

Production Packaging Innovations

Conditions of sale

1. Purpose & Application

- 1.1. These Conditions apply to all Goods sold or supplied by PPI to the Customer.
- 1.2. The Customer warrants that it enters into this contract on its own behalf or as authorised agent of a third party.
- 1.3. If more than one person is the Customer those persons contract jointly and severally for themselves and each other.

2. Governing Law & Australian Consumer Law

- 2.1. These Conditions are governed by and construed in accordance with the laws of Victoria and the parties consent to the jurisdiction of the courts of Victoria.
- 2.2. Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law. If any provision of these Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

3. Quotations & Orders

- 3.1. Any quotation made by PPI to the Customer will not be construed or operate as an offer or obligation to sell, but will be an invitation to treat only.
- 3.2. PPI reserves the right to alter or vary any quotation at any time prior to acceptance.
- 3.3. PPI may, in its absolute discretion, accept or reject an order placed by the Customer.

4. Price

- 4.1. Prices quoted are inclusive of wage rates, costs of materials, exchange rates, freight costs, taxes, duties and any other costs and expenses applicable at the date of quotation or at such other date as may appear in the quotation form.
- 4.2. PPI may increase a price by an amount necessary to absorb an increase in cost after an order is accepted which is due to:
 - 4.2.1. the increase in the cost of any component used in the manufacture of the Goods;
 - 4.2.2. the increase in the average cost of labour employed in the manufacture of the Goods; or
 - 4.2.3. the Customer altering any item or matter on which the price is based.
- 4.3. If PPI considers it is necessary or appropriate for PPI to vary or suspend work as a result of the Customer's instructions (or lack thereof) any increased costs or expenses will be for the Customer's account.

5. Payment

- 5.1. A Customer who is not a Credit Account Customers must pay for Goods in Cleared Funds no later than the expiration of the calendar month following the month of sale unless otherwise agreed in writing.
- 5.2. A Credit Account Customer must pay the Price in accordance with the applicable Terms of Credit.
- 5.3. If the Customer is in breach of clauses 5.1 or 5.2, PPI may charge interest on overdue amounts at the rate provided for by Section 2 of the Penalty Interests Rate Act 1983 (Vic), plus 2%. Such interest will be compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.

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- 5.4. The Customer will pay to PPI upon demand all costs and expenses incurred by PPI as a result of the breach of clauses 5.1 or 5.2.

6. Delivery

- 6.1. Goods are sold FIS within the Melbourne metropolitan area and other destinations as agreed.
- 6.2. PPI will make reasonable endeavours to deliver the quantity of Goods ordered plus or minus 10%, and the Customer will pay for the actual amount delivered.
- 6.3. PPI will endeavour to deliver by any delivery date specified in a quotation or order form but, to the extent permitted by Law, PPI will not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in or failure of delivery.
- 6.4. PPI reserves the right to deliver by instalments. If delivery is made by instalments the Customer will not be entitled to:
- 6.4.1. terminate or cancel an order; or
 - 6.4.2. claim compensation for any loss or damage howsoever arising for failure by PPI to deliver any instalment on or before the quoted date.
- 6.5. PPI will not be responsible for delay in manufacture or delivery caused by, or in any way incidental to an act of God, war, fires, breakages or machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond PPI's reasonable control.
- 6.6. Any quotation containing a provision to supply Goods ex stock is subject to fulfilment of prior orders at the date of receipt of the Customer's order.

7. Pallets

Any pallets used for delivery are held by the Customer as bailee and the Customer agrees to indemnify PPI for any loss arising from any pallet not being returned to PPI in good order and condition within twenty-eight (28) days of delivery.

8. Intellectual Property

- 8.1. All Intellectual Property of PPI, including any developed during the supply of the Goods, is the sole property of PPI.
- 8.2. Unless otherwise agreed in writing, the costs of the development of Intellectual Property is for the Customer's account.
- 8.3. PPI may, at its discretion, charge the Customer for any preliminary work undertaken by PPI at the Customer's request in relation to the design or construction or the provision of services, undertaken or services provided.

