

**1. TERMS APPLY TO ALL CONTRACTS TERMS AND CONDITIONS OF SALE**

**TERMS AND CONDITIONS OF SALE**

The terms and conditions apply to and form part of any contract arising from the Customer's acceptance of the Company's offer and any contract arising from repeat or further orders for the same or similar goods whether given orally or otherwise'

**2. OFFERS**

(a) Unless otherwise agreed in writing, all prices are:

i. Open for acceptance for thirty (30) days only;

ii. F.I.S. Consignment Address;

iii. subject to the Company's right to withdraw or vary any quotation at any time prior to acceptance;

iv. exclusive of any costs attributable to any special delivery required by the Customer and those costs are recoverable from the Customer

v. based on labour, material and services, costs which prevail at the date of quotation, and any variations to those costs or to specification after the date of quotation are recoverable from the customer

vi. calculated on the basis of all goods ordered being delivered in one shipment;

vii. exclusive of sales tax and goods and services tax which if applicable will be charged to the Customers account.

(b) In these terms and conditions of sale FIS, Consignment Address means that the Company will pay freight and (transport) insurance for the carriage of goods, and risk in respect of the goods passing from the Company to the Customer when the goods are delivered to the Customer at the agreed place for delivery or, in accordance with clause 9, to a carrier.

CIF means that the Company will pay freight and insurance for the carriage of goods, and risk in respect of the goods passing from the Company to the Customer where the goods are delivered to the port of discharge nominated by the customer as the agreed place of delivery

(c) A contribution for the costs of artwork, including any alterations thereto, original blanks, photographic negatives, positives or proofs, screens and moulds where relevant dies, designs, sketches, stems, blocks and engravings may be an extra charge unless otherwise agreed in writing and these items remain at all times the property of the Company. No responsibility will be accepted by the Company for errors in proofs passed by the Customer.

### **3. ACCEPTANCE**

The placing of an order with the Company is full acceptance of these terms and conditions and any terms and conditions sought to be introduced by the Customer's order will be disregarded and form no part of this contract.

#### **4. SALES TAX**

(a) Unless the Customer furnishes to the Company a Quotation of Certificate or an Exemption Certificate, the Company will charge to and collect from the Customer the amount of any sales tax payable in respect of the goods.

(b) The Customer warrants that any Quotation of Certificate or Exemption Certificate furnished to the Company is property and lawfully furnished and that any information contained therein is true and correct in all respects and if, without knowledge or fault on the part of the Company, a Quotation of Certificate or Exemption Certificate is improperly or unlawfully furnished or information contained therein is not true and correct, the Customer agrees to indemnify the Company against all liabilities, penalties, costs and expenses of whatsoever nature suffered or incurred by the Company as a result thereof.

#### **5. GOODS AND SERVICES TAX**

If any supply made by the Company to the Customer pursuant to these terms and conditions is a taxable supply pursuant to the meaning contained in A New Tax System (Goods and Services Tax) Act 1999 as amended ("GST Act") then:

(a) In addition to any consideration payable by the Customer to the Company under these terms and Conditions, the Company shall be entitled to recover from the Customer an additional amount on account of goods and services tax ("GST"), such amount to be equal to the amount of the Company's GST liability in respect of the supply calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under these terms and conditions is the value of the taxable supply and shall be recoverable at the same time as any of the consideration is payable under these terms and conditions;

(b) the Company may in its absolute discretion review the Customer's obligations under paragraph (a) above and reduce the amount payable by the Customer to the Company under that clause. Any adjustment shall be notified in writing by the Company to the Customer on or before the date the consideration is payable under paragraph (a) above, failing which no such adjustment will be allowed.

## 6. QUANTITY

In the case of stock items, product will be dispatched according to the order and in minimum order quantities as agreed upon between Packit and the Customer. In the case of specific manufacturing order, every endeavour will be made to deliver the quantity ordered. but owing to the difficulty of producing exact quantities, orders are conditional upon a margin of 10% being allowed for over runs or shortages, the same to be charged for or deducted pro rata by the Company, unless otherwise agreed in writing at the time of ordering.

