

## 1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

<b>Word</b>	<b>Meaning</b>
<b>Buyer:</b>	means any of LIMPAC Packaging Limited, LIMPAC Packaging Pty Ltd ABN 26 164 926 434 or any other company which is a related body corporate of such companies and which is the buying entity for the purposes of these terms:
<b>Conditions:</b>	means these terms and conditions of purchase of the Buyer;
<b>Contract:</b>	means an Order which is placed by the Buyer and accepted by the Seller;
<b>Goods:</b>	means any goods (including any part or parts of them) agreed in a Contract to be purchased by the Buyer from the Seller;
<b>Group Company</b>	means any holding company, associated company or subsidiary company of the Buyer;
<b>Order:</b>	means the Buyer's written instruction to the Seller to supply the Goods, incorporating these Conditions;
<b>Parties:</b>	means the Buyer and the Seller and Party shall be construed accordingly; and
<b>Seller:</b>	means the person, firm or company described in the Order.
<b>Services:</b>	means any services agreed in a Contract to be purchased by the Buyer from the Seller.

1.2 In these Conditions references to any statute, statutory provision, regulations or other legal provisions shall, unless the context otherwise requires, be construed as a reference to that statute, provision, regulation or other provisions as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions the headings will not affect the construction of these Conditions.

## 2. APPLICATION OF TERMS

2.1 These Conditions are the only terms and conditions upon which the Buyer is prepared to deal with the Seller and they shall govern all Contracts entered into between the Parties to the entire exclusion of all

other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgment or acceptance of order, specification or similar document will form part of a Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

- 2.2 Each Order made by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 These Conditions apply to all Contracts entered into by the Parties and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an employee or contractor of the Buyer with the title "Financial Controller" or "Vice President".

### **3. QUALITY AND INSPECTION**

- 3.1 The quality, quantity and description of the Goods and/or Services, shall subject to these Conditions, be as specified in the Order and/or any applicable specification and/or patterns supplied or advised by the Buyer to the Seller.
- 3.2 The Seller shall comply with all applicable statute, statutory provision, regulations or other legal requirements concerning the supply of the Goods or Services, including the manufacture, packaging, packing and delivery of Goods and the performance of the Services.
- 3.3 The Buyer shall have the right to inspect and test the Goods at any time prior to the delivery of the Goods and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
- 3.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and be entitled to either reject the Goods or allow the Seller to immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under a Contract (and no such inspection or testing shall affect the Seller's warranties given in these Conditions).
- 3.6 From the date of supply of the Goods or the Services, the Buyer shall have a period, reasonable in the circumstances, in which to determine whether the Goods and/or Services conform to the particulars of the Order and thereafter to accept or reject the same accordingly.
- 3.7 If any Goods and/or Services fail to comply with the provisions set out in Condition 3 the Buyer shall be entitled to avail itself of any one or more remedies listed in Condition 12.

### **4. WARRANTIES AND INDEMNITY**

- 4.1 The Seller warrants to the Buyer that the Goods:
  - 4.1.1 will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller by the Buyer in writing at the time the Order is placed;
  - 4.1.2 will be free from any defects in design, material and workmanship;
  - 4.1.3 will correspond with any relevant specification, pattern or sample given by the Buyer to the Seller;

