

## Terms and Conditions of Sale

### 1. General

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Unless the context otherwise requires:

**Agreement** means the agreement between ANCHOR and Customer for the supply of Goods by ANCHOR to Customer and comprises these Terms and Conditions of Sale together with the terms of any quotation and/or delivery order issued by ANCHOR and the terms of any credit application or purchase order submitted by Customer and accepted by ANCHOR.

**ANCHOR** means Anchor Packaging Pty Ltd ABN 84 115 077 695 of Suite W3.B3 Level 3 Building 2/75 O' Riordan Street, Alexandria NSW 2015.

**Consequential Loss** means any loss or damage which does not naturally or indirectly result in the ordinary course of events from the breach, action or inaction in question, whether or not a party has been advised of or is aware of that loss or damage, including any loss of opportunity, data, goodwill (excluding goodwill) or future reputation, any failure to realise anticipated savings and any damage to credit rating.

**Credit Arrangement** means the credit terms granted to Customer in response to an application for credit accepted by ANCHOR.

**Customer** means a party to whom ANCHOR has agreed to supply Goods pursuant to the Agreement.

**Goods** means the goods sold by ANCHOR to Customer, whether or not the subject of a Purchase Order.

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

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

**PPSR** means Personal Property Securities Register being the official government register of security interests and personal property in Australia maintained under the PPSA.

**Purchase Order** means a written purchase order submitted by Customer to ANCHOR for the supply of Goods.

**Security interest** means a security interest registered by Customer on the PPSR in favour of ANCHOR.

### 2. Quotations and Purchase Orders

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- (a) Subject to clause 2(b), written quotations from ANCHOR are valid for a period of 30 days from the date of issue or as otherwise specified in the quotation. Prices given in any quotation by ANCHOR are applicable to that quotation only and will not apply in any other instance. A quotation from ANCHOR is not an offer to sell.
- (b) To purchase Goods, Customer must submit to ANCHOR a Purchase Order setting out the full description of the Goods to be purchased, the required delivery date, delivery (or pick up) address and any other information required by ANCHOR. If ANCHOR has provided a quotation for such Goods, the Purchase Order must refer to that quotation, failing which the Goods will be charged at ANCHOR's then applicable price list.

- (c) A Purchase Order may be accepted or rejected by ANCHOR in its sole discretion.
- (d) A contract for the supply of Goods on the terms set out in a Purchase Order will be formed upon ANCHOR accepting that Purchase Order. Each contract shall be governed by the Agreement.
- (e) The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- (f) Customer acknowledges and agrees that any conditions or terms of purchase submitted by Customer that deviate from, or are inconsistent with, the Agreement will not be binding on ANCHOR, notwithstanding any stipulation by Customer that the terms and conditions contained in (or linked to) a Purchase Order prevail over the Agreement or the fact that a Purchase Order postdates the date of the Agreement.
- (g) Where the Goods to be supplied contain raw materials, the price and availability of which is uncertain, and/or there is a lack of availability of such raw material such that ANCHOR is either not able to supply the Goods at all or to supply the Goods at the price stated in the Purchase Order, ANCHOR may, in its sole discretion:
  - (i) make reasonable efforts to source the relevant raw material, and if unable to do so, serve notice of immediate termination of the Purchase Order under the Agreement; or
  - (ii) negotiate with Customer in good faith to increase the purchase price for the Goods to take account of the greater cost of the raw material, and if agreement cannot be reached, serve notice of immediate termination of the Purchase Order under the Agreement; or
  - (iii) serve notice of immediate termination of the Purchase Order under the Agreement, and for avoidance of doubt:
    - (iv) ANCHOR will not have any liability to Customer arising out of termination of the Agreement; and
    - (v) Customer must pay to ANCHOR the purchase price of Goods already supplied or to be supplied under the Agreement.