## 7. LIABILITY - SUITABILITY OF GOODS

(a) Subject to paragraph (a), no warranty is given by the Company or responsibility accepted by it that goods sold comply with the requirements of any legislation relating to the marking and/or labelling and/or packaging of goods. compliance with the requirements of such legislation is the sole responsibility of the Customer and the Customer must indemnify the Company against all losses, claims, costs and expenses of whatsoever nature arising from my action or proceeding of any kind resulting from non-compliance.

(b) Subject to paragraph (a), no condition or warranty that work done or goods supplied are or is suitable in size, shape, capacity, quality or otherwise for the Customer's purpose is contained in, given by or to be implied in this contract.

(c) No warranty or condition as to merchantability, fitness for any particular purpose or otherwise howsoever is given by the Company concerning the work done or goods supplied under the contract or is to be implied and all such warranties, terms and conditions are expressly *excluded* to the maximum extent permitted by law. The Company shall not be liable to any other party (whether under statute or in contract or tort) for any indirect or consequential loss or damage.

(d) The Customer has the benefit of conditions and warranties implied by statute which cannot lawfully be excluded, restricted or *modified*.

(e) Subject to any statutory provision to the contrary my liability of the Company to the Customer in relation to any breach of a condition or warranty referred to in paragraph (d) is

limited to replacement of the goods or supply of equivalent goods, or at the option of the Company, payment of an amount equal to the cost of replacing the goods, or of acquiring equivalent goods (whichever ever is the lowest amount)

### 8. DELIVERY

(a) The company will use its best endeavours to deliver or arrange for delivery of the goods to the Customer at the agreed place and time for delivery but no liability will attach to the Company if the goods are not delivered within that period.

(b) The Company reserves the right to alter the agreed date by notice prior to the due date of delivery given to the Customer where it is in the Company's view impractical to deliver or arrange for delivery of the goods to the Customer on the specified date.

(c) Any goods not taken within the period specified in paragraph (a) or on such other date as has been notified to the Customer are to be paid for in full within 30 days from that date unless otherwise agreed in writing and any delivery or other costs incurred by the Company in connection with such goods are recoverable from the Customer. Such goods remaining in the Company's stores under these circumstances will be at the Customer's risk and subject to a storage charge at the option of the Company.

(d) The Company reserves the right to supply by instalments. Each instalment is *deemed to be sold* under a separate contract and will be separately invoiced for payment upon the Company's usual terms as set out in clause 10. Failure of any one delivery shall not invalidate the contract as to other deliveries.

(e) Should delivery of work be required sooner than the normal time requisite for its proper production every effort will be made to secure freedom from defects, but reasonable allowance must be made by the Customer in such cases. Should such delivery necessitate overtime being worked or other additional costs being incurred, a charge may be made to cover the increased cost.

### 9. CARRIERS AND TITLE

(a) Risk in respect of goods delivered to a carrier for carriage to the Customer passes to the Customer when the goods are handed over or made available to the carrier agreed between the Company and the Customer.

(b) The Company will use its best endeavours to notify the Customer within 24 hours of goods having been handed over or made available to a carrier but no liability will attach to the Company if notice is not given within that period, nor will the failure to give notice within that period excuse the Customer from any of its obligations under this contract.

(c) There is no agreement between the Company and the Customer as to who that carrier is to be, or if the Company is otherwise to select the carrier, the Company may select any carrier as in its absolute discretion it sees fit and engage such carrier on such terms as the Company in its absolute discretion sees it.

(d) Title to goods supplied by the Company to the Customer under this contract passes to the Customer only upon payment of the invoice for the goods. Until payment in full is received by the Company, the Customer shall store the goods in such a way that clearly designates that they remain the property of the Company.

