

RESOLUTION PACKAGING PTY LTD - PRODUCT TERMS AND CONDITIONS

1 GENERAL

Subject to this clause, these Terms apply to all supplies of Products by Resolution Packaging Pty Ltd ACN 158 061 780 and its successors and assignees (**Supplier**) to the Customer. By submitting an order to the Supplier, the Customer indicates its acceptance of these Terms. These Terms, and any Invoice, contain, and are deemed to be a conclusive record of, the entire agreement and understanding between the Supplier and the Customer with respect to the supply of Products. The Customer agrees that the Supplier may amend these Terms or the terms of any Invoice the Supplier issues at any time. If the Supplier amends these Terms or the terms of any Invoice, such amendments will only take effect in relation to orders for Products that the Customer makes following the date of amendment. These Terms prevail over any other terms the Customer seeks to impose in relation to the supply of the Products.

2 DEFINITIONS

In these Terms unless inconsistent with the subject or context:

- 2.1 **Confidential Information** means, in respect of a party, all information of that party which is proprietary and treated as confidential by that party, but does not include information that: (a) is in the public domain (otherwise than as a breach of confidentiality by the other party or any person to whom the other party has properly disclosed that information); (b) is required to be disclosed by law; or (c) the other party created or came lawfully into the possession of independently of the party to whom the confidentiality obligation is owed.
- 2.2 **Controller** means, in relation to a person's property: (a) a receiver or receiver and manager of that property; or (b) anyone else who (whether or not as agent for the person) is in possession, or has control of that property to enforce any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.
- 2.3 **Customer** means: (a) the person named on the Invoice as the customer; (b) any person who accepts an Invoice as the customer; and (c) the executors, administrators, successors in title, legal personal representatives, permitted assigns, substitutes (including persons taking by novation), employees, servants and agents of any person referred to in (a) or (b) of this definition. Where more than one person is included in the term "Customer" they will be jointly and severally liable.
- 2.4 **Delivered** means that the Products have been: (a) delivered to the Customer; (b) left at or about the premises of the Customer; or (c) removed from the premises of the Supplier by the Customer.
- 2.5 **Invoice** means a written invoice from the Supplier to the Customer for the Products.
- 2.6 **Insolvency Event** means any of the following events: (a) a person becomes insolvent (or insolvent under administration) as defined in the *Corporations Act 2001* (Cth), states that it is insolvent or is presumed insolvent under an applicable law; (b) a person is wound up, dissolved or declared bankrupt or commits an act of bankruptcy; (c) a liquidator, provisional liquidator, Controller, administrator, receiver, receiver and manager, encumbrancer, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of a person's assets or undertakings (**Insolvency Commencement**); (d) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), a meeting is called, resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in an Insolvency Event; or (f) a person is taken, under section 459F(1) of the *Corporations Act 2001* (Cth), to have failed to comply with a statutory demand, unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by the Supplier.
- 2.7 **Products** means all packaging and any other goods supplied, or to be supplied, by the Supplier to the Customer.

3 PAYMENT FOR PRODUCTS

- 3.1 The Supplier will provide the Customer with an Invoice on or before the date of Delivery in respect of the relevant Products. Unless otherwise specified in the Invoice, the Customer must pay the Supplier the total cost of the Products identified in the Invoice (**Product Price**) (or where relevant, the instalment amount under clause 3.3) in Australian Dollars within 30 days from the date of the order by the Customer of the relevant Products. The Customer will, subject to the other provisions of the Terms, be liable for payment regardless of whether or not Delivery is made.
- 3.2 The Customer is not entitled to set-off against or withhold payment of any amount due on account of any claim against the Supplier whether or not admitted by the Supplier.
- 3.3 If Products are or may be Delivered in instalments the Supplier may (at its own discretion) invoice on a pro rata basis as and when delivery of an instalment has been made, and payments will be due in respect of each Delivered instalment.

