

# TERMS AND CONDITIONS

## GENERAL

Onpack supplies and delivers innovative digital printing solutions tailored to our customers' product labelling and packaging needs.

The Customer wishes to engage Onpack to supply the Goods set out in any Purchase Order agreed between the parties from time to time and in accordance with these Terms and Conditions.

## INTERPRETATION

In these Terms and Conditions capitalised terms have the meaning given to them in context, or otherwise as set out below:

**Agreement** means these Terms and Conditions, including any annexure, read together with each Purchase Order.

**Australian Consumer Law** means the law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Customer** means any person Onpack supplies with Goods under a Purchase Order.

**Customer Credit Application** means any agreement between Onpack and the Customer that provides for the supply of the Goods on credit, and any other document executed by the Customer or its agent, representative, officer, or director in connection with that agreement.

**Customer Information** means as set out in clause 8.1 of these Terms and Conditions.

**Commencement Date** means the date on which a Customer Credit Application is executed or the date on which the first Purchase Order is agreed between the parties, whichever is earlier.

**Defect** means a defect, error or imperfection in the Goods that means they do not comply with a Purchase Order, but does not include anything disclosed by Onpack as a feature or limitation of the Goods prior to acceptance of a Purchase Order, or anything trivial, insubstantial, or caused by Customer Information alone.

**Event of Default** means a party: is bankrupt or insolvent; has a receiver, administrator, official manager or liquidator or any similar official appointed over it or any of its assets; has an order or resolution passed for its winding up, bankruptcy or dissolution; ceases to trade or exist, or is subject to any similar event.

**Fees** means the fees payable by the Customer under this Agreement, including but not limited to the fees as set out in any Purchase Order or Onpack invoice.

**Goods** means any finished goods and/or services agreed to be supplied by Onpack to the Customer from time to time, as described in a Purchase Order.

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

**Intellectual Property** means all present and future intellectual property, including works or other subjected matter of copyright, trade marks, designs, patents, circuit layouts, business or domain names, inventions, know-how, confidential information and trade secrets, arising anywhere in the world, whether registered or unregistered, and any rights subsisting in or connected with that intellectual property, including any moral rights.

**Onpack** means Onpack Pty Ltd (ACN 615 327 270) a company incorporated in Victoria, Australia, of Unit 20, 306 Albert Street, Brunswick, Victoria, 3056.

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

**Purchase Order** means any document agreed between the parties in writing which describes the Goods to be supplied by Onpack and the Fees to be paid by the Customer as consideration for those Goods, and be in the form of an invoice or quote provided by Onpack and accepted by the Customer, or emails exchanged between the parties.

**Special Condition** means any special condition agreed in writing between the parties under a Purchase Order, which is intended to modify these Terms and Conditions.

**Term** means, in respect of a Purchase Order, the period from the acceptance of that Purchase Order to its completion or termination in accordance with this Agreement and, in respect of this Agreement, the period from the Commencement Date to termination of this Agreement under clause 12.

## 1. APPOINTMENT

- 1.1 The Customer appoints Onpack to provide the Goods from the Commencement Date for the Term. Subject to payment of the Fees, Onpack agrees to provide the Goods in accordance with this Agreement.
- 1.2 The particulars of the Goods that Onpack will provide are as described in a Purchase Order. The parties may have any number of Purchase Orders in place at the same time, and each Purchase Order will be read together with these Terms and Conditions, together forming this Agreement. A Purchase Order will take effect when agreed in writing by the parties. The Customer agrees that Onpack may refuse to agree to a Purchase Order and may refuse to provide any requested goods or services without a Purchase Order being agreed.
- 1.3 The Customer acknowledges and agrees that the appointment is non-exclusive and that Onpack may be engaged by other Customers to provide goods or services (including goods or services similar to the Goods described in a Purchase Order) during the period of the appointment.

