



# General Terms and Conditions of Supply

## THE PAPER CUP COMPANY PTY. LTD. GENERAL TERMS AND CONDITIONS OF SUPPLY

### 1. Parties

The parties to these terms are:

- (a) The Paper Cup Company Pty Ltd ACN 110 975 696 of Factory B, 8 Adina Court, Tullamarine in the State of Victoria, and is referred to as 'us', 'our' or 'TPCC'; and
- (b) The customer who acquires our goods and/or services who is referred to as "you" and "your".

### 2. Application

These terms and conditions apply to all goods and services that we provide, unless we agree otherwise in writing.

### 3. Customer Contracts

- (a) Where we agree to provide you with goods and/or services, your customer contract with us is made up of (in order of precedence):
  - (i) the order form (in the case of online orders, the order as recorded by us); and
  - (ii) these terms.
- (b) Unless approved by us otherwise, all orders you make with us must be in writing in the form of and via email sent to [john@tpccau.com](mailto:john@tpccau.com). The order must include, among other things:
  - (i) Artwork if custom printing is required where applicable
  - (ii) Copy of the quote if given.
  - (iii) 50% deposit.
  - (iv) Full trading name, Address/es, billing/delivery.
- (c) A quotation that we provide you is not an offer by us to supply the goods and/or services.
- (d) If you make an order on the basis of a quotation, we will:
  - (i) notify you in writing of our agreement to your offer; or
  - (ii) deliver you the goods and/or provide you the services.
- (e) If we agree to provide you with goods and/or services, then we may impose conditions on our agreement, including the requirement for payment of a security deposit of 50%. Any such condition forms part of your customer contract with us.
- (f) Any variation of the customer contract must be in writing and approved by us before the variation is deemed effective.

### 4. Acknowledgements

You acknowledge that:

- (a) There may be a variation in the colour and finish of goods we print for you, on the basis of the printing surface of the goods eg. cardboard, paper, etc. Accordingly, we do not warrant that the colour of the ordered goods will match 100% the colour you have ordered.
- (b) The final quantity may vary by approximately  $\pm 10\%$  and full quantity made will be invoiced.
- (c) If the final quantity required must be at least the quantity ordered then this should be made clear at the time the order is placed, otherwise a full minimum quantity will reapply if the balance short is requested.

### 5. Warranty on Goods

- (a) All goods we sell you will have the benefit of our manufacturer warranty. The terms and conditions of our manufacture warranty are outlined in our Warranty Policy, which can be found on our website – [www.tpccau.com/html/warranty.html](http://www.tpccau.com/html/warranty.html)
- (b) Warranty claims will only be considered for acceptance by us, if the return of the goods, is in accordance with our Warranty Policy. You will be liable for all costs associated with having the goods returned to us.
- (c) We may vary or amend Warranty Policy without your consent, but where we do, we will endeavour to notify you at least 7 days before we do so.

### 6. Quotations and Pricing

- (a) Where we provide you with a quotation, that quotation is valid for a period of 7 days unless we advise you otherwise.
- (b) Where a customer contract does not specify a price, then unless we agree otherwise in writing, the price of the goods will be deemed to be our recommended retail price contained in our price list.
- (c) The prices shown in our price list are subject to change without notice.
- (d) Where materials or other goods that we use in the provision of our goods and/or services are not available or deficient in any way, then we are not obliged to accept an order.
- (e) We may vary pricing or quotations at any time before we accept an order and enter into a customer contract with you.

### 7. Payment

- (a) You must pay our invoices in cleared funds within 7 days of their date of issue, unless other arrangements are in place. Failure to pay invoices on time will incur a storage fee of \$10 per week per pallet or part thereof.
- (b) Payment terms of any goods and/or services sold to you are an essential term of any customer contract.
- (c) Any payment tendered by you to us will be applied as follows:
  - (i) Firstly, a reimbursement for any collection or legal costs incurred in recovering monies owing by you, to us;
  - (ii) Secondly, in payment of any interest we have charged you pursuant to clause 13 of these terms
  - (iii) Thirdly, in relation to obligations that are not secured under the Personal Property Securities Act 2009 (Cth) ('PPSA'), in the order in which those obligations are incurred;
  - (iv) Fourthly, in relation to obligations that are secured under the Personal Property Securities Act 2009 (Cth) ('PPSA'), in the order in which those obligations were incurred;
  - (vi) Fifthly, any other monies or consideration owing to us.

