

Terms and Conditions of Sale

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BIRCHLANE PTY LTD TRADING AS AXIS PACKAGING TERMS AND CONDITIONS OF SALE

These terms and conditions (Conditions) will form the agreement (Agreement) between you (Customer) and us (Company).

1. Basis of the Agreement

- 1.1. These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or the course of dealing.
- 1.2. The Customer acknowledges that it has read and understands the Conditions of this Agreement and the Customer agrees to be bound by these Conditions.
- 1.3. This Agreement constitutes the entire agreement between the Customer and the Company and the Customer acknowledges that the Customer has not relied on any statement, promise or representation made or given by, or on behalf of, the company which is not set out in the Agreement. Any samples, drawings, descriptive matter, or advertising material issued by the Company and any descriptions, illustrations contained in the Company's catalogues, brochures or website (Marketing Materials), are issued or published for the sole purpose of giving an approximate idea of the Services described in them. The Marketing Materials do not form part of this Agreement (or any other agreement) between the Customer and the Company for the provision of the Services.
- 1.4. This Agreement replaces any and all earlier or pre-existing agreements between the Customer and the Company.
- 1.5. All Services provided by the Company to the Customer are subject to the Conditions of this Agreement.
- 1.6. In the event of any, or to the extent of any inconsistency, between the Conditions of this Agreement and any terms or conditions incorporated into a bill of lading, waybill, consignment note or other transport document issued by the Company or by any third party in course of providing the Services then this Agreement will prevail.

2. Definitions

- 2.1. The following words will have special

meaning in this Agreement.

- (a) ACL means the Australian Consumer Law contained within Schedule 2 of the Competition and Consumer Act 2010 (Cth) (formerly the Trade Practices Act 1975).
- (b) Agreement means these Conditions together with any other document referred to in these Conditions for the sale and purchase of Services in accordance with these Conditions.
- (c) Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.
- (d) Company means Birchlane Pty Ltd (ACN 073 588 708) trading as Axis Packaging at 11 Reggio Road, Kewdale, Western Australia 6105. Refer to the Company's website www.axispackaging.com.au/contact for telephone details.
- (e) Conditions means these terms and conditions as amended from time to time by the Company.
- (f) Customer means you as a person, business, company or other legal entity.
- (g) Goods means the Customer's goods (or part thereof) accepted by the Company for the purpose of performing the Services.
- (h) GST means the goods and services tax imposed by or under the GST law.
- (i) GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999.
- (j) Order means the Customer's request for Services.
- (k) Offer Form means a written quote or estimate from the Company to the Customer containing:
 - (i) a cost calculation for performance of the Services; and
 - (ii) these Conditions, for acceptance by the Customer.
- (l) Products means any and all plastic, timber and metal expendable packaging products manufactured and supplied by the Company and any and all re-usable packaging products including Pelican Products, which the Company is authorised by the manufacturer to sell in Australia

- (m) Tax Invoice means a tax invoice supplied to the Customer by the Company that complies with the requirements of the GST Law.
 - (n) Services means any and all dealings with and handling of Goods including the supply of packaging materials.
- #### **2.2. Interpretation**
- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - (b) A reference to a party includes its personal representatives, successors or permitted assigns.
 - (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted.
 - (d) A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted.
 - (e) Any singular reference includes the plural and vice versa and the word 'including' means 'including, but not limited to', and the word 'includes' means 'includes without any limitation'.
- #### **3. The Company**
- 3.1. The Company is a packaging supplier and manufacturer of customised timber, plastic and metal packaging products. The company also packages Goods using packaging products that are manufactured or supplied by the Company.
 - 3.2. The Company is not a common carrier and the Company does not load, unload, perform or provide transport services of any description and the Company does not accept any liability as a common carrier or as a provider of any transportation services as contained in this clause.
- #### **4. Offer and Pricing**
- 4.1. The cost of the provision of Services to the Customer is calculated according to the Customer's instructions. The Company will provide the Customer with an Offer Form which will state the price for the provision of Products or Services or both to the Customer.
 - 4.2. The cost estimate excludes GST. The amount of GST to be applied to

the Order will be calculated by the Company and confirmed by a Tax Invoice to the Customer from the Company upon the Customer's notice of acceptance of the Offer to the Company.

