by Sydney Packaging in relation to the Products shall be limited to the warranty offered by the manufacturer of the Products, with necessary amendments; and in any event, shall be strictly subject to the following conditions:
  - a. The warranties shall not extend to defects that have not arisen solely from faulty materials or workmanship, or where the Products have received maltreatment, inattention or interference;
  - b. The Customer must provide to Sydney Packaging complete written notice of the defects and proof of purchase of Products within 14 days of delivery of the Products; and
  - c. The Products must (and may only) be returned to Sydney Packaging in accordance with these Terms.
29. To the fullest extent permitted by law, Sydney Packaging's liability in relation to Products supplied to the Customer is limited, at its own complete discretion, to the replacement of the Products or the supply of equivalent Products; the repair of the Products; and the payment of the cost of replacing the goods or of acquiring equivalent Products.
30. Under no circumstances shall Sydney Packaging be liable for any indirect, consequential or incidental loss, including without limitation loss of business or opportunity, loss of profits and loss of savings.

#### **General**

31. The supply of the Products is a taxable supply for Products and Services Tax (GST) purposes. Unless expressly stated otherwise, Prices shall be stated exclusive of GST, and GST shall be payable in addition to Price as provided in the tax invoice issued by Sydney Packaging.
32. These Terms constitute the entire agreement between the parties, and to the fullest extent permitted by law any other terms, statements, representations, conditions and warranties not expressly contained in these terms are excluded.
33. Sydney Packaging's failure or delay in the exercise of a right, remedy or power or right under these Terms or at law, to enforce or insist upon the timely performance of any of these terms, or to insist upon or demand timely payment of moneys when due, and any credit or forbearance extended by Sydney Packaging to the Customer, shall not constitute a waiver of any subsequent default, or a waiver of Sydney Packaging's rights and powers under these Terms or at law.
34. These Terms shall be governed and interpreted according to the laws in force in New South Wales. Sydney Packaging and the Customer hereby submit to the jurisdiction of the Courts of New South Wales. The parties' submission to jurisdiction in this clause includes submission to a Court of Appeal.
35. 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.

#### **Definitions**

Capitalised terms bear the definitions provided by these Terms or legislation.

Loss or Claim means any damage, injury, loss, cost, expense, liability, claim, demand, action, proceeding or judgment, however arising and whatsoever nature or kind, whether due to negligence of any person, under law or statute, or in equity, whether present or future, fixed or unascertained, and whether direct, indirect, actual or contingent.

Price means the price of the Goods as provided in the applicable Quotation, or if none is so provided then the price provided from time to time in accordance with Sydney Packaging's published price list (which may be varied by Sydney Packaging at any time without notice).

PPSA means the Personal Property Securities Act 2009 (Cth), and a term defined by the PPSA has the same meaning when used in these Terms.

Products means any goods ordered or purchased by a Customer from Sydney Packaging.

Proceeds has the same meaning given to that term under the PPSA. Security Interest has the same meaning given to that term under the PPSA.

Sydney Packaging means Sydney Packaging Pty Ltd ACN 003 436 306.

Terms means these the Credit Application, these Terms and Conditions of Sale (as amended by Sydney Packaging from time to time), and any terms which are implied by law which cannot be excluded.