

POWERAK GROUP PTY LTD TERMS AND CONDITIONS OF SALE

ALSO AVAILABLE AT WWW.POWERPAK.COM.AU

General

- These Terms and Conditions (**Conditions**) apply to any contract, purchase order, or any other order, request, arrangement or understanding however described (**Purchase Order**) for the supply of any goods, products, materials or services (**Goods and Services**) to the purchaser and/or any person acting on behalf of such (**Purchaser**) by Powerpak Group Pty Ltd (ACN 159 538 539) trading as Powerpak Packaging (**Powerpak**).
- Except to the extent otherwise agreed by Powerpak in writing these Conditions will in all circumstances prevail over any terms, conditions, representations or understandings between Powerpak and the Purchaser with respect to any Goods and Services.
- Without limiting the manner in which these Conditions may be accepted at law, these Conditions will be deemed to be accepted by the Purchaser on each occasion that the Purchaser:
 - accepts any quotation issued by Powerpak for Goods and Services;
 - issues any instructions (whether in person, online, by email or telephone) or any documentation, including without limitation any terms and conditions, to Powerpak in relation to any quotation, Purchase Order or the supply of any Goods and Services;
 - permits Powerpak to supply Goods and Services to the Purchaser; and
 - pays Powerpak for any Goods and Services or otherwise assesses any claim for payment made by Powerpak for any Goods and Services.

Variation of Conditions

- Powerpak may unilaterally vary these Conditions from time to time at its discretion and such variation will apply to every new and existing Purchase Order 7 days after the Purchaser is given notice of the variation unless the Purchaser notifies Powerpak in writing within that time that it does not agree to the variation, in which case the unvaried Conditions shall continue to apply.
- Notwithstanding any other provisions of the Conditions, notice of variation may be effected by Powerpak by provision of the varied Conditions to the Purchaser or by publication on Powerpak's website.

Quotations, Purchase Orders and prices

- Prices and product specifications contained in Powerpak's price lists or any information provided by Powerpak to the Purchaser are subject to change from time to time at the absolute discretion of Powerpak and without notice to the Purchaser.
- Unless stipulated otherwise, the price quoted and the price payable for Goods and Services supplied by Powerpak:
 - includes standard packing arrangements;
 - is in Australian Dollars exclusive of GST and any other taxes or duties which may apply in relation to the Goods and Services; and
 - shall be subject to handling fees, as may be set by Powerpak, for any Goods and Services under \$150 (GST excl.) to be supplied outside the Perth Metro Area.
- Unless stipulated otherwise, any quotations for Goods and Services are valid for 30 days but may be withdrawn, revoked or varied by Powerpak at any time at its absolute discretion.
- Unless otherwise agreed by Powerpak, 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 reserves the right at its absolute discretion to accept, decline or cancel (in part or in whole) any Purchase Order for Goods and Services.

Delivery of Goods and Services

- Unless stipulated otherwise by Powerpak, any time or date for completion and/or delivery of the Goods and Services is an estimate only and Powerpak will complete and/or deliver the Goods and Services as soon as practicable. In no circumstances will Powerpak be responsible for any loss or damage associated with any delay in the completion and/or supply of Goods and Services or failure to complete and/or supply Goods and Services.
- Powerpak will be deemed to have completed and/or delivered the Goods and Services when they are collected by the Purchaser, made available for unloading at the Purchaser's nominated delivery point or used by the Purchaser (whichever occurs first).
- The Purchaser will be deemed to have accepted the Goods and Services, as outlined in Powerpak's corresponding invoice, at the time of their completion and/or delivery.
- Unless the Purchaser notifies Powerpak in writing of any inaccuracies, short supply, fault, damage or defect (**Defects**) in the Goods and Services within 7 days of their completion and/or delivery, Powerpak's corresponding invoice shall be conclusive evidence of the Purchaser's acceptance of and liability to pay for the Goods and Services as outlined in Powerpak's invoice and Powerpak will not be liable for any loss or damage suffered by the Purchaser in connection with any Defects.
- Powerpak reserves the right to inspect the Goods and Services to determine the extent, nature and cause of any alleged Defects.