4.3. All offers for Services contained in an Offer Form are valid for 90 days unless withdrawn earlier by the Company. No other offer for Products or Services will be accepted by the Company unless it is given by the Company in an Offer Form.

4.4. The Company reserves the right to:

- (a) accept or refuse to provide Products or Services or both to a Customer at its sole discretion; and
- (b) change or correct prices in relation to Products and Services disclosed in the Offer Form by giving the Customer notice of 2 Business Days of the change.

5. Order

5.1. To accept an Offer, the Customer must place an Order by returning a signed copy of the Offer Form to the Company within 90 days from the date cited on the Offer Form.

5.2. When the Company receives the signed Offer Form from the Customer, the Company will confirm that an Order has been placed by the Customer and:

- (a) provide an estimate for the date for the provision of the Products or the Services or both; and
- (b) supply a Taxable Invoice for the Order based on the Offer contained in the Offer Form, to the Customer;

5.3. The Company will use its reasonable endeavours to meet the date estimated for the provision of the Products or the Services or both, but the Company will not be liable for any loss or damage suffered by the Customer or any third party for a failure by the Company to meet the estimated date.

6. Payment

6.1. The Customer can negotiate terms for payment for the Products or the Services or both in accordance with arrangements listed below which are subject to agreement and confirmation by the Company at the time of accepting the Customer's Order:

- (a) 50% deposit of the value of the Tax Invoice supplied to the Customer by the Company at time of accepting the Customer's Order;
- (b) full payment of the amount of the Taxable Invoice before the Services are provided by the Company;

(c) cash payment by the Customer on delivery from Company of the Products or completion of the Services; or

(d) on account being terms of 7, 14 or 30 days after the Company has provided the Products or the Services or both to the Customer.

6.2. If a Customer does not pay a Tax Invoice in full and in accordance with the selected and agreed payment term in clause 6.1 above, the Company may at its sole discretion:

- (a) make a demand for the immediate payment of the outstanding amount to the Company by the Customer; and
- (b) apply an amount of interest of 5% to the outstanding amount to cover the Company's administrative fees and costs associated with storage of the Customer Goods at the Company's premises.

7. Title

7.1. Until the Company receives full payment in cleared funds for all Products or Services or both provided by the Company to the Customer along with any other amount owing to the Company by the Customer:

- (a) title in the Company's Products will remain vested in the Company and will not pass to the Customer;
- (b) the Customer must hold the Company's Products as fiduciary bailee and agent for the Company;
- (c) to the extent that it is possible to do so, the Customer must keep the Company's Products separate from its Goods including all labelling and Product materials;
- (d) the Customer must hold the proceeds of the Goods contained in the Company's Products on trust for the Company in a separate account although a failure to do so will not affect the Customer's obligations to deal with the funds as a trustee; and
- (e) the Company may without notice to the Customer, enter where it suspects that its Products are and remove the Products, notwithstanding that the Customer's Goods may be attached to the Company's Products or other goods of the Customer and which are not the property of the Company, and for this purpose, the Customer irrevocably licenses the Company to enter its premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party

arising from such action.

8. Risk and Insurance

8.1. The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately upon the Goods leaving the Company's premises.

8.2. The Products or Services or both are provided to the Customer on the basis that the Customer has obtained any and all necessary permits, licences under all relevant laws, codes and regulations in respect of the Goods.

8.3. The Customer assumes all risk and liability for loss, damage or injury to person or to property of the Customer, or third parties arising out of the use, installation or possession of Products obtained from the Company, unless recoverable from the Company on the failure of any statutory guarantee pursuant to the ACL.

9. Loss or Damage in Transit

9.1. The Company is not responsible for any:

- (a) loss or damage to the Goods in transit by the Customer or by its agent(s) whether shipping to or from the Company's premises; or
- (b) damage or defects to the Goods which have been caused by the improper storage, warehousing or transportation of the Customer's Goods or by any neglect, abuse or improper use of the Customer's Goods by the Customer or any agent(s) of the Customer whilst the Customer's Goods are on the Company's premises.

9.2. This section does not apply to any Goods which have been added to, modified, varied or changed by the Company.

10. Cancellation

10.1. If the Company is unable to provide the Services, then the Company may cancel the Customer's Order (even if the Company has previously accepted the Order) and refund all money paid to the Customer.