### **3. Payment of purchase price**

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- (a) The purchase price for the Goods the subject of a Purchase Order will be the price set out in the relevant Purchase Order unless the purchase price is increased pursuant to clause 2(f) or under any other later agreement. If a Purchase Order omits to include a purchase price, the price(s) contained in the relevant quotation or the then applicable price list will apply.
- (b) Payment of the purchase price must be made in full within 30 days from the end of the month after the date of the relevant invoice or otherwise in accordance with Customer's Credit Arrangement.
- (c) Customer is not entitled to set off any money owing, or claimed to be owing, by ANCHOR against money due by Customer to ANCHOR.
- (d) If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, ANCHOR may require Customer to pay

on demand, interest at the rate of 10% per annum calculated on a daily basis, compounded monthly in arrears and reckoned from the due date of payment until the actual date of payment.

- (e) In the event of any default in payment, the Customer is liable to ANCHOR for all costs, expenses or losses incurred by ANCHOR arising out of the Customer's failure to pay (including without limitation the costs of any legal action, debt collection costs, Court costs, search costs and legal costs on a solicitor and own client basis). The Customer must immediately upon demand, pay to ANCHOR all such amounts (on an indemnity basis).

#### **4. Cancellation of orders**

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- (a) Customer may not vary or cancel a Purchase Order without ANCHOR's prior written consent, which may be withheld in ANCHOR'S absolute discretion. If ANCHOR does agree to vary or cancel a Purchase Order, it may impose such terms and conditions relative to the cancellation as it deems fit and Customer must comply strictly with such terms and conditions failing which the Purchase Order will remain valid and binding in all respects.
- (b) Without derogating from the foregoing, Customer remains liable and must pay to ANCHOR the purchase price for Goods already supplied or to be supplied and for the cost of any raw materials sourced in respect of Goods, the subject of that Purchase Order.
- (c) Customer agrees to indemnify and hold ANCHOR harmless against any loss, damage and expense incurred by ANCHOR in relation to the variation or cancellation of a Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and associated costs incurred by ANCHOR in the manufacture or partial manufacture of the Goods and including compensation that ANCHOR is required to pay to its suppliers.

#### **5. Return of Goods and credits**

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- (a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with clause 5(b).
- (b) Customer may reject any Goods that are incorrectly supplied or oversupplied by notifying ANCHOR in writing and providing full particulars of the claim within 5 days of receipt of those Goods. ANCHOR may dispute any such claim.
- (c) Goods referred to in clause 5(b) may be returned to ANCHOR for credit if all the following is complied with:
  - (i) the Goods are returned to ANCHOR's premises with ANCHOR's prior written approval within 7 days of delivery, at no cost to ANCHOR, unless delivered in error by ANCHOR, in which case ANCHOR will bear the cost of return;
  - (ii) the Goods are accompanied by a dispatch note stating ANCHOR's original invoice number and reason for return; and
  - (iii) the Goods are returned in an unsoiled, undamaged and resaleable condition (and to the extent applicable) in their original packaging.
- (d) Customer must not return any Goods to ANCHOR unless it has complied with clause 5(c) and has done all things necessary to permit ANCHOR to examine the Goods to ANCHOR's satisfaction within the stipulated 7-day period.

## 6. Delivery, Storage and Use

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- (a) Notwithstanding anything to the contrary contained or implied in any Purchase Order, all quoted delivery dates are best estimates only. Customer acknowledges and agrees that time is not of the essence and that Customer may not terminate a Purchase Order or return any Goods the subject of a Purchase Order and ANCHOR will not be liable to Customer if, for any reason, ANCHOR fails to meet a delivery date.
- (b) ANCHOR is deemed to have delivered the Goods when the Goods are made available to Customer for acceptance of delivery or physical collection by or on behalf of Customer at Customer's nominated delivery or pick up address (**Delivery**). Any unloading or loading shall be Customer's responsibility, unless ANCHOR otherwise agrees in writing.
- (c) ANCHOR may deliver the Goods by instalments (where, in ANCHOR's opinion, this is reasonable) and issue interim invoices to Customer.
- (d) Without limiting any other provision of the Agreement and without prejudice to any other right available at law including the right to claim damages, failure by Customer to pay any instalment, or any other amount when due, will entitle ANCHOR to withhold or delay delivery of any remaining Goods ordered.
- (e) If Customer is unable to accept delivery of or collect the Goods at Customer's nominated delivery address on the delivery day, then notwithstanding delivery being deemed to have taken place, ANCHOR may (at its option and without limiting its other rights and remedies either under the Agreement or at law) arrange suitable storage of the Goods, whether at its premises or elsewhere. Customer must pay or reimburse ANCHOR for all costs and expenses of storage, including but not limited to, the cost of insurance, demurrage, handling and other charges associated with such storage.
- (f) The Customer acknowledges that ANCHOR will supply the Goods as described in a Purchase Order but makes no warranty as to their fitness for purpose. Customer acknowledges it has the sole responsibility to ensure the suitability of the Goods for their intended purpose.

