

Terms and Conditions of Sale

1. General

Unless the context otherwise requires:

Agreement means these Terms and Conditions of Sale which apply to the supply of Goods by IPA to Customer.
Customer means the party named in the Order, to whom IPA has agreed to supply Goods.

Force Majeure means any act, omission or circumstance relied on by a party over which that party could not reasonably have exercised control.

Goods means the goods and/or services agreed to be supplied by IPA and purchased by Customer, as detailed in the Order.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice means the invoice issued by IPA for the supply of the Goods.

IPA means Integrated Packaging Australia Pty Ltd ACN 095 393 776, and for the purpose of clause 9, includes its employees, servants, agents and contractors.

Order means an order by the Customer to IPA to supply the Goods.

PPSA means the *Personal Property Securities Act 2009* (Vic).

2. Formation of Agreement

- 2.1 A contract is formed by and upon IPA accepting an Order from Customer. Each contract is governed by the Agreement.
- 2.2 The Agreement takes precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- 2.3 Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind IPA, notwithstanding any statement by Customer that its terms and conditions prevail over the Agreement.

3. Payment

- 3.1 The Customer must pay the amount due for the Goods, within 30 days from the date on the Invoice.
- 3.2 If Customer does not pay money by the due date for payment, or a payment made by Customer fails to be honoured, without affecting any other rights which it may have against Customer, IPA may require Customer to pay on demand interest at the National Australia Bank Limited prime lending rate effective from time to time plus 4% per annum calculated from the due date on daily balances of amounts unpaid.
- 3.3 Customer must not set off any money owing or alleged to be owing by IPA against money due by Customer to IPA.
- 3.4 The total purchase price, unless otherwise stated in the Order, includes GST, delivery charges and packaging but does not include any freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which will be paid by Customer.

4. Return of goods

- 4.1 Customer is deemed to have accepted the Goods unless it makes a claim in accordance with this clause.
- 4.2 Customer may reject any Goods that are wrongly supplied or oversupplied by notifying IPA of the claim and providing full particulars of the claim in writing within two days of receipt of those Goods. IPA may dispute any such claim.
- 4.3 Goods referred to in clause 4.2 may be returned to IPA for credit if all of the following is complied with:
 - (a) the Goods are returned to IPA's premises by prior arrangement and with IPA's written approval within 10 days of delivery, at no cost to IPA (unless delivered as the result of an administrative error by IPA, in which case IPA will bear the cost of return);
 - (b) the Goods are accompanied by a dispatch note stating IPA's original Invoice number and reason for return; and
 - (c) the Goods are returned in an unsoiled, undamaged and re-saleable condition in their original packing.
- 4.4 Customer must not return any Goods to IPA unless it has complied with clause 4.3 and has done all things necessary to permit IPA to examine the Goods to IPA's satisfaction within that period.

5. Delivery and storage

- 5.1 All quoted delivery or consignment dates are estimates only. IPA is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.
- 5.2 IPA is deemed to have delivered the Goods when the Goods are actually delivered to the delivery point nominated by Customer, or where delivery to the delivery point is not made due to reasons which are the responsibility of Customer, the date when delivery would have been effected.
- 5.3 IPA may deliver the Goods by instalments (where, in IPA's opinion, this is reasonable) and issue interim Invoices to Customer.
- 5.4 Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle IPA to withhold or delay delivery of any remaining Goods ordered.

6. Title and risk

- 6.1 Title to the Goods shall remain with IPA until all monies owing by Customer to IPA have been paid in full (whether such monies are payable under a specific contract or on any other account).
- 6.2 Until such time as Customer has paid in full all monies owing to IPA, Customer shall:
 - (a) store, protect and insure the Goods from fire and loss damage;
 - (b) store the Goods separately and mark them so that they are clearly and easily identifiable as IPA's property and, if IPA requests, inform IPA of the location of the Goods;
 - (c) hold the Goods as bailee for IPA;
 - (d) indemnify IPA against any claim arising out of the possession, use or disposal of the Goods by

Customer or repossession or attempted repossession by IPA.

6.3 If:

- (a) a payment is not made in accordance with the Agreement;
- (b) Customer commits any other breach of the Agreement; or
- (c) Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent,

then IPA may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:

- (d) terminate the Agreement; or
- (e) suspend some or all its obligations to Customer under the Agreement; and
- (f) enter upon any premises owned or occupied by Customer where IPA reasonably believes the Goods may be stored and repossess the Goods without being liable for any damages caused.

6.4 If Customer sells the Goods before payment in full to IPA, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for IPA in respect of those Goods, and must keep such proceeds in a separate account until the liability to IPA is discharged and must immediately pay that amount to IPA.

6.5 The risk in the Goods passes to Customer at the time of delivery to Customer, or deemed delivery to Customer under clause 5.2.

7. Personal Property Securities Act 2009

- 7.1 Where the PPSA is in force, Customer acknowledges that the Agreement creates a *security interest* under the Act, in the Goods and the proceeds of sale of the Goods.
- 7.2 Customer agrees:
 - (a) to do all things necessary and required by IPA to ensure that the security interest is a perfected "purchase money security interest" under PPSA; and
 - (b) not to allow any third party to acquire a security interest in the Goods.
- 7.3 To the extent that the Goods are for Customer's business use, Customer agrees to the extent permitted under the PPSA, that Customer has no right:
 - (a) to receive notice of removal of an accession under the PPSA, or
 - (b) under Chapter 4 of the PPSA; or
 - (c) under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.

8. Force Majeure

- 8.1 Neither party will be liable for any delay or failure to perform its obligations (other than an obligation to pay money) under the Agreement, if such delay is due to Force Majeure.
- 8.2 If a delay or failure to perform obligations (other than an obligation to pay money) is due to Force Majeure, the performance of a party's obligations under the Agreement will be suspended.

9. Limitation of liability for Goods

- 9.1 To the maximum extent permitted by law, all conditions and warranties expressed or implied by statute, common law, equity, trade, custom, usage or otherwise in respect of the Goods are expressly excluded.
- 9.2 For equipment forming part of the Goods, which equipment is not manufactured by IPA, the original manufacturer's warranty will apply. IPA's liability for such equipment shall not exceed the liability of the manufacturer.
- 9.3 In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of IPA for a breach of any condition or warranty implied by law is limited at IPA's option to the repair of the Goods or to supply replacement Goods.
- 9.4 IPA's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.
- 9.5 Customer acknowledges and agrees that, to the extent permitted by law, IPA has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- 9.6 IPA's total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

10. Miscellaneous

- 10.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- 10.2 The Agreement is governed by and must be interpreted in accordance with the laws of Victoria. Customer unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria determined in accordance with this clause.
- 10.3 Where there is more than one Customer then the liability of each shall be joint and several.
- 10.4 The rights and remedies provided in the Agreement will not affect any other rights or remedies available to IPA.
- 10.5 The Customer shall be liable for assessing the suitability of covering very large or high value stockpiles using the Goods & IPA shall not be held liable for damage to contained goods by wetting, wind damage or other adverse consequences beyond IPA's control. Plastic covers must be secured properly to avoid dislodgement and wind damage.
- 10.6 The Goods must not be exposed to chemical sprays, hydraulic oils, adhesives, fire embers, chewing (for instance; by rodents/insects), etc.
- 10.7 Dispose of Goods safely (check before recycling).