



ADELAIDE
PACKAGING
SUPPLIES

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Quality Packaging Solutions

ADELAIDE PACKAGING SUPPLIES - ABN 68 054 508 637

TERMS AND CONDITIONS

The following terms and conditions apply to each contract arising for the supply of any Goods from time to time ('Goods') by Adelaide Packaging Supplies ('APS') to any customer (together with the customer's heirs, executors, administrators, successors and assigns). ('Customer')

1. QUOTATION PRICE

All quotations are exclusive of Goods and services tax ('GST') and do not include the supply of any Goods, cartons, packaging materials, pallets, bins, containers or any other item not specifically referred to in such quotations by APS.

Quotations are valid for 30 days from the date of the quotation or such shorter time as specified in the quotation. APS may, in its absolute discretion, vary or withdraw a quotation at any time prior to acceptance by the Customer. APS reserves the right to vary quoted prices at any time upon written notice to the Customer to take into account increased supply costs.

2. PAYMENT

The Customer must pay for all Goods in full at the time it places an order with APS, subject to APS providing credit facilities to the Customer.

In the event that APS agrees to provide credit facilities to the Customer, APS will render an invoice to the customer for Goods ordered, at such time as APS considers appropriate. The Customer must pay each APS invoice in full within 30 days of the date of the invoice. If the Customer fails to pay any invoice in full on or before the due date, APS may, without prejudice to any other rights or remedies available to APS:

- (a) add interest to the amount due and unpaid at a rate not exceeding the ANZ Bank overdraft rate plus 2%;
- (b) suspend deliveries to the Customer;
- (c) terminate any contracts in relation to undelivered Goods;
- (d) terminate all credit facilities; and
- (e) institute legal action for recovery of outstanding amounts and costs incurred.

The Customer must pay any expenses, costs or disbursements incurred by or on behalf of APS in recovering any outstanding monies or in the recovery of Goods, including debt collection agency fees and solicitor's costs on a full indemnity basis.

3. GOODS AND SERVICES TAX

Unless specifically described as 'GST inclusive', any consideration to be paid or provided for a supply by APS to the Customer does not include any amount on account of GST.

Where any such supply is subject to GST (other than a supply the consideration for which is specifically described as 'GST inclusive'), the Customer must, at the same time and in the same manner as the GST exclusive consideration is payable or to be provided for that supply, pay to APS an amount equal to the GST payable by APS in respect of that supply.

4. DELIVERY

APS delivers Goods by making them available at its warehouse for collection by the Customer. If requested, APS will deliver Goods to an address nominated by the Customer, for an additional quoted charge.

Unless otherwise agreed in writing, APS is not responsible for any loss or damage to Goods or mis-delivery or failure to deliver or delay in delivery of Goods for any reason whatsoever and whether in contract or tort, whether negligent or otherwise.

5. TITLE AND RISK

Risk passes to the Customer upon delivery

Title to and ownership of all legal and beneficial interest in any Goods delivered to the Customer by APS passes to the Customer upon payment in full by the Customer of the price for the Goods and any other amounts due to APS by the Customer on any legal ground. Until such payment is made, the Goods remain the property of APS, the relationship between the parties is fiduciary in nature and the Customer holds all Goods delivered by APS as bailee for APS and must deliver up the Goods on request by APS. Payment by cheque is not deemed to have been made to APS until the cheque has been cleared by the bank on which it was drawn.

Upon the occurrence of any of the following events, all amounts outstanding to APS by the Customer will be immediately due and payable; the Customer's right to possession of all Goods supplied by APS and not paid for in full by the Customer ceases and APS is entitled to recover possession of the same:

- (a) any step is taken by a mortgagee to take possession of or dispose of the whole or any part of the Customer's assets, operations or business;

- (b) any step is taken to enter into any arrangement between the Customer and its creditors;
- (c) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Customer's assets, operations or business; or
- (d) the Customer fails to pay any amount due to APS in accordance with these terms and conditions.

The Customer must store any Goods supplied by APS that have not been fully paid for by the Customer separately from all other Goods and in a manner which makes them readily identifiable as APS's Goods. The Customer irrevocably authorises APS and its employees, servants and agents to enter onto any premises where APS's Goods are stored or are reasonably thought to be stored, for the purposes of examination or recovery of the Goods. If for any reason APS's Goods cannot be clearly identified the parties agree that the Customer is deemed to have disposed of Goods not the property of APS first.

The Customer may sell Goods that it has not fully paid for but only after the Customer has sold all Goods of the same description owned by the Customer. The Customer must hold any funds received and any claims against third parties in relation to the sale of such Goods on trust for APS. The Customer must account to APS for the price of any Goods resold by the Customer as soon as the proceeds of sale are received, notwithstanding the terms of any credit facility.

The Customer indemnifies APS against all losses, claims, costs, demands and expenses however arising which APS may sustain or incur during the course of or in any attempt to exercise its rights or should it be prevented for any reason from exercising its rights pursuant to these terms and conditions.

6. GUARANTEE

- a) If the Customer (on in the case where the Customer is a trust, the trustee) is a Corporation, APS agrees to supply Goods to that corporation on the condition that the Directors of the corporation hereby guarantee all liabilities of the Customer to APS. This guarantee may be enforced at any time by APS and in the event that APS requires a separate guarantee from the Customer's directors; the directors will execute same at the request of APS.
- b) If the Customer is the trustee of a trust APS agrees to supply Goods to that trustee on the condition that the trustee hereby guarantees all liabilities of the Customer to APS. This guarantee may be enforced at any time by APS and in the event that APS requires a separate guarantee from multiple individual trustees the trustees will execute same at the request of APS.
- c) If a guarantee has been given in favour of APS by persons associated with the Customer then the "terms" referred to in that guarantee are these terms.

