



ePac Flexibles Melbourne Terms and Conditions of Sale (01/22)

1. Scope and Binding Effect

1.1. These Terms and Conditions of Sale ("**Terms and Conditions**") apply to all purchase orders accepted by ePac Flexibles Melbourne Pty Ltd (ABN 75 649 460 560) ("**Seller**") and to all price quotations made by the Seller. To the extent that these Terms and Conditions conflict with or are different from those contained in any purchase order or other procurement documents submitted by any person, firm, company or customer ("**Buyer**"), these Terms and Conditions will prevail and any additional or inconsistent terms are rejected by the Seller. Buyer's acceptance of or payment for products and services shall conclusively confirm assent to these terms.

2. Products and Services

2.1. Buyer is responsible for choice of product, and ensuring product complies with all applicable legal requirements and regulatory standards before use or on-sale.

2.2. Buyer must observe all storage and use conditions (if any) for products specified by the Seller in every respect.

2.3. Buyer is responsible, before use, for carrying out appropriate testing under realistic conditions and must suspend use of product supplied by the Seller immediately if it observes an error.

2.4. Seller is not responsible or liable for any product or service to the extent that:

- (a) it is made or performed to designs, drawings, specifications and/or procedures etc. or with any materials which are provided or approved by or on behalf of Buyer; or
- (b) are used, stored, handled or maintained incorrectly or inappropriately after delivery to Buyer.

2.5. Seller may update, modify, alter or make substitution for any of its products or any component in or used in forming any part of them.

2.6. Buyer is solely responsible for ensuring that materials, designs, drawings, specifications, procedures etc. provided by or on behalf of Buyer, to be used by Seller in meeting any orders, are correct, appropriate and comply with all applicable laws, regulations and standards.

2.7. These Terms and Conditions and any order or contract between the Buyer and Seller will not be deemed to be a sale by sample. Any description of products is given by way of identification only and does not constitute a sale by description. No representation, warranty or condition is given that products supplied will be completely identical to, or correspond with, any sample or test material that may have been supplied.

3. Intellectual Property

3.1. Buyer represents and warrants to Seller that at all times:

- (a) it is duly authorised to permit the seller to use the trade marks, copyright material, artwork and any material which Buyer specifically asks Seller to use on or in connection with products or services; and
- (b) Seller's use of such trademarks, copyright material, artwork or material will not infringe the trade mark, copyright or other intellectual property rights of any party and will not breach any statute, regulation or rule.

3.2. Buyer indemnifies and holds Seller harmless in respect of all damages, costs, claims, expenses and liabilities whatsoever arising from or in connection with any use by Seller of trade marks, copyright material, artwork or other material which Seller uses at Buyer's direction or instruction, which infringes or is alleged to infringe any intellectual or industrial property right of any third party anywhere in the world.

4. Purchase Orders and Quotations

4.1. All orders by Buyer are made subject to these Terms and Conditions (and any specific terms set out in an Order Confirmation) alone, which together exclude and override any other oral or written representations, terms and conditions inconsistent with them which the Buyer may seek to impose.

4.2. Any quotation made by Seller in respect of a supply is for information only and shall not constitute a firm offer. Orders are only binding when a written Order Confirmation is sent by the Seller to the Buyer. If the Buyer makes any additions to or alterations to an order placed with Seller, the Seller will be entitled to reject such addition or alteration or to cancel the order.

5. Purchase Price

5.1. Unless stated in an Order Confirmation or otherwise agreed in writing, product unit prices will be as determined by Seller at the time of Order Confirmation.

5.2. Unless agreed by the Seller in writing, prices do not include costs incurred by the Seller arising from late notification by the Buyer of a change to agreed delivery schedule, storage charges where product is not collected immediately upon being made available, or demurrage costs.

5.3. Any delivery costs included in prices are representative of standard delivery only (that is, delivery of products between 8.30am and 5.00pm Monday to Friday (inclusive) in the place to which products are to be delivered, subject to that day not being a bank or public holiday). Any costs, charges or expenses incurred by Seller to meet variations to standard delivery are payable by Buyer.

5.4. Duty, Government charges etc. including GST will be to the Buyer's account.

5.5. Minor deviations from approved colour or press proofs will not entitle the Buyer to a price reduction or to refuse acceptance.

5.6. All fully prepaid invoices will include 5% for freight and 5% for overage in the amount charged. If the delivered quantity is below the 5% overage charged, a credit note will be issued by Seller to be used at a later date by Buyer.

5.7. Except for those sales set out in clause 5.6, delivery within a range of 10% (more or less) than the quantity ordered by the Buyer constitutes good performance of these Terms and Conditions, and the amount under or over supplied will be deducted or charged for pro-rata.

6. Delivery

6.1. Unless otherwise agreed to by the parties:

- (a) delivery is FOB Seller's plant;
- (b) risk in any product supplied to Buyer under these Terms and Conditions will pass to Buyer immediately upon delivery of Products to the carrier at the shipping point; and
- (c) legal and equitable title of product is retained by Seller until Seller receives payment in full.

