

# Jemseal Packaging Co. Pty Ltd: Terms and Conditions of Trade

## 1. Definitions

"Conditions" means these Terms and Conditions of Trade;  
"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from the Supplier;  
"goods" means goods supplied by the Supplier to the Customer;  
"services" means services supplied by the Supplier to the Customer; and  
"Supplier" means Jemseal Packaging Co. Pty Ltd (ABN 85 005 595 611) 23 Lawson Cres., Thomastown, Victoria 3074.

## 2. Basis of Contract

- 2.1 Unless otherwise agreed by the Supplier in writing, the Conditions apply exclusively to every contract for the sale of goods or services by the Supplier to the Customer and cannot be varied or supplanted by any other condition.
- 2.2 Any written quotation provided by the Supplier to the Customer concerning the proposed supply of goods or services is valid for 30 days and is an invitation only to the Customer to place an order based on that quotation. The Conditions may include additional terms in the Supplier's quotation which are not inconsistent with the Conditions.

## 3. Placing an Order

- 3.1 The Customer must comply with the procedure prescribed by the Supplier for the placing of orders.
- 3.2 Any order placed by the Customer is an offer. An order will not be accepted until the Supplier communicates acceptance to the Customer or it has provided the goods or services.

## 4. Payment

- 4.1 Payment for goods and services must be made within 30 days of the end of month in which the Supplier's invoice is raised.

## 5. Payment Default

- 5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:
- a) Charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2 per cent for the period from the due date until the date of payment in full.;
- b) Charge the Customer for all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- c) Cease or suspend for such period as the Supplier thinks fit, supply of any further goods or services to the Customer;
- d) By notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier; without effect on the accrued rights of the Supplier under any contract.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of the Supplier:
- a) Where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- b) Where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## 6. Passing of Property

- 6.1 Until full payment in cleared funds is received by the Supplier for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the customer:
- a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
- b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
- c) the Customer must keep the goods separate from its goods and maintain the labelling and packaging of the Supplier;
- d) the Customer is required to hold the proceeds of any sale of the goods on trust for the Supplier in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as a trustee;
- e) the Supplier may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

## 7. Pricing

- 7.1 Prices for the supply of goods and services exclude:
- a) Consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the goods and services, whether at point of supply or at some other specified occurrence, by whatever name; and
- b) The cost of freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery; and the Customer must pay to the Supplier all such amounts in (a) and (b) in addition to the prices for the supply of the goods and services
- 7.2 Where there is any change in the costs incurred by the Supplier in relation to the goods or services, the Supplier may vary its price for goods or services on order to take account of any such change.

## 8. Intellectual Property

- 8.1 The Customer warrants that the Customer copyright in or licence to authorize the Supplier to reproduce all material supplied by the Customer to the Supplier for the purpose of providing the goods and services and the Customer hereby expressly authorise the Supplier to reproduce all and any such material for the purpose of providing the goods and services.
- 8.2 The Customer indemnifies and agrees to keep indemnified the Supplier against all liability, losses, claims and expenses (including legal cost on indemnity bases) incurred by the Supplier in relation to or in anyway directly or indirectly connected with any breach of intellectual property rights in relation to material supplied by the Customer.

## 9. Risk and Insurance

- 9.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being despatched from the Suppliers premises.
- 9.2 The Supplier has no obligation to insure any property of the Customer in the Supplier's possession.

## 10. Delivery and Performance of Contract

- 10.1 Any period or date for delivery of goods or provision of services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.
- 10.2 A delivery docket or completed driver's manifest signed by the driver or Customer or its employee or agent will be proof of delivery of goods invoiced.
- 10.3 The Supplier will use its best endeavours to supply the quantity of goods ordered by the Customer, however, the Customer will allow a variation in quantity of plus or minus 10%.

## 11. Liability

- 11.1 The customer must, within 7 days of delivery of goods, notify the company in writing of any alleged claims for short or wrongful delivery or non compliance with specifications. If the Customer fails to inspect and give notice within 7 days, the Supplier is deemed to have fulfilled the contract. No such claim shall in any event exceed the invoiced price of the goods.
- 11.2 The Customer must not use the goods in conjunction with flammable, toxic or dangerous products. The Customer acknowledges that the Supplier is not aware of the specific use for which the Customer requires the goods and the Supplier is not liable for any damage whatsoever and howsoever cause to belongings, property or persons in any way related to the specific use of the goods intended or made by the Customer.
- 11.3 Except as specifically set out herein, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.4 Replacement or repair of the goods or resupply of the services is the absolute limit of the Supplier's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.
- 11.5 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party
- 11.6 The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of goods or services.
- 11.7 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

## 12. Cancellation

- 12.1 if, through circumstances beyond the control of the Supplier, the Supplier is unable to effect delivery or provision of goods or services, then the Supplier may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier after that order has been accepted by the Supplier. The Supplier is still entitled to payment in full.

## 13. Privacy

- 13.1 Any information the Supplier obtains from the Customer is necessary for the Supplier's business purposes of providing the Customer with the goods and services, and may be used in answering the Customer's queries; considering the Customer's credit application; performing internal administration; developing and improving and marketing the Supplier's goods and services; and any directly related purposes.
- 13.2 The Supplier will not disclose any personal information without the Customer's consent except to a related entity or adviser of the Supplier or where the Supplier is otherwise required by law to do so.
- 13.3 The Customer may access the personal information on written request. A copy of the Supplier's privacy policy is also available on written request. The privacy policy contains details on the use, collection, disclosure and security of personal information held by the Supplier.

## 14. Miscellaneous

- 14.1 The law of Victoria from time to time governs the Conditions and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

