

## Terms and Conditions governing provision of Products and Services by Cpak

### 1. Application

- 1.1 When we say "We", "Us" "Our" or "Cpak", we are referring to The Cpak Pty Ltd (ACN 127 820 366) references to "You", "Your", "Customer" or "Client", refer to the entity that has placed a Purchase Order for Goods with Cpak.
- 1.2 If You have placed a Purchase Order for Goods from Cpak it is understood that You have read and agreed to these terms and conditions (**T&C's**).
- 1.3 These T&C's can change at any time, by continuing to order Goods from Us, You agree to any changes or revisions to these T&Cs.

### 2. Orders and Quotations

- 2.1 A Purchase Order will be deemed as accepted on the earlier of Cpak sending a Purchase Order acknowledgment in writing to You or on delivery to You of the ordered Goods.
- 2.2 All Quotations, based on current exchange & shipping rates, are valid for 14 days from receipt & subject to confirmation
- 2.3 All Quotations will specify terms for freight arrangement

### 3 Delivery

- 3.1 Cpak will deliver Your ordered Goods during ordinary business hours (unless otherwise agreed) to a delivery point nominated by You, or where not specified, to a delivery point at Cpak's discretion
- 3.2 You warrant and agree that You will provide facilities for the efficient receipt and safe, prompt unloading of the Goods.
- 3.3 Cpak is to be notified within 48 hours upon receipt of goods with any quantity discrepancy, damage or defects detected with details noted and delivery docket countersigned by the driver or delivery refused for return to Cpak warehouse otherwise any claims thereafter will not be recognised and deemed to have occurred on site
- 3.4 Stock supplied ex Cpak warehouse will be inspected by Your chosen carrier then after inspection will be signed as receipted in good order and condition thereafter Cpak will not be liable for any damage or claims
- 3.5 Pallets and packaging are supplied with the goods and included in the price. Disposal is at the customers expense and Cpak will not be liable for removal or any cost of removal

### 4 Supply

- 4.1 Minimum 48 hours' notice is required for despatch of goods
- 4.2 All deliveries are to be full pallet or carton quantities
- 4.3 Any proprietary pre-production sample costs incurred for orders not proceeding to full production (including but not limited to glass bottle development, capsules, die cutters, print plates, foil blocks and artwork) will be invoiced by Cpak for payment within agreed terms
- 4.4 Orders are conditional upon production quality allowance being Cartons +3%, European Glass +/- 10%, Capsules -5% to +10% , Apholos +/- 5% with produced amounts being charged accordingly
- 4.5 Maximum storage of proprietary goods is 3 months from arrival time into Cpak's warehouse unless otherwise agreed in writing in which all goods will then be delivered and invoiced by Cpak for payment within agreed trading terms
- 4.6 Product Specification Sheets, Label Panel Specifications and Technical Specifications are available on request
- 4.7 The suitability of products supplied for Your individual packaging requirements are Your responsibility to validate prior to purchase and Cpak will not held responsible for unsuitability of products supplied
- 4.8 Cpak or Changyu Glass Company will not be responsible for any issues arising from Third Party Processing of their glass
- 4.9 Lead times based on production and shipping advice at time of quotation are subject to change at time of order confirmation. Cpak is not liable for any customer expenses incurred due to delays outside of its control

### 5 Fees

- 5.1 Prices indicated in any Price List are subject to alteration by Cpak without notice, by continuing to order Goods from Cpak, You agree to any such changes.
- 5.2 Unless otherwise specified to You by Cpak, the price of the Goods shall be the price prevailing at the date a Purchase Order is submitted by You to Cpak.

### 6 Payment

- 6.1 Cpak will issue you with an invoice once your Purchase Order for Goods has been processed and delivered or in the case of a Stock order upon despatch.
- 6.2 Payment terms for invoices are 30 days EOM of invoice date
- 6.3 Payment is accepted via the following methods:
  - (a) EFT;
  - (b) Cheque;
  - (c) Visa; or
  - (d) Mastercard.
- 6.4 If You fail to make payment of an invoice issued to you by Cpak, time being of the essence, We may take the following action:
  - (a) more than 90 days overdue - we will put your account on hold until all outstanding Fees are collected.
  - (b) more than 120 days overdue - we will send your account to a debt collection agency.

### 7 Our Intellectual Property

- 7.1 You acknowledge and agree that Cpak shall retain the Intellectual Property Rights in any Goods, product documents or other information provided to You by Cpak under these T&C's.