## 7. Title and risk

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- (a) Title to the Goods shall remain with ANCHOR until all monies owing by Customer to ANCHOR for the Goods have been paid in full.
- (b) Until the Customer has paid ANCHOR in full for the Goods, Customer shall:
  - (i) store the Goods separately and mark them so that they are clearly and easily identifiable as ANCHOR's property and, if ANCHOR requests, inform ANCHOR of the location of the Goods;
  - (ii) hold the Goods as bailee for ANCHOR, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (**Bailment**); and
  - (iii) indemnify ANCHOR against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by ANCHOR;
- (c) To facilitate ANCHOR being able to procure the repossession of Goods under this clause 7 or claim the proceeds of sale of the Goods, Customer agrees to register an appropriate Security Interest in favour of ANCHOR in relation to Goods supplied from time to time. The Customer agrees to provide ANCHOR with all such information that ANCHOR requires in order to register a Security Interest at any time. The Customer will immediately advise

ANCHOR of any changes which may affect ANCHOR's Security Interest.

- (d) If:
- (i) a payment is not made in accordance with the Agreement;
  - (ii) Customer commits any other breach of the Agreement; or
  - (iii) 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 ANCHOR may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:

- (iv) terminate the Agreement and the Bailment;
  - (v) suspend some or all its obligations to Customer under the Agreement; and/or
  - (vi) enforce its rights under the Security interest and enter upon any premises owned or occupied by Customer where ANCHOR reasonably believes the Goods may be stored and repossess the Goods (including uninstalling the Goods) without being liable for any damages caused.
- (e) If Customer sells the Goods before payment in full to ANCHOR, Customer holds the proceeds on trust for ANCHOR in respect of those Goods and must keep such proceeds in a separate account until the liability to ANCHOR is discharged and must immediately pay that amount to ANCHOR.
- (f) The risk in the Goods passes to Customer at the time of Delivery.

## 8. Insurance

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Customer must keep the Goods insured against all risks for Goods (including against loss by theft or damage by fire or water) from the time the risk in the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for ANCHOR until title passes to the Customer, up to the amount it owes ANCHOR in respect of those Goods, and must keep such proceeds in a separate account until the liability to ANCHOR is discharged and must immediately pay that amount to ANCHOR

## 9. Warranty and Limitation of liability for Goods

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- (a) Other than is provided for in this clause 9, ANCHOR makes no warranties or representations to Customer. The warranty in this clause 9 is in addition to any other rights or remedies which may be available to Customer at law.
- (b) All and any terms, conditions and warranties implied by law that might apply to the supply of the Goods are specifically excluded to the fullest extent permitted by law.
- (c) ANCHOR warrants the Goods to conform in all material respects with any specifications contained in a Purchase Order and to be free from defects in workmanship and materials under normal use and service from the date of Delivery until the later of use of the Goods and the 1<sup>st</sup> annual anniversary of the date of Delivery of the Goods (**Warranty Period**). This warranty does not extend to (and ANCHOR accepts no liability for) damage due to external causes including accident, abuse, misuse, or normal wear and tear.

- (d) During the Warranty Period, to the extent permitted by law, ANCHOR's sole liability (and for avoidance of doubt, Customer' sole remedy) with respect to a breach of clause 9(c) will be to repair or replace (as ANCHOR may elect) any such defective Goods at ANCHOR's expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.
- (e) ANCHOR'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.
- (f) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to ANCHOR (by hand or registered post) at its then primary trading address or by email to the commonly used email address of the contact person within ANCHOR that Customer commonly deals with.
- (g) Customer acknowledges and agrees that, to the extent permitted by law, ANCHOR has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for any Consequential Loss other than Consequential Loss in relation to which ANCHOR recovers or would have able to recover under a policy of insurance but for breach by ANCHOR of a term of any relevant policy.
- (h) Subject to clause 9(f), ANCHOR's total liability under any Purchase Order and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under the relevant Purchase Order.