9. Warranties & Limitation of Liability

- 9.1. PPI warrants that the Goods comply with any guarantees or warranties that cannot be excluded under the ACL or any other Law.
- 9.2. To the extent permitted by Law, all other guarantees, warranties, undertakings, and representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions are expressly excluded and that any advice, recommendation, information or service provided by PPI, its employees, servants or agents regarding the Goods sold or the methods and conditions of application and use of the Goods sold will not be construed as contractual conditions or warranties.
- 9.3. If the Customer is a Consumer and any Goods supplied by PPI are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that PPI's

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liability for a failure to comply with a guarantee under the ACL in relation to those Goods (other than a guarantee under sections 51, 52 and 53 of the ACL) is limited, at the option of PPI, to one or more of the following:

- 9.3.1. the replacement of the Goods or the supply of equivalent goods;
 - 9.3.2. the repair of the Goods;
 - 9.3.3. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - 9.3.4. the payment of the cost of having the Goods repaired.
- 9.4. If the Customer is not a Consumer, to the extent permitted by Law, PPI will not be liable in any circumstances for any loss or damage to any property or person whatsoever resulting from the provision of the Goods (including Consequential Loss).
- 9.5. Subject to any Law to the contrary, PPI will not be liable to the Customer for any loss or damage sustained by the Customer as a consequence of:
- 9.5.1. any incorrect or otherwise negligent advice, recommendation, information or services provided by PPI, its employees servants or agents regarding the Goods sold or the methods or conditions of application and use of the Goods sold; or
 - 9.5.2. short or over delivery of Goods or delivery of damaged Goods unless the Customer has given written notice to PPI within 7 days of the date on which the Goods were delivered to or collected by the Customer.
- 9.6. Should the Customer consider that it has any claim (other than claims of the nature referred to in clause 9.5) against PPI which having regard to these Conditions it is entitled to make, it will:
- 9.6.1. immediately upon becoming aware of circumstances giving rise to such a claim, notify PPI of the nature of the claim; and
 - 9.6.2. allow PPI, its servants or agents full and free access to the Goods in relation to which the claim is made (or the place where the Goods have been applied or used) for the purpose of conducting such tests as PPI may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 9.7. The Customer undertakes to indemnify PPI in respect of any liability whatsoever arising in connection with the provision of the Goods to any person by the Customer who claims to have, who has or may hereafter have any interest in the Goods or any part of the Goods.

10. Insolvency and Default

- 10.1. If the Customer commits an Act of Default which is not remedied within 7 days of PPI giving written notice of the Act of Default, PPI may cancel all unfulfilled orders the Customer has placed with PPI or place the Customer on stop supply until the Customer has remedied the Act of Default.
- 10.2. If PPI cancels all unfulfilled orders pursuant to clause 10.1:
- 10.2.1. all amounts payable by the Customer to PPI will immediately become due and payable notwithstanding that the due date has not arisen;
 - 10.2.2. the Customer will reimburse PPI for all legal costs incurred by PPI calculated on a solicitor and own client basis as a consequence of PPI instructing its solicitors to provide advice to it in connection with the default and/or to institute such recovery process as will in the absolute discretion of PPI be appropriate in the circumstances.

11. Insurance

- 11.1. Insurance for any part of the provision of Goods by PPI will not be arranged by PPI except with the express written instructions of the Customer and then only at the Customer's expense. PPI may impose an additional administrative fee for arranging such insurance.

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- 11.2. In the event that PPI does insure the Goods, PPI's liability will not exceed the amount of any applicable insurance payout.

12. Risk

All goods will be at the Customer's risk upon delivery to the Customer, their carrier or agent unless otherwise agreed in writing.

13. Title

- 13.1. Title to the Goods will not pass to the Customer until payment in full for all Goods is made.
- 13.2. Until ownership of and title of the Goods passes to the Customer:
- 13.2.1. the Customer will not, without PPI's consent:
- 13.2.1.1. make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of PPI;
- 13.2.1.2. purport or attempt to sell or dispose of the Goods except in the ordinary course of its business;
- 13.2.1.3. charge, encumber or create a Security Interest in the Goods; and
- 13.2.2. the Customer will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods.
- 13.2.3. PPI may give notice in writing to the Customer to return the Goods or any of them to PPI and, upon such notice, the Customer's right to obtain ownership or any other interest in the Goods will cease.
- 13.3. If the Customer supplies the Goods to any person before ownership of and title to the Goods passes to it, whether or not with PPI's consent, the Customer holds the proceeds of the resupply of the Goods on trust for PPI and will pay the proceeds of sale to PPI upon receipt.
- 13.4. If the Customer breaches clauses 13.2.1 or 13.3, PPI may enter upon the Customer's Premises, or any other site, to repossess the Goods without incurring liability to the Customer or any other person, and the Customer grants PPI an irrevocable licence to do so.

