

STANDARD TERMS AND CONDITIONS OF TRADE

Definitions

“Company” means Pro-Pac Packaging Limited (ABN 36 112 971 874) its subsidiaries and assigns.
“Customer” means the person or persons identified as the Customer on the Commercial Credit Application Form or in the absence thereof the party placing the Order with the Company.
“Order” means an offer by a Customer to purchase Products from the Company.
“Products” includes any goods or services or combination of both ordered by the Customer from the Company or supplied by the Company on the order of the Customer.
“Unique Item” includes any Product that has been specially ordered for a Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.
“PPS Act” means the Personal Property Securities Act 2009 (Cth) as amended from time to time.
“PPSR” is the Personal Property Securities Register established under section 147 of the PPS Act.
“Rented Pallet” means pallets owned by independent companies that rent pallets including *Chep* and *Loscam*.
“Writing” includes fax email and SMS.

1. Acceptance of Order

The Company may accept any Order in whole or in part. Dispatch by the Company of Products for delivery pursuant to an Order (whether by single or multiple delivery) shall be taken as acceptance to the extent dispatched and the terms hereof current at the date of acceptance shall apply to the sale. Accepted Orders may not be varied or cancelled by the Customer and (subject to the conditions set out herein) there is no right of return.

2. Price

The price of the Products shall be as agreed between the parties or otherwise the published price or where there is no agreed price or published price such amount as indicated on invoices provided by the Company to the Customer regarding Products ordered. Prior to acceptance of an Order, the Company may change its published prices at any time without notice.

Products ordered are quoted on the basis of collection from the factory or store of the Company from which they are delivered. The Company may charge for freight and handling at rates dependent on distance and volume of Products supplied. The rates are subject to change at any time without notice. A fuel levy may be charged by the Company for any delivery.

A further charge of \$20 may be made by the company for all orders under the minimum order value for that division of the Company that has the order placed on it. This fee and the threshold at which it applies may increase without notice.

3. Credit granting

The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment of all Products supplied is required before delivery. Where credit has been approved for the Customer, all invoices issued by the Company are due and payable no later than thirty (30) days calculated from the end of the month in which the Products were delivered (or such other date for payment as the Customer and the Company may agree in writing).

4. Credit Policy and Default

The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 2% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a “solicitor and own client” basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay for the Products in accordance with invoices issued to the Customer, the Company may at its sole discretion:

- cancel any provision of credit to the Customer;
- reverse any rebates and discounts allowed;
- require cash pre-payment for any further Products ordered;
- provide to a credit reporting agency details of the payment default;
- commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- recover possession of the goods pursuant to the retention of title preserved under Clause 7;
- decline to supply Products to the Customer and terminate any other agreement with the Customer; and
- exercise any other rights at law.

A certificate of debt signed by a representative of the Company shall be prima facie evidence of money owing by the Customer to the Company at that time.

5. Taxes

The Company reserves the right to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

6. Delivery

Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement. Notwithstanding any specification to the contrary in the Customer’s Order the failure of the Company to deliver by a time specified by the Customer shall not entitle the Customer to treat that contract as breached or repudiated. The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products promptly or at all.

7. Retention of Title to the Products Pending Payment

Orders are accepted on condition that ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account. Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for, and on behalf of the Company. The Customer shall store and segregate the Products (at no cost to the Company) in such a way that they can be identified as the Company’s property, shall keep them properly stored, protected and insured and shall deliver them to the Company upon request and the Company shall be entitled to

enter the premises where they are stored to retrieve them at any time and may resell such Products without the Customer’s consent. The Customer will however be entitled to sell such Products within the ordinary course of business on condition that so long as title to such Products remain with the Company, that the Company shall legally and beneficially be entitled to the proceeds of sale that the Customer shall hold on trust for the Company in a separate account or where applicable the Customer will assign or transfer to the Company the claims the Customer has in respect of such sales.

8. Passing of Risk

The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery of the Products to the Customer or upon collection of the Products by the Customer, the Customer’s agent or any courier as the case may be.

9. Personal Property Securities Act

The Customer acknowledges that by virtue of clauses 4, 7, 8 and 16 the Company has a security interest in the Products for the purposes of the PPS Act and to the extent applicable the PPS Act applies.

The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering any security interest which the Company has over the Products on the PPSR, in order to perfect the security interest and comply with the requirements of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Company to undertake the matters set out above. The Customer waives pursuant to s.157 (3) (b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.

The Customer and the Company agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Products to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):

- section 129 (disposal by purchase);
- section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
- section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- subsection 132(4) (statement of account if no disposal);
- section 135 (notice of retention);
- section 142 (redemption of collateral);
- section 143 (reinstatement of security agreement);

Pursuant to section 275(6) of the PPS Act and subject to section 275(7), the Customer and the Company agree not to disclose to any interested person information pertaining to the Company’s security interest as set out in section 275(1).

