

# Caspak Products Pty Ltd – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Stock Holding Expiry Date" means the date which Goods have aged past the Stock Holding date, which may be specified in the Order Confirmation.
- 1.2 "Australian Consumer Law" means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding provisions of state or territory fair trading legislation.
- 1.3 "Company" shall mean Caspak Products Pty Ltd ACN 111 440 754 its successors and assigns or any person acting on behalf of and with the authority of Caspak Products Pty Ltd.
- 1.4 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
- 1.5 "Credit Account Application" means the credit application form entitled "Credit Account Application" or any similar form provided by the Company.
- 1.6 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis pursuant to the Guarantee and Indemnity and these Terms and, if applicable, named on the Credit Account Application.
- 1.7 "Guarantee and Indemnity" means any personal or corporate guarantee and indemnity provided by a Guarantor in respect moneys now owing and all further sums of money from time to time owing to the Company by the Customer, in respect of Goods and Services supplied or to be supplied by the Company pursuant to these Terms.
- 1.8 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.9 "Order Confirmation" means any order confirmation provided by the Company to the Customer, pursuant to these Terms.
- 1.10 "PPSA" means the Personal Property Securities Act 2009 (Cth) and all terms which are both capitalised and italicised in these Terms have the meaning given to them in the PPSA
- 1.11 "Price" shall mean the price payable for the Goods as agreed between the Company and the Customer in accordance with clause 3 of this contract.
- 1.12 "Services" shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.13 "Terms" means these terms and conditions of trade.

## 2. Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the Terms.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Terms by the Customer the Terms are binding and can only be amended with the written consent of the Company.
- 2.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

## 3. Price and Payment

- 3.1 At the Company's sole discretion, the Price shall be either:  
(a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or  
(b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to invoice the Customer in respect of Goods at the expiration of the Stock Holding Expiry Date.
- 3.3 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 3.4 At the Company's sole discretion, a deposit may be required.
- 3.5 At the Company's sole discretion:  
(a) payment shall be due on delivery of the Goods; or  
(b) payment for approved Customer's shall be due thirty (30) days following the end of the month in which a statement is emailed to the Customer's email address or address for notices.
- 3.6 If the Customer has been granted credit facilities by the Company pursuant to the Credit Account Application, the price of the Goods is due and payable in accordance with the terms and conditions of the Company regarding the provision of the credit facilities as set out in the Credit Account Application or as otherwise notified by the Company to the Customer.
- 3.7 The Company reserves the right to cease to provide credit facilities pursuant to the Credit Account Application at any time.
- 3.8 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.9 If the creditworthiness of the Customer becomes unsatisfactory in the Company's opinion, the Company reserves the right to:  
(a) vary the terms of payment; and/or  
(b) require additional security at any time prior to delivery of the Goods; and/or  
(c) cease to provide credit facilities pursuant to the Credit Account Application.
- 3.10 Payment will be made by cash, or by cheque, or by bank cheque, or by Visa or MasterCard (plus a surcharge of up to 2.5% of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 3.11 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Delivery of Goods

- 4.1 Delivery of the Goods shall take place when:  
(a) on expiry of the Stock Holding Expiry Date; or  
(b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier); or  
(c) when the Customer's carrier takes possession.
- 4.2 At the Company's sole discretion, the costs of delivery are:  
(a) included in the Price; or  
(b) in addition to the Price; or  
(c) for the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

## 5. Risk

- 5.1 Notwithstanding that the Company retains ownership of the Goods until all monies owing to the Company on any account have been paid, all risk for the Goods passes to the Customer on delivery in accordance with clause 4.1.
- 5.2 If any of the Goods are damaged or destroyed following delivery in accordance with clause 4.1 but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## 6. Title

- 6.1 The Company and Customer agree that title, property and ownership of the Goods shall not pass until the Customer has paid the Company all amounts owing to the Company by the Customer on any account.
- 6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 6.3 Until title, property and ownership in the Goods passes to the Customer in accordance with clauses 6.1 and 6.2, the Customer acknowledges and agrees that:  
(a) the Customer grants the Company a *Security Interest* in the Goods and any *Proceeds* that secures all monies howsoever owing or payable by the Customer to the Company;