## 2. FEES & EXPENSES

- 2.1 Where Onpack supplies the Goods to the Customer under a Customer Credit Application, the Customer agrees to pay the Fees within 30 days of the date of the end of the month in which any invoice is issued (or in accordance with any other payment terms set out in that Customer Credit Application).
- 2.2 Where Onpack does not supply the Goods to the Customer under a Customer Credit Application, the Customer agrees to pay Onpack the Fees by the due date and method specified in any invoice (or within 14 days of the date of any invoice if no due date is specified), or in accordance with any payment terms otherwise agreed in a Purchase Order. Where up-front payment is required by Onpack, Onpack may (in its sole discretion) elect not to commence production of or provide the Goods or any other services until payment in full is received and will not be liable for any resulting delay or loss or damage to any person.
- 2.3 The Customer agrees to provide Onpack with all necessary information to enable the issuing of an invoice and/or taking of payment, and to inform Onpack promptly of any change to that information.
- 2.4 Onpack may increase the Fees or alter or terminate a Customer's credit limit from time to time on notice to the Customer (**Fee Notice**), but the Customer will have 30 days from the date of any Fee Notice to provide Onpack with written notice terminating an affected Purchase Order. A failure by the Customer to terminate a Purchase Order in accordance with the foregoing will be deemed as acceptance of the increased Fees or altered credit facility arrangement.
- 2.5 The Customer agrees that all Fees or Expenses not paid in full on the due date are debts due and payable immediately. The Customer agrees to pay all of Onpack's reasonable costs of recovering such debts (which may include debt collection or legal fees). Onpack reserves the right to charge, and the Customer agrees to pay, interest on any debt owed by the Customer under this Agreement, at a rate of 2% above the Commonwealth Bank of Australia's commercial lending rate at the time of charging.

## 3. GST

- 3.1 Except where this Agreement states otherwise, each amount payable by a party under this Agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount, and at the same time, pay to the supplier the GST payable in respect of the supply.
- 3.2 A party's obligation to pay an amount under this clause 3 is subject to a valid tax invoice being delivered by the other party

## 4. TITLE AND RISK

- 4.1 Risk in the Goods will pass to the Customer on delivery unless otherwise agreed in writing between the parties.

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- 4.2 Title in the Goods will remain with Onpack and pass to the Customer only on payment of the Fees, as well as all other amounts owing to Onpack by the Customer (under this Agreement or otherwise), in full. The Customer shall hold the Goods (including where they have been converted or changed by any process) as bailee and agent for Onpack.
- 4.3 Until title to the Goods passes to the Customer upon payment in full of all Fees owing to Onpack for all Goods supplied, the Customer must:
- (a) subject to 4.3(b):
    - (i) store the Goods separately and in such a manner that they are clearly identified as the property of Onpack; and
    - (ii) ensure that the Goods are properly stored, protected, readily identifiable and insured;
  - (b) only sell the Goods in the ordinary course of the Customer's business (which does not include sale for less than cost or on conditions); and
  - (c) hold and agree to hold the proceeds of any sale, lease or other dealing of the Goods for Onpack in a separate bank account with a bank over which the Customer have not given any security.
- 4.4 In addition to any rights Onpack may have under Chapter 4 of the PPSA, Onpack is entitled at any time until title in and to the Goods passes to the Customer to demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer to enter, or cause Onpack's agent to enter, any premises occupied by the Customer (or any other premises where the Customer is holding the Goods) in order to search for and remove the Goods.
- 4.5 For the purpose of clause 4.4 above, the Customer:
- (a) irrevocably grants a license to Onpack to enter such premises (including via an agent); and
  - (b) indemnifies Onpack from and against all loss, cost, damage, or claim suffered or incurred by Onpack as a result of exercising its rights under this clause 4.
- 4.6 To the extent permitted by law, if there is any inconsistency between Onpack's rights under this clause 4 and its rights under Chapter 4 of the PPSA, this clause 4 prevails.
- 4.7 The Customer acknowledges and warrants that Onpack has and may perfect a registrable security interest in the Goods and any proceeds of the Goods (and that this Agreement is evidence of that security interest) until title passes in accordance with this clause 4. The Customer agrees to do any thing requested by Onpack or reasonably necessary to perfect and enforce Onpack's security interest and waives any rights to receive notice of its registration.
- 4.8 If title in and to the Goods has not passed to the Customer in accordance with this clause 4, the Customer's right to sell the Goods shall immediately terminate upon the occurrence of an Event of Default in respect of the Customer.