### 8. Final Sale, Delivery, Claims and Returns

- (a) Subject to clause 12 and clause 15, and to the extent permitted by law, any supply of goods and/or services is deemed final after the production of printing plates. You acknowledge that we will not refund you if you change your mind after the sale is final.
- (b) All delivery and freight charge are payable by you, unless we agreed otherwise in writing.

- (c) Any dates specified for delivery of any goods to you, are estimated dates only, and we will not be liable for any damage or loss which you may suffer as a result of the delivery being delayed beyond such dates for any reason whatsoever.
- (d) Upon the delivery of the goods you must inspect the goods immediately and report any damage to the delivery driver and us. If you fail to report the damage upon delivery to the delivery driver, you may void any freight insurance which covers such damage.
- (e) Acceptance of the goods delivered to you, pursuant to this agreement, will be deemed for all purposes to have taken place at the expiration of 7 days from the date of delivery.
- (f) No goods will be accepted for return, if the return of the goods is not in accordance with our Return Policy, which can be found on our website – [www.thepapercupcompany.com.au/returns](http://www.thepapercupcompany.com.au/returns). You will be liable for all costs associated with having the goods returned to us.
- (g) No goods will be accepted for return after the expiration of the time specified in Clause 8(e) from the date of delivery, unless agreed in writing by us and or in accordance with our warranty policy, prior to such return, and then only upon conditions acceptable to us, and at your entire risk as to loss or damage, and provided the goods are, and remain, in the same condition which they were delivered to you.
- (h) If you return the goods within the time period specified in 8(e), acknowledgement of the claim will be at our complete discretion.
- (i) Upon the return of the goods, as specified in Clause 8(h), the goods must be in the same condition as when it was dispatched to you.
- (j) If we accept your warranty claim, you will be liable for all of costs of having the goods returned to us.

## 9. Back Orders

Back orders will be supplied to you on the terms and conditions applying at the time the original order is accepted by us.

## 10. Title and Risk

- (a) Risk in all goods passes to you upon delivery to you or your representative or any authorised third party to receive the goods.
- (b) Title to goods does not pass to you until you have paid us all money payable under your customer contract in cleared funds.
- (c) From the time of delivery, until title to goods passes to you, you must:
  - (i) store the goods separately from all other goods and not store at any other address than your usual place of business where the good were delivered to;
  - (ii) label the goods to identify them;
  - (iii) insure the goods for their full replacement value, noting our interest on any policy of insurance;
  - (iv) keep the goods safe;
  - (v) not part with possession of the goods; and
  - (vi) not encumber the goods.
- (d) You grant us an irrevocable licence to enter upon any premises/property upon which goods we supplied you are located or stored:

- (i) to inspect the goods; and
- (ii) to take possession of the goods at any time prior to title passing to you, if you are:
  - A. in breach of these terms or any other agreement between us;
  - B. have parted possession with the goods; or
  - C. you are or have been:
    - declared bankrupt or are wound up (which ever is applicable);
    - issued with a statutory demand or committed an act of bankruptcy; or
    - served with a pending creditors petition or winding up application (which ever is applicable)
    - put into receivership and have had a receiver or receiver and manager appointed
- (e) Upon request, you must provide us with a certificate of currency of insurance for the insurance required under clause 10(c)(iii).

## 11. Goods on Consignment

- (a) The title and ownership of any goods we deliver to you on consignment, will remain with us until we are paid in full.
- (b) Any goods on consignment will be at your own risk from delivery.
- (c) You will be responsible for the maintenance and repair of any goods on consignment with you.
- (d) You must immediately return any goods on consignment to us, upon our demand, without delay.

## 12. Penalty Interest

We may impose penalty interest at a rate 15% higher than the rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic) on any overdue payments under a customer contract.

