

TERMS AND CONDITIONS

Definitions

- In the Terms or the Order:
 - 'Supplier' means Cypruspine Wrappings Pty Ltd ABN 73 110 011 302 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*);
 - 'Applicant' means any person, firm, corporation or entity, which purchases or orders Goods from the Supplier; and
 - 'Goods or The Goods' means the paper or other articles or materials described in any invoice issued by the Supplier and supplied or to be supplied to the Applicant under an Order.

Payment terms

- The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from date of invoice and payment is due and payable on that date. The Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
- Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of:
 - 10 percent of the amount of the invoice payable; and
 - a further 10 percent per annum payable per year, or part thereof, until payment by the Applicant.
- The Applicant shall pay the price stated in any invoice of the Supplier and payment of the invoice shall be made by a method of payment approved by the Supplier without deduction or set off.
- The chargeable weight for the quantity actually delivered is in the case of paper in sheets, the nominal weight of reams (inclusive of the weight of ream wrapper, whether or not the paper is wrapped) and in the case of paper on reels the actual weight (inclusive of the weight of reel wrappers, cores and wooden plugs).
- Unless Goods are specified in the price list as 'Under Millpack', goods may only be purchased by the Applicant in Millpacks.
- All payments due under an Order are to be made in Australian currency free of exchange and shall be made to the Supplier's office in Australia stated on the invoice relating to such Order or to such other place as may be notified by the Supplier to the Applicant in writing.
- The Supplier shall invoice the Applicant upon delivery of the Goods. Unless notified on the face of the invoice or otherwise in writing by the Supplier payment of the price stated on the invoice shall be made by the Applicant on or before the following date of the month following the month in which the invoice is raised ('the due date'). In the event of any discrepancy between the Terms and any terms and conditions of the Supplier appearing on the face of the invoice, the latter shall prevail. Time shall be of the essence in relation to all obligations of the Applicant to make payment for the Goods.
- The Goods may only be returned for credit or exchange. No refunds will be made Custom made or custom processed Goods or Goods acquired specifically for the Applicant will only be returnable with the Supplier's written consent. Goods may only be returned for credit or exchange within 7 days of the date of invoice and must be in as new & saleable condition. At the Supplier's discretion, Goods returned for credit or exchange may incur a fee equal to 10 percent of the invoiced price of the Goods provided however that the minimum fee per Order shall be \$30 and the maximum fee per Order shall be \$300.

Jurisdiction

- The Applicant acknowledges and agrees that this agreement shall be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
- The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
- The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

- The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
- Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

- The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

- Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.
- Unless withdrawn by the Supplier, any quotation made by the Supplier is open for acceptance by the Applicant for 30 days from the date of the quotation or such other period as may be notified from time to time in writing by the Supplier to the Applicant.

Retention of title

- Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
- Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the goods with other similar goods.
- The Applicant shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.
- The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 21 hereof unless and until the funds held on trust are remitted to the Supplier.
- The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
- The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 23. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
- The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable license to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
- For the avoidance of any doubt, the Supplier's interest constitutes a purchase money security interest pursuant to the *Personal Property Securities Act 2009 (PPSA)*.

Delivery and Storage

- While the Supplier shall make every endeavour to deliver the correct quantity, quality and where applicable, size and weight of Goods ordered, the Applicant acknowledges that the Supplier may experience difficulty in supplying the Goods in the exact terms as ordered. Accordingly, the Applicant agrees that in relation to the supply of Goods it shall accept and pay for Goods supplied by the Supplier notwithstanding inaccuracies in the precise quantity, quality, size or weight of Goods (as the case may be) in comparison to the precise terms of Order, on the following basis:
 - in the case of raw Paper products, in accordance with percentage tolerance levels prescribed under the Terms and Conditions of supply of the manufacturing paper mill supplying the Supplier or, as may be agreed between the Applicant and the Supplier from time to time.
 - in all cases an appropriate pro-rata adjustment shall be made for the value of any over or under supply with a commensurate variation to the purchase price payable.
- The Goods shall be delivered to the Applicant FIS capital city or FAS alongside rail country deliveries. Indent orders shall be delivered as per supplying mill conditions. Risk in the Goods passes to the Applicant upon the earlier of:
 - delivery to the Applicant or his agent or a carrier nominated by the Applicant or by the Supplier on the Applicant's behalf, or
 - despatch of the invoice for the Goods to the Applicant. 8.3 Goods delivered to the Applicant are subject to freight and/or courier charges as determined by the Supplier from time to time and which shall be payable by the Applicant. Freight and/or courier charges will be included in the invoice for the relevant Order.
- In the event that the Applicant requests the Supplier to withhold delivery of the Goods or any part thereof or if delivery is delayed for any other reason as a consequence of the Applicant's instructions or lack thereof the Supplier may in its absolute discretion store the Goods for the Applicant and the Applicant shall pay the Supplier all storage charges charged or incurred by the Supplier and if the Goods are stored elsewhere all cartage charges incurred by the Supplier.
- Notice by the Supplier to the Applicant that the Goods have been stored in accordance with this clause shall constitute delivery of the Goods.
- The Supplier reserves the right upon notice to the Applicant at any time to withhold deliveries if the Supplier in its sole discretion considers that the financial condition of the Applicant so warrants and that such action is advisable to protect the Supplier's interests.
- Whether or not risk has passed to the Applicant, the Supplier shall to the full extent permitted by law be under no liability in respect of any damage caused to, or any deterioration of, the Goods during the course of transit.
- A certificate purporting to be signed by an officer of the Supplier confirming delivery shall be conclusive evidence of delivery, as shall any signed delivery docket.