### 5. DELIVERY

- 5.1 Any time quoted for delivery in a Purchase Order is an estimate only. The Customer is not relieved of any obligation to accept or pay for Goods because of any delay in delivery.
- 5.2 Onpack will make all reasonable efforts to deliver the Goods to the Customer at the time and on the date agreed as the delivery date. However, time is not of the essence under these Terms and Conditions and, except where Onpack has an obligation under the *Australian Consumer Law*, Onpack is not liable for any failure to deliver or delay in delivery for any reason, including without limitation, where an event beyond Onpack's reasonable control occurs in accordance with clause 5.3.
- 5.3 If for any reason beyond the control of Onpack (including without limitation as a result of any strike, trade dispute, fire, tempest, theft, breakdown, or similar) a Purchase Order cannot be filled at the time stipulated by the Customer, Onpack shall be entitled to delay or cancel delivery and the Customer agrees that Onpack will not be liable to the Customer for any costs, expenses, losses or damages arising out of such cancellation.

### 6. DEFECTS, ERRORS & CHANGE REQUESTS

- 6.1 The Customer is solely responsible for reviewing and approving all proofs (whether electronic or hard-copy) provided by Onpack in respect of a Purchase Order (**Proof**) in a timely manner.
- 6.2 The Customer must examine the Goods for Defects on delivery and notify Onpack of any Defects in writing within 7 days of delivery. Except where the Australian Consumer Law requires, if the Customer does not notify Onpack of Defects within 7 days of delivery, it shall be deemed to have accepted the Goods.
- 6.3 The Customer must preserve any Goods that are found to have a Defect in the state in which they were delivered and return them to Onpack or allow Onpack (or a nominated agent) access to the Customer's premises for the purpose of inspecting the Goods. If, upon inspection, Onpack agrees that such Goods have a Defect, the remedies set out in clause 6.4 or 6.5 will apply. Any perceived error or defect in the goods that was identified in a Proof approved by the Customer will not be considered a Defect.
- 6.4 Clerical errors and misprints in computations, typing or otherwise in any document constituting the Goods are subject to correction by Onpack by either re-issuing of the document or adjustment of the document, as the case requires. Onpack shall not be liable for any cost expense or damage incurred by the Customer as a result of any document requiring correction.
- 6.5 The Customer acknowledges that whilst Onpack will make every endeavour to produce the exact number of items in a relevant Purchase Order, owing to human and/or up to machine/computer error the number of items actually produced may be 10% over or under the number specified in the Purchase Order (**a discrepancy**). Where a discrepancy occurs Onpack will adjust the Fees charged under the Purchase Order by a pro-rata amount to reflect the actual number of items produced.
- 6.6 Onpack is under no obligation to accept a request for additions or alterations to specifications or instructions provided by the Customer after a Purchase Order has been accepted (**Change Request**) if actioning that Change Request would cause Onpack to incur any loss, cost, or damage (including breach of contract), or if Onpack does not have the capacity to do so. If a Change Request is accepted, the cost of additions or alternations will be added to the Fees.
- 6.7 If, before the Purchase Order is accepted, the Customer does not give Onpack specific instructions in relation to style, type or layout, Onpack may use any style, type and layout which, in Onpack's opinion, is appropriate, and any subsequent requested change to same will be treated as a Change Request in accordance with clause 6.6.

### 7. WARRANTIES

- 7.1 Onpack warrants and represents to the Customer that:
- (a) Onpack has all necessary rights, power, and authority to enter into and perform its obligations under this Agreement;
  - (b) Onpack will comply with all applicable laws in providing the Goods; and
  - (c) Onpack will use the Customer Information only for the purpose of providing the Goods.
- 7.2 The Customer warrants and represents to Onpack that:
- (a) the Customer has all necessary rights, power, and authority to enter into and perform its obligations under this Agreement and is able to pay its debts as and when they fall due;
  - (b) the Customer will comply with all applicable laws in its performance of this Agreement;
  - (c) all Customer Information provided to Onpack is true, complete and accurate in all necessary respects; and the Customer Information, as well as Onpack use of that information in accordance with this Agreement, does not and will not infringe the rights of any person or applicable law.