7. LIABILITY

- (a) To the maximum extent permitted by law under no circumstance will APS, its employees and/or agents be liable to the Customer for any indirect, incidental, special or consequential damages of any kind including without limitation, damages for loss of business or other profits arising out of or referable to these Terms and Conditions or any act done or admitted to be done under or by reason of these Terms and Conditions whether caused by the negligence or breach of statutory duty by APS or otherwise.
- (b) Subject to Clauses 8(a) and 8(e), the Customer is liable for and indemnifies APS against all liabilities, claims, losses, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis determined without taxation, assessment or similar process and whether incurred or awarded on or against APS) arising from or incurred in connection with the Customer's use of the Goods. Each indemnity under these Terms and Conditions is a continuing obligation, separate and independent from the Customers' other obligations and survives termination and completion of the purchase of the Goods.
- (c) Subject to Clauses 8(a) and 8(e), the Customer shall indemnify APS for any loss, damage or expense incurred by APS, to the maximum extent permitted by law, for any breach of these Terms and Conditions by the Customer.
- (d) Notwithstanding any of the above, Goods sold to consumers as defined under section 3(2) of the Australian Consumer Law (as contained in the Competition and Consumer Act 2010 (Cth)) come with guarantees that cannot be excluded under the Australian Consumer Law. If the Customer is such a consumer
 - i. the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage; and
 - ii. the Customer is also permitted to have the Goods repaired if the Goods fail to be of an acceptable quality and the failure does not amount to a major failure.

This warranty against defects is given in addition to other rights and remedies of the Customer at law.

- e) The liability of APS to the Customer for a breach of a condition or warranty implied by law which cannot be excluded is limited to the extent possible subject to APS' option (at its absolute discretion) to:
 - i. the supply of the Goods again; or
 - ii. the repair or rectification of the Goods; or
 - iii. the payment of the cost of having the Goods supplied again or repaired.
- f) APS excludes all liability to the Customer for any loss, damage, or expense suffered or incurred by the Customer if APS is unable to carry out any of its obligations under this contract by reason of:
 - i. APS cannot reasonably obtain the necessary materials to produce or manufacture the Goods; or
 - ii. any event beyond the reasonable control of APS, its suppliers or contractors directly or indirectly affects APS's ability to deliver Goods or otherwise comply with a contract with the Customer.

8. PPSA

- (a) If Chapter 4 of the Personal Property Securities Act 2009 (Cth) ("PPSA") does apply to the enforcement of a Security Interest arising under or in connection with these Terms and Conditions, the Customer agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest ("Security Interest" has the same meaning as under the PPSA):
- i. section 95 (notice of removal of accession), to the extent that it requires APS to give the Customer a notice;
 - ii. section 96 (when a person with an interest in the whole may retain accession);
 - iii. subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - iv. section 125 (obligation to dispose of or retain collateral);
 - v. section 130 (notice of disposal), to the extent that it requires APS to give the Customer a notice;
 - vi. paragraph 132(3)(d) (contents of statement of account after disposal);
 - vii. subsection 132(4) (statement of account if no disposal);
 - viii. section 142 (redemption of collateral);
 - ix. section 143 (reinstatement of security agreement).
- (b) Where a person is a controller in relation to the Goods, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Goods by that controller.
- (c) Despite any contrary provisions of the PPSA, notices or documents required or permitted to be given to APS for the purposes of the PPSA must be given in accordance with the PPSA.
- (d) The Customer consents to APS effecting a registration on the PPSR (in any manner APS considers appropriate) in relation to any Security Interest arising under or in connection with these Terms and Conditions and the Customer agrees to provide all assistance reasonably required by APS to facilitate this.
- (e) The Customer waives the Customer's right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (f) The Customer acknowledges that if APS' interest under these Terms and Conditions is a Security Interest for the purposes of the PPSA:
- i. that Security Interest relates to the Goods and all Proceeds of any kind; and
 - ii. this Terms and Conditions document is a security agreement for the purposes of the PPSA

9. ORDER CANCELLATION OR DEFERMENTS

Any cancellation or deferment of a Customer order is not effective unless such cancellation or deferment is authorised by APS's Managing Director or his or her nominee.

10. PRICES

- (a) Prices quoted to not include delivery costs unless expressly otherwise stated.
- (b) Such prices as quoted are based on the cost of labour and material at the date of the quotation and shall be subject to adjustment if such prices vary between the date of quotation and the date that APS incurs such costs and if any such variation is beyond the control of APS

11. DELIVERY TIME

APS shall not be liable for any delay or loss arising from late delivery, and tendered dates for delivery and installation are only best estimates.

12. CANCELLATION OR POSTPONEMENT

The Customer shall not be entitled to cancel any accepted order or part order unless agreed in writing by APS. In any event, APS shall be entitled to demand and receive a cancellation fee of 20% of the value of the order cancelled or such other sum as APS may agree in writing in consideration of accepting any cancellation.

13. ENTIRE CONTRACT AND VARIATION

These terms and conditions may be varied by APS from time to time, by APS giving notice of such variation to the Customer.

These terms and conditions (as varied by APS from time to time) together with any written quotation given by APS to the Customer, comprise the entire contract between APS and the Customer and supersede all prior representations and agreements between the parties in relation to the subject matter. The liability of APS to the Customer for a breach of a condition or warranty implied by law which cannot be excluded is limited to the extent possible subject to APS' option (at its absolute discretion) to the subject matter.

14. LAW

South Australian law applies to this contract and the parties hereby submit to the non-exclusive jurisdiction of the courts of South Australia.

15. SEVERANCE

Any provision of these terms and conditions that is invalid or unenforceable may be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force. The customer agrees to the above terms and conditions.