6.2. Seller will follow Buyer's shipping instructions. Absent such instructions from Buyer, Seller will ship by the method it deems most advantageous. Delivery dates are estimates only. Seller will make commercially reasonable efforts to meet specified delivery dates, but will otherwise not be responsible for delayed deliveries.

6.3. The Seller will not be liable for any loss or damage whatsoever or howsoever caused arising from delay in delivery.

7. Limitation of Liability

7.1. To the maximum extent permitted by law, in no event shall the Seller be liable to the Buyer in an amount exceeding the purchase price of the product.

7.2. To the maximum extent permitted by law, neither party will be liable for any indirect, special, incidental, exemplary, punitive or consequential loss or damage of any kind (including loss of profits or revenue, loss of turnover, loss of goodwill, loss of customer, or plant downtime) sustained for any cause or arising out of anything in connection with these Terms and Conditions and/or any related purchase order. These limitations include any liability that may arise out of third-party claims.

7.3. Any technical advice furnished or recommendation made by Seller or any Seller representative concerning any use or application of any product is believed to be reliable but Seller makes no warranty, either express or implied, as to its accuracy or completeness or of the results to be obtained.

8. Indemnity

8.1. Buyer indemnifies Seller against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by Amcor arising from or in connection with any breach or default by Buyer of these Terms and Conditions, any related order or contract, or the *Competition and Consumer Act 2010 (Cth)*.

8.2. Without limiting clause 7.2, Buyer indemnifies and holds Seller harmless in respect of all damages, costs, claims, expenses and liabilities arising directly or indirectly out of or in connection with sales made by Buyer to third parties, or any use (whether by Buyer or any other person) of product or services supplied, where such costs, claims, expenses or liabilities are caused by, or arise due to the fault of Buyer.

9. Claims

9.1. Products will conform to specifications provided or approved by or on behalf of Buyer, subject to customary tolerances. Seller will repair or replace, at its option, any product found to be defective or nonconforming, provided that:

- (a) any claim is received by the Seller within 30 days of delivery;
- (b) Buyer has given prompt written notice to Seller of the specifically identified defect or nonconformity;
- (c) Seller has provided written return authorization to Buyer and Buyer has returned the nonconforming product to Seller, freight prepaid by Seller;
- (d) Seller has reasonably verified Buyer's claim that the products is defective or nonconforming;
- (e) the defect, loss or claim must not have resulted from an act or omission of the Buyer (including, without limitation, any instruction or specification provided by Buyer to Seller).