### 8 Claims

- 8.1 Claims will only be accepted for product that is faulty and not of merchantable quality
- 8.2 All pallet/carton tickets details and signed delivery dockets must be provided, technical limitations and label specifications have been conformed to and samples of faulty product made available
- 8.3 Bottling line downtime fees will not be accepted by Cpak

### 9 Return of Goods

- 9.1 To the fullest extent permitted by law no goods will be accepted for return unless prior written authorisation is given by Cpak for goods that are not fit for purpose or not of merchantable quality
- 9.2 Returns are made within 5 business days after delivery
- 9.3 Goods are accompanied by a Cpak return docket

### 10 Confidentiality

- 10.1 You must keep all confidential and proprietary information provided or disclosed by Cpak to You confidential and You must ensure that Your employees, agents and/or contractors assume the same obligations.
- 10.2 For the purpose of these T&C's, such information includes, but is not limited to, information relating to Cpak's business affairs, methods of carrying on business and its pricing arrangement (if any) with You.

### 11 Warranties and Liability

- 11.1 You make the following warranties to Cpak:
  - (a) Where You provide Cpak with any Product Material for the purpose of Cpak developing Your Goods, that You are entitled to use the Product Material and that its use by Cpak will not infringe upon the Intellectual Property Rights or Moral Rights of any third party.
  - (b) Cpak will not be liable to You for damages or any other remedy for failure to perform its obligations under these T&C's due to a Force Majeure Event.
  - (c) That a Force Majeure Event will not relieve You from any obligation to pay for Goods already delivered or capable of delivery to You by Cpak after a Force Majeure Event comes to an end.
  - (d) Cpak will not be liable to You for damages or any other remedy due to delay where Cpak has used its reasonable endeavours to meet any agreed deadlines.
  - (e) That Cpak will not be liable to You for any business interruption, loss of revenue, loss of income, loss of business, loss of profits, loss of opportunity, loss of contracts or any other indirect or consequential loss arising in connection with, or as a result of, the provision of Goods by Cpak to You.
- 11.2 Notwithstanding anything else contained in these T&C's, the maximum liability of Cpak to You whether under contract, at law, in equity or otherwise, is limited to an amount equal to the Fees actually paid by You to Cpak.

### 12 Indemnity

- 12.1 You shall indemnify Cpak from and against all losses, damages, costs and expenses suffered or incurred by Cpak, and all claims,