## 13. Liability, Indemnities and Warranties

- (a) To the extent permitted by law we:
  - (i) will provide services with reasonable care and skill but do not warrant that they will be provided without fault;
  - (ii) will provide services that are reasonably fit for a their intended purpose but do not warrant that they will be provided without fault;
  - (iii) will supply goods of an 'acceptable quality' but do not warrant that they will be supplied without fault or defect;
- (b) Except for any express warranties in a customer contract, to the extent permitted by law we disclaim all express and implied warranties in relation to goods, services or a customer contract.
- (c) In the case of any breach of a customer contract, or any negligence for which we are responsible, or breach of a condition or warranty that legislation prohibits us from excluding (which condition or warranty shall accordingly be included), our liability to you will be limited, at our option, to:
  - (i) if the breach or negligence relates to goods –
    - A. replacement of any goods involved or the supply of equivalent goods;
    - B. the repair of such goods;

- C. the payment of the cost of replacing the goods or of acquiring equivalent goods ;or
- D. the payment of the cost of having the goods repaired; and
- (ii) if the breach relates to services–
  - A. supplying of the services again; and
  - B. the payment of the cost (for the period of the breach) of having the services supplied again.
- (d) In no circumstances are we liable for any indirect, secondary or consequential loss(including among other things, loss of profits, loss of business, loss of bargain, loss of income or business interruption) that you or anyone else may suffer.
- (e) For all other liability we may be liable for, our liability will not exceed the total of any tax invoice you have paid to us that relates to such liability arising.
- (f) You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:
  - (i) any act or omission by you;
  - (ii) any breach of any law by you;
  - (iii) any breach of a customer contract; by you or anyone receiving the goods and services or the benefit of them.

## 14. Substitution and Repairs

We reserve the right to:

- (a) substitute goods with ones that are of the same or similar quality where goods that you order are not available – in which case we will endeavour to advise you of this;
- (b) to vary the design of the goods at our absolute discretion to provide for the required purpose.

## 15. Cancellation

- (a) You acknowledge and agree that if you cancel a customer contract, we may suffer loss and damage, and we reserve our rights to recover such loss and damage from you. In the event we have suffered loss and damage, you agree to release us any deposit you have paid us, as compensation towards such loss and damage, without prejudice to any of our rights.
- (b) We may end a customer contract at anytime if:
  - (i) you breach any term of your customer contract, including non payment;
  - (ii) we deem you (in our absolute discretion) to be an unacceptable credit risk;
  - (iii) you are declared bankrupt;
  - (iv) you have been served with a bankruptcy notice, creditor's petition or winding up application;
  - (v) you are insolvent, or we have reason to believe that you are insolvent (in our absolute discretion);
  - (vi) you are placed under management, or have a receiver and manager appointed, or you go into voluntary administration or liquidation;
  - (vii) we are unable to perform our obligations under a customer contract, due to a breach by any of our suppliers, or an event of force majeure.

- (c) If a customer contract is cancelled by you or ended by us in accordance with clause 15(b), we reserve the right to:
  - (i) charge you the freight costs for the delivery and return of the goods.
  - (ii) charge you a handling and restocking fee of 25% of the price of the goods and/or services;

## 16. Representations and Entire Agreement

- (a) These terms contain the whole agreement between us, unless agreed otherwise in writing. We both agree that neither of us is entitled to rely on any warranty or statement in relation to:
  - A. these terms.
  - B. any goods and/or services provided under these terms, to fullest extent permitted by law.
- (b) without limiting clause 13(b), you warrant that you have not:
  - (i) relied on any representation made by us which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.
  - (ii) Any advice, recommendations, information or services provided by us, our employees, servants or agents regarding the goods and/or services sold and the use of the goods will not be construed as contractual guarantees, conditions or warranties.

## 17. Security

- (a) In consideration of us supplying and providing you the goods and/or services, you agree and consent to us:
  - (i) Registering a general security interest over all your company assets and property (if applicable);
  - (ii) Registering a caveat against any real property you may own from time to time; and/or
  - (iii) Securing or registering any other security interest against you, from time to time.on account of any monies owing to us under a customer contract, by you, from time to time.
- (b) If you are a trustee, you represent to us that you have authority under the relevant trust instrument to trade with us and to give us the security noted in clause 17(b), in your capacity as trustee.
- (c) You irrevocably appoint us as your attorney from time to time, to do all things necessary to create and register each of the security interests noted in clause 17(b).

