

## CONDITIONS OF SALE (12/2013)

**1. Price**

- 1.1. The purchase price contained in this Agreement is based upon rates and costs as at the date of this Agreement or where this Agreement arises from a quotation given by the Company, as at the date of quotation and may change without notice.
- 1.2. The Company shall only be responsible to comply with the regulations, bylaws, codes and standards specified in this Agreement and the Company shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards. In the event of there being any changes in any regulations, bylaws, codes or standards with which the Company is obliged to comply after the date of this Agreement or where this Agreement arises from a quotation given by the Company after the date of quotation, then any additional costs in meeting any such changes shall be to the account of the Buyer.

**2. Taxes and Duties**

- 2.1. The Buyer shall pay Goods and Services Tax and any other taxes or duties assessed to or otherwise payable by the Company in connection with the supply of Goods under this Agreement, in addition to the purchase price.

**3. Payment**

- 3.1. Payment is due in full on the 20th day of the month (unless other payment terms have been arranged) following the month that the Goods are dispatched by the Company.
- 3.2. In the case of export sales, payment shall be made by confirmed irrevocable letter of credit unless otherwise agreed. Letters of credit shall, unless otherwise agreed, be established through a first class bank and be irrevocable, confirmed and without recourse available for the Company's draft at sight and otherwise in a form satisfactory to the Company.
- 3.3. Any additional payments due by the Buyer pursuant to any of the provisions of this Agreement shall be paid at the time provided in this Agreement or, if no time is provided, within 7 days of payment being demanded in writing by the Company.
- 3.4. If the Company shall at any time deem the credit of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under this Agreement until the provision of sufficient security. All costs and expenses of or incurred by the Company as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
- 3.5. The Buyer shall not be entitled to withhold payment or to make any deductions from the purchase price without the prior written consent of the Company.
- 3.6. Receipt of a cheque, bill of exchange, or other negotiable instrument by the Company shall not constitute payment and the Buyer shall remain liable for the full purchase price until such cheque, bill of exchange, or negotiable instrument is paid in full.
- 3.7. The Company may apportion payments made by the Buyer to outstanding accounts in such amounts and in such order as the Company may determine in its sole discretion.

**4. Interest for Late Payment**

- 4.1. Any failure on the part of the Buyer to make payment on the due date shall constitute a breach of this Agreement for which the Buyer shall be liable to compensate the Company by immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until the date of payment at a rate equal to 5% above the current overdraft rate which the Company has with its principal trading bank.

**5. Delivery**

- 5.1. Delivery shall be made at the address indicated in the Company's quotation or acceptance or, if no address shall be indicated, delivery shall be made at the Buyer's premises. The Company shall use its best endeavours to deliver the Goods on the date, time and at the address specified by the Buyer from time to time. Despite this delivery shall be deemed to have occurred when the Goods are actually delivered to the Buyer's premises and regardless of whether the Buyer fails or refuses to accept delivery.
- 5.2. In the case of export sales, unless otherwise stated in the Company's quotation or acceptance, shall be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for despatch or earlier leave the Company's custody for shipment to the Buyer. Trans-shipment shall be allowed. Delivery may be effected by the Company at its election by one or more shipments.
- 5.3. The Company reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate Agreement under the same provisions as the main Agreement. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the Buyer to repudiate the main Agreement.
- 5.4. Without prejudice to any other rights and remedies which it may have, the Company may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that he will fail or refuse to take or accept delivery at the time specified in the Company's quotation or acceptance or at any other times that the Company is able to deliver the Goods.
- 5.5. Delivery of within ten percent more or less in the quantity of the Goods ordered by the Buyer shall constitute performance of any Agreement, the amount under or over supplied to be deducted or charged for pro rata.