- 4.1.4 will comply with all statutory requirements and regulations and other legal provisions relating to the sale of Goods;
  - 4.1.5 will be owned by the Seller and will be free from encumbrances, liens and reservation of title such that the Seller can pass good title to the Buyer; and
  - 4.1.6 will not infringe any intellectual property rights of any third party.
- 4.2 The Seller warrants to the Buyer that the Services:
- 4.1.1 will be performed by appropriately qualified and trained personnel, with due care and diligence, in a proper and professional manner and to high standard of quality as it is reasonable for the Buyer to expect in all the circumstances;
  - 4.1.2 will correspond with any relevant specification given by the Buyer to the Seller; and
  - 4.1.3 will comply with all statutory requirements and regulations and other legal provisions relating to the supply of Services.
- 4.3 The Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 4.3.1 breach of any warranty given by the Seller in relation to the Goods or the Services;
  - 4.3.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods;
  - 4.3.3 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
  - 4.3.4 any act or omission of the Seller's personnel in connection with the performance of Services; and
  - 4.1.3 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost, or expense was caused by, relates to or arises from the use of the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of a Contract by the Seller.
- 5. DELIVERY**
- 5.1 The Goods shall be delivered to and/or the Services shall be performed at the Buyer's place of business or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods/ performance of the Services. The Seller shall off-load the Goods as directed by the Buyer. The Seller shall deliver the Goods properly and securely packed for delivery, clearly labelled and accompanied by a delivery note clearly describing the Goods and quoting the Order number.
  - 5.2 The date for supply of the Goods and/or the Services shall be specified in the Order, or if no such date is specified then supply shall take place within 28 days of the Order.

- 5.3 The Seller shall invoice the Buyer upon, but separately from, supply of the Goods and/or the Services to the Buyer. All invoices shall quote the Order number to which they relate.
- 5.4 The Seller shall ensure that each delivery of Goods is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered via notification from the Seller. Where applicable a certificate of analysis showing test results related to the delivery must also be supplied. Delivery shall not be deemed to be effected until the Goods have been received at the destination specified in the Order and the signature of a duly authorised employee of the Buyer obtained as proof of their identity. Any signature of proof of the identity of the Goods shall not imply that the Buyer has inspected the Goods nor shall such matters be proof that the Goods conform to the requirements of the Order.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the Buyer in normal business hours.
- 5.7 If the Goods are not delivered and/or Services not performed on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to;
- (a) cancel a Contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;
  - (c) recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods/Services in substitution from another supplier; and
  - (d) claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods/performance of the Services on the due date.
- 5.8 If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 5.9 Where the Buyer agrees in writing to accept delivery of the Goods or performance of the Services by instalments a Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver the Goods or perform the Services any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.
- 5.10 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.
- 5.11 The Goods shall be supplied safely and without risk to the health or safety of the Buyer's employees or agents or damage to the Buyer's property and without risk to the health or safety and property of any third party. The Seller will at all times comply with all health and safety legislation and policies and requirements of the Buyer and in particular (but without limiting the foregoing) the Seller will provide the Buyer's employees or agents at the point of delivery with all relevant data and information necessary for the safe receipt, unpacking, storage and use of the Goods or in relation to the safe operation or performance of the Services.

## **6. RISK/PROPERTY**

The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete when ownership

of the Goods shall pass to the Buyer.

## **7. PRICE**

- 7.1 The price of the Goods and/or Services shall be stated in the Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax, goods and services tax or any other sales or service tax levied or due on the Goods and/or Services but inclusive of all other charges including charges for packaging, packing, shipping, carriage, insurance and delivery, duties, levies or other imposts (including any import duties or charges payable on the importation into Australia of the Goods or any components or materials used to manufacture the Goods).
- 7.2 No variation in the price nor extra charges will be accepted by the Buyer.

## **8. PAYMENT**

- 8.1 The Buyer shall pay the price of the Goods and/or Services within 60 days after the end of the month in which the delivery of the Goods and/or performance of the Services is made but time for payment shall not be of the essence. Where the Parties have previously agreed a payment period of more than 60 days after the end of the month in which the delivery of the Goods or performance of the Services is made then the Parties agree to adhere to such existing terms and this Clause 8.1 shall not apply to these Conditions.
- 8.2 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under a Contract.

## **9. CONFIDENTIALITY**

The Seller shall keep in strict confidence all information disclosed by the Buyer or its agents to the Seller, including any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors which need to know the same for the purpose of discharging the Seller's obligations to the Buyer under these Conditions and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller. The confidential material and information remains the property of the Buyer. The Seller must, on request, return any written material which it or its employees or agents have been given.