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### 8. INFORMATION & ACCESS

- 8.1 The Customer agrees to promptly provide to Onpack all information, accesses, permissions, approvals, data, materials, artistic and literary works, and documents that are relevant to or necessary for Onpack to provide the Goods, including sufficient quantities of materials to allow for spoilage, such quantity to be specified by Onpack (**Customer Information**) and agrees to bring to Onpack's attention any matters about which the Customer is uncertain. Onpack will not independently verify the accuracy of such Customer Information. The Customer agrees that Onpack will not be liable for any loss or damage arising from reliance on, or inaccuracy or defect in, any Customer Information supplied by or on behalf of the Customer.
- 8.2 The Customer will promptly perform its obligations under this Agreement, including satisfying any requirements for performance, disclosure, or delivery by the Customer that are specified in a Purchase Order, and provide Onpack will all assistance reasonably required by Onpack to enable Onpack to provide the Goods.

### 9. CONFIDENTIALITY

- 9.1 In this clause 9, "Confidential Information" means the terms of this Agreement and all information of a confidential or sensitive nature (including Intellectual Property), whether in writing or otherwise of or concerning a party or its employees, agents, customers, suppliers or contractors under, acquired by the other party in contemplation of or in connection with this Agreement. Confidential Information will not include any information that is in the public domain or intended to come into the public domain as a result of the performance of the Goods (other than through a breach of this Agreement).
- 9.2 Each party acknowledges that it may receive Confidential Information of the other party and agrees to keep that Confidential Information secret, to protect and preserve its confidential nature, and not use it or disclose it to any person (or allow or assist or make it possible for any person to observe or have access to it) without the other party's prior consent, except to the extent reasonably necessary to:
- provide the Goods;
  - obtain professional advice in relation to the Goods;
  - comply with this Agreement; or
  - comply with disclosure obligations required by law, provided that the other party is given reasonable notice of the required disclosure.

### 10. PRIVACY

- 10.1 Onpack will collect, use, hold, and disclose personal information generally in accordance with its privacy policy (available at [www.Onpack.com.au](http://www.Onpack.com.au)). Personal information collected by Onpack in performance of this Agreement will be treated as Confidential Information for the purposes of clause 9, and will only be collected, used, held, or disclosed for the purposes of providing the Goods, and otherwise with consent of the Customer. The Customer warrants that it has obtained the consent of any relevant person:
- to disclose any personal information constituting the Customer Information, or otherwise provided in connection with this Agreement, to Onpack (including its employees and contractors); and
  - for Onpack (including its employees and contractors) to use and disclose any personal information constituting the Customer Information (or otherwise provided in connection with this Agreement) in providing the Goods (including after the termination or expiration of this Agreement).
- 10.2 Both parties agree to comply with the applicable provisions of the *Privacy Act 1988*, the *SPAM Act 2003*, and any other applicable law in dealing with any information provided by the other party.

### 11. INTELLECTUAL PROPERTY

- 11.1 Nothing in this Agreement affects the ownership of any Intellectual Property owned by either party before this Agreement or independently of this Agreement or the Goods. Unless expressly agreed otherwise in a Purchase Order, any drafts, designs, or ancillary documents or materials created or used by Onpack in producing the Goods, including any Intellectual Property therein, will be owned by Onpack (save to the extent that they contain Customer Information).
- 11.2 The Customer grants to Onpack a royalty-free, non-exclusive licence to use the Customer Information and all Intellectual Property therein for the purpose of providing the Goods during the Term of the relevant Purchase Order.
- 11.3 Onpack may use the Customer's name and logo for the purpose of promoting its services and identifying the Customer as a customer, but only with the Customer's prior consent.