4 DELIVERY OF PRODUCTS

- 4.1 The Customer acknowledges that any delivery date is an estimate only and that, whilst the Supplier will use reasonable endeavours to deliver the Products on or before the delivery date, the Supplier does not warrant nor represent that the Products will be delivered on the delivery date. The Supplier will not be liable under any circumstances for any loss, damage or delay occasioned to the Customer arising from late or non-delivery nor shall the Customer be entitled to treat these Terms between the Supplier and the Customer as repudiated if Products are not delivered on or before the delivery date.
- 4.2 If the Supplier is unable to deliver Products to the Customer for any reason whatsoever beyond the control of the Supplier including but not limited to industrial dispute, fire or Act of God, then, the Supplier may rescind these Terms and, to the maximum extent permitted by law the Customer will have no recourse against the Supplier except for a refund of any part of the Product Price already paid in respect of those Products.
- 4.3 The Customer agrees that if it fails or refuses to take delivery of Products then the Supplier may, in its sole discretion and without prejudice to any of its other rights, store those goods at the risk and expense of the Customer.
- 4.4 Where Products are placed with an independent carrier, the carrier will be deemed to be an agent of the Supplier and not of the Customer for the purposes of sections 50, 51 and 52 of the *Goods Act 1958* (VIC) and any equivalent legislation in any other Australian jurisdiction.

5 LIABILITY AND INDEMNITY

- 5.1 To the extent permitted by law (and subject to clause 5.4), any claims by the Customer in respect of Products must be notified in writing by the Customer to the Supplier within thirty days after Delivery and if the Customer does not do so, the Customer is deemed to forever release and discharge the Supplier from all actions, suits, charges, claims and demands which relate directly or indirectly to the Products.
- 5.2 Except for any terms, representations, guarantees and warranties that are implied by law into these Terms, or which are otherwise granted to the Customer by law (including any consumer guarantees provided under schedule 2 of the *Competition and Consumer Act 2010* (CCA)), which cannot lawfully be excluded or modified, or which are expressly stated in these Terms, the Customer acknowledges that the Supplier does not provide any representations, guarantees or warranties in respect of the Products.
- 5.3 Except for any liability that cannot lawfully be excluded (including any liability under the CCA) under no circumstances will the Supplier be liable for any loss, damages, claims or costs whatsoever (**Losses**) (including, without limitation, any consequential, indirect or incidental damages, or damages for loss of profit or opportunity), regardless of how such Losses arise: (a) caused directly or indirectly out of or in respect of the use or custody of the Products or the supply of Products; or (b) caused directly or indirectly by the inadequacy of Products for any purpose or any defect in the Products.
- 5.4 Nothing in these Terms purports to modify or exclude the non-modifiable or non-excludable representations, guarantees and warranties and other legal rights provided to the Customer under the CCA or any other laws of any jurisdictions.
- 5.5 To the maximum extent permitted by law, the Customer hereby indemnifies the Supplier against any liability, loss, damage, cost or expense whether direct, indirect or consequential (including for loss of profits, business or anticipated savings) suffered or incurred by the Supplier as a result of or in respect of: (a) the Supplier taking any action or exercising any of its rights under these Terms, including but in no way limited to any debt collection costs and related legal costs; or (b) the use or custody of the Products or the purchase and supply of Products.