**6. Risk**

- 6.1. Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the date of delivery of the Goods.
- 6.2. Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods insured in the names of the Company and the Buyer for their respective rights and interests and will produce to the Company upon demand such evidence as the Company may require to confirm the existence of such insurance. If the Buyer defaults in the performance of its obligations under this clause, the Company shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Buyer to the Company upon demand.
- 6.3. If any of the Goods are damaged or destroyed prior to the property therein passing to the Buyer, the Company shall be entitled, without prejudice to any of its other rights or remedies under this Agreement to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable under this Agreement) and the production of this Agreement by the Company shall be sufficient evidence of the Company's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Company. Any such insurance proceeds shall be applied by the Company as follows:
  - a. First, in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid;
  - b. Secondly, in payment of the outstanding purchase price of any other Goods supplied to the Buyer by the Company, whether under this Agreement or otherwise;
  - c. Thirdly, in payment of any other sums payable to the Company by the Buyer whether under this Agreement or otherwise.

d. Thereafter any balance shall be paid to the Buyer.

## **7. Property**

- 7.1. Property in the Goods shall be retained by the Company until the Goods are resold by the Buyer pursuant to the authority granted by clause 7.2 hereof provided however that if the Goods are being purchased by the Buyer otherwise than for the purpose of resale, property in the Goods shall pass from the Company to the Buyer when the purchase price and all other moneys payable to the Company by the Buyer (whether under this Agreement or otherwise) have been paid in full.
- 7.2. Notwithstanding that property in the Goods is retained by the Company, the Buyer is hereby authorised to sell the Goods in the ordinary course of business provided that such authority may be revoked by the Company at any time if;
- a. the Company deems the credit of the Buyer to be unsatisfactory; or
  - b. the Buyer is in default in the performance of its obligations under this Agreement or any other Agreement between the Company and the Buyer; or
  - c. the Buyer shall be declared bankrupt; or
  - d. the Buyer enters into any composition or arrangement with its creditors; or
  - e. a resolution is passed or an application is filed for the winding up of the Buyer; or
  - f. a receiver is appointed in respect of all or any assets of the Buyer.
- 7.3. When Goods in respect of which property has not passed to the Buyer are sold by the Buyer pursuant to the authority granted by clause 7.2 hereof, any book debt created upon the sale of such Goods and the proceeds of sale of such Goods, when received by the Buyer, shall be held upon trust by the Buyer for the Company and any proceeds of sale so received by the Buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company and thereafter shall be retained by the Buyer. Notwithstanding anything hereinbefore contained, the Company hereby authorises the Buyer to deal with any such proceeds of sale received by the Buyer as if such proceeds of sale were the absolute property of the Buyer provided that such authority may be revoked by the Company at any time if any one of the events referred to in clauses 7.2 (a) – (f) occurs.

## **8. Delay**

- 8.1. If any time for delivery of the Goods or completion of this Agreement or any part thereof shall be stated in this Agreement, such time shall be approximate only and shall not be deemed to be of the essence of this Agreement.
- 8.2. The Company shall not be liable for failure to deliver the Goods or for any delay in delivery of the Goods where such failure or delay is occasioned by any event or cause whatsoever, including strike, lock-out and other industrial dispute or default by the Buyer, beyond the reasonable control of the Company.
- 8.3. If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the contract purchase price as represents the extent to which the Company has performed this Agreement or carried out work required by this Agreement up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay in the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate this Agreement.

## **9. New Zealand Product Number Symbol**

- 9.1. When applying the New Zealand product number symbol (“the Symbol”) to the Goods the Company will exercise all reasonable care and skill in accordance with the relevant recommended procedures as published from time to time by the New Zealand Institute of Paperboard Packaging Association Incorporated (“the institute”) and in accordance with the Buyer’s specifications provided that the Buyer’s specifications are consistent with the recommendations of the operation manual for product numbering and symbol marking as published from time to time by the New Zealand Product Number Association Limited (“the Association”).