(e) The Customer shall be entitled to imply the goods in the usual conduct of its business including for the sale and storage of the Customer's usual goods, and as a consequence transfer title to the goods to any bona fide purchaser for value of such goods.

(f) In the event that the Customer fails to pay for or fails to store the goods as required pursuant to these terms and conditions, The Company shall, at its sole option, have the right to:

i. demand the immediate return of such goods as the Company in its sole discretion may nominate or identify, and upon making such demand be deemed to be immediately entitled to possession of the nominated or identified new or unused goods; and/or

ii. demand immediate payment of its unpaid accounts for monies owed for goods sold and delivered for those goods not recovered pursuant to paragraph (i) above.

(g) In the event that, upon demand being made under paragraph (1) above, the Customer fails or refuses to return the nominated goods to the Company as required by that paragraph, the Company may, by itself, its servants, agents or contractors, enter upon the premises of the Customer where the nominated goods are stored and itself on take possession of those goods.

## **10. TERMS**

(a) Subject to paragraph (b), goods will be paid for at the time of placing an order.

(b) Where:

i. the Company has approved an application for commercial credit from the Customer or has otherwise agreed in writing and that approval has not been revoked or withdrawn); and

ii. the cost of goods ordered by the Customer, plus the cost of any goods previously ordered by the Customer for which payment is outstanding, does not exceed the credit limit approved for the Customer, goods will be paid for at or before the end of the month following the month of invoice.

(c) The Company may charge on overdue balances outstanding at two per cent (2.0%) per month;

(d) If payment is not received by the Company on or before the due date, the Customer will be liable for all costs incurred in recovery, including all debt collection agency fees and solicitor's costs.

(e) Any errors made by the Company in computations, typing or otherwise of any part of the quotation, offer, invoice, delivery docket, or any other form of communication with the Customer

shall be subject to correction by the Company and the Customer agrees to be bound by any such correction.

(f) All Items remain the property of the Company until paid for in full.

### **11. DEFAULT OF CUSTOMER**

If agreement for the purposes of clause 10(a) is not granted or is revoked or withdrawn by the Company, or the Customer defaults in payment or commits an act of bankruptcy or, being an incorporated company, passes a resolution for winding up (except for the purposes of reconstruction) or a court makes an order to that effect, the Company reserves the right to cancel the order (so far as it remains unperformed) in all or in part, without liability on the part of the Company, and all monies owing to the Company under the contract will be immediately payable.

### **12. SUSPENSION AND CANCELLATION OF WORK**

(a) In the event that the Customer cancels an order or requests that part of an order be suspended for a period of thirty (30) days or more the Company shall be entitled to payment in full for the portion of work completed at the date of any such cancellation or request for suspension.

(b) No request for suspension or cancellation of an order shall be binding on the Company unless accepted in writing by the Company.

### **13. CLAIMS**

(a) The Customer shall inspect all goods immediately upon receipt and claims must be made in writing within seven (7) days of receipt of the goods by the Customer, except claims as to non-delivery which must be made in writing within fourteen (14) days of dispatch of the goods.



Claims for defects must be made within 3 months from date of delivery. Any claims not made within that period shall be deemed to be waived.

(b) In the event that the Customer makes a claim against the Company in relation to the goods the Customer shall ensure that the goods are maintained in the same state as when received and that no portion of the goods is used or disposed of.

(c) Should the customer use or dispose of any portion of the goods then such disposal or use shall constitute acceptance of the goods by the Customer and the Company shall not be bound to consider any claim in relation to the goods.

(d) The Company shall not be bound to consider any claim which is greater in amount than the invoice value of the goods claimed to be faulty when delivered.

#### **14. VARIATION OR WAIVIERS**

These terms and conditions shell govern any contracts unless expressly waived or varied in writing by the Company, but so as not to release the Customer from any obligations herein.