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- demands, actions, suits or proceedings made or brought against Cpak arising out of:
- (a) Your breach of any of the provisions of these T&C's;
  - (b) Your breach of any of the warranties at clause 9 of these T&C's; and/or
  - (c) any loss, damage, or injury, caused by, resulting from or in any way connected with the Goods provided by Cpak to You under Your Agreement with Cpak and howsoever caused.
- 10.2 The indemnity at clause 10.1 does not apply to the extent that any such loss or damage arises from the wilful misconduct of Cpak, or any of its officers, employees or agents.
- 11 Default**
- 11.1 Where You are in default under these T&C's, including where You are made subject to an Insolvency Event, Cpak will be entitled to refuse to supply or deliver further Goods to You until such time as You have remedied the default.
- 11.2 Where You are in default of an obligation in relation to payment, then notwithstanding any other rights and remedies available to Cpak, Cpak will be entitled to:
- (a) Interest on all overdue amounts, from the date of default to the date of payment, in full, calculated at 10% per annum;
  - (b) the costs to Cpak, on an indemnity basis, of recovering any overdue amounts, including but not limited to legal and/or debt collection costs; and/or
  - (c) terminate or suspend, without incurring any liability to You, any Purchase Order in force between You and Cpak for the supply of Goods, whether under these T&C's or otherwise.
- 12 Risk and Title**
- 12.1 Risk & Title in the Goods passes to You when the Goods have been paid in full.
- 12.2 Cpak is not liable for any theft, damage or loss of Goods once title has passed.
- 13 Application of the PPSA**
- 13.1 In this clause, PPSA means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 13.2 This clause applies to the extent that Cpak's interest in any Goods is a security interest.
- 13.3 You acknowledge and agree that Cpak may apply to register a security interest in the Goods at any time before or after delivery of the Goods to you. You waive your rights under section 157 of the PPSA to receive notice of any verification of the registration.
- 13.4 You acknowledge and agree that Cpak shall be entitled to apply amounts it receives from You to amounts owing to it in such order as Cpak chooses.
- 13.5 If you default in the performance of any obligation owed to Cpak under these T&C's or any other agreement for Cpak to supply Goods to You, You acknowledge and agree that Cpak may enforce its security interest in any Goods by exercising all or any of its rights under these T&C's or the PPSA.
- 13.6 To the maximum extent permitted by law, Cpak and You acknowledge and agree that the following provisions of the PPSA do not apply to the enforcement by Cpak of any security interest it has in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 14 Implied Terms**
- 14.1 Except for any warranties expressly made in these T&C's, all conditions, warranties, undertakings or representations, express or implied, arising by statutes, general law or otherwise are expressly excluded to the extent permitted by law.
- 15 Severability**
- 15.1 If any provision of these T&C's is wholly or partly invalid or unenforceable in any jurisdiction, that provision will be severed and will not affect the validity or enforceability of the remaining provisions which will continue in full force.
- 16 GST**
- 16.1 If any amounts payable by You are subject to Goods & Services Tax (GST), then You are liable to pay the GST on that amount.
- 16.2 All quotations & pricing are exclusive of GST
- 17 Waiver**
- 17.1 The failure of a party to at any time to require performance of any obligation under these T&C's is not a waiver of that party's right to assert any remedy for breach of that obligation and at any other time to require performance of that or any other obligation under these T&C's.
- 18 Inconsistency**
- 18.1 Should any inconsistency exist or arise between a provision of these T&C's and a provision of any exhibit, schedule, or other document incorporated by reference, the provisions of these T&C's shall prevail.
- 19 Notices**
- 19.1 Any notices under these T&C's must be in writing which may be given by personal delivery, pre-paid postage or facsimile to the party's business address or registered office.
- 20 Entire Agreement**
- 20.1 Your Agreement with Cpak constitutes the entire agreement between the parties in relation to its subject matter and the parties agree that all prior representations, agreements, statements and understandings, whether verbal or in writing, have not been relied upon and are expressly excluded.
- 21 No Agency**
- Nothing in this Agreement constitutes or shall be deemed to constitute a partnership or agency between Cpak and You for any purpose whatsoever and Cpak and You agree and acknowledge that neither the Cpak nor You has the authority or power to bind the other or to contract in the name of and create a liability against the other in any way or for any purpose.
- 22 Jurisdiction**
- 22.1 These T&C's are governed by the laws of New South Wales Australia and each party submits to the exclusive jurisdiction of the courts of that state and waives any right to any claim of *forum non-conveniens*, inconvenient forum, or transfer or change of venue.
- 23 Definitions and Interpretation**
- The following definitions shall apply to these T&C's:
- Agreement** shall mean a Purchase Order, these T&C's and any other document incorporated by reference.
- Fees** shall mean any fees payable by You to Cpak in accordance with the terms of a Purchase Order or these T&C's from time to time. Ag.
- Goods** shall mean the goods, materials, supplies, equipment or other items identified in a Purchase Order.
- Force Majeure Event** shall mean any event beyond Cpak's control including without limitation an act of god, government interference, trade or industrial disputes, power outage and/or non-delivery or shortage of supplies.
- Insolvency Event** shall mean in relation to an entity that it is unable to pay its debts as and when they fall due or is subject to a winding up in insolvency application or is placed into liquidation, administration or receivership.
- Intellectual Property Rights** shall mean the rights in any patents, copyright, designs, trademarks (registered or unregistered), domain names, confidential information and all rights of a similar nature which subsist in Australia or elsewhere whether or not such rights are registrable or capable of being registered.
- Moral Rights** shall mean the right of integrity of authorship, the right of attribution of authorship of a work and the right not to have the authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).
- Price List** shall mean the price of Goods from time to time as set out on our website or as otherwise provided to You by Cpak at Your request.
- Product Material** shall mean any artwork, graphics, logos, symbols, information, documents, audio, or other materials in which Intellectual Property Rights subsist, supplied by You to Cpak for the purposes of this Agreement.
- Purchase Order** shall mean Your request for Cpak to supply You with Goods either in writing by submitting to Cpak a standard form document entitled 'Purchase Order Form' or by placing an order with Cpak either online or via telephone.
- Third Party Intellectual Property** shall mean any material owned by a third party in which Intellectual Property and/or Moral Rights subsist.