### 12. TERM & TERMINATION

- 12.1 This Agreement will commence on the Commencement Date and continue in effect unless terminated in accordance with this clause 12. A Purchase Order will commence on the start date specified in that Purchase Order and continue in effect for the whole of the Term of that Purchase Order, unless terminated earlier in accordance with this clause 12 or in accordance with any additional rights of termination, as specified in clause 12.2.
- 12.2 Any right of termination provided in a Special Condition applies in addition to this clause 12 and does not have the effect of replacing any right herein, unless expressly agreed between the parties.
- 12.3 Either party may terminate this Agreement and/or any one or more Purchase Orders immediately upon written notice to the other party (the **Relevant Party**) if:
- the Relevant Party commits a material breach of this Agreement which is incapable of being remedied or, if the breach is capable of being remedied, the Relevant Party fails to remedy the breach within 7 days after being required in writing to do so;
  - the Relevant Party or any of its employees, agents or representatives commits an act of dishonesty, serious misconduct or serious neglect of duty in relation to the Goods or this Agreement; or
  - the Relevant Party is or is likely to be subject to an Event of Default or is otherwise unable to pay its debts as and when they become due.
- 12.4 Onpack may terminate, or suspend the supply of the Goods under, this Agreement and/or any one or more Purchase Orders immediately upon written notice to the Customer if the Customer:
- fails to pay any Fees, Expenses, or other amounts on or by the due date for payment and otherwise in accordance with this Agreement;
  - ceases or fails to provide within a reasonable time any information or assistance reasonably necessary for Onpack to provide any part of the Goods; or
  - acts fraudulently or dishonestly or otherwise in breach of any relevant law.
- 12.5 Either party may terminate this Agreement on 30 days' written notice if no Purchase Order has been in force for a period of at least 30 days prior to the date of the notice.
- 12.6 For the avoidance of doubt, termination of this Agreement under clauses 12.3 or 12.4 will result in the termination of any Purchase Order in force at the date of termination, but termination of a Purchase Order alone will not affect the operation of this Agreement in respect of any other then current or future Purchase Order.
- 12.7 If the supply of the Goods is suspended in whole or in part under clause 12.4, Onpack may, at its sole election:
- end that suspension if and when the relevant breach is cured and Onpack has the resources available to re-commence supply of the Goods;

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- (b) continue the suspension until such time as Onpack has the resources available to re-commence supply of the Goods; or
- (c) provide notice of termination at any time if the issue constituting grounds for suspension under clause 12.4 has not been remedied,

and the Customer agrees that Onpack will not incur any liability in respect of the failure to supply the Goods during any period in which those Goods are suspended.

- 12.8 If this Agreement or a Purchase Order is terminated by either party, Onpack will cease providing the relevant Goods and the Customer must immediately pay Onpack all Fees and Expenses due or incurred up to the date of termination in connection with those Goods. For the avoidance of doubt, following termination the Customer must pay Onpack for all work performed in accordance with this Agreement regardless of whether that work has been delivered or invoiced to the Customer.

### 13. LIABILITY & INDEMNITY

- 13.1 To the maximum extent permitted by law and subject to clauses 13.2 and 13.3, Onpack provides the Goods on an "as is" basis and excludes any and all conditions, warranties, representations, implied terms and/or liability for any loss howsoever caused (including by negligence) arising in connection with the Goods or this Agreement.

- 13.2 In respect of any liability of Onpack which cannot be excluded in accordance with clause 13.1, Onpack limits its liability to the Customer as follows:

- (a) under any applicable consumer guarantees in the Australian Consumer Law in relation to the supply of the Goods to either, at Onpack's sole discretion: (i) replacing the Goods or supplying equivalent goods; (ii) repairing the Goods; or (iii) paying the cost of replacing or repairing the Goods or of acquiring equivalent goods.
- (b) for breach of agreement, negligence, breach of statutory duty or any other cause of action other than a breach of an applicable consumer guarantee (regardless of how that liability is caused), arising under this Agreement or related to any Goods, in aggregate to the total Fees paid by the Customer for the relevant Goods.

- 13.3 The Customer continuously indemnifies Onpack, and its directors, employees, agents, and assigns, for and against any loss, damage, cost, or claim (including in negligence) incurred by Onpack arising from or in connection with the Customer's breach of this Agreement or any relevant law.