## 18. Security Interest Under the PPSA

- (a) You agree that:
  - (i) Each order accepted by us, being an order accepted under these terms, creates a registrable interest under the PPSA in any goods supplied under it, including goods on consignment;
  - (ii) You acknowledge our right to register a financing statement under the PPSA with respect to the security interest created by these terms
  - (iii) If we register a security interest under the PPSA we may exercise any or all remedies afforded to us as a secured party under it, without prejudice to any other rights or remedies arising out of a breach by you, of any agreement with us;

- (iv) The goods, including goods on consignment, are collateral for the purposes of the PPSA
- (b) You acknowledge and agree that you waive any rights you have under the PPSA to receive notice in relation to registration events.
- (c) Both you and we agree that neither of us will disclose information of the kind specified in section 275(1) of the PPSA.
- (d) At our election, we may exercise at any time, at our absolute discretion that any section of the PPSA specified in Section 115, will not apply to the extent permitted by section 115.

## 19. Force Majeure

- (a) We are not responsible for the consequences of force majeure.
- (b) For the purpose of this clause a force majeure is an event or circumstance beyond our reasonable control.

## 20. GST

- (a) Except where express provision is made to the contrary, the consideration payable by the customer under this agreement represents the value of any taxable supply for which payment is to be made.
- (b) Amounts payable under or in respect of a taxable supply made by us (other than under clause (c)) are GST exclusive.
- (c) Subject to us supplying you with a valid tax invoice, if we make a taxable supply for a consideration, which represents its value, then you will pay, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the taxable supply.
- (d) Subject to us supplying you with a valid tax invoice, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third party, the amount required to be paid, reimbursed or contributed by you will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under clause 20.
- (e) For the purpose of this clause 20:
  - (i) GST means GST within the meaning of the GST Act; and
  - (ii) A New Tax System (Goods and Services Tax) Act 1999 (as amended).

## 21. Customer Contact

- (a) On our request, you must nominate at least one customer contact in writing to us.
- (b) You must keep us informed of current and accurate contact details of your customer contact/s.
- (c) A customer contact must be contactable at all reasonable times.
- (d) We may deal with a customer contact on the basis that they are your representative and have your full authority, including making variations.
- (e) A person remains your customer contact until we are given notice in writing that they are no longer your customer contact and a replacement customer contact is nominated.

## 22. Credit Checks

- (a) You authorise us to do the things set out in this clause 24 and acknowledge that we may do so, whenever we see fit for as long as a customer contract continues or you owe us any money.
- (b) We may use a credit report (within the meaning of the Privacy Act 1988(Cth)) on you to assess your credit worthiness or for debt recovery purposes.
- (c) We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.
- (d) We may exchange information about you with other credit providers or a credit reporting agency.
- (e) You acknowledge that we are authorised to do the things set out in this clause 24 under the Privacy Act 1988(Cth) and that to assess or review your credit worthiness, we may:
  - (i) request a third party to report about your credit worthiness; and
  - (ii) disclose financial, credit and other information about you to any person.
- (f) You must cooperate with any enquiries that we make about your credit worthiness and provide any further information, consent or authority we reasonably require.

## 23. Waiver

No right under a customer contract can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach by the other party on one or more occasions, it is not taken to have agreed to any future breach.

## 24. Assignment

- (a) You may not transfer your rights or obligations under a customer contract to or share them with anyone without our prior written consent.
- (b) We may transfer our rights or obligations under this agreement to or share them with anyone without notice to you.

## 25. Intellectual Property Rights

- (a) You may not use any of our intellectual property including our photographs, logos, trademarks, or get up without our written consent.
- (b) Where we allow you to use our intellectual property, we may revoke that consent at any time – where we do, you must immediately cease using our intellectual property.

## 26. Variations

We may vary or amend these terms without your consent, but where we do we will endeavour to notify you at least 7 days before we do so.

## 27. Severance

If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

## 28. Jurisdiction

This agreement and any customer contract are governed by the laws of Victoria, Australia. Any legal proceedings relating to them can only be taken in courts with jurisdiction in Victoria.