

# GENERAL TRADING TERMS & CONDITIONS OF SALE (“TERMS”)

Powerpak Group Pty Ltd (ACN 159 538 539) t/as Powerpak Packaging (ABN 63 159 538 539)

## General

1. These Terms and Conditions (“Conditions”) apply to all contracts between Powerpak Group Pty Ltd (ACN 159 538 539) trading as Powerpak Packaging (ABN 63 159 538 539) (Powerpak) and the purchaser (“Purchaser”) of any goods, products, materials (“Goods”) and/or Services supplied by Powerpak on credit (if sold or supplied on credit) or otherwise (“Contract”).
2. These Conditions will prevail over any terms, conditions, representations or understandings between the Purchaser and Powerpak in relation to the Goods and/or Services, whether or not any inconsistency arises.
3. Powerpak expressly rejects any conditional order made by the Purchaser.
4. A contract is formed when Powerpak receives any purchase order and either sends a written acceptance to the Purchaser, dispatches the Goods or commences the provision of Services pursuant to an order.

## Quotations

5. Unless otherwise stated by Powerpak, quotations are valid for 30 days.
6. Powerpak may withdraw, revoke or vary any quotation at any time at its absolute discretion.

## Orders and Prices

7. Powerpak reserves the right to accept or decline, in whole or in part, any order for Goods and/or Services placed by the Purchaser.
8. Unless otherwise agreed by the parties, orders received for out of stock Goods will be placed on back order. All backorders will be charged at the price prevailing at the time of the original order. Powerpak will not be liable for any loss or damage that the Purchaser may suffer in connection with Goods being out of stock.
9. Unless otherwise stated, all prices for Goods are exclusive of all applicable taxes and charges. Where the Goods sold are subject to GST, the Purchaser is liable to pay any applicable amount of GST at the same time as payment for Goods is made.
10. The prices and product specifications contained in Powerpak’s price lists or any information provided by Powerpak to the Purchaser are subject to change at the absolute discretion of Powerpak and without notice to the Purchaser.
11. Unless agreed otherwise, prices quoted include Powerpak’s standard packing arrangements.
12. Any order under \$150 (excluding GST) will incur a handling fee as may be set by Powerpak from time to time.

## Price beat

13. Powerpak will beat by 5% any advertised price that is lower than the price of any Good published in Powerpak’s Buyers Guide, subject to the purchaser providing to Powerpak any written quote or invoice displaying the lower price provided that:
  - a. it was issued no more than 30 days prior to the date of presentation to Powerpak;
  - b. it is for an identical item (e.g. same brand, type, quality, colour) that is in stock with the competitor; and
  - c. if the Buyer is eligible for free delivery, the quote or invoice must include any delivery costs.
14. The price beat offer excludes reseller, clearance and/or contract pricing. Powerpak reserves the right to limit the quantity of the Goods and/or Services available for the price-beat offer at its absolute discretion.

## Delivery

15. All orders are subject to delivery fees payable by the Purchaser.
16. Powerpak will endeavour to dispatch all standard orders as soon as practicable, however it will not be responsible for any loss or damage associated with Goods being dispatched late.
17. Any time or date for completion and/or delivery of the Goods and/or Services provided by Powerpak to the Purchaser is an estimate only and does not constitute a representation, or term of the Contract, nor shall it be part of the description of the Goods and is not of the essence of the contract.
18. Powerpak is deemed to have delivered the Goods when they are collected by the Purchaser or when they are made available for unloading at the Purchaser’s nominated delivery point (whichever occurs first).

## Payment

19. Time for payment for any Goods and/or Services is of the essence.
20. Unless otherwise agreed in writing by Powerpak and the Purchaser, payment for the Goods and/or Services must be made by the Purchaser in accordance with the invoice issued by Powerpak to the Purchaser. Powerpak may, at its absolute discretion, require the Purchaser to pay a deposit.
21. Where the Purchaser has an approved credit account with Powerpak, the Purchaser must ensure that payment for the Goods is made within 30 days from the end of the month in which the invoice is issued, or such other date for payment as Powerpak and the Purchaser agree in writing. If the Purchaser exceeds the Purchaser’s approved credit account limit, all further Goods and/or Services provided by Powerpak to the Purchaser must be paid on a cash-on-delivery basis.
22. Powerpak reserves the right to cancel the Purchaser’s credit account:
  - a. at any time, at its absolute discretion, without any notice to the Purchaser; and/or
  - b. if the Purchaser’s credit account remains inactive for more than 3 months;
  - c. if the Purchaser does not comply with the approved account terms.
23. Powerpak, at its absolute discretion, may refuse delivery of the Goods and/or the provision of Services and acceptance of any other orders from the Purchaser until the Purchaser pays to Powerpak any amounts owed or contingently owed for any reason whatsoever by the Purchaser to Powerpak whether under this or any contract or

otherwise.