- 13.4 Neither party will be liable for any consequential, collateral, special, incidental, indirect, exemplary or punitive damages, including, without limitation, loss of profits or revenue, loss of opportunity or loss or destruction of data, costs of cover, costs of delay, however caused and based on any theory of liability, for any claims or causes of action arising out of or related to this Agreement or the Goods.

- 13.5 Without limiting the generality of the foregoing clauses, Onpack will not be liable to the Customer for loss, however caused, of any data stored on discs, tapes, compact discs or other media supplied by the Customer to Onpack.

- 13.6 Subject to clause 13.5, Onpack will not be liable for the damage, loss or destruction of any property of the Customer in the Onpack's possession unless the loss or damage is due to the failure of Onpack to exercise due care and skill in handling or storing the property.

### 14. GENERAL

- 14.1 **Outside work:** If Onpack has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Onpack from a third party in order to carry out the Customer's instructions:

- (a) Onpack will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such goods/services;

- (b) Onpack acquires such goods and/or services as agent for the Customer (not as principal) and any claim by the Customer in relation to the supply of those goods and/or services must be made directly against the third party; and
- (c) the Customer must pay all Fees applicable to the supply of such goods and/or services.

- 14.2 **Property left with Onpack:** If the Customer leaves property in Onpack's possession without specific instructions as to what is to be done with it, Onpack may, 12 months after the completion of any relevant Purchase Order, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property. Onpack has no obligation to insure any property of the Customer in Onpack's possession and is not liable for any damage to the property. The Customer must pay the cost of any insurance arranged by Onpack at the request of the Customer.

- 14.3 **Subcontractors:** The Customer agrees that Onpack may without notice engage subcontractors or other professional consultants to assist Onpack in providing the Goods. Onpack will remain liable for the actions or omissions of any subcontractor to the same extent Onpack would be liable under these Terms and Conditions if the subcontractor were an employee of Onpack.

- 14.4 **No employment:** Nothing contained in this Agreement constitutes the relationship of joint venture, partnership, or employment between the parties and it is the parties' express intention to deny such relationships.

- 14.5 **Assignment:** Onpack may by written notice to the Customer assign, transfer, subcontract or otherwise dispose of, in whole or in part, its rights under this Agreement. The Customer must not assign or novate this Agreement without Onpack's prior written consent, such consent not to be unreasonably withheld.

- 14.6 **Variation:** This Agreement may only be amended or modified in writing signed by the parties.

- 14.7 **Notices:** Any notice or demand to be given or made under this Agreement must be in writing signed by a party's authorised representative. A notice will be deemed to be received (a) in the case of a notice given by hand, on delivery; (b) in the case of a notice sent by pre-paid post, 5 days following the date of postage; (c) in the case of a notice sent by facsimile, on the date the notice was sent provided that the sending facsimile machine confirms by a printed report that the facsimile was successfully sent; and (d) in the case of a notice sent by email, upon the recipient or their mail server confirming receipt of the email.

- 14.8 **Entire agreement:** The Terms and Conditions set out in this Agreement contain the entire agreement concluded between the parties, and this Agreement supersedes any and all prior agreements, representations, or understandings between the parties, whether written or oral, in respect of the same subject matter. To the extent that any inconsistency arises: (a) between these Terms and Conditions (including any annexure) and a Purchase Order, these Terms and Conditions will prevail except over any Special Condition included in that Purchase Order; or (b) between two or more Purchase Orders, the most recently agreed Purchase Order will prevail over any prior agreed Purchase Order.

- 14.9 **Waiver:** Any waiver of a right or remedy under this Agreement will only be valid if the waiver is given in writing and signed by the party giving the waiver.

- 14.10 **Survival:** Clauses 4, 6, 8.1, 9, 10, 12.8, 13, 14.1, and 14.2 will continue in force notwithstanding the termination or expiration of a Purchase Order or this Agreement in its entirety for any reason.

- 14.11 **Severance:** If a provision of this Agreement or part thereof is unenforceable, then that provision (or relevant part) may be severed without affecting the enforceability of any other provision of this Agreement.

- 14.12 **Governing law:** This Agreement is governed by and must be construed in accordance with the laws of Victoria, Australia, and the parties irrevocably consent to the jurisdiction of the courts there.