10.2. Due to the specialised and customised nature of Products required to perform the Services, no purported cancellation or suspension of an order by the Customer will be binding on or after an Order has been accepted by the Company.

10.3. If the Customer purports to cancel an Order and the Company agrees to the cancellation of that Order the Customer must pay the Company the full cost of the Order or a lesser amount to be determined by the Company.

11. Termination

- 11.1. Without prejudice to any of the Company's rights under this Agreement, if the Customer does not make the payment due and payable to the Company in accordance with clause 6 of this Agreement, the Company may at its sole discretion and without further liability to the Customer:
- (a) refuse to provide Products or Services or both to the Customer; and
 - (b) terminate this Agreement with the Customer without any further notice to the Customer.

12. Warranty and Liability

- 12.1. The Company manufactures and sells specialised expendable Products which are suitable for a single and specific use which is described in the Offer Form unless otherwise authorised by the Company in writing.
- 12.2. The Company is an authorised Australian distributor of Pelican re-usable Products which the Customer may use in accordance with the terms and conditions specified by the manufacturer. The Company assumes no responsibility for any Pelican products supplied to a Customer. For more information on Pelican Products please refer to the Company's website at www.axispackaging.com.au/products/pelican-products
- 12.3. The Customer assumes all responsibility for damage to persons or property where the Customer has elected to package its own Goods in Products supplied by the Company including any improper use of the Products or packaging methods adopted by the Customer.
- 12.4. The Customer will assume all liability for the re-use of any expendable Product which has not been authorised by the Company in writing or any reusable Products supplied by the Company in accordance with the terms and conditions of the manufacturer of the re-usable Products.
- 12.5. All Products, Service descriptions and prices contained in the Company's Marketing Material are current and any standards or specifications are depicted as accurately as possible by the Company.
- 12.6. Not every Product or Service depicted in the Company's Marketing Material is suitable for every kind of use, re-use or purpose and unless otherwise stated in writing by the Company, the Company does not make or give any warranty that the Products or Services described within the Company's Marketing Material are fit for any particular purpose.

- 12.7. Due to the different combinations of Goods and in particular; active ingredients and essential oils, certain Products used in the Company's provision of its Services may react poorly with the Goods and may render the Goods defective. The Company can not guarantee that Product materials used as part of the Services will function correctly with the Customer's Goods.
- 12.8. At the Customer's request, and subject to availability, the Company may supply a sample of the Product material (free of charge) to the Customer to enable the Customer to determine if the Product will be appropriate before accepting an Order.
- 12.9. The provision of a sample (when available) is to enable the Customer to determine if the Company's Services will be suitable for the Customer's purpose.
- 12.10. It is the Customer's responsibility to ensure that its Goods are compatible with the Products used by the Company in the provision of its Services.
- 12.11. Subject to the conditions set out in clauses 12.1 and 12.2, the following provisions set out the entire financial liability of the Company (including any liability for acts or omissions by its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of these Conditions;
 - (b) any use made or resale of the packaging products by the Customer or any other product consisting of the Service; or
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 12.12. All warranties, conditions and other terms implied by statute or common law (save for conditions implied by sections 51 to 53 inclusive of the ACL are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.13. Nothing in these Conditions will limit or exclude the Company's liability for:
- (a) death or personal injury caused by the negligence of the Company, or the negligence of employees, agents or subcontractors (as applicable) of the Company;
 - (b) fraud or fraudulent misrepresentation by the Company or the its employees, agents, sub-contractors (as applicable);
 - (c) breach of any term that may be implied in these Conditions under sections 51 to 53 inclusive of the ACL;

- (d) defective products under the ACL as it relates to the Products used in conjunction with the provision of the Services; or
 - (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 12.14. Subject to the conditions in sections 12.11 of these Conditions, the Company:
- (a) is not liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or of business or depletion of goodwill in each case whether direct, indirect or consequential arising under or in connection with the Agreement (howsoever caused), and
 - (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Agreement by the Company, its employees, agents or subcontractors (if applicable) is limited to the price paid by the Customer for the Products or the Services or both.