## **10. Warranty**

- 10.1. The Company warrants that it will repair or make good any defects in materials or workmanship brought to its notice in writing within 30 days after delivery. If written notice is not given within 30 days the claim shall be deemed to have been waived nor shall any claim be accepted
- a. if any attempt to repair the defective Goods is made by any person or persons not authorised by the Company to effect such repairs; or
  - b. if the defective Goods have been modified or incorrectly stored, maintained, installed or operated;
  - c. if the Buyer disposes of such Goods in any part thereof within the latter 30 days all claims in respect of the Goods so disposed of shall be deemed to have been waived.
- 10.2. The Company shall have the right at any time within 30 days after receipt of the complaint to inspect the Goods complained of.
- 10.3. Should the Company elect to repair any defective Goods, such repair shall be effected at such place as the Company may specify and the Buyer shall be responsible for shipment of the defective Goods to the place or places so specified.
- 10.4. If the Goods or any component(s) that are not manufactured by the Company, then the foregoing warranty shall not apply to such Goods or any component(s) that are not manufactured by the Company and no warranties are given by the Company in respect to such Goods, or any component(s). In the case where the manufacturer or supplier of any such Goods, or any component(s) provides any warranty then the Company (to the extent that it is able to do so) shall make such warranty available to the Buyer.
- 10.5. If the Company fails to perform its warranty obligations under clause 10.1 the Company’s liability for such failure shall be limited to damages which shall be subject to the limitations contained in clause 11.

## **11. Liability**

- 11.1. The Company shall not be liable for any loss of profits, loss of goodwill or loss of opportunity or any exemplary, punitive, consequential, direct, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Company’s obligations arising under or in connection with this Agreement or from any cancellation of this Agreement or from any negligence on the part of the Company, its servants, agents or contractors nor shall the Company be liable for any loss, damage or injury caused to the Buyer’s servants, agents, contractors customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer shall indemnify the Company against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- 11.2. The Buyer shall only have the right to reject non-complying Goods if rejection is notified in writing to the Company within 30 days of the Buyer’s receipt of the Goods and the Goods are forthwith resumed to the Company at the Buyer’s expense.
- 11.3. Notwithstanding anything hereinbefore contained in this clause or contained elsewhere in this Agreement, the liability of the Company, whether in contract or pursuant to any cancellation of this Agreement or in tort or otherwise, howsoever, in respect of all claims for loss, damage or injury arising from breach

of any of the Company's obligations arising under or in connection with this Agreement, from any cancellation of this Agreement or from any negligence on the part of the Company, its servants, agents or contractors shall not in aggregate exceed the purchase price.

## **12. Default and Indemnity**

- 12.1. If the Buyer defaults in the due payment of any moneys payable to the Company, whether under this Agreement or otherwise, or if the Buyer is in default in the performance of its obligations under this Agreement or any other contract or any of the events referred to in clause 7.2 have occurred, the Company, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate this Agreement, and payment for the Goods delivered and work performed up to the date of such suspension or termination any other moneys payable hereunder shall immediately become due and payable.
- 12.2. The Buyer appoints the Company as its agent to enter upon the premises where the Goods are situated, despite section 109 of the PPSA and in addition to the rights contained in that section, take possession of and remove the same without being responsible for any damage thereby caused, and the Company may resell any or all of the Goods and apply the proceeds in or towards payment of the purchase price and all other moneys owing to the Company by the Buyer. The Buyer shall indemnify the Company against all costs and expenses (including legal fees, transportation and storage charges) incurred by the Company in connection with any default made by the Buyer under this Agreement. Any suspension of this Agreement by the Company shall not prevent it terminating this Agreement during the period of suspension.
- 12.3. The Company may appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Buyer, under this Agreement. Any receiver so appointed may take possession of the Goods and resell them and otherwise exercise all rights and powers conferred on a receiver by law.

## **13. Patents and Copyright**

- 13.1. Copyright in all drawings, specifications and other technical information provided by the Company in connection with this Agreement is vested in the Company.
- 13.2. If any Goods are to be supplied to the Buyer's design, the Buyer hereby warrants that the manufacture and supply of such Goods by the Company will not infringe any patent, copyright, registered design or other rights of any other person and the Buyer agrees to indemnify the Company against any liability incurred by the Company including any costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by the Company infringes any patent, copyright or other rights of any other person.

## **14. Dimensions and Specifications**

- 14.1. Dimensions and specifications contained or referred to in this Agreement or in any catalogues or other publications maintained or issued by the Company are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of this Agreement that the Goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

## **15. Colour**

- 15.1. Should the Company be obliged to match any shade or colour, a light and dark tolerance shall be allowed to such extent as shall be agreed upon by the Company and the Buyer and in the absence of any agreement, a reasonable tolerance shall be allowed.

