

Spicers Australia Pty Ltd (ABN 84 007 228 113) trading as Spicers
Phone: (03) 9768 8400, Fax: (03) 9768 8401

Terms and Conditions mean these terms and conditions, as amended, modified, consolidated or replaced from time to time. They apply to any goods or services supplied or to be supplied to us or any third party at our request.

“**Spicers**” means you, your.

“**Buyer**” means we, our or us.

The singular includes the plural and the converse.

A gender includes all genders. Defined terms include their corresponding grammatical forms.

1. Price and Terms of Payment

- (a) We must pay for any goods within the date stated in the relevant invoice (or within 7 days if no date is stated) in cash, cheque, bank cheque, credit card or by electronic means free of any set off, counterclaim or any other deduction. You may allocate payments in any manner you choose.
- (b) You may in your absolute discretion accept payment by credit card. If payment is accepted and made by credit card, you will charge to us, and we will pay to you, costs equal to the costs incurred by you arising as a result of the credit card payment as varied from time to time. For payment by American Express, you will charge us up to a maximum of 2.5% off the invoice value and for payment by other credit cards, you will charge us up to a maximum of 1.5% of the invoice value.
- (c) The price of all goods is the amount shown in any invoice and is exclusive of GST except where the price is expressed to be inclusive of GST.
- (d) We will pay interest compounded monthly on any overdue account shown in any invoice at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2%;
- (e) You may increase the price of any goods ordered by us at any time arising as a result of any increased costs passed on to you by any supplier of yours or as a result of any change of law, including increases in any taxes.
- (f) The chargeable weight for the quantity actually delivered is:
 - (i) weight of reams (inclusive of the weight of ream wrapper whether or not the paper is wrapped); and
 - (ii) in the case of paper on reels, the actual weight (inclusive of the weight of reel wrappers, cores and wooden plugs);
- (g) Where Goods include paper or packaging, unless the Goods are specified in the price list as “Under Millpack”, those goods may only be purchased by us in Millpacks.
- (h) All payments due under an Order are to be made in Australian currency free of exchange and shall be made to your office in Australia stated on the invoice relating to such Order or, to such other place as may be notified by you to us in writing.
- (i) At your discretion, Goods returned for credit or exchange may incur a fee equal to your costs of receiving the returned Goods and administration of the transaction, provided however that the maximum fee per Order shall be \$300; and
- (j) You reserve the right at any time to suspend credit or to change credit terms provided to us when you consider that our financial condition so warrants. In any such case in addition to other remedies herein or at law, cash payments or satisfactory security from us may be required by you before dispatch of the Goods or performance of the Service, or the due date for payment by us under any Order with you may be accelerated by you.

2. Products

- (a) Without derogating from clause 24 you disclaim all responsibility and/or liability whatsoever in relation to any goods and/or services sold subject to these Terms or otherwise which are damaged in any way after sale.
- (b) Notwithstanding clause 24, if any goods sold by you develops any fault which is due to a defect in manufacture, processing or material & which in your opinion precludes reasonable usage being obtained by us, then provided such goods are returned to you within 7 days of us becoming aware of the fault, with all transportations charges prepaid, you will either:
 - (i) Repair or replace the goods free of charge;
 - (ii) Make such allowance to us in a reduction in the then current price for the goods as appropriate, after taking into account the usage already rendered by the goods in question;
- (c) All warranty adjustment claims must be in writing and contain details to the satisfaction of you; and
- (d) We agree that a certificate purportedly signed by an officer of you who has inspected any of the goods, certifying any faults relating thereto shall be conclusive evidence thereof

3. Cancellations and Returns

We agree:

- (a) Not to return goods without your prior approval and if goods are not in brand new and unused conditions with undamaged packaging and if 7 days or more have passed since delivery;
- (b) That you may take back goods in saleable condition on such terms as you consider to be reasonable;
- (c) To pay you on request a restocking fee of 15% of the gross invoice value of all returns;
- (d) Not to return goods without first providing you an original invoice as proof of purchase;
- (e) Not to return any goods which have been custom made, custom processed or custom acquired; and
- (f) That you do not give cash refunds.

4. Quotations

We agree that:

- (a) Quotations must be in writing;
- (b) You shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation;
- (c) You may prior to receipt of any order amend any quotation and notify us accordingly without ramification;
- (d) You shall not be bound by any quotation if you form the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with us and if you also form the view that those circumstances have substantially and/or materially changed;
- (e) We shall pay any additional charges you levy for holding any goods referred to in any quotation pending placement of an order; and
- (f) You and we expressly agree that an Order placed by us shall not be governed by the provisions of the United Nations Convention on Contracts for the international Sale of Goods adopted in Vienna in 1980 (known as the Vienna Convention) and that the provisions of the Vienna Convention are expressly excluded.

