

Terms and Conditions of Trade

1 INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Johnston Packaging Pty Ltd and customer for the supply of goods and/or services by Johnston Packaging Pty Ltd to the customer.

1.2 INTERPRETATION

In these Terms and Conditions:

“**Additional Work**” includes all work undertaken by the Johnston Packaging as a consequence of the customer’s variation, alteration or modification of its instructions in relation to the Order;

“**Business Day**” means a day on which banks are open for general banking business in the State or Territory in which the Johnston Packaging premises are located; “**Estimate**” means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4);

“**Freight Costs and Charge**” includes all costs and expenses incurred by Johnston Packaging in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise; “**Goods**” means all present and after acquired goods produced by Johnston Packaging under an Order;

“**GST**” means Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Interest Rate**” means a rate 2% higher than the Cash Target Rate as fixed by the Reserve Bank of Australia;

“**Order**” means the work required to be done in order to fulfill the customer’s instructions;

“**Preliminary Work**” means any and all work performed by Johnston Packaging at the customer’s express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Johnston Packaging at the time when Johnston Packaging supplied the Estimate;

“**Printer’s Charge**” refers in each case to the standard or usual fee charged by Johnston Packaging from time to time in respect of the Order;

“**Quote**” means the quote described in clause 2.1.

1.3 General

In these Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form that expression has a corresponding meaning;
- (e) reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.

1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

1.5 Business Day

If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, may be done on the next Business Day.

2 QUOTES

2.1 Johnston Packaging Pty Ltd to supply quote

Johnston Packaging may give the customer a quote specifying:

- (a) the work required to be done in order to fulfill the customer’s instructions and
- (b) an estimate of Johnston Packaging’s charge for the performance of such work.

2.2 Acceptance by customer

When Johnston Packaging has given the customer the Quote:

- (a) Johnston Packaging need not commence work until the Quote has been accepted by the customer.
- (b) The customer may accept the Quote by instructing Johnston Packaging in writing to commence work.
- (c) Acceptance by the customer of the Quote will constitute acceptance by the customer of these Terms and Conditions.

2.3 Quote evidence of instructions

If the Quote is accepted by the customer, the subject of the quote (the work) shall be carried out and the customer shall pay for the work in accordance with the Quote and these Terms and Conditions

2.4 Johnston Packaging Pty Ltd may revise Estimate

Johnston Packaging may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and Johnston Packaging shall notify the customer of such amendment as soon as practicable thereafter. Upon Johnston Packaging giving the customer notification of such amendment such amended estimate shall be and be deemed to be the Estimate for the purposes of these Terms and Conditions.

3 CHARGES

3.1 Invoice

When the Order has been completed, Johnston Packaging will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, an amount representing Johnston Packaging's charge for the work done, and for any of the other charges specified in clause 3.2. If permitted by these Terms and Conditions, Johnston may, at other times, issue invoices to the customer.

3.2 Charges additional to quoted price

In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing Johnston Packaging's charge for the work done, Johnston Packaging may charge to the customer:

- (a) the amount of any sales tax payable on:
 - (i) the Goods;
 - (ii) any goods produced in the course of performing the Order.
- (b) fees for any preliminary work performed at the customer's request;
- (c) fees for additional work required to be done as a result of the customer changing his, her or its instructions;
- (d) fees for having to work from poor copy;
- (e) fees for work which involves tables or foreign language and which was not notified to Johnston Packaging before the Quote was prepared;
- (f) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (g) fees and other charges for work required to be done urgently, including any overtime costs;
- (h) fees for handling or storing material or equipment supplied by the customer for the purposes of the Order;
- (i) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the customer;
- (j) freight costs and charges;
- (k) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause;

3.3 Under/over supplies

- (a) The customer acknowledges that whilst Johnston Packaging will make every endeavor to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order ("a discrepancy").
- (b) Where a discrepancy occurs Johnston Packaging will adjust the amount charged to the customer for the Order a pro rata amount to reflect the actual number of items produced.+

4 DELIVERY

4.1 Notification

Johnston Packaging shall notify the customer when the Goods are ready for collection.

4.2 Collection

The customer must collect the Goods from Johnston Packaging's premises upon being notified by Johnston Packaging that the Goods are ready for collection. If Johnston Packaging agrees to deliver the Goods the customer shall bear all freight costs and charges of such delivery.

4.3 Rejection

Subject to clause 7.1 the customer may only reject the Goods if they do not comply with the customer's instructions. If the

customer wishes to reject the Goods, the customer must notify Johnston Packaging of the rejection:

- (a) if Johnston Packaging agrees to deliver the Goods to the customer's premises . within 7 days of delivery (or such other time as is mutually agreed);
- (b) otherwise - within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

4.4 Risk

The risk in the Goods passes to the customer;

- (a) if Johnston Packaging is required to deliver the Goods to the customer's premises . at the time of delivery;
- (b) otherwise . at the time Johnston Packaging notifies the customer that the Goods are ready for collection.

