

## Standard Terms and Conditions

### Definitions

“**Company**” means Pro-Pac Group Pty Limited (ABN 50 095 393 776) its subsidiaries and assigns.

“**Customer**” means the Person identified as the Customer on the Commercial Credit Application Form, or the agreement which incorporates these terms, or in the absence thereof the Person placing the Order with the Company.

“**Order**” means a written offer by a party to purchase Products from the Company.

“**Person**” includes a person, entity, company, partnership, association, trust or organisation.

“**Products**” means the goods or services ordered by the Customer from the Company and includes any Trials.

“**Unique Item**” includes any Product (or raw materials used to produce any Product) that is:

(a) specially ordered by the Company for the Customer (whether locally or from overseas), or that is not a usual Company stocked item; or

(b) has been requested by the Customer in volumes which are over and above the Company’s usually stocked volumes; or

(c) stored for and at the request of the Customer or stored to ensure forecasts provided by the Customer are met;

or

(d) that is specially manufactured or converted for the Customer and includes raw materials that are specifically obtained or held for the Customer.

“**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.

“**Trials**” means trials, preliminary work and/or work or products produced in an experimental way at the Customer’s request, whether or not saleable by the Customer.

“**Writing**” or “**Written**” includes email

- 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 of the Order to the extent dispatched and the terms hereof shall apply to the sale. An order acknowledgement or confirmation by the Company is not acceptance of an Order.
- 2. Order Cancellation Orders may not be varied or cancelled by the Customer without the written consent of the Company.** Where the Company consents to the cancellation of an Order the Customer must reimburse the Company for all costs incurred by the Company prior to or as a result of cancellation of the Order, and any additional costs incurred as a result of variation of the Order.
- 3. Minimum Order** The Company may require the Customer to amend its Order to ensure it complies with any minimum order quantity or value thresholds set by the Company from time to time.

- 4. Price:** The price of the Products shall be as agreed in writing between the parties, or otherwise the Company’s generally published price.

. In addition to the price, the Company may charge for freight and handling at rates dependent on distance and volume of Products supplied. These rates are subject to change from time to time. A fuel levy may be charged by the Company for any delivery.

- 5. Credit:** The Company may accept an Order and allow credit for part or all of its value or may 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 twenty one (21) days calculated from the end of the month in which the invoice is dated (or such other date for payment as the Customer and the Company may agree in writing). Notwithstanding any credit which may have been granted, the Company may require pre-payment for any Unique Item.

- 6. Credit Policy & Default:** The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 0.0657% per day calculated from the due date and accruing daily 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, reverse any accrued rebates, cancel any discounts, require prepayment, and put the Customer’s account on stop.

- 7. GST** 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.

- 8. Delivery:** Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company, without the consent of 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 return, redelivery and storage. Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement. Notwithstanding any specification to the contrary in the Customer’s Order delivery timeframes are estimates only and may be impacted by the availability of raw materials, and production lead times which can vary from time to time. Accordingly the failure of the Company to deliver by a time specified by the Customer shall not entitle the Customer to treat the sale contract as breached or repudiated in the absence of unreasonable delay.

- 9. Title:** 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. The Customer acknowledges that 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 Section 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):

- i. Section 129 (disposal by purchase);

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- ii. Section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
- iii. Section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- iv. Section 132(4) (statement of account if no disposal);
- v. Section 135 (notice of retention);
- vi. Section 142 (redemption of collateral);
- vii. 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:** Orders placed for manufactured Unique Items will be supplied in line with the quantities run at time of production but may vary by the following percentages, depending on the total quantity in the Order, and the type of product:

Printed or laminated Reels/ rolls:

On runs of 500kgs or more	10%
On runs of 250- 499kgs	20%
On runs of 100-249kgs	30%
On runs less than 100kg	40%

Bags/ pouches:

On runs of 100,000 or more	10%
On runs of 50,000-100,000	20%
On runs of 50,000- 25,000	30%
On runs of 25,000 or less	50%

Other manufactured Unique Items- 10% of the total quantity in the order. In all cases, the Company will charge for the quantity actually delivered.

Where Unique Items are held in inventory for the Customer or are work in progress, and the Customer discontinues normal, regular purchasing of these Unique Items from the Company or terminates its relationship with the Company, then the Customer must purchase at the then current price all remaining inventory of these Unique Items within 10 days of request by the Company. Any additional storage costs, destruction or delivery costs incurred by the Company must be paid by the Customer.