## **16. Agreement**

- 16.1. Unless otherwise stipulated by the Company any quotation may be withdrawn at any time by the Company. If not withdrawn it remains open for acceptance for a maximum period of 30 days from the date of quotation and thereafter shall be deemed to be withdrawn.
- 16.2. The Goods described in any quotation, or confirmation of order by the Company shall form part of this Agreement and such Goods will be supplied on the terms and conditions contained in this Agreement. All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded. In the case of any conflict between an order submitted by the Buyer and the Company's confirmation of order and this Agreement, the Company's confirmation of order and terms of this Agreement shall prevail. No agent or representative of the Company is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form an Agreement or part of an Agreement with the Company collateral to this Agreement.

## **17. Personal Property Securities Act 1999 (the "PPSA")**

- 17.1. The Buyer grants to the Company a security interest in all present and after acquired Goods and their proceeds as security for all moneys payable to the Company (whether under this Agreement or otherwise).
- 17.2. On the Company's request the Buyer shall promptly execute any documents and do anything else required by the Company to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the Goods. The Buyer will also provide the Company with any information the Company may reasonably require to complete a financing statement or financing change statement.
- 17.3. The Buyer shall immediately notify the Company in writing of any change in the Buyer's name.
- 17.4. The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- 17.5. The Buyer shall pay all costs incurred by the Company incurred in protection or preservation of its security interest or its registration, recovery or attempted recovery of outstanding moneys and the enforcement of these terms and conditions or the security interest contained in this Agreement.
- 17.6. The Buyer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to this Agreement.
- 17.7. The Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this Agreement.
- 17.8. The Buyer will not allow a security interest to be created or registered over the Goods in priority to the security interest held by the Company.

## **18. Waiver**

- 18.1. All the original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Company or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

## **19. No Assignment**

- 19.1. The Buyer may not assign all or any of his rights or obligations under this Agreement without the prior written consent of the Company.

## **20. Law and Jurisdiction**

- 20.1. This Agreement shall in all respects be deemed to be an Agreement made in New Zealand and the construction, validity and performance of this Agreement shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of this

Agreement is accepted and acknowledged by the Buyer provided however that the Company shall be entitled to commence any action arising out of or in respect of this Agreement in any other court.

## **21. Artwork/Design and Barcodes**

- 21.1. The Company shall enable the Buyer to review and approve any artwork or designs prepared by the Company. If the Buyer declines to undertake such review, or fails to undertake such review within the period advised by the Company, the Buyer shall be deemed to have accepted the artwork and designs and authorised the Company to proceed with the production of the Goods.
- 21.2. If the Buyer requests to be present at any stage of the production process then the Company shall advise the Buyer of the time and place at which the Buyer should attend. Should the Buyer or its representative fail to attend, within 30 minutes of the arranged time, then the Company may elect to either proceed or not proceed with the production of the Goods. If the Company elects to proceed with production then the Buyer shall be deemed to have approved the Goods. If the Company elects not to proceed with production then the Company shall not be liable to the Buyer or any other party for any delay in providing the Goods.
- 21.3. Preparation by the Company of artwork and design (which terms include written text) whether printed upon any packaging material or separate label for use in conjunction with any packaging material or attachment to any Goods and sold to the Buyer shall not amount to nor be construed as a warranty, condition or representation expressly or by implication in any manner whatsoever that such labelling complies with any law or laws whether by statute, regulation or otherwise in force now or which at any time in the future may be in force in New Zealand or elsewhere and containing any prescription as to the content, form, shape, size, words, letters, figures, symbols, colours, barcodes or any other labelling required upon any package or label for any Goods whatsoever.
- 21.4. The Buyer's specifications should be consistent with the requirements of EAN International and any relevant industry requirements for product numbering and barcode symbol marking ("the Authority").
- 21.5. The Company shall use all reasonable endeavours to comply with the Buyer's specifications as to the product numbering or barcode symbol marking subject to and in accordance with the conditions to be fulfilled at each stage of the printing process as laid down by the Authority.
- 21.6. The Company shall comply with industry print quality standards as to barcode reproduction.
- 21.7. Where a Buyer specifies a bar code symbol that does not conform, to the specifications of the Authority, the Company supplies the bar code on the understanding that the Buyer is aware of the non-conformance and exempts the Company from any consequence of the non-conformance.