Where required by law to respond the Company may charge the Customer a reasonable sum for work and costs associated with responding to a request made under section 275(1) of the PPS Act.

10. Unique Items

Unique items shall not in any case be eligible for return. Orders placed for Unique Items are to be supplied as per quantities run at time of production that may vary by up to 10% of the total quantity in the Order.

Where Unique Items are held in inventory specifically for the Customer and the Customer discontinues normal, regular purchasing of these Unique Items from the Company, then the Customer undertakes to buy at the current purchase price all remaining inventory of these Unique Items within 10 days of receiving notification hereunder from the Company.

11. Pallets

Unless otherwise agreed to in writing all pallets on which Products are delivered remain the property of the Company and must be returned to the Company at the Customer’s expense in good order and condition to the factory or store of the Company from which they were delivered. Pallets will be deemed to be in the Customer’s possession until received at such factory or store. To the extent the law permits, all risks whatsoever and costs associated with the pallets vests in the Customer and the Customer agrees to replace the pallets with pallets of a similar type and quality or reimburse the costs thereof in respect of pallets that are not returned in good order and condition to the Company within one month of delivery of the Products.

Where Products are delivered on a Rented Pallet, the Customer must either replace the equivalent amount of Rented Pallets with the transport company delivering the Products or transfer the Rented Pallets through a valid account of the Rented Pallet company. Any Rented Pallets not replaced or transferred shall be invoiced at current replacement cost to the Customer.

12. Claims and Returns

The Customer will inspect and check all Products received and within 14 days of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer’s Order. The Customer is responsible for checking that Products comply with those Ordered prior to use. Returned Products must be unmarked, in a saleable condition and must include the original packaging.

No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with a valid purchase order or receipt. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned the factory or store of the Company from which they were delivered. All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.

13. Credit Card recovery of costs

A service fee may be added to the price where payment is made by way of a credit card.

14. Returned Cheques

An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice.

- 15. Disputed Charges**
If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever first occurs), the undisputed amount is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice thereof from the Company and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date will be deemed to be correctly charged.
- 16. Recovery**
Notwithstanding any other provision to the contrary, if any amount due by the Customer to the Company is not paid within the term for payment, the Company reserves the following rights in relation to the Products until all amounts owed by the Customer to the Company in respect of the Products and all other Products and services supplied to the Customer by the Company at any time are fully paid:
- legal and equitable ownership of the Products;
 - to retake possession of the Products; and
 - to keep or resell any of the Products repossessed.
- The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.
- 17. Disclaimer and Limitation of Liability**
The Trade Practices Act and various State Acts imply certain warranties into transactions which in certain circumstances cannot be excluded. Notwithstanding this (but subject to such laws as necessarily apply) the Customer acknowledges that it has not relied on any advice given or made by or on behalf of the Company in connection with the Products. The Company excludes all implied conditions and warranties from this agreement, except any conditional warranty (such as conditions or warranties implied by the Trade Practices Act and State Acts) to the extent that they cannot be excluded ("Non Excludable Conditions"). The Company limits its liability:
- for breach of any Non-Excludable Conditions to the extent that liability for such breach can by law be limited to the invoice cost of the Products supplied; and
 - for any error or omission in delivery of the Products caused by the Company to (at the Company's sole discretion) resupply of the Products affected by the breach, or the payment of the cost of resupply.
- Subject to this Clause, the Company excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with this agreement whether that liability lies in contract, tort (including the Company's negligence) or under statute. Without limitation, the Company will in no circumstances be liable for any indirect or consequential losses, including but not limited to loss of profits, loss of revenue, loss of business opportunity, costs or any loss of reputation. The Customer indemnifies the Company and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of this agreement and any negligent or unlawful act or omission of the Customer in connection with the Products.
- 18. Set-off**
The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.
- 19. Assignment**
The Customer may not assign or subcontract any contract for the purchase of Products or its obligations under this agreement. The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.
- 20. Force Majeure**
The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract, either totally or partially, as a result of including but not limited to fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war, equipment, facilities, services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.
- 21. Privacy Information**
The Company may give information about the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
 - allow the credit reporting agency to create or update credit information records containing information about the Customer, its guarantors, directors or proprietors;
 - for registration on the PPSR (Personal Property Securities Register); and
 - to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.
- 22. Waiver of terms of agreement**
The failure by the Company to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.
- 23. Proper Law**
The agreement is governed by and will be construed in accordance with the laws of the State of NSW and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW.
- 24. Entire Agreement**
This document represents the entire agreement between the parties and may not be amended except in writing signed by each of the parties.
- 25. General**
The Company may serve any notice or Court document on the Customer by forwarding it by ordinary pre-paid post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address.
- If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.
- All amounts quoted or invoiced are in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs.
- The Company reserves the right to review these terms and conditions at any time. If following any such review there is to be a change in the terms and conditions, that change will take effect from the date on which the Company notifies the Customer of that change.
- In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer and its guarantors shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold or supplied to the third party and other charges on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.