Price Beat

- Powerpak will beat any price lower than the price for any Goods and Services published in Powerpak's Buyers Guide by 5% if: (a) a current written quote/invoice displaying the lower price is provided; (b) the quote/invoice is no more than 30 days old; (c) the Goods and Service quoted/invoiced are of the same brand, type and quality as stocked and advertised by Powerpak; (d) if the Purchaser is eligible for free delivery – the quote/invoice includes delivery costs (**Price Beat Offer**).
- The Price Beat Offer excludes reseller, clearance or contract pricing, and Powerpak reserves the right not to accept any offer to purchase.

Advertising material

- All descriptions, specifications, illustrations, drawings 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.

Payment for Goods and Services

- Time for payment for Goods and Services is of the essence. Outstanding monies will incur interest at the rate of 21% per annum (calculated and accruing daily).
- Unless otherwise agreed in writing by Powerpak, the Purchaser must make payment for the Goods and Services in accordance with any invoice issued by Powerpak. Powerpak may, in its absolute discretion, require the Purchaser to pay a deposit.
- If the Purchaser has an approved credit account with Powerpak, the Purchaser must make payment for the Goods and Services in accordance with the payment terms agreed by Powerpak for the approved credit account.
- If the Purchaser exceeds the limit of the approved credit account, all further Goods and Service may, at Powerpak's absolute discretion, be provided to the Purchaser on a cash-on-delivery basis.
- Powerpak reserves the right to cancel the Purchaser's credit account at any time at its absolute discretion.
- The Directors of the Purchaser are personally, jointly and severally liable to Powerpak for any monies owed to Powerpak.

Returns and Cancellations

- Powerpak does not accept returns of custom-made or specially produced Goods and Services (including packaging and machinery).
- The Purchaser bears any and all costs associated with the return of the Goods and Services (unless agreed otherwise).
- Any cancelled Purchase 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 Purchase Order price.
- Subject to the Australian Consumer Law (**ACL**), all returns are subject to prior approval of Powerpak and Clauses 13 and 14 of these Conditions. Goods must be unused, undamaged and in their original packaging. The Purchaser must have a copy of the corresponding tax invoice supplied with the Goods and Services and must obtain a return number from Powerpak.
- All credit for Goods that have been approved for return will incur a restocking fee of 15% of the invoiced value of the returned Goods and must be used within 6 months from the date of its grant to the Purchaser.

Risk and Title

- Unless otherwise provided in these Conditions, the Goods and Services shall be at the Purchaser's sole risk immediately upon their delivery.
- The Purchaser agrees that title to Goods and Services, including with respect to individual items that comprise the Goods and Services, is retained by Powerpak until all monies owing by the Purchaser to Powerpak have been paid in full.

- Prior to title in the Goods passing to the Purchaser, the Purchaser agrees that it:
 - acts as bailee of the Goods and Services until such time as property in them passes to the Purchaser;
 - must keep the Goods and Services in good and merchantable condition and fully insure the Goods and Services against loss or damage however caused;
 - must not sell the Goods and Services 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;
 - any proceeds of re-sale, insofar as they relate to the Goods and Services, shall be held on trust for Powerpak in a separate account; and
 - must not create any encumbrance over the Goods and Services which is inconsistent with Powerpak's title and ownership of the Goods.

Personal Properties and Securities Act (PPSA)

- For the purposes of this Clause 33, words or terms appearing in quotation marks have the same definition as those words in the *Personal Property Securities Act 2009 (PPSA)* and the Purchaser and Powerpak acknowledge and agree that:
 - Powerpak may register a "security interest" in the Goods and Services, including a "purchase money security interest", at any time before or after delivery;
 - if the Purchaser defaults in performance of obligations owed to Powerpak under these Conditions or a Purchase Order, Powerpak may enforce its security interest in any Goods and Services by exercising its rights under these Conditions or the PPSA;
 - the Purchaser waives its right under s. 157 of the PPSA and agrees that the Purchaser and Powerpak contract out of ss. 95, 118, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA and such sections shall not apply to these Conditions or any Purchase Order; and
 - the Purchaser must at its own cost 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.