24. Powerpak reserves the right to charge interest on any outstanding amount from the date it becomes outstanding for payment to the date payment is received at the rate of 3% per month compounded daily. All payments made by the Purchaser will first be applied to the accrued interest.
25. Payments made by credit card may be subject to a surcharge.

## Risk and Retention of Title

26. Unless otherwise provided in these Conditions, the Goods and/or Services supplied by Powerpak to the Purchaser shall be at the Purchaser’s sole risk immediately upon their delivery to the Purchaser.
27. The Purchaser agrees that title to Goods is retained by Powerpak until Powerpak receives from the Purchaser:
  - a. payment in full for the purchased Goods; and
  - b. all other monies owing by the Purchaser to Powerpak at any time.
28. Where the Goods comprise a number of items, the property of Powerpak in each item comprising the Goods will not pass to the Purchaser for any individual item until payment in full is received for all items.
29. Prior to title in the Goods passing to the Purchaser, the Purchaser agrees that:
  - a. it acts as bailee of the Goods until such time as property in them passes to the Purchaser and that this bailment continues for each item of the Goods until the price has been paid in full;
  - b. it must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
  - c. it must not sell the Goods except with the prior written consent of Powerpak or in the ordinary course of the Purchaser’s business, provided that any such sale is at arms’ length and on market terms;
  - d. any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Powerpak in a separate account; and
  - e. it must not create any encumbrance over the Goods which is inconsistent with Powerpak’s title and ownership of the Goods.

## Advertising material

30. All descriptions, specifications, illustrations, drawings and/or any other information contained in catalogues, price lists or other advertising material of Powerpak or elsewhere are approximations only. They are intended by Powerpak to be a general description for information and identification purposes only and do not create a sale by description.

## Returns and Cancellations

31. Powerpak cannot accept returns of all custom-made or specially produced Goods.
32. Any cancelled orders will result in the Purchaser being liable for the greater of any costs incurred and/or loss suffered by Powerpak or 50% of the order price.
33. Except as provided otherwise by the ACL, returns of all other Goods are subject to prior approval of Powerpak at its absolute discretion upon a written request by the Purchaser made within 7 days from the date of delivery. Goods must be unused, undamaged and in their original packaging.
34. All credit for Goods that have been approved for return:
  - a. is subject to a restocking fee equivalent to 15% of the invoiced value of the returned Goods; and
  - b. must be used within 6 months from the date of its grant to the Purchaser.
35. The Purchaser must bear any costs associated with the return of the Goods.

## Inaccuracies

36. The Purchaser must check all Goods received as soon as they are delivered and all Services as soon as they are rendered and must notify Powerpak in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods and/or Services within 7 days of their delivery.
37. If the Purchaser notifies Powerpak under clause 36, Powerpak may, at its absolute discretion, replace or give a credit for the Goods and/or Services.
38. If the Purchaser does not notify Powerpak under clause 36, Powerpak will not be responsible for any loss or damage arising out of or resulting from such inaccuracies or short supply of the Goods, or fault, damage or defect in the Goods and/or Services.
39. The Purchaser will be deemed to have accepted the Goods and/or Services after 7 days from the date of their delivery, unless within that time the Purchaser has notified Powerpak under clause 36.