6 RETENTION OF OWNERSHIP

- 6.1 Risk in the Products shall pass to the Customer when Delivered. Property in, and ownership of, Products will remain with the Supplier and not pass to the Customer until the Customer has paid the Supplier for those Products in full and has also paid the Supplier all other amounts owing on any account whatsoever by the Customer.
- 6.2 When property in, and ownership of, Products has not passed to the Customer, the Customer will, from the time those goods (**Unpaid Products**) are Delivered, take custody of the Unpaid Products and retain custody of them as the fiduciary agent and bailee of the Supplier. The Customer will ensure that the Unpaid Products do not lose their identity, and are clearly identifiable, as the property of the Supplier and are properly stored and protected and remain fully insured. The Customer must hold any insurance proceeds in respect of the Unpaid Products on trust for the Supplier.
- 6.3 When the Customer has custody of the Unpaid Products as the fiduciary agent and bailee of the Supplier, the Customer may re-sell such Unpaid Products but only as the fiduciary agent of the Supplier and must maintain separate records of sale in respect of the Unpaid Products. The Customer cannot, however, incur any liability for or on behalf of the Supplier to any third party by contract or otherwise. Any re-sale of Unpaid Products under this clause 6.3 must be for money at arm's length, on market terms, and in the ordinary course of the Customer's business.

- 6.4 Where the Customer re-sells Unpaid Products under clause 6.3, then, with respect to the proceeds of the goods re-sold (**Proceeds**), the Customer will hold on trust for the Supplier the Proceeds and must account to the Supplier for all Proceeds unless and until the Supplier has received payment in full of all amounts owing to the Supplier from the Customer.
- 6.5 The Customer will maintain records to ensure that trust money and trust property are clearly identifiable as being held on trust for the Supplier. Moneys held on trust for the Supplier will be kept separate until they are paid to the Supplier.
- 6.6 If: (a) the Customer fails to pay the Product Price for Products or any part thereof in full by the due date for payment; (b) an Insolvency Event occurs in relation to the Customer; (c) the Customer parts with possession of Unpaid Products otherwise than by way of sale in the ordinary course of the Customer's business; or (d) the Customer breaches any of the other provisions of this Agreement, the Supplier (and its agents) shall have the immediate right to: (e) demand that the Customer immediately account to the Supplier for any money or property (including, but not restricted to, any Unpaid Products and any debt) held on trust for the Supplier; (f) demand that the Customer immediately account to the Supplier for any money owed to the Supplier as a result of a breach of this Agreement; (g) re-take possession of any Unpaid Products held by the Customer or dispose of the Unpaid Products from the Customer's premises without notice to the Customer and for those purposes the Supplier (and any other person) may enter upon any premises occupied by the Customer or any other place where the Unpaid Products are stored free from trespass; (h) retain, sell, purchase or otherwise dispose of the Unpaid Products held by the Customer or any Products not yet Delivered and apply the proceeds after defraying expenses of sale and enforcement in or towards reduction of amounts due and payable on any account whatsoever to the Supplier; and (i) be indemnified by the Customer from and against (and the Customer must pay on demand to the Supplier) all loss, damage, costs or expenses which the Supplier (or any of its agents) may suffer or incur in exercising its rights under this clause 6.6 or any other provision of this clause 6.
- 6.7 The Customer must allow representatives of the Supplier, free from trespass, to enter any premises where Unpaid Products are held and inspect such goods at any time.
- 6.8 If an Insolvency Commencement occurs in relation to the Customer, the Customer must immediately conduct a stocktake of all property (including trust property) belonging to the Supplier in the Customer's custody and provide the Supplier with access to the results of that stocktake.
- 6.9 The Customer irrevocably appoints the Supplier as its true and lawful attorney to recover any proceeds of Unpaid Products that are sold under clause 6.3 to any person and to exercise the Customer's rights against such person, including, without limitation, the right to re-take possession of those goods.