5. Placement of Orders

We agree that:

- (a) If any dispute arises concerning any order (including any question of identity, authority or any phone, fax

or computer generated order) the internal records of you shall be conclusive evidence of what was ordered;

- (b) Each order placed shall be and deemed to be representation by us made at the time that we are solvent and able to pay all of our debts as and when they fall due; and
- (c) When placing an order we shall inform you of any facts which might reasonably affect acceptance of the order by you and/or any granting of credit and any failure to do so by or on behalf of the us shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of you and to be unconscionable, misleading and deceptive.

6. Supply and Delivery

- (a) You may supply by installments and/or withhold or cancel supply without ramification where:-
 - (i) You have insufficient goods to fulfill orders;
 - (ii) Goods are not available to supply;
 - (iii) We are in breach of these Terms;
 - (iv) You have safety concerns;
 - (v) You consider it appropriate whether because of any minimum invoice policy or otherwise;
- (b) We agree that:
 - (i) You may elect to arrange delivery at your discretion and without any liability and at the cost and responsibility of us in all things;
 - (ii) You reserve the right to charge for any delivery;
 - (iii) We shall be deemed to have accepted delivery and liability for goods on being notified by you that goods are ready for collection and/or on goods being delivered to a carrier or to our business premises or nominated site whether attended or not;
 - (iv) A certificate purporting to be signed by your officer confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and
 - (v) You shall not be liable for delay, failure or instability to deliver any goods.
- (c) We agree:
 - (i) To pay for any order as you invoice from time to time;
 - (ii) That no delay or failure to fulfill any part of any order shall entitle us to cancel or vary any order or delay or reduce any payment; and
 - (iii) To pay you for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection
- (d) In the case of raw paper products, in accordance with percentage tolerance levels prescribed under the Terms and Conditions of supply of the manufacturing paper mill supplying you or as may be agreed by us and you from time to time;
- (e) In all cases, an appropriate pro-rata adjustment shall made for the value of any over or under-supply, with a commensurate variation to the purchase price payable;
- (f) Unless agreed otherwise in writing, the Goods shall be delivered to us Free on Truck to our store in a capital city, or Free on Truck at a railhead outside a capital city. Indent orders shall be delivered as per supplying mill conditions;
- (g) Goods delivered to us are subject to freight and/or courier charges as determined by you from time to time and which shall be payable by us. Freight and/or courier charges will be included in the invoice in the relevant order;
- (h) We shall return all pallets and any other re-useable packaging or delivery material provided by you and indemnify you for the full replacement cost of any which are not returned to you promptly and in serviceable condition; and
- (i) We agree to pay you for any charges incurred in hiring pallets from a third party, from the date of delivery until the date such pallets are returned to you or are otherwise released from hire.

7. Variations

To be binding, any variation or cancellation of these Terms or any order must be approved by you in writing.

8. Exclusions

- (a) We agree that:-
 - (i) No dealing between you and us shall be or deemed to be a sale by sample;
 - (ii) If you publish material concerning your goods, services and/or prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded;
 - (iii) We shall rely on our own knowledge and expertise in selecting any goods and/or services for any purpose and advice and/or assistance given by or for you shall be at our risk and shall not be or be deemed to be given as an expert or advisor nor to have been relied on by us or anyone claiming through us;
 - (iv) All goods are sold subject to all applicable trading Terms, Warranties and representations of the manufacturer;
- (b) You shall not be responsible nor liable for:-
 - (i) Paying and/or obtaining any necessary judicial statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences;
 - (ii) Any failure to comply with any special requirements of us or any other person (whether relating to manufacture, design, fabrication, installation, fixing or fitting and/or any other particular intended use of any goods and/or services otherwise;
- (c) We agree that you shall not be liable for any goods and/or services;
 - (i) Made or performed to designs, drawings, specifications and/or procedures and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of us;
 - (ii) Utilised stored, handled fixed or fitted and/or maintained incorrectly or inappropriately; and
 - (iii) Manufactured and/or supplied by any other party.
- (d) We agree:-
 - (i) To check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; and
 - (ii) Comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by you and/or by another manufacturer.

