

# COSPAK PTY LTD

## NEW ZEALAND- TERMS AND CONDITIONS

### 1 GENERAL

- (a) These terms and conditions constitute the whole contract between Cospak and the buyer and shall supersede all previous communications either oral or written. Any quotation or tender by Cospak shall be deemed to be subject to these terms and conditions. No term or condition contained in the buyer's acceptance or order shall add to amend or delete these terms and conditions or any of them unless expressly agreed in writing by a duly authorised officer of Cospak.
- (b) Notwithstanding clause 1(a) Cospak may alter or replace these terms and conditions at any time. All orders placed subsequently by the buyer shall be upon the altered or replaced terms and conditions.
- (c) It is the buyer's responsibility when accepting this contract or ordering to ensure the goods ordered conform to the buyer's requirements and are suitable and sufficient for the buyer's purpose.
- (d) It is the buyer's responsibility to obtain any approvals licence or permits necessary for the performance of this contract.
- (e) All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by Cospak or contained in any catalogues, price lists or advertisements are by way of general description only of the goods and shall not form part of this contract.
- (f) It is the buyer's responsibility to provide all information necessary to enable performance of this contract and the buyer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

### 2 PRICES AND ORDERS

- (a) Prices are subject to alteration without notice and the price payable by the buyer shall be the price ruling at the time the goods are made available.
- (b) Prices quoted and this contract are based on present rates and costs of material, labour, freight, insurance, customs agents and carriers' fees, government tariffs, duties and taxes and shall be subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring before completion of this contract.
- (c) Prices quoted are based on the full quantities specified and do not necessarily operate pro rata for any greater or lesser quantities.
- (d) Prices quoted are exclusive of GST Unless stated otherwise, in addition to the price stated, the buyer shall pay any GST or other taxes, insurance, freight and handling charges in relation to the sale and delivery of the goods.
- (e) Any quotation by Cospak is not and shall not be construed as an offer capable of acceptance or as creating an obligation to sell.
- (f) No order shall be binding on Cospak until accepted in writing by Cospak or a person authorised on its behalf.
- (g) Cospak will not accept return of or give credit for any goods supplied under this contract.
- (h) If the buyer cancels or alters any order or part order for special products or standard products with special materials at any time after Cospak has received the order then Cospak reserves the right to charge to the buyer the cost of any special products or materials already acquired for the order together with the costs of any labour and tooling expended to the date of such cancellation or alterations. No returns of special products will be accepted.
- (i) In the event of the suspension of manufacture or supply on the buyer's instruction, or lack thereof, or due to the inability of the buyer to accept the goods for any reason on or after the date on which they are ready for delivery, the buyer shall be liable for all extra costs and losses thereby incurred by Cospak.
- (j) Cospak shall not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acceptance, acknowledgement or invoice and the same shall be subject to correction.

### 3 TERMS OF PAYMENT

- (a) Payment in full shall be made in accordance with the terms and within the times stated on each invoice. Payment must be made in cash without deduction or setoff of any kind and in such other manner as Cospak shall stipulate from time to time.
- (b) Cospak may at any time after the goods are made available require immediate payment (without the need to make formal demand) or withhold deliveries if Cospak considers the buyer to be a credit risk.
- (c) Where any payment is not made on the due date, then without prejudice to any other rights or remedies available to Cospak under these terms and conditions or at law or in equity or otherwise Cospak may charge interest, by way of liquidated damages, on all overdue accounts at the rate of eighteen percent (18%) per annum calculated on a daily basis from the date on which payment was due until payment is made in full, such interest to accrue both before and after judgment.
- (d) The buyer shall upon demand reimburse Cospak for all costs (including legal costs on a solicitor/client basis), expenses or other sums reasonably incurred by Cospak in exercising any right or remedy available to it consequent upon default by the buyer, which sum shall also carry interest at the rate specified above if unpaid within one (1) calendar month of demand having been made.

### 4 DELIVERY, RISK AND PROPERTY

- (a) Subject to the provisions of clause 6, Cospak shall use its best endeavours to deliver the goods at the time requested by the buyer. Unless otherwise agreed in writing the goods shall be delivered to the buyer ex store or works of Cospak.
- (b) Cospak may at its discretion agree to act as agent for the buyer for delivery beyond store or works in which case all costs of carriage and insurance shall be paid by the buyer. The buyer shall at the buyer's expense provide labour, cranes or forklifts and reasonable access to point of delivery for offloading of goods without delay as and when required by Cospak or the carrier.
- (c) Where Cospak agrees to deliver the goods to the premises of the buyer and where Cospak contracts with a carrier to do so, delivery of the goods to the carrier in all circumstances constitutes delivery to the buyer.
- (d) Risk of loss in the goods shall pass to buyer upon delivery and Cospak shall not be liable for any damages caused to the goods whilst they are in transit.
- (e) Cospak may at its discretion make and invoice partial deliveries against an order and each such delivery shall be a separate sale under these terms and conditions.
- (f) As long as the buyer owes Cospak any part of the price of goods supplied at any time Cospak shall retain the legal title in all goods supplied. The buyer shall hold the goods as bailee for Cospak provided that the buyer shall be entitled to use or resell the goods in its ordinary course of business. The buyer shall keep the goods stored separately during the time the buyer has them in such a way that the goods remain identifiable. Cospak may enter any premises upon which the goods may be located to inspect and/or take possession of the goods at any time after payment is due. If all or any of the goods are wholly or partially attached to, intermingled with or incorporated in any other goods Cospak may at its sole discretion disconnect, retrieve or sever the goods in order to remove them without being liable for any loss or damage caused or any liability incurred thereby and the buyer indemnifies Cospak for any claims for loss or damage that may be made against Cospak as a result of the exercise by Cospak of its rights pursuant to this clause.
- (g) If the buyer resells the goods or any of them before payment is made it shall hold the sale proceeds in trust for Cospak in a separate bank account such that the sale proceeds are identifiable and traceable and shall account to Cospak for all moneys owed by the buyer to Cospak. If the buyer resells the goods or any of them so as to create a debt owed to the buyer, the buyer assigns all legal and equitable title to that debt to Cospak and the buyer irrevocably appoints Cospak as its attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in the name of the buyer for the benefit of Cospak.
- (h) The buyer acknowledges that these terms and conditions create a security interest in all present and after required goods and any proceeds of the sale of the goods as security for all of the buyer's obligations to Cospak pursuant the Personal Property Securities

Act 1999 (*"the PPSA"*) and that Cospak may register a financing statement to perfect its security interest in the goods in accordance with the provisions of the PPSA.