7 PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

- 7.1 In this clause, capitalised expressions have the meaning given to them in the PPSA.
- 7.2 The Customer acknowledges and agrees that by entering into these Terms, the Customer grants a Security Interest to the Supplier in the Unpaid Products and any proceeds of sale in respect of those Unpaid Products.
- 7.3 The Customer consents to the Supplier registering any one or more Financing Statements or Financing Change Statements in respect of any Security Interest created by or contemplated under these Terms, and undertakes to do all things reasonably required by the Supplier to facilitate this.
- 7.4 The Customer agrees to pay, on demand by the Supplier, all costs incurred in connection with registering any Financing Statement or any Financing Change Statement and shall indemnify the Supplier (and its agents) in respect of all such costs incurred.
- 7.5 The Customer agrees not to cause (directly or indirectly) the registration of a Financing Change Statement in respect of the Unpaid Products without the Supplier's prior written consent.
- 7.6 The Supplier and the Customer agree that the following provisions of the PPSA will not apply to these Terms: section 95 (notice of removal of accession) to the extent that it requires the secured party to give a notice to the grantor; section 96 (when person with an interest in the whole may retain accession); section 125 (obligation to dispose of or retain collateral); section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 7.7 For the purposes of section 157 of the PPSA, the Customer waives its right to receive notice of any verification statement in relation to the registration of a Financing Statement or a Financing Change Statement.
- 7.8 For the purposes of section 275(6) of the PPSA, the Supplier and the Customer agree that neither party will, or is entitled to, disclose information of the kind specified in section 275(1) of the PPSA.

- 7.9 The Customer agrees that it will not enter into any agreement which permits any other person to register any Security Interest in respect of the Unpaid Products, the proceeds of sale of the Unpaid Products, or any accounts owed in respect of the Unpaid Products without the Supplier's prior written consent.
- 7.10 Notwithstanding anything else in these Terms, any exercise, or attempted exercise, of any enforcement right by the Supplier under these Terms does not prejudice or limit, in any respect, any other rights or remedies of the Supplier arising at law or in equity.
- 7.11 The Customer and the Supplier acknowledge and agree for the purposes of satisfying section 20(1)(iii) of the PPSA that the description of the Products the subject of each and any Security Interest created under these Terms is as set out in these Terms and any Invoice in relation to those Products and the description of the Products in any Invoice is expressly incorporated into these Terms.

8 CONFIDENTIAL INFORMATION

- 8.1 Each party agrees not to disclose the other party's Confidential Information to any person or entity without the prior written consent of that other party.

9 RECALLS

- 9.1 If the Customer becomes aware of any circumstances which may lead to a recall of any of the Products due to health, hygiene or safety reasons, the Customer must notify the Supplier immediately.
- 9.2 A recall of any of the Products may be initiated by the Supplier at any time: (a) where the Supplier is of the view that any of the Products may cause a health, hygiene or safety risk to consumers; (b) any of the Products are discovered to have a consistent defect due to a number of consumer complaints; or (c) where required or recommended by a government agency or any statutory requirements or authorities.
- 9.3 If a recall is initiated, the Customer shall cooperate with the Supplier and use reasonable efforts in effecting any such recall.
- 9.4 To the extent that the Customer's actions or omissions necessitated any recall, the Customer shall be responsible for the payment of costs and expenses associated with such recall, including the costs associated with replacement of the recalled Products or components of Products.

10 TAXES

- 10.1 Unless otherwise agreed with the Supplier, the Product Price and any other sums payable by the Customer under or in relation to these Terms are exclusive of all national, federal, state, local, or other taxes and assessments of any jurisdiction, including sales or use taxes, property taxes, withholding taxes as required by international tax treaties, customs or other import or export taxes, value added taxes, goods and services tax and amounts levied in lieu thereof based on charges set, services performed or to be performed or payments made or to be made under these Terms (**Taxes**), and Taxes will be payable by the Customer in addition to those sums.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Customer acknowledges that any and all of the trademarks, trade names, copyright, patents and other intellectual property and proprietary rights, whether registered or unregistered, and whether arising by legislation, law or any other manner in or arising out of, the Products shall be and remain the sole property of the Supplier or its licensor.