#### **15. FORCE MAJEURE**

Every effort mill[ be made to carry but every contract but the due performance of a contract is subject to variations or cancellation owing to an Act of God, internal disturbances, war, strikes, lockouts, fire, flood, riot, theft, tome majeure of any other causes beyond the Company's control or owing to inability to procure materials or articles except at increased prices due to any of the above. but the Customer will remain liable for payment for work done to the date of cancellation.

#### **16. PALLETS**

(a) The Customer holds any pallets of the Company used for delivery of goods (other than any non-returnable pallets sold by the Company to the Customer) on a bailment and the Customer agrees to indemnify the Company in respect to any loss arising because any pallet is not returned in good order and condition to the Company within twenty-eight (28) days after delivery of goods.

(b) Pallets may be exchanged on a one-for-one basis at the Company's depot and transfer or hire of pallets can be arranged upon request to the Company.

### 17. PATENTS AND DESIGNS

(a) In consideration of the Company accepting an order from the Customer, the Customer warrants and assures that no patent, copyright, trademark, design or any other right, or any legislation is or will be infringed by reason of the Company accepting or carrying out the order and the Customer agrees to indemnify the Company against all losses, costs and expenses of whatsoever nature suffered or incurred by the Company in connection with any claim, action or proceeding by a third party.

(b) The Customer acknowledges that all technical information, advice, know-how, drawings, designs and samples ("the Information") submitted to the Customer by the Company are the confidential and proprietary Information of the Company.

(c) The Customer will keep the information secret and confidential and will not disclose it or any part thereof to any party without the express authority of the Company. This obligation of confidence does not apply to any part of the Information which forms part of the public domain or enters the public domain other than by reason of default on the part of the Customer.

(d) The Customer will not reproduce any part of the information in any form without the express authority of the Company.

### 18. EXPERIMENTAL ORDERS

Preliminary work and/or work produced in an experimental way at a Customer's request will be considered an order and may be charged to the Customer.

### 19. DISPUTES

- (a) If a dispute or difference arises between the parties other than a dispute in respect of charges for work done or goods supplied by the Company, and one party requires it to be resolved, that party must promptly give the other parties notice identifying, and giving details of, the dispute or difference.
- (b) Within ten (10) days of the parties receiving the notice referred to in (a), a delegate of each of the parties must meet and, in good faith, attempt to resolve the dispute or difference.
- (c) If, within two (2) days of the first meeting under (b) the dispute or difference is not resolved, a delegate of each of the parties must again meet within a further ten (10) days and, in good faith, attempt to resolve the dispute or difference.
- (d) If, within twenty one (21) days of the first meeting under (c), the dispute or difference is not resolved, the chief executive officer of each of the parties must meet within a further ten (10) days and, in good faith, attempt to resolve the dispute or difference.
- (e) If the dispute is not resolved in the meeting convened pursuant to (d), the parties must submit the dispute or claim to arbitration in Brisbane in accordance with and subject to the Institute of Arbitration Australia Rules for the Conduct of the Commercial Arbitration.
- (f) The parties agree not to commence litigation unless all avenues of alternative dispute resolution set out in this clause 19 have been reasonably exhausted.

(g) Nothing in this clause prejudices the right of a party to seek injunctive or declaratory relief pursuant to the agreement.

(h) Notwithstanding anything else contained in the contract or this clause 19 in the event of any charges alleged to b. in dispute the Customer will pay for all charges appearing on the statement of account pending and investigation of the charge or charges so disputed,

## **20. GOVERNING LAW**

This contract is governed by and will be construed in accordance with the laws of the State in which is situated the office of the Company to which the order is addressed and the Customer and the Company hereby submit to the jurisdiction of the courts of that State and all courts competent to hear from those courts.

## **21. EXCLUSION OF THE VIENNA CONVENTION**

The United Nations Convention of Contracts for the International Sales of Goods or any amendment or modification thereto or any international convention in substitution therefore is hereby excluded from and shall not apply to this contract.