## 10. Miscellaneous

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- (a) The fact that ANCHOR fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. ANCHOR must agree in writing to any waiver.
- (b) 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.
- (c) ANCHOR shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond ANCHOR's reasonable control and not as a consequence of ANCHOR's negligence.
- (d) A notice to be given to a party under the Agreement must be in writing and must be sent by post or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was sent.
- (e) Governing Law: ANCHOR and the Customer agree that this Agreement and any supplementary Agreement for the supply of goods and or services by ANCHOR to the Customer is governed by the laws of New South Wales. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the Courts in New South Wales and any Court hearing appeals from those Courts.
- (f) Where there is more than one party comprising the Customer then the liability of each shall

be joint and several.

- (g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to ANCHOR.
- (h) Customer shall not assign this Agreement without ANCHOR's prior written consent which may be withheld in its absolute discretion or granted subject to any conditions.
- (i) If the Customer is a trustee, then the Customer represents and warrants to ANCHOR that (i) the Customer is acting in its capacity as a trustee of the trust of which it is trustee (**Trust**), and that the execution of this Agreement is (ii) for the benefit of the Trust; (iii) the Trust has been validly created and is in existence; (iii) the Customer has been validly appointed as trustee of the Trust; (iv) the Customer is the only trustee of the Trust and no action has been taken or is proposed to remove it as trustee of the Trust; (v) the Customer is empowered by the trust deed constituting the Trust to enter into and perform its obligations under this Agreement and to carry on the transactions contemplated in this Agreement in its capacity as trustee of the Trust; (vi) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust deed for it to enter into and perform its obligations under this Agreement; (vii) the Trust has not been terminated, nor has any event for the vesting of the assets of the Trust occurred; and (viii) its right of indemnity out of, and lien over, the assets of the Trust have not been limited in any way.
- (j) If the Customer is a corporate entity then in consideration for ANCHOR entering into the Agreement at his/her/their behest, any director(s) signing on behalf of the Customer, jointly and severally guarantees performance by the Customer of all its obligations under the Agreement including but not limited to the obligation to make payment in full to ANCHOR of the purchase price of any Goods sold to the Customer.

## 11. Our Promise

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1. Your business is our business. We will do everything we can to make your business better, because the better you do, the better we do.
2. You will always be treated honestly, with dignity, respect and friendliness.
3. Everything you get from us is guaranteed to be free of faults and to comply with our internally audited programs (please refer to Clause 5 in our T&C's).
4. You will be told immediately about any delays, problems, variations or anything else affecting any transaction with us so that you have the opportunity to make alternate arrangements. We will do everything we can to help you make those alternate arrangements.
5. Whenever you ask us for products, services or information which are not in our range or knowledge, you will be given recommendations on whom and where you can get what you seek.
6. You will always feel welcome and valued, whenever you visit our showroom, phone us, visit our stand at exhibitions and in every contact you have with us.
7. We reserve the right to charge a restocking fee of 15% for goods returned (goods must be in original condition and the same packaging as delivered, and with bar code intact)

## 12. Orders, Deliveries & Freight Information

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1. To commence trade with us you must have an opening order exceeding \$1000 (excl. GST).
2. Your complaints, suggestions and requests are always welcome. It is only when we know what you require that we can provide it for you.
3. Our order process is as follows:

Orders received prior to 11.30am – despatched following day

Orders received after 11.30am – despatched within 48hours

Pickups for NSW Customers – 1 days notice required, order must be in by 11.30am

Pickups for VIC Customers - 1 days notice required, order must be in by 11.30am

Pickups for QLD Customers - 1 days notice required, order must be in by 11.30am

4. Minimum order quantities and freight costs apply as follows:

Free freight applies to orders of \$1000 (excl. GST) or more in many areas throughout Australia. If you are not in a free freight area, our Customer Service team will be in contact regarding freight charges. Areas excluded are WA, SA, NT, TAS and Far NQLD.

Full Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Position in Company: \_\_\_\_\_