9. Risk and Title

- (a) Risk in any goods passes to us on delivery;
- (b) Title remains with you until we have paid you for all goods supplied in full and in cleared funds;
- (c) Until title passes to us, we will hold any goods supplied to us on trust and as bailee for you. We also agree that any proceeds of any sub-sale to any customer of ours will be held in trust in a separate account until the amount we owe to you at any time for those goods is paid to you;
- (d) We must store any goods belonging to you separately from other goods in our possession so as to prevent any deterioration and clearly mark them as your goods;

- (e) We must comply with all applicable laws in relation to the transportation, delivery, handling and storage of any goods. Without limitation, any environmental and OH&S laws; and
- (f) We agree to instruct any customer or agent of ours in relation to the proper and safe handling, carriage or storage of any goods, including compliance with any OH&S or environmental laws.
- 10. Delivery**
- (a) Any order placed by us with you is irrevocable;
- (b) Delivery to us will be at your premises or as requested by us. If not collected after 7 days of any nominated delivery date, we must pay:
- (i) all storage costs. You will not be liable for any delays;
- (ii) All expenses relating to delivery, insurance, transit or storage of goods after delivery to us will be at our cost;
- (c) You may stop goods in transit whether or not delivery has been made to us if we are in default at any time;
- (d) Once delivered goods may not be returned unless defective or damaged in transit. Claims for defective or damaged goods must be given to you in writing within 30 days of delivery date or invoice date, whichever is the earlier. You will not be liable for any claim advised after that time. Claims are subject to inspection; and
- (e) We irrevocably authorise you and any of your lawful agents, at any reasonable time, to enter our premises or any premises occupied by us or our agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to your rights to claim the balance of all moneys due. We indemnify you in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms and Conditions
- 11. Indemnity**
- We indemnify you against any claim or loss arising from or related in any way to any dealing between you and us and/or arising under these Terms.
- 12. Security agreement**
- We agree that these Terms and Conditions, including any order and invoice covering any goods ordered by us, together constitute a security agreement for the purposes of the PPSA
- 13. Security Interest**
- (a) We give you a security interest in:-
- (i) all goods supplied by you that are described in any invoice, delivery or shipping documentation of yours or order documentation that we give you;
- (ii) All present and future inventory and accounts as original collateral;
- (iii) All present and future property of ours including real property. We agree that you may lodge a caveat against any real property. We agree to give you a mortgage in respect of any of real property in registrable form if required by you; and
- (b) The security interest given by us is given as beneficial owner. If we are trustee of any trust, we acknowledge that the security interest given by us applies to the assets of the trust and our personal assets. We appoint you our attorney by way of security for the purposes of this clause and in respect of any enforcement powers.
- (c) Any security interest that arises under this clause is a continuing security interest. It applies to all real property, personal property and any proceeds. It is not extinguished or in any way diminished even if any goods or any part of them is processed or commingled with and becomes part of a product or a mass as part of a manufacturing, assembling or commingling process;
- (d) Any security interest arising secures the due and punctual payment of all moneys payable by us under these Terms and Conditions. Any account arising by virtue of any sale of any goods supplied to us takes effect as a transfer;
- (e) You may register a financing statement, including any financing change statement, on the PPSR. We will reimburse you for any costs and expenses and other charges incurred by you in registering them. We irrevocably waive any rights to receive a copy of any verification statement; and
- (f) We acknowledge that until we have paid for all goods we are not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms and Conditions, then we contract out of the enforcement provisions referred to in s 115(1), except sections 120 and 121.
- 14. Enforcement**
- (a) If an Event of Default occurs or is continuing, you may immediately enforce these Terms and Conditions. Without limitation this includes:-
- (i) Retaking possession of any goods not paid for by us;
- (ii) Suspending delivery of any goods on order and/or refusing to process any unfulfilled order;
- (iii) Enforcing any security interest;
- (iv) Requiring payment in cash on delivery;
- (v) Requiring payment of any proceeds held by us in a separate account or otherwise; and
- (vi) Appointing a receiver and manager of any of our real or personal property that is subject to a security interest. We agree that any such receiver and manager has the powers conferred by the Corporations Act.
- (b) The powers exercisable by you are those given by these Terms and Conditions, including the PPSA, at law or in equity;
- (c) In the event that we have not been paid for the sale of your goods by any customer of ours, at your option, you may in addition to the powers in s 120 of the PPSA, collect that account on giving our customer notice in writing to that effect. You will be entitled to issue proceedings in our name against our customer for recovery of that account for your benefit. We indemnify you in respect of any such action and proceedings. For the purposes of this clause, we must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identity of such customer and your goods.
- (d) You may in your discretion despite s 14(6) of the PPSA apply any moneys received in respect of any PMSI obligations of ours on a pro rata basis;
- (e) We will pay your enforcement costs and those of any agent of yours including legal costs on an indemnity basis.
- 15. Negative pledge**
- (a) We agree not to grant any security interest over any of our personal property except in the ordinary course of business;
- (b) We agree not to grant a security interest in any account as original collateral under s 64 of the PPSA.
- 16. Force Majeure**
- You are not liable for any delay or the failure to perform any obligation in our favour arising as a result of a force majeure event.
- 17. Confidentiality**