## Warranty and Liability

40. Powerpak acknowledges that where the ACL applies with respect to the Goods and/or Services, certain guarantees and rights are provided by the CCA and ACL.
41. Where the ACL applies with respect to any supply of the Goods and/or Services to the Purchaser: (a) any rights provided to the Purchaser by the ACL or CCA that by statute cannot be excluded that are inconsistent with any term of these Conditions are to prevail over any terms of these Conditions to the extent of the inconsistency; (b) nothing in these Conditions purports to derogate from or exclude any rights provided by the ACL or CCA that by statute cannot be excluded or modified.
42. Powerpak makes no express warranties or representations in relation to the Goods and/or Services supplied by it.
43. Powerpak will not be responsible in any way whatsoever for the consequence of any representation or conduct made or any advice given in connection with the Goods and/or Services whether by its employees, agents or sub-contractors or otherwise to the Purchaser or any third parties. The Purchaser agrees that all such representations and/or advice are/is accepted or relied upon by the Purchaser entirely at the Purchaser’s risk.
44. Powerpak’s liability to the Purchaser or any third parties (whether arising under statute,

contract, tort (including negligence), equity or otherwise)) for any defect in the Goods, or the quality of the Goods and/or Services, will in all cases be limited to the cost of repair or replacement of such Goods or re-provision of the Services.

45. Subject to clause 41, to the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by Powerpak, the manufacturer or a third party) pertaining to or in connection with the Goods and/or Services and any obligation of Powerpak to repair, replace or refund any Goods and/or provide the Services again are excluded.
46. Powerpak will not be liable for any consequential loss or damage of any kind suffered by the Purchaser as a result of the supply of the Goods and/or Services by Powerpak to the Purchaser.

#### **Indemnity**

47. The Purchaser agrees to indemnify and hold Powerpak harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Powerpak, and from and against all actions, proceedings, claims or demands made against Powerpak, arising:
  - a. as a result of the Purchaser's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods and/or Services or the use of the Goods and/or Services;
  - b. as a result of any other negligence or other breach of duty by the Purchaser's in connection with the Goods and/or Services; and/or
  - c. as a result any breach of these Conditions by the Purchaser.

#### **Waiver**

48. Any failure or delay by Powerpak to enforce any of its rights under these Conditions does not operate as a waiver of those rights.

#### **Repossession of Goods**

49. In the event of default by the Purchaser, Powerpak may retake possession of the Goods. All costs of such repossession must be paid by the Purchaser. Such right shall be without prejudice to Powerpak's any other rights.
50. The Purchaser authorises Powerpak and its agents and servants to enter into the Purchaser's premises without notice at any time for the purposes of examination and recovery of goods.

#### **Cost Recovery**

51. Any expenses, costs or disbursements incurred by Powerpak in recovering any outstanding monies owing by the Purchaser, including debt collection fees and solicitor-client legal costs, must be paid by the Purchaser on a full indemnity basis.

#### **PPSA**

52. The Purchaser acknowledges and agrees that Powerpak may register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s157 of the PPSA to receive notice of any verification of the registration.
53. If the Purchaser defaults in the performance of any obligation owed to Powerpak under these Conditions, Powerpak may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA.
54. To the extent permitted by law, the Purchaser and Powerpak agree that the following provisions of the PPSA do not apply to the enforcement by Powerpak of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 137, 142 and 143.
55. The Purchaser must promptly do anything reasonably required by Powerpak to ensure that Powerpak's security interest is a perfected security interest and has priority over all other security interests in the Goods.
56. Nothing in clauses 52 - 55 is limited by any other provision of these Conditions or any other agreement between the parties.
57. If a term used in clauses 52 - 56 has a particular meaning in the PPSA, it has the same meaning in those clauses.

#### **Entire agreement**

58. Every contract for the supply of Goods and/or Services pursuant to an order incorporates these Conditions and constitutes the entire agreement between Powerpak and the Purchaser. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that contract.
59. The Purchaser acknowledges, represents and warrants to Powerpak that in any decision or matter concerning or in connection with any Goods and/or Services it has relied solely on the terms expressed in these Conditions and in writing in an order for the supply of Goods and/or Services and has not relied on any prior negotiations, proposals, representations, or conduct of Powerpak or Powerpak's employees or agents.

#### **Variation**

60. These Conditions may be varied unilaterally by Powerpak at its sole discretion.
61. Any variation to these Conditions will apply to every order made by the Purchaser and accepted by Powerpak after the expiry of 7 days' notice of the variation to the Purchaser. Notwithstanding any other provision of these Conditions, notice may be effected for the purpose of this clause by provision of the varied Conditions to the Purchaser or by publication on Powerpak's website.
62. No variation to these Conditions will apply with respect to any order already made by the Purchaser and accepted by Powerpak unless notice is given under clause 61.