- (i) The buyer shall provide all information, executed or arrange for the execution of all documents and do all other things that Cospak may require to ensure that Cospak has a perfected first ranking security interest in the goods under the PPSA.
- (j) The buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of Cospak under the PPSA and agrees that as between Cospak and the buyer, the buyer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where Cospak has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- (k) The buyer shall immediately upon request by Cospak, procure from any person considered by Cospak to be relevant to its security position such agreements and waivers as Cospak may at any time require.
- (l) The buyer shall immediately notify Cospak of any change in the buyer's name, address details and any other information provided to Cospak to enable Cospak to register a financing change statement if required.
- (m) In addition to any lien to which Cospak may be entitled by statute or common law, Cospak shall in the event of insolvency of the buyer or winding up be thereupon entitled to a general lien on all property whatsoever owned by the buyer and in possession of Cospak at the time such lien arises, to cover the unpaid price of any goods supplied by Cospak to the buyer.

## 5 INSPECTION AND ACCEPTANCE

Upon delivery of goods the buyer shall inspect goods at its expense and give written notice to Cospak within seven (7) days of delivery of any non-conformity to description or the terms and conditions of this contract. Failure to give such notice shall constitute an irrevocable acceptance of the goods by the buyer.

## 6 FORCE MAJEURE

Cospak shall not be liable for failure or delay to deliver the goods due to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier of Cospak, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority. No such failure or delay shall entitle the buyer to terminate this contract and Cospak's obligations to the buyer shall be suspended without liability on the part of Cospak while such cause exists.

## 7 INTELLECTUAL PROPERTY

Cospak shall not be liable to the buyer or otherwise for any infringement or unauthorised use of any patent, trademark, design, copyright or any other industrial property right arising out of performance of this contract. In case any dispute or claim is made in respect thereof Cospak may terminate this contract by notice in writing to the buyer without any liability on the part of Cospak.

## 8 DEFAULT

Upon the happening of any of the following events:

- (i) the commission by the buyer of any act of bankruptcy or the buyer going into liquidation or a petition being presented for the sequestration of the buyer's estate or for the winding up of the buyer; or
- (ii) the buyer being a company is deregistered; or
- (iii) the buyer assigning its property for the benefit of creditors or having a receiver or official manager appointed to any of its assets; or
- (iv) the buyer failing to make any payment to Cospak on the due date; or
- (v) the buyer being in breach of any of these terms and conditions.

then in any such event Cospak shall without prejudice to any other rights or remedies it may have, exercise any one or more of the following rights:

- (i) cease production of the goods;
- (ii) decline to deliver the goods or any balance of the goods still due under this contract;
- (iii) stop any goods in transit;
- (iv) otherwise cease to perform any of its obligations to the buyer;
- (v) terminate this contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by the buyer and / or damages;
- (vi) enter into any premises and repossess any goods already delivered and whether or not property in such goods has passed to the buyer in respect of which entry the buyer indemnifies Cospak for all damages for which Cospak may be responsible;
- (vii) recover from the buyer the contract price together with default interest in accordance with Clause 3(c) in respect of all goods delivered and for freight storage handling and any other expenses incurred by Cospak;
- (viii) to sell elsewhere and charge the buyer with any resultant loss.

## 9 WARRANTIES AND LIABILITY OF COSPAK

- (a) To the fullest extent permitted by law all warranties or liabilities imposed or implied whether by law or by statute are expressly excluded. The buyer specifically acknowledges that where it is acquiring the goods for business purposes the provisions of the Consumer Guarantees Act 1993 are excluded.
- (b) The buyer shall assume all risk and liability resulting from the use of the goods either alone or in conjunction with other goods or materials even if Cospak had or should have had prior knowledge of the use to which the goods would be put.
- (c) Where the buyer is supplying the goods to a third party for business purposes the buyer shall ensure that in its terms of trade it contracts out of any liability under the Consumer Guarantees Act 1993 and the buyer indemnifies Cospak in respect of any failure to do so.
- (d) In no case shall Cospak be liable to the buyer or any other person for any indirect or consequential loss or damage of any kind arising out of or attributable to any breach by Cospak of these terms and conditions, any warranties or conditions, negligence or otherwise.
- (e) Regardless of the legal basis of any claim of any kind made against Cospak, Cospak's maximum liability to the buyer under any circumstances shall not exceed the purchase price paid or payable for the goods supplied by Cospak which gave rise to that claim.

## 10 MISCELLANEOUS

- (a) All notices to be served upon the buyer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the buyer. The buyer shall be deemed to have received any notice two (2) days after posting.
- (b) The buyer shall not assign any rights or obligations under this contract without the prior written consent of Cospak.
- (c) No waiver by Cospak of any default of the buyer in the performance of any obligation or condition of this contract shall be deemed to be a waiver of that or any other obligation or condition.
- (d) The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one buyer, each buyer shall be bound to Cospak jointly and severally.

Name of Signatory: ..... Signature:.....