## **22. Plates, Dies, Blocks, Screens, Original Designs and Artwork**

- 22.1. Unless otherwise agreed, by the Company and the Buyer, printing plates, moulds, blocks, rubber stereotypes, cutting dies artwork, screens and other preparatory work may be automatically destroyed if they have not been used for a period of 2 years.

## **23. CGA**

- 23.1. The Buyer acknowledges that the Buyer is acquiring, or holding itself out as acquiring, the Goods from the Company for the purposes of a business and the Buyer agrees that:
  - a. the conditions, warranties and guarantees set out in the CGA accordingly shall not apply to and are excluded from the acquisition of the Goods by the Buyer;
  - b. the Buyer may not claim any of the remedies set out in the CGA from the Seller.
- 23.2. The Buyer agrees that if the Buyer is acquiring the Goods for the purpose of resupplying the Goods in trade, or the personal or domestic or household use, the Buyer will:
  - a. if resupplying the Goods in trade, procure that the Buyer's written terms and conditions for such resupply require that the Buyer's client and each person in the distribution chain include in their supply agreements, when the acquirer acquires, or holds itself out as acquiring the Goods for the purposes of business, an acknowledgement in writing that the acquirer is acquiring the Goods for business purposes and to exclude the provisions of the CGA from any such acquisition;
  - b. if resupplying the Goods directly to a consumer within the meaning of the CGA who is acquiring or holding itself out as acquiring the Goods for the purposes of a business, the Buyer will supply the Goods pursuant to written terms and conditions which acknowledge that the Goods are being acquired for business purposes and exclude the provisions of the CGA.
- 23.3. If the Buyer is a consumer as that term is defined in section 2 of the CGA and the Buyer has not contracted out of the CGA under clause 24.1 of these terms and conditions, nothing in these terms and conditions will limit any rights the Buyer may have under the CGA.

## **24. Interpretation**

- 24.1. These conditions of sale are entered into on behalf of and are intended to bind and ensure to the benefit of the Company and the Company's successors and assigns.
- 24.2. In these conditions:
  - a. "Agreement" means the Agreement between the Company and the Buyer for the purchase of the Goods;
  - b. "person" includes a corporation, association, firm, company, partnership or individual.;
  - c. "the Buyer" means the person, firm or company buying the Goods from the Company;
  - d. "CGA" means the Consumer Guarantees Act 1993 as amended from time to time;
  - e. "the Company" shall mean Orora Packaging New Zealand Limited;
  - f. "the date of the Agreement" means:
    - (a) where the Agreement arises from an order placed by the Buyer, the date of acceptance of the order by the Company, or
    - (b) where the Agreement arises from a quotation given by the Company, the date upon which written notification of acceptance of the quotation is received by the Company;
  - g. "the Goods" means all personal property supplied by the Company to the Buyer.
  - h. "the purchase price" means the purchase price of the Goods as agreed between the Company and the Buyer, subject to any variation in accordance with clauses 1 or 2 hereof;

## **25. Privacy Act 1993**

- 25.1. The Buyer authorises the Company to contact any credit agency, referee or any other source ("Source") in order to check, exchange or provide information in relation to the Buyer and the Buyer authorises each Source to provide to the Company any information about the Buyer. If the Buyer is a natural person,

the Privacy Act 1993 entitles the Buyer to have access to personal information held by the Company about the Buyer and to request correction of that personal information.

**26. Acknowledgement**

26.1. The Buyer acknowledges that it has received a copy of this Agreement and in particular that this Agreement constitutes a “security agreement” for the purposes of the PPSA and that the Company may register a financing statement in respect of this Agreement.

**27. Vienna Convention**

27.1. The Buyer and the Company agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.