If the customer is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to Johnston Packaging at the time the customer notifies Johnston Packaging that the goods are rejected.

5 PAYMENT

5.1 Time for payment

Unless Johnston Packaging and customer agree otherwise, the customer must within 30 days from the end of the month of receiving Johnston Packaging invoice, pay to Johnston Packaging the total amount set out in the invoice.

5.2 Method of payment

Payment for the Order is to be made by the customer by cash, cheque credit or any other form of payment as agreed by Johnston Packaging and the customer. Unless otherwise stated, all payment shall be in Australian Dollars.

5.3 Interest

Johnston Packaging may charge interest at the 90 day bill rate on amounts not paid within the time specified in clause 5.1.

5.4 Advance and progress payments

Johnston Packaging may:

- (a) if Johnston Packaging has not previously done work for the customer, issue an invoice for the amount of the Estimate before commencing the Order;
- (b) if completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion to be at the Johnston Packaging discretion) or require a proportion of the Estimate to be paid in advance of any work being done.
- (c) If the Order is suspended for more than 30 days at the request of the customer or as a result of something for which the customer is responsible, Johnston Packaging may issue an invoice for a particular sum (to be specified by Johnston Packaging) for the work already done and for other costs incurred by Johnston Packaging (such as storage costs).

6 NON PAYMENT

6.1 Damages

The customer must pay to Johnston Packaging any costs, expenses or losses incurred by the Johnston Packaging as a result of the customer's failure to pay to Johnston Packaging all sums outstanding from the customer to Johnston Packaging (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6.2 Retention of title

- (a) Until the customer has paid all sums outstanding in relation to the Goods Property of the Goods does not pass from the Johnston Packaging to the customer.
- (b) If the Goods are in the customer's possession, the customer holds the Goods as trustee for Johnston Packaging and must store the Goods so that they are clearly identifiable as the property of Johnston Packaging.
- (c) Johnston Packaging may call for and recover possession of the Goods for which purposes Johnston Packaging's employees or agents may enter the customer's premises and take possession of the Goods without liability to the customer), and the customer must deliver the Goods to Johnston Packaging if so directed by the Johnston Packaging.
- (d) The customer may, in the ordinary course of the customer's business, sell the Goods to a third party but:
 - (i) the proceeds of sale to the third party are held by the customer as trustee for Johnston Packaging and the customer must account to Johnston Packaging for those sums; and
 - (ii) if Johnston Packaging requires, the customer must assign to Johnston Packaging the customer's claim against the third party and must execute all documents necessary to effect that assignment.

6.3 General lien

Johnston Packaging shall, in respect of all sums owed by the customer to Johnston Packaging, have a general, lien on all property of the customer in the Johnston Packaging's possession and may, after 14 days notice to the customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the customer's property held by Johnston Packaging as aforesaid enjoys copyright protection in favour of the customer, the customer hereby grants to Johnston Packaging a license to exercise the rights conferred on Johnston Packaging under this clause.

7 LIABILITY

7.1 Proofs

If Johnston Packaging submits to the customer a proof of the Goods Johnston Packaging will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the customer before the Order was completed.

7.2 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement (Non-excludable Rights).

7.3 Disclaimer of Liability

Johnston Packaging disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the customer, by status, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. Where (and to the extent) permitted by law, the liability of Johnston Packaging for a breach of a Non-excludable Right is limited, at Johnston Packaging option, to the supplying of the Goods and/or any services supplied again.

7.4 Indirect losses

Notwithstanding any other provision of these terms and conditions Johnston Packaging is in no circumstance,

(whatever the cause), liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the customer for:

- (a) any increase costs or expenses;
- (b) any loss of profit, revenue, business, contract or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party, or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Johnston Packaging's failure to complete or delay in completing the Order or to deliver the Goods.

7.5 Electronic data

Without limiting the generality of the foregoing clauses, Johnston Packaging will not be liable to the customer for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the customer to Johnston Packaging.

7.6 Customer's property

Subject to clause 7.5, Johnston Packaging will not be liable for the damage, loss or destruction of any property of the customer in Johnston Packaging's possession unless the loss or damage is due to the failure of Johnston Packaging to exercise due care and skill in handling or storing the property.

7.7 Force Majeure

Johnston Packaging will have no liability to the customer in relation to any loss, damage or expense caused by Johnston Packaging's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, strike, lookout, breakdown, war, the inability of Johnston Packaging's normal suppliers to supply necessary materials or any other matter beyond Johnston Packaging's control.

8 GENERAL MATTERS

8.1 Alterations to style etc

If, before the Quote is prepared, the customer does not give Johnston Packaging specific instructions in relation to style, type or layout:

- (a) Johnston Packaging may use any style, type and layout which, in Johnston Packaging's opinion, is appropriate; and
- (b) Johnston Packaging may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the customer subsequently altering the style, type or layout used by Johnston Packaging.