## **10. THE BUYER'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture or supply of the Goods shall at all times be and remain the exclusive property of the Buyer shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

## **11. TERMINATION**

- 11.1 The Buyer shall have the right at any time and for any reason to terminate a Contract in whole or in part by giving the Seller written notice whereupon all work on a Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work in progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate a Contract forthwith if:

- (a) the Seller commits a breach of any of the terms and conditions of such Contract;
- (b) the Seller is in liquidation, provisional liquidation or under administrations, has a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property or takes any step that could result in the Seller becoming an insolvent under administration (as defined in the *Corporations Act 2001* (Cth)) or enters into a compromise or arrangement with, or assignment for the benefit of its creditors or members (other than a solvent voluntary administration); or
- (c) the Seller is taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand or becomes unable to pay its debts or otherwise insolvent;
- (d) the Seller ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller to adequately fulfil its obligations under a Contract has been placed in jeopardy.

11.3 The termination of a Contract, however arising, will be without prejudice to the rights and duties of the Buyer accrued prior to termination. These Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 12 REMEDIES

12.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied and/or Services not performed in accordance with, or the Seller fails to comply with, any of the terms of these Conditions the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Buyer:

- (a) to rescind the Order;
- (b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- (c) at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of a Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods and/or performance of the Services but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with a Contract;
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of a Contract; and
- (g) to invoice the Seller a standard administration fee of [A\$150] for each occasion when the Buyer has to revert to the Seller to correct a failing of the Seller under the terms of these Conditions.

## 13. ASSIGNMENT

13.1 The Seller shall not be entitled to assign a Contract or any part of it without the prior written consent of the Buyer.

13.2 The Buyer may assign a Contract or any part of it to any person, firm or company.

#### **14 DISPOSAL OF GROUP COMPANY**

14.1 In the event that the Buyer makes a disposal of any Group Company (by way of a share sale or the sale of substantially all of a Group Company's business and assets (the "Disposed Company") the Seller agrees that it shall (at the sole discretion of the Buyer) either:

- (a) reduce the aggregate number of Goods made available by the Seller to the Buyer by the number of Goods that the Buyer allocated to the Disposed Company under the terms of this Agreement; or
- (b) reassign the number of Goods made available by the Seller to the Buyer for the Disposed Company to other Group Companies within the Buyer's Group.

#### **15 ANTI BRIBERY**

15.1 The Seller represents to the Buyer that at all times during the term of a Contract governed by this Conditions, it shall and shall procure that its employees, contractors, and agents (of which it shall assume responsibility) comply in full with all anti-bribery and anti-corruption laws including the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and the Criminal Code Act 1995 (Cth) as it relates to anti-bribery and anti-corruption. It hereby acknowledges that, notwithstanding any other remedy the Buyer may have against the Seller for breach of this representation, any breach of this representation shall immediately entitle the Buyer to terminate each Contract without any further obligation or liability to the Seller.

15.2 The Seller shall procure that no person for whom the Seller is responsible:

- (a) gives or receives any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the supply of the Goods and/or Services to the Buyer; or
- (b) enters into any business agreement with any director, employee or agent of the Buyer, other than an agreement they make as a representative of the Buyer or with the Buyer's consent.

#### **16 FORCE MAJEURE**

The Buyer reserves the right to defer the date of delivery of the Goods, the performance of the Services or payment or to cancel a Contract in whole or in part or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

#### **17 GENERAL**

17.1 Each right or remedy of the Buyer under a Contract is without prejudice to any other right or remedy of the Buyer whether under a Contract or not.

17.2 If any provision of a Contract is found to be wholly or partly unenforceable it shall, to the extent of such unenforceability be deemed severable and the remaining provisions of such Contract and the

remainder of such provision shall continue in full force and effect.

- 17.3 Failure or delay by the Buyer enforcing or partially enforcing any provision of a Contract will not be construed as a waiver of any of its rights under such Contract.
- 17.4 Any waiver by the Buyer of any breach of, or any default under, any provision of a Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of such Contract.
- 17.5 The formation, existence, construction, performance, validity and all aspects of a Contract shall be governed by the law of Victoria, Australia and the parties submit to the non exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia and any court that may hear appeals from any of those courts for any proceedings in connection with a Contract and waives any right it may have to claim that those courts are an inconvenient forum.