- (b) the Company's *Security Interest* in the Goods and any *Proceeds* of the Goods is a *Purchase Money Security Interest* (or "PMSI") to the extent that it secures payment of any amounts owing in relation to the Goods;
- (c) the Company's *Security Interest Attaches* to the Goods and any *Proceeds* as soon as the Customer attains possession of the Goods, or where the Customer has arranged its own carrier to transport the Goods from the Company's premises as soon as that carrier obtains possession of the Goods;
- (d) the Company may apply any monies received from the Customer first to satisfy any portion of debt that is unsecured, second to satisfy any portion of debt that is secured but not by a PMSI and third to satisfy any portion of debt that is secured by a PMSI, or in any other manner the Company sees fit;
- (e) the Customer will grant nor seek to grant any *Security Interest* in the Goods adverse to the interest of the Company;
- (f) the Customer holds the Goods as fiduciary bailee and agent for the Company and shall store the Goods separately from the Customer's own goods or goods of any other person, in a manner which clearly renders them identifiable as the Goods of the Company unless the Goods are otherwise on sold in the ordinary course of the Customer's business;
- (g) the Customer and/or administrator so appointed to the Customer shall keep the *Proceeds* from the sale of the Goods separate and on trust for the Company in a separate account which shall not be overdrawn. Interest attached to these proceeds of sale shall be paid by the Customer into the separate account which shall not be overdrawn;
- (h) the Goods will be kept in a proper condition by the Customer until ownership of the Goods passes to the Customer;
- (i) if the Goods are incorporated into new products, the Customer acknowledges that it holds the Company's interest in the new products on trust for the Company and the Company's *Security Interest* in the Goods extends to any accession to the fullest extent permitted by the PPSA; and
- (j) the company shall have the right of stopping Goods in transit whether or not delivery has been made.
- 6.4 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Company's *Security Interest*, the Company contracts out of all obligations to give notice and any restrictions on the Company's rights to enforce its *Security Interest* to any and all extent provided under section 115 of the PPSA.
- 6.5 The Customer agrees to provide all information and execute all documents necessary for the Company to register and perfect its *Security Interest* in the Goods and *Proceeds* under the PPSA and to promptly inform the Company in writing of any change of name of the Customer or of any other change of details that appear on the Register and agrees that all fees in relation to registration including amendments to any registration are to be borne by the Customer.
- 6.6 The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
- 6.7 Where the Customer suffers an *Event of Default*, the Company shall have the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove or otherwise re-take possession of the Goods and to resell the Goods and the Company, its employees, agents or contractors are hereby irrevocably authorized to enter any premises occupied by the Company in which the Goods may from time to time be located without committing a trespass. The Customer appoints the Company as its agent to enter any premises not owned by the Customer in which any of the Goods may be located from time to time. The Company will have no obligation to make good any damage caused by such search, recovery, detachment or removal of Goods. The Customer indemnifies and keeps the Company indemnified from and against any costs, claims, damages or losses expended or suffered by the Company in recovering the Goods (including legal costs on a full indemnity basis). Subject to clause 6.4, the Company's rights under this clause 6.7 are in addition to and not in derogation from its rights under Chapter 4 of the PPSA, save to the extent that there is any inconsistency between the Company's rights under this clause 6.7 and Chapter 4 of the PPSA, this clause 6.7 prevails.

## 7. Defects

- 7.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods. Where the Customer is a consumer as defined in the TPA then the client shall also be entitled to a refund.
- 7.2 Goods will not be accepted for return other than in accordance with 7.1 above.

## 8. Australian Consumer Law

- 8.1 Our goods come with a guarantee that cannot be excluded under Australia Consumer Law. You are entitled to a replacement or a refund for a major failure and compensation for any other reasonably foreseeable loss and damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 9. Warranty

- 9.1 Except as expressly provided to the contrary in these Terms, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise, relating in any way to the Goods or these Terms are excluded. Without limiting the generality of the preceding sentence, the Company shall not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods or the failure or omission on the part of the Company to comply with its obligations under these Terms
- 9.2 Subject to clauses 9.1 and 9.3 of these Terms, the Customer acknowledges that no warranties or representations are made whatsoever by the Company as to the quality, nature or fitness for purpose of Goods, and the Customer acknowledges that it has not relied on any such warranty or representation
- 9.3 To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## 10. Intellectual Property

- 10.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 10.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

## 11. Default & Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one-half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 11.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 11.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or 2.5 percent (2.5%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:  
(a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or

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- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 12. Security and Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
  - (a) where the Customer and/or the Guarantor (if any) is the owner of, or has rights or interest in:
    - (i) any land or other real property capable of being charged; or
    - (ii) *Personal Property* of which the Customer and/or the Guarantor (if any) may grant a *Security Interest*,  
both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interests in the said land or real property and grant an all present and after acquired PMSI in the personal property to the Company or the Company's nominee to secure all amounts owing under these Terms. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met and register a *Security Interest* on the *Register*.
  - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

### 13. Guarantee and Indemnity

- 13.1 If applicable, these Terms include the terms of the Guarantee and Indemnity in the form approved by the Company.

### 14. Cancellation

- 14.1 The Company may cancel any contract to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

### 15. Privacy Act 1988

- 15.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
- 15.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 15.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 20F) *Privacy Act 1988* (Cth).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:
  - (a) provision of Goods; and/or
  - (b) marketing of Goods by the Company, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 15.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Customer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 15.6 The Company may give information about the Customer to a trade insurer in order for the insurer to provide appropriate insurance cover to the Company.

### 16. General

- 16.1 These Terms shall apply to any invoices or order confirmations issued in respect of Goods and/or Services supplied.
- 16.2 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.3 These Terms and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria. The laws of the Commonwealth of Australia govern any *Security Interest* under these Terms.
- 16.4 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these Terms.
- 16.5 In the event of any breach of this contract by the Company, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.6 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
- 16.7 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.8 The Company reserves the right to review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which the Company notifies the Customer of such change. The Terms, as amended from time to time are available at [www.caspak.com.au](http://www.caspak.com.au)
- 16.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.10 The failure by the Company to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.