13. Force Majeure

- 13.1. If the performance or observance of the Company's obligations under this Agreement is prevented, restricted or affected by a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the Company's reasonable control, the Company will notify the Customer of the cause and after 30 days of the Customer's receipt of that notice this Agreement may be terminated by either the Company or the Customer without penalty.

14. Privacy

- 14.1. The Customer agrees to the Company collecting, using and disclosing certain information about the Customer to the kind referred to under this section and in accordance with the Company's Privacy Policy which can be read on the Company's website at www.axispackaging.com.au/downloads.
- 14.2. Except for information covered by the Company's Privacy Policy, any material or information submitted to the Company (including testimonials) will be considered as having been voluntarily submitted for use by the Company and be treated as non-

confidential and non-proprietary information.

- 14.3. Subject to the Company's legal obligations to the Customer, the Customer permits the Company to copy, disclose, distribute or otherwise use the Customer's information at the Company's sole discretion, whether for commercial or non-commercial purposes and without liability or compensation to the Customer or any other person or entity.
- 15. Confidential Information**
- 15.1. The Customer acknowledges that the Company may from time to time disclose certain Confidential Information to the Customer including documentation about the Company's Services, marketing or intellectual property including but not limited to technical specifications, know-how, use and operation (Confidential Information).
- 15.2. The Customer must:
- (a) only use the Confidential Information solely for the purpose contemplated by this Agreement; and
 - (b) not during the term of this Agreement or at any time after this Agreement has come to an end, disclose (whether indirectly or directly) to any third party the Confidential Information, other than what may be required to be disclosed under law.
- 16. Disclaimer**
- 16.1. Any information provided in the Company's Marketing Materials including all testimonials from its customers, is intended to provide general information only.
- 16.2. Whilst the Company takes all reasonable care to include accurate and up-to-date information in this Agreement and in the Marketing Materials the information provided in the Marketing Materials should not be relied upon as being error free or accurate.
- 16.3. We make no representation or warranty as to the timeliness, reliability, accuracy or completeness of any such Marketing Material, nor does the Company accept any responsibility arising in any way for errors or omission from that Marketing Material.
- 16.4. All information provided in the Company's Marketing Material is provided "as is" without warranty of any kind, either express or implied, to the fullest extent possible under law.
- 16.5. In no event will the Company be liable to any party for any direct, indirect, incidental or consequential damages or losses whatsoever arising from the Customer's acceptance

of this Agreement or reliance upon the Company's Marketing Material including browsing or downloading Marketing Material from the Company's Marketing Material or part thereof by the Customer including, without limitation, damages for loss of profits, business interruption, loss of information or damage to systems due to viruses or other harmful components.

17. Updates

- 17.1. The Company reserves the right to revise, change and modify:
- (a) its costs for the provision of Services reflected in any of the Company's Marketing Materials without any notice to the Customer; and
 - (b) this Agreement at any time by posting new Terms and Conditions on the Company's website www.axispackaging.com.au/downloads.
- 17.2. The Customer is bound by any such revisions, changes or modifications made by the Company and the Customer should review the downloads tab each time the Customer visits the Company's website to ensure that the Customer has the most up to date information concerning the cost of Services and Terms and Conditions for dealing with the Company.

18. Applicable Laws

- 18.1. This Agreement is governed by the laws of the State of Western Australia.
- 18.2. The parties agree to the non-exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia, Western Australian Registry and any court entitled to hear an appeal from those courts.

19. Dispute Resolution

- 19.1. If a dispute arises between the Company and the Customer in connection with this Agreement or the subject matter or formation (including non-contractual disputes or claims) of the dispute, a party must give the other party a dispute notice specifying the nature of the dispute and requesting its resolution under this clause.
- 19.2. If the dispute is not resolved within 14 days of either party receiving notice of the dispute the dispute is by reason of this clause submitted to mediation. The mediation must be conducted in Perth. Arrangement concerning the appointment of a mediator and remuneration of the mediator to be agreed between the parties.
- 19.3. If a dispute which was subject of a Notice of Dispute is not resolved by mediation after 28 days of the

appointment of the mediation then either party (but not before the expiration of the 28 days) may refer the matter to a Court of competent jurisdiction in Western Australia in accordance with section 18 of this Agreement.