- Any security agreement that arises under these Terms and Conditions is confidential. Despite this, we agree that you may disclose any information concerning us to any interested person under s 275(6) of the PPSA..
- 18. General**
- (a) We will tell you if we change our name, any of our officers or management, our registered office, become a trustee of any trust or, cease to be so, or the constitution of any partnership of which we are a member changes;
- (b) Any certificate signed by you, any director or any person authorised by you as to the amount due and payable by us is sufficient evidence of our liability to you under these Terms and Conditions as at the date of any such certificate unless proven wrong;
- (c) If any provision of these Terms and Conditions is unenforceable for any reason, it will not invalidate any other provisions which will remain in full force and effect despite that invalidity;
- (d) These Terms and Conditions contain the entire agreement in respect of the supply of goods to us and any Terms and Conditions contained in our purchase order will not apply to the supply of goods to us;
- (e) You may at any time set off any amount you owe us against any amount payable by us to you whether or not the amount we owe you is due and payable or actually or contingently payable by us;
- (f) We agree that all intellectual property in the creation of any goods and/or services shall be and remain your property notwithstanding any contribution by us; and
- (g) These Terms apply to any reconditioned or repaired goods provided that it is proved to your satisfaction that you reconditioned or repaired the goods.
- 19. Governing law**
- These Terms are governed by the laws of Victoria. We submit to the non-exclusive jurisdiction of any Victorian court and waive any rights to claim that courts there are an inconvenient forum.
- 20. Notices**
- (a) Any notice required under these Terms and Conditions may be given by any party, any director or authorised person of that party; and
- (b) Any notice may be given at that party's registered address or other address stipulated in application in connection with these Terms and Conditions or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified to the other party.
- 21. Time**
- For the purposes of any payment obligation of ours under these Terms and Conditions, time is of the essence.
- 22. Survival of indemnities**
- (a) Each indemnity and payment obligation of ours under these Terms and Conditions is continuing obligation, separate and independent from all other obligations, and survives termination of these Terms and Conditions; and
- (b) It is not necessary for you to incur expense or make a payment before enforcing a right of indemnity
- 23. Exclusion of implied terms**
- To the extent permitted by law, you exclude all conditions, warranties, terms and consumer guarantees implied by law (including the Australian Consumer Law) arising in connection with a supply of goods or services. To the extent permitted by law, you limit your liability in your discretion to replacing the goods or supplying equivalent goods, or, in the case of services, by supplying the services again.
- 24. Limitation of liability**
- To the extent permitted by law, you exclude any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case your liability is limited as under clause 23.
- 25. Default**
- (a) On default or breach of any part to these Terms by us, you may, amongst other things, terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at your discretion, take immediate possession of any goods not paid for without prejudice to any other rights without being liable in any way to any party;
- (b) We agree not to commence or continue or permit to be commenced or continued through it any suit or action against you while we are in default under any part of these Terms or in any of its dealings with you;
- (c) You may apply any payment in reduction of fees, interest and/or any principal debt in such order or priority as you in your discretion deems appropriate; and
- (d) We irrevocably authorize the payment directly to you of any debt due to us by any of our debtors in reduction of any amount due to you under these Terms or otherwise.
- 26. Definitions**
- "Event of Default"** means:
- (a) We fail to pay when due any moneys owing to you under these Terms and Conditions;
- (b) We give any third party a security interest in accounts as original collateral in respect of the proceeds of any collateral covered by a security interest under these Terms and Conditions;
- (c) An Insolvency Event occurs or is continuing; and
- (d) We breach any other provision of these Terms and Conditions and fail to cure it within 5 business days' notice from you to do so.
- "Default"** has a corresponding meaning.
- "Goods"** mean any goods you supply us whether on consignment or otherwise under these Terms and Conditions. They include goods described on any invoice, quotation, work authorisation or any other forms you provide us or any order we give you.
- "GST"** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge. Tax invoice, taxable supply and value have the meaning given to them by the GST Law.
- "GST Law"** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- "Guarantor"** means that person, or entity, who agrees to be liable for our debts whether on a principal debtor basis or who is otherwise a surety of ours.
- "Insolvency Event"** means:
- (a) An administrator is appointed to us or any Guarantor;
- (b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by you an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for our winding up, dissolution or administration or any guarantor or we or any guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of our creditors or a class of them;
- (c) We cease, suspend or threaten to cease or suspend the conduct of all or a material part of our business or dispose of or threaten to dispose of a material part our assets.
- (d) We or any guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business;
- (e) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of us or any guarantor;
- (f) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of our assets or any guarantor and is not discharged or stayed within 20 business days; and
- (g) A security interest becomes enforceable or is enforced.
- "PPSA"** means the Personal Property Securities Act 2009 (Cth).
- The expressions account, collateral, financing statement, financing change statement, inventory, proceeds, purchase money security interest (PMSI), security agreement, security interest, verification statement have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning. It also applies to all land and licences and personal property that is not personal property covered by the PPSA.