14. Personal Property Securities Act 2009 (Cth)

- 14.1. The Customer acknowledges and agrees that:
- 14.1.1. these Conditions constitute a Security Agreement for the purposes of the PPSA and PPI may, without notice to the Customer, register its Security Interest in the Goods and their proceeds as a Purchase Money Security Interest on the Register;
- 14.1.2. the Customer will do all things necessary to facilitate Registration of PPI's Security Interest;
- 14.1.3. the Security Interest will not be discharged, nor the Customer's obligations affected by the administration of the Customer.
- 14.2. To the extent permitted by law, the Customer irrevocably waives any rights it may have:
- 14.2.1. to receive notices or statements under sections 95, 118, 121(4), 123, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 14.2.2. to reinstate this Security Agreement under section 143 of the PPSA; and
- 14.2.3. to receive a notice of Verification Statement under section 157 of the PPSA.
- 14.3. To the extent permitted by Law, the Customer acknowledges that section 96 of the PPSA will not apply.

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14.4. Notices or documents required or permitted to be given to PPI for the purposes of the PPSA must be given in accordance with the PPSA.

15. No waiver

A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

16. Dispute

16.1. If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.

16.2. If a dispute persists for more than 30 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.

17. Entire Agreement

17.1. Unless agreed by the Customer and PPI in writing to the contrary, these Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods including, but without limiting the generality of the foregoing, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

17.2. All rights, immunities and limitations of liability in these Conditions will continue to have their full force and effect in all circumstances notwithstanding any breach by PPI or any other person connected with PPI.

18. Authorised Inquiries

The Customer irrevocably authorises PPI, its servants and agents to make such inquiries as it deems necessary to investigate the credit worthiness of the Customer from time to time including (but not limiting to) the making of inquiries with persons nominated as trade referees, the bankers of the Customer or any other credit providers and the Customer hereby authorises the information sources to disclose to PPI such information concerning the Customer which is within their possession and which is requested by PPI.

19. Privacy Act

19.1. The Customer consents to PPI obtaining from a credit-reporting agency a credit report containing personal credit information about the Customer in relation to any credit provided by PPI.

19.2. The Customer agrees that PPI may exchange information about the Customer and Guarantor named in the application for credit with those credit providers for the purposes of, including but not limited to, assessing a credit application or notifying of a default.

19.3. The Customer agrees that personal data provided may be used and retained by PPI for, including but not limited to, the provision of Goods and/or services, marketing, processing payment instructions, enabling the general operation of the Customer's credit account.

20. GST

Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST) as interpreted under A New Tax System (Goods and Services Tax) Act 1999. In addition to such charges, the Customer must pay GST on the taxable supply to the Customer of an amount equal to the GST exclusive consideration multiplied by the GST rate.

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21. Definitions

- 21.1. **ACL** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- 21.2. **Act of Default** occurs if either party:
- 21.2.1. commits a material breach of these Conditions;
 - 21.2.2. commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
 - 21.2.3. is subject to a resolution or an application for liquidation;
 - 21.2.4. has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or
 - 21.2.5. anything analogous to or having similar effect to any of the other events above arises.
- 21.3. **Cleared Funds** means cash or cheque, once cleared.
- 21.4. **Conditions** means these Conditions of Sale.
- 21.5. **Consequential Loss** means loss of revenue, profits, anticipated savings or business opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages.
- 21.6. **Customer** means any person to whom any quotation is made and any person offering to contract with PPI on these Conditions and any person who purchases Goods from PPI and any person acting on their behalf.
- 21.7. **Goods** means all Goods and services supplied by PPI to the Customer at any time and from time to time.
- 21.8. **Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests.
- 21.9. **Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the Australian Consumer Law, as amended from time to time.
- 21.10. **Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA.
- 21.11. **PPI** means KJ Innovations Pty Ltd & RJ Innovations Pty Ltd, trading as "Production Packaging Innovations" ABN 15 870 494 700.
- 21.12. **PPSA** means the Personal Property Securities Act 2009 (Cth).
- 21.13. **Real Property** means land or other property that is not Personal Property as defined in the PPSA.
- 21.14. **Register** means the Personal Property Securities Register as established under the PPSA.
- 21.15. **Terms of Credit** means any terms of credit PPI agrees to provide to the Customer.
- 21.16. Words importing the singular number will be deemed to include the plural and vice versa. Words importing the male gender will be deemed to include the female and neutral gender and vice versa.