#### **Default and Termination**

63. Powerpak may issue a notice of default in the event of a breach of this Contract by the Purchaser by giving 7 days for the default to be remedied.
64. Each of the following occurrences constitutes an event of default:
  - a. the Purchaser breaches or is alleged to have breached these Conditions for any reason (including, but not limited to, defaulting on any payment due under these Conditions) and fails to remedy that breach within the timeframe stipulated in clause 63;

- b. the Purchaser, being a natural person, commits an act of bankruptcy;
- c. the Purchaser, being a corporation, is subject to:
  - i. a petition being presented, an order being made or a meeting being called to consider a resolution for the Purchaser to be wound up, deregistered or dissolved;
  - ii. a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or any part of the Purchaser's property and undertaking; or
  - iii. the entering of a scheme of arrangement (other than for the purpose of restructuring);
- d. the Purchaser purports to assign its rights under these Conditions without Powerpak's prior written consent;
- e. the Purchaser ceases or threatens to cease conduct of its business in the normal manner.

65. Where an event of default occurs, except where payment in full has been received by Powerpak, Powerpak may:

- a. terminate the Contract;
- b. terminate any or all orders and credit arrangements (if any) with the Purchaser;
- c. refuse to deliver Goods or provide further Services;
- d. pursuant to clauses 49-50, repossess any Goods delivered to the Purchaser, the payment for which has not been received; or
- e. retain (where applicable) all money paid on account of Goods or Services or otherwise.

66. On the occurrence of an event of default all invoices issued by Powerpak to the Purchaser will become immediately due and payable.

#### **Notice**

67. Where, pursuant to these Conditions, a party is required to give notice to the other party, such notice must be:
  - a. in writing; and
  - b. signed by a person authorised by the sender.
68. A notice is deemed to have been given and served on a party:
  - a. if delivered personally, on the same day on which it was delivered;
  - b. if sent by post, it is taken to have been given on the day it would have been delivered in the ordinary course of post;
  - c. if sent by fax, at the time recorded on the transmitting machine;
  - d. if sent electronically, at the "time of dispatch" within the meaning of section 13 of the Electronic Transactions Act 2001 (WA).

#### **Privacy and Credit Reporting**

69. Powerpak may collect information in relation to the Purchaser, for the purpose of providing the Goods and/or Services, in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.
70. Where the Goods and/or Services are supplied on credit, the Purchaser irrevocably authorises Powerpak, its employees and/or agents to make such inquiries as are deemed necessary to investigate the Purchaser's credit worthiness, including (without limitation) the making of inquiries from persons nominated as trade referees, bankers, or any other credit providers (Information Sources) or credit reporting agencies, and the Purchaser authorises the Information Sources to disclose such information to Powerpak.

#### **Force Majeure**

71. Powerpak will not be responsible for any delay in or failure of performance of supply or delivery of Goods and/or Services caused by circumstances beyond its control including but not limited to, strikes, lock-outs, labour disturbances, acts of government, riot, civil war, commotion, fire, flood, failure of power supply or similar event and shall not be liable for any consequential loss, damage, expense or claim suffered by the Purchaser or any other party as a result of any such event.

#### **Severance**

72. If a court of competent jurisdiction decides that any part of these Conditions is invalid or unenforceable, then that part of the Conditions will be modified (if possible) so as to make it enforceable. If it cannot be modified, then it will be severed and the rest of the Conditions will continue to operate.

#### **Applicable Law**

73. This Contract is governed by the law of Western Australia.
74. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the non-exclusive jurisdiction of that state.
75. To the extent permitted by law, the Sale of Goods Act 1985 (WA) does not apply to any contract between Powerpak and the Purchaser.

#### **Interpretation**

76. In these Conditions:
  - a. ACL means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
  - b. CCA means the Competition and Consumer Act 2010 (Cth);
  - c. Goods means any item of whatsoever nature, including any packaging supplies and/or material, which is sold, to be sold by Powerpak to the Purchaser;
  - d. GST means the tax payable on certain goods within the meaning of the GST Act;
  - e. GST Act means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
  - f. Purchaser means a person who acquires Goods and/or Services from Powerpak;
  - g. PPSA means the Personal Property Securities Act 2009 (Cth);
  - h. Services means any services performed or provided by Powerpak in connection with any request by the Purchaser in relation to the Goods.