Powerpak's warranties and liabilities

- Powerpak makes no express warranties or representations in relation to Goods and Services supplied by it.
- To the fullest extent permitted by law:
 - all warranties, conditions and guarantees (whether given by Powerpak, the manufacturer or a third party) pertaining to or in connection with the Goods and Services and any obligation of Powerpak to repair, replace or refund any Goods and Services are excluded;
 - Powerpak's liability to the Purchaser or any third party (whether arising under statute, common law, contract, tort (including negligence) or in equity) for:
 - any defect in, or the quality of the Goods and Services, will in all cases be limited to the cost of repair or replacement of such Goods or re-provision of the Services; and
 - damages for personal injury, damage to property and/or any contingent, consequential, indirect, special, economic or punitive damages is excluded.
- Nothing in these Conditions excludes, restricts or modifies any terms, conditions, guarantees or warranties, or Powerpak's liability for them, which are imposed by any statute (including the *ACL* and the *Competition and Consumer Act 2010* (Cth)), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent Powerpak may legally do so.

Default

- In the event of the Purchaser's breach of these Conditions or a Purchase Order, Powerpak may issue a notice of breach giving the Purchaser not less than 7 days to remedy the breach.
- If the Purchaser does not remedy the breach within 7 days of receipt of notice of breach, the Purchaser acknowledges and agrees (and authorises where applicable) that, without prejudicing or otherwise limiting any other rights Powerpak may have at law or under these Conditions, Powerpak will be entitled to:
 - refuse to deliver any Goods and Services and/or terminate the relevant Purchase Order and any other Purchaser Orders or credit arrangements with the Purchaser;
 - enter upon the Purchaser's premises without notice at any time for the purposes of examination and recovery of any Goods for which the Purchaser has not paid Powerpak;
 - retain all money paid on account of Goods and Services (where applicable); and
 - claim and recover from the Purchaser any:
 - loss and damages it has incurred as a result of the Purchaser's breach and the termination of any Purchase Order(s) as a result thereof, including any contingent, consequential, indirect, special and economic loss or damages; and
 - cost, expense or disbursement incurred by Powerpak in recovering outstanding monies or repossessing Goods (including any debt collection fees and any legal costs) on a full indemnity basis.

Indemnity

- The Purchaser agrees to fully 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, in connection with or arising:
 - as a result of the Purchaser's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods and Services or the use of the Goods and Services;
 - as a result of any other negligence or other breach of duty by the Purchaser, its employees or agents in connection with the Goods and Services; and
 - as a result of any breach of these Conditions or a Purchase Order by the Purchaser.

Notices

- Where, pursuant to these Conditions, a party is required to give notice to the other party, such notice must be in writing and signed by a person authorised by the sender.
- 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, 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; and (d) if sent electronically, at the "time of dispatch" within the meaning of s. 13 of the *Electronic Transactions Act 2001* (WA).

Privacy and Credit Reporting

- Powerpak may collect information in relation to the Purchaser for the purpose of supplying the Goods and 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.
- The Purchaser irrevocably authorises Powerpak, its employees and 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, banks or any other credit providers (**Information Source**) or credit reporting agencies and the Purchaser authorises the Information Source to disclose such information to Powerpak.

Severance

- If a clause or part of a clause in these Conditions is found to be illegal, invalid or unenforceable, that Clause or part thereof will be modified or severed (to the extent possible) and the rest of the Conditions will continue to operate in full force and effect.

No Waiver

- The Purchaser acknowledges and agrees that any failure or delay by Powerpak to exercise or enforce any right or obligation under these Conditions does not operate as a waiver of such right or obligation or give rise to an estoppel.

Applicable Law

- To the fullest extent permitted by law, the *Sale of Goods Act 1985* (WA) does not apply to these Conditions or any Purchase Order.
- These Conditions and any Purchase Order are governed by the law of Western Australia
- Any legal action in relation to these Conditions and/or any Purchase Order 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.