Partial delivery/forward orders

- If the Applicant places any forward order the Applicant agrees:
 - to pay for so much of any order as is from time to time delivered by the Supplier.
 - no delay or failure to fulfill any part of any order shall entitle the Applicant to cancel or vary Order or delay reduce any payment.

Packing

- Packing will be effected in accordance with the Supplier's standard practice and the cost of packing is included in the price. If the Applicant requests other, packing the Applicant will bear the cost or packing.

Pallets

- The Applicant will return all pallets and any other re-useable packaging or delivery material provided by the Supplier and indemnifies the Supplier for the full replacement cost of any which are not returned to the Supplier promptly.

Cancellation of terms of credit

37. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
38. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

39. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

40. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
41. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

42. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

43. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
 - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to sign this agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
44. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

45. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
46. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

47. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

48. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
49. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
 - (a) under section 95 to receive notice of intention to remove an accession;
 - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (e) under section 130 to receive a notice to dispose of goods;
 - (f) under section 132(2) to receive a statement of account following disposal of goods;
 - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - (j) under section 142 to redeem the goods;
 - (k) under section 143 to reinstate the security agreement; and
 - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

50. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
51. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
52. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 23 and 51.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 58.
 - (c) Thirdly, in payment of the outstanding invoice(s).

53. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
54. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 53 herein.
55. Payments allocated (and/or reallocated) under clause 53 and/or 54 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty

56. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
57. If as a result of:
 - (a) any legislation becoming applicable to the subject matter of this agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;The Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

58. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

Set-off

59. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
60. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Exclusion of Vienna Convention

61. The parties expressly agree that the Order shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna in 1980 (known as the Vienna Convention) and that the provisions of the Vienna Convention are expressly excluded.

Miscellaneous

62. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
63. In relation to the supply of goods, the Supplier's liability is limited to:
 - (a) replacing the goods or supplying similar goods;
 - (b) repairing the goods;
 - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
 - (d) providing the cost for having the goods repaired.
64. In relation to the supply of services, the Supplier's liability is limited to:
 - (a) supplying the service again; or
 - (b) providing for the cost of having the services supplied again.
65. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
66. The Supplier shall not under any circumstances be liable for any claim, loss or damage sustained or incurred by the Applicant or any other party arising in any way as a result of the unavailability of the Goods or any delay in delivery of the Goods or any part thereof or any failure to deliver the Goods or part thereof.
67. The obligations of the Supplier shall be suspended during the time and to the extent that the Supplier is prevented from or delayed in complying with those obligations by Force Majeure.
68. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
69. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
70. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
71. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
72. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Severance

73. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
74. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

75. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

76. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
77. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

Consent to Register

78. The Applicant hereby consents to the Supplier recording the details of this Agreement on the PPS Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
79. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

80. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
81. In circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein.

Intellectual Property

82. The Applicant warrants that any design or instruction furnished to the Supplier will not cause the Supplier to infringe any patent, registered design or trade mark in the execution of the Applicant's order. The Applicant indemnifies the Supplier against any claim, loss, liability, cost and expense that may be incurred by the Supplier as a result of any infringement or unauthorised use of patents, trademarks, designs or copyright arising out of the manufacture or use of the Goods.
83. The sale and purchase of the Goods does not confer on the Applicant any license or rights under any patents, trademarks or copyright which is the property of the Supplier or any other person.
84. An Order contains the whole understanding of the parties relating to the subject matter of the Terms and the Terms cannot be altered or varied without the written agreement of the Supplier. The Terms and the current price list of the Supplier supersede all previous terms and price lists of the Supplier. If any dispute arises over any Order (including any question of identity, authority or any telephone, facsimile, computer or e-mail order) the internal records of the Supplier will be conclusive evidence of what was ordered. Each Order placed shall be and be deemed to be a representation made by the Applicant at the time that it is solvent and has the present and future ability to pay all of its debts as and when they fall due.

Privacy Act

85. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.