8.2 Overset

The customer must pay for overset matter (being matter produced on the customer's instructions but not used in a publication for which it was intended). The customer may instruct Johnston Packaging to retain overset matter for future issues of the publication or to discard the overset matter.

8.3 Outside work

If Johnston Packaging has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Johnston Packaging from a third party in order to carry out the customer's instructions:

- (a) Johnston Packaging 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 the goods and/or services.
- (b) Johnston Packaging acquires the goods and/or services as agent for the customer and not as principle and will have no liability to the customer in relation to the supply

of those goods and/or services. Any claim by the customer in relation to the supply of those goods and/or services must be made directly against the third party.

- (c) The customer must pay for the goods and/or services.
- (d) Property in any goods obtained from a third party and incorporated into the Goods passes to Johnston Packaging at the time of incorporation

8.4 Material supplied by customer

If Johnston Packaging and the customer agree that the customer is responsible for supplying materials or equipment for the purposes of the Order;

- (a) The customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified at the time by Johnston Packaging.
- (b) Johnston Packaging will not normally count or check the materials and if requested by the customer to do so, may charge for counting or checking.
- (c) Johnston Packaging will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the customer.
- (d) Property in any materials supplied by the customer and incorporated into the Goods passes to Johnston Packaging at the time of incorporation.

8.5 Property left with Johnston Packaging Pty Ltd

If the customer leaves property in Johnston Packaging's possession without specific instructions as to what is to be done with it, Johnston Packaging may 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

8.6 Responsibility to insure

Johnston Packaging has no obligation to insure any property of the customer in Johnston Packaging's possession. The customer must pay the cost of any insurance arranged by Johnston Packaging at the request of the customer.

8.7 Ancillary Materials

Unless Johnston Packaging and customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, modes, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos and other material produced by Johnston Packaging in the course of or in preparation for performing the Order (whether or not in fact used for the purpose of performing the Order) are the property of Johnston Packaging.

8.8 Copyright

- (a) Unless Johnston Packaging and the customer agree otherwise, the copyright in all works of art created by Johnston Packaging is the property of Johnston Packaging.
- (b) The customer:
 - (i) warrants that the customer has copyright in or a licence to authorise Johnston Packaging to reproduce, all artistic and literary works supplied by the customer to Johnston Packaging for the purposes of the Order and the customer hereby expressly authorises Johnston Packaging to reproduce all and any of such works for the purposes aforesaid;
 - (ii) hereby indemnifies and agrees to keep indemnified Johnston Packaging against all liability, losses or expenses incurred by Johnston Packaging in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and

- (c) Samples and Design remain the property of Johnston Packaging and may not be copied or supplied to any other party.

8.9 Ideas

The customer must keep confidential and not use any ideas communicated by Johnston Packaging to the customer without Johnston Packaging's written consent.

8.10 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the customer) used by Johnston Packaging to store data for the purposes of completing the Order are the property of Johnston Packaging. The customer cannot require Johnston Packaging to supply the customer any data so stored and Johnston Packaging may charge for supplying such data to the customer.

8.11 Storage of electronic data

Unless otherwise agreed between Johnston Packaging and the customer, Johnston Packaging will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Johnston Packaging agrees to store such data, Johnston Packaging may charge for doing so.

8.12 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

8.13 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity of unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity of enforceability of the provision in any other jurisdiction.

8.14 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in the State or Territory in which Johnston Packaging premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceeding in connection with these Terms and Conditions.

9 GOODS AND SERVICES TAX

9.1 All amounts are GST exclusive

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

9.2 Out of pocket expenses are GST exclusive

All out of pocket expenses referred to in these Terms and Conditions are GST exclusive out of pocket expenses.

9.3 Johnston Packaging to assist Customer

Johnston Packaging will do all things reasonably available to it to assist the customer to claim on a timely basis any input tax credits (if any) the customer may be entitled to claim for any acquisition of goods and services from Johnston Packaging. This includes Johnston Packaging maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the customer.

10. PERSONAL PROPERTY SECURITIES ACT

10.1 Security Interest

The customer acknowledges and agrees that:

- (a) these Terms and Conditions give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2009; and
- (b) the security interest is taken in all Goods previously supplied by Johnston Packaging to the customer (if any) and all Goods that will be supplied in the future by Johnston Packaging to the customer during the continuance of the parties' relationship.

10.2 Undertaking

The customer undertakes to:

- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which Johnston Packaging may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) reimburse Johnston Packaging for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
- (c) give Johnston Packaging not less than 14 days' prior written notice of any proposed change in the customer's name and/or any other change in the customer's details.

10.3 Verification Statement

The customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