12 DEFAULT INTEREST AND ACCOUNT KEEPING FEES

- 12.1 If the Customer fails to pay any amount payable to the Supplier on the due date for payment (including payment of any Account Keeping Fee), the Customer must pay to or as directed by the Supplier interest on the amount unpaid at the rate of 15% per annum. This interest must be paid on demand.
- 12.2 The interest payable under clause 12.1: (a) accrues daily from and including the due date for payment up to but excluding the actual date of payment; and (b) may be capitalised by the Supplier from time to time at such intervals determined by the Supplier from time to time. Amounts paid by the Customer to the Supplier will be applied in the manner and order determined by the Supplier from time to time in its absolute discretion.
- 12.3 If a liability of the Customer becomes merged in a judgment or order, the party (as an additional and independent obligation) must pay interest on the amount of that liability from, and including, the date of judgment until it is paid in full at the higher of: (a) the rate payable under the judgment or order; and (b) the rate payable under clause 12.1.
- 12.4 The Customer must pay the amount of \$1 per day (**Account Keeping Fee**) to the Supplier, which is due and payable on each day that an amount due for payment is not paid on the date (or by the time on the date) due for payment.
- 12.5 The Supplier's right to require payment of interest under this clause and obtain payment of the Account Keeping Fee does not affect any other rights and remedies the Supplier may have in relation to any failure to pay an amount due by the Customer to the Supplier.

13 ENVIRONMENTAL MATTERS

- 13.1 If the Customer is required by proper law to deduct or withhold in respect of payment to the Supplier any amount of payment as a result of

any law, the Customer must: (a) pay the amount deducted or withheld as required by law; (b) obtain official receipts (or other documentation ordinarily provided in connection with the payment) from the relevant body or authority and promptly after receipt deliver them to the Supplier; and (c) pay to or as directed by the Supplier an additional amount which the Supplier determines is necessary to ensure the Supplier receives when due a net amount that is equal to the full amount that the Supplier would have received if a deduction or withholding had not been made. The Customer waives any statutory right to recover from the Supplier any amount paid in connection with this clause.

14 NO LIABILITY FOR ASSISTANCE

14.1 Where the Supplier or any representative of the Supplier provides any technical advice or assistance whatsoever to the Customer including, without limitation, in connection with setting up bottling lines or other equipment for filling and/or handling bottles or in connection with the use, application, storage or sale of any Product, the Customer releases the Supplier and its representatives to the maximum extent permitted by law in respect of any harm, damage, liability, claim, costs, expenses or actions that may arise out of or in connection with any such advice or assistance (including in relation to any negligence).

15 OTHER TERMS

- 15.1 The Customer must immediately notify the Supplier of any alteration to the ownership or effective control of the Customer.
- 15.2 The Customer may not assign its rights contained in any agreement between the Supplier and the Customer to supply and purchase Products without the prior written consent of the Supplier.
- 15.3 The Supplier will have the right to suspend deliveries of Products where the Supplier in its absolute discretion considers the amount owing by the Customer at that time (whether actually due for payment or not) is the limit to which the Supplier is prepared to allow the Customer credit.
- 15.4 If any provision of these Terms is found to be invalid or unenforceable, this provision will be severed from these Terms and this will not affect the validity or enforceability of the other provisions of these Terms which will remain in full force and effect.
- 15.5 The headings in these Terms are inserted for convenience of reference only and are not intended to be part of or to affect the meaning and interpretation of any of the terms and conditions of these Terms.
- 15.6 Notices or other communications to be given under these Terms will be deemed to have been given if they are in writing and signed by, or on behalf of, any of the respective parties and served upon the other party by being delivered by hand or sent by ordinary post or by being transmitted by facsimile. Any such notice or communication will be deemed to have been received at the time at which it is left at the recipient's address or at the expiration of 48 hours from the time of posting or upon receipt by the sender of the facsimile transmission report.
- 15.7 These Terms will be governed by the laws of New South Wales and the Customer and the Supplier agree to submit to the jurisdiction of the Supreme Court of New South Wales, the Federal Courts of Australia and the courts of appeal therefrom.
- 15.8 By placing an order for Products with the Supplier, the Customer agrees and acknowledges that it has read and fully understood these Terms and agrees to be bound by it.