**11. Pallets:** Unless Products are delivered on a Rental Pallet, the Company will invoice the Customer for the replacement cost of the pallet on which Products are delivered.

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 to the Customer at the then current Company replacement cost.

**12. Claims & Returns:** The Customer must inspect and check all Products received and within 14 days of receipt notify the Company in writing of any shortage in quantity, defect in or damage to the Products, using the Company's claim form ("Eligible Returns"). The Company will then determine and advise the Customer of the next course of action which may include – return of the Products, destruction of the Products or delivery of the Products to a third party.

No credit or replacement will be given unless the relevant Products are Eligible Returns. The Company may recover its costs (including freight, handling and other charges) where the returned Products are not Eligible Returns. Any Products returned by the Customer must be returned in the same condition they were received.

**13. Credit Card Recovery of Costs:** A reasonable service fee may be added to the price where payment is made by way of a credit card.

**14. Disputed Charges:** If the Customer disputes 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.

Invoiced amounts that are not objected to in writing within 14 days of the invoice date will be deemed to be correctly charged.

**15. 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:

- (a) legal and equitable ownership of the Products;
- (b) to retake possession of the Products; and
- (c) 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.

**16. Limitation of Liability:** The law implies certain warranties into transactions which in certain circumstances cannot be excluded. Notwithstanding this (but subject to such laws as apply) the Company excludes all implied conditions and warranties from this agreement, except any warranty implied by law to the extent that they cannot be excluded ("**Non Excludable Conditions**").

The Company limits its liability:

- (a) 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
- (b) 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 or under statute, except in cases of wilful default, negligence or criminal conduct of the Company. Neither party will 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. Each party indemnifies the other party and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the indemnifying party's breach of this agreement and any negligent or unlawful act or omission of the indemnifying party in connection with the agreement.

**17. 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.

**18. 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.

**19. 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 any event outside of the Company's control including but not limited to fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, epidemic, pandemic, disease, sickness, 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.

**20. Privacy:** The Company may give information about the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (b) allow the credit reporting agency to create or update credit information records containing information about the Customer, its guarantors, directors or proprietors;
- (c) for registration on the PPSR; and
- (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency. The Current credit reporting agency is Equifax Australia Level 14, 100 Arthur St North Sydney, NSW 2060.

**21. No Waiver:** The failure by the Company to exercise, or any 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.

**22. Experimental Orders Trials, and Preliminary Work:** Trials and the costs associated with Trials may be charged to the Customer at the option of the Company.

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### 23. Property & Material Supplied by Customer:

Property including Printing Plates, artwork, logos and designs, tooling, Moulds, equipment and all other equipment and materials supplied to the Company by, or on behalf of, the Customer ("Customer Equipment"):

- (a) shall be stored and retained by the Company or its suppliers, at the exclusive risk of the Customer and the Company shall not be responsible for any loss or damage to the Customer Equipment while under its control or suppliers control, nor shall it be responsible for any insurance in relation thereto;
- (b) will not be counted or checked by the Company; and
- (c) shall be removed by the Customer within 7 days after written request by the Company, otherwise the Company may return the Customer Equipment to the Customer or dispose of the same, recovering the costs thereof from the Customer..

The Company accepts no responsibility for imperfect work caused by defects in or unsuitability of Customer Equipment.

The Company reserves the right to retain possession of any Customer Equipment until all expenses, accounts, liabilities and/or debts have been paid in full including, but not limited to, all outstanding invoices, Unique Items and stock held on Customers Order but not yet invoiced, work in progress and preparatory costs not yet charged.

The Customer must immediately advise the Company of any changes to the Customer Equipment, including any artwork, design and logo changes.

**24. Bar Codes:** It is the responsibility of the Customer to check bar codes on receipt of goods. The Company is not responsible for bar codes being GS1 certified or any costs or losses that may be suffered resulting from any inability of bar codes to scan correctly.

**25. Artwork, Moulds & Printing Plates:** The supply of Artwork, Moulds and Printing Plates will be charged to the Customer, unless supplied by the Customer. Set up costs and Replacement sets will also be charged to the Customer if and when required.

**26. Proper Law:** The agreement is governed by and will be construed in accordance with the laws of the State of Victoria and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of Victoria.

**27. 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.

**28. General:** If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

These terms and conditions apply to the supply of Products by the Company to the exclusion of any terms and conditions included in the Customer's Order.

All amounts quoted or invoiced are in Australian dollars (unless otherwise stated). Payments remitted in foreign currency must include all related bank charges and currency conversion costs.