- 9.2. If written notice of a claim is not given to Seller within 30 days, it will be deemed to have been waived by Buyer.
- 9.3. No claim will be accepted by Supplier if:
- there is any attempt to repair the defect by any person not authorised by the Seller to effect such repairs;
 - the defective item has been modified or incorrectly stored, maintained, installed or operated; or
 - Buyer disposes of the item in whole or in part.
- 9.4. Buyer will indemnify the Seller for costs and expenses incurred by the Seller or its solicitors, legal advisers, mercantile agents and others acting on the Seller's behalf to the extent that the Buyer has caused or contributed towards the matter which lead to the Seller engaging such persons.
- 10. Customer Credit**
- 10.1. Prior credit approval and non-delinquent status are necessary before Seller will ship on an open account basis. If at any time the financial responsibility of the Buyer, or the credit risk involved, becomes unsatisfactory to the Seller, the Seller may require cash or satisfactory security prior to shipments or deliveries.
- 11. Payment**
- 11.1. Cash purchases will be paid for with order or at or prior to delivery as required by the Seller.
- 11.2. Credit purchases will be paid for by cheque, bank cheque or EFT without deduction, in accordance with the terms specified on the invoice.
- 11.3. All queries regarding items shown on invoices must be submitted by the Buyer to the Seller within thirty (30) days of the issue date of invoice.
- 11.4. If any undisputed amount due and payable is not paid in accordance with payment terms agreed, the Seller reserves the right to hold deliveries until due payment has been received or the matter has been resolved.
- 12. Set Off and Recovery**
- 12.1. The Seller can set off any amount which the Buyer or any of its related entities owe the Seller under these Terms and Conditions or any related order or contract against any amount which the Seller owes to Buyer or any of its related entities (whether under these Terms and Conditions, related order, contract or otherwise).
- 12.2. Unapplied cash, credit notes or other discounts against future purchases issued by Seller in connection with products returned by the Buyer must be used by Buyer within 90 days of issuance by Seller, and unless applied by the Buyer against the purchase of additional products within such 90-day period, shall expire.
- 13. Personal Property Securities Act 2009 (Cth) (PPSA) Registration**
- 13.1. Buyer acknowledges that Seller's rights and interest in product and services supplied to the Buyer, under these Terms and Conditions or any related order or contract, and the proceeds derived from them, constitute a security interest. Seller may register any security interest contemplated by these Terms and Conditions and/or any related order or contract on the PPS Register (as defined in the PPSA). Buyer must supply the Seller with any information and take any steps Seller requires to effect and enforce such registration. Buyer irrevocably and unconditionally waives any rights under the PPSA to receive any notice from Seller in connection with its registration, including any verification statement or financing change statement registered by Seller. Buyer will not allow a security interest to be created or registered over products in priority to the security interest held by Seller.
- 13.2. Buyer agrees that any action taken by Seller in relation to the Buyer's security interest in product is at the cost of Buyer. The parties agree that for the purposes of section 115 of the PPSA, nothing in sections 95, 121(4), 125, 130 (to the extent that it requires the Seller to give any notice to the Buyer), 132(3)(d), 132(4) and 135 of the PPSA will apply to any collateral arising from or in connection with these Terms and Conditions and/or any related order or contract. Notwithstanding section 275 of the PPSA, the parties further agree to keep confidential the contents of these Terms and related material.
- 14. Excluded Items**
- 14.1. To the maximum extent permitted by law, all terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded.
- 14.2. To the maximum extent permitted by law, all representations warranties and conditions relating to product or services supplied by the Seller (including, without limitation, as to quality, suitability or fitness for any purpose (whether or not made known to the Seller), compliance with any sample or description, whether express or implied, and however made or arising, are hereby excluded, and the Seller will have no liability of any nature to the Buyer in respect thereof. Without limitation, the Buyer acknowledges that no catalogue, technical schedule, price list or product literature of the Seller is deemed to constitute or contain any representation, warranty or condition relating to products or services.
- 15. Insolvency**
- 15.1. If the Buyer is involved in any act of insolvency, then the Seller may deem this to be a default under these Terms and Conditions and may suspend its obligations under or terminate these Terms and Conditions and/or any related order or contract without prejudice to any rights it may have. An act of insolvency includes bankruptcy, liquidation, receivership, administration, failure to comply with a statutory demand, a suspension of payment of debts or the bringing of a winding up application which is not dismissed within seven (7) days.
- 16. Force Majeure**
- 16.1. Seller will not be in default or breach of these Terms and Conditions or any related order or contract, and will not be liable to Buyer, for any delay or failure to perform arising from or due to an event of Force Majeure.
- 16.2. Without prejudice to any obligation to pay for product, equipment or services already delivered as the date of a Force Majeure, Seller reserves the right to terminate an arrangement in whole or in part, or to postpone delivery by a reasonable period, if performance of its obligations is prevented or impaired by an event of Force Majeure.
- 16.3. An event of Force Majeure means an event or cause beyond the reasonable control or influence of Seller and includes, without limitation any labour dispute, blockade, strike, lock out, shortage of labour, industrial action; an act of God, natural disaster, lightning, storm, gale, landslide, bush fire, climatic condition or earthquake; accident, explosion, flood, fire, damage by water, operating breakdown; act of public enemy, political unrest, civil commotion, riot, war, terrorism or sabotage; the effect of any applicable law, order, official directive, rule or regulations of any government or other competent authority; environmental contamination; trade sanction, embargo, inability to obtain any essential equipment or materials, delay by suppliers, restricted supply of electrical power or materials, water shortage, lack of transportation.
- 16.4. If Seller terminates an arrangement pursuant to clause 16, Seller shall refund any payment which Buyer has already made on account of the price (subject to deduction of any amount Seller is entitled to claim from Buyer) but will not be liable to compensate Buyer for any further loss or damage caused by the termination or any failure to deliver arising out of it.
- 17. Notice**
- 17.1. Buyer will be deemed to have notice of and be bound by any change to these Terms and Conditions immediately once updated by the Seller and either notified to the Buyer directly or displayed by the Seller's website. Such changes will not apply to orders accepted by the Seller prior to the date of the change.
- 18. Waiver**
- 18.1. Failure by the Seller to insist on strict performance of any term, warranty or condition of these Terms and Conditions or any related order or contract will not be taken as a waiver of it or of any rights the Seller may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- 19. Variation**
- 19.1. No variation of these Terms and Conditions nor of any specific terms set out on the front page of an Order Confirmation will be valid or bind the Seller unless approved in writing by an authorised representative of the Seller.
- 20. Severability**
- 20.1. If any provision of these Terms and Conditions is or shall become void in whole or in part, the other provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these Terms and Conditions.
- 20.2. Any part of these Terms and Conditions being a whole or part of a clause, shall be capable of severance without effecting any other part of these Terms and Conditions.
- 21. Jurisdiction**
- 21.1. These Terms and Conditions and any dispute, proceeding, or claim of any nature arising out of or in any way relating to them or their formation shall be governed and construed in accordance with the laws of Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction there.
- 22. Confidentiality**
- 22.1. All information relating to, or contained in, a quotation, purchase order, Order Confirmation or invoice ("**Confidential Information**") is subject to a duty of confidence and must not be disclosed to any person unless the disclosure is permitted by clause 22.2.
- 22.2. A party may disclose Confidential Information:
- to those of its employees, related bodies corporate, legal advisers, agents, consultants and contractors who may reasonably require the information, including to perform these Terms and Conditions;
 - with the consent of the other party;
 - where a party can prove that information was in its possession before disclosure to it by the other party (and not subject to obligations of confidence between the parties) or was independently developed;
 - to the extent required to enforce these Terms and Conditions or for proceedings arising out of or in connection with these Terms and Conditions; or
 - to the extent required by law, competent regulatory authority or court order.