

## ACORN PACKAGING SERVICES LIMITED

### STANDARD TERMS AND CONDITIONS

#### 1. **Definitions**

- 1.1 'Seller' means Acorn Packaging Services Limited.
- 1.2 'Buyer' means any company, business, sole trader or individual who places an order with the Seller.
- 1.3 'Price' means the amount stated in the Seller's invoice and not as stated in any quotation, estimate, documentation or given orally unless agreed in writing by a Director of the Seller exclusive of VAT and delivery charges.
- 1.4 'Terms' means the standard terms of sale as set out in this document to which all contracts shall be subject and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- 1.5 'Writing' includes telex, cable, electronic mail, facsimile transmissions and comparable means of communication.
- 1.6 'Packaging' means any Packaging or other items offered for sale by the Seller.
- 1.7 'Goods' means any customers items to be transported in the Packaging.
- 1.8 'Working day' means every day from Monday to Friday except Bank Holidays.

#### 2. **Ordering**

- 2.1 The Seller will supply Packaging to the Buyer only in accordance and as set out herein which shall prevail over any term contained in the Buyer's order or any correspondence or elsewhere unless specifically agreed to in writing and proved by a Director of the Seller.
- 2.2 The Seller reserves the right to make changes to the Packaging offered at its discretion.
- 2.3 A person who is not party to these Terms and Conditions has no right to enforce any of these Terms under the Contracts (Rights of Third Parties) Act 1999.
- 2.4 Quotations are invitations to treat only.
- 2.5 Orders are accepted subject to availability of Packaging and materials at the time of delivery.
- 2.6 Orders which have been accepted by the Seller may be cancelled only with the written agreement of a Company Director of the Seller and on terms that the Buyer will

indemnify the Seller against all losses, damages, costs and expenses incurred by the Seller as a result of that cancellation.

- 2.7 The Seller reserves the right to revise or change the Packaging at any time and to make any changes in the specification of the Packaging which are required to conform with the applicable Health, Safety and other statutory and/or EU requirements.
- 2.8 The Seller shall not be liable in respect of any misrepresentation made by the Seller, its employees or Agents to the Buyer as to condition or quality of the Packaging unless the representation is made or confirmed in writing by the Seller and/or fraudulent.
- 2.9 Without prejudice to Clause 2.8 of the terms while the Seller takes every precaution in the preparation of its literature and website, these documents are for the guidance of the Buyer only and statements therein in the absence of fraud on the part of the Seller should not constitute representations and the Seller shall not be bound by them. If the Buyer requires advice in relation to the Packaging a specific request for written advice should be given.
- 2.10 Any typographical, clerical or other error or omission in any sales literature of the Seller, acceptance, offer, invoice or other document or information issued by the Seller is subject to correction without any liability on the part of the Seller.

### 3. **Price**

- 3.1 Quotations and prices are based on costs and excise duty prevailing at the time when they are given or agreed. The price of the Packaging including excise duty shall be that ruling as at the date of delivery. All prices quoted are exclusive of delivery charges and Value Added Tax which is payable at the rate ruling at the date of delivery unless zero rated or exempt from VAT.
- 3.2 Any discounts, deductions, allowances or rebates agreed are only available if all sums due from the Buyer to the Seller and are paid by the due date. Prices stated or quoted are applicable to the quantity specification and delivery dates. If the order placed varies or delay is caused by the Buyer's instructions or lack of instructions, the Seller shall be entitled to adjust the price at its discretion.

### 4. **Payment**

- 4.1 Payment in full is due within 30 days of the date of the invoice to Buyers who have established credit accounts with the Seller. All Buyers who do not have a credit account with the Seller are required to pay in full when placing an order with the Seller. The Seller will issue a pro-forma invoice to the Buyer for payment.
- 4.2 Failure to pay the Seller in full on the due date entitles the Seller to suspend or cancel future deliveries and/or orders.
- 4.3 The Seller reserves the right to charge interest on overdue accounts in accordance with Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 until payment is received in full.

- 4.4 VAT will be added to all amounts payable by the Buyer.
- 4.5 Credit is granted and may be reviewed at any time at the Seller's discretion. The Seller reserves the right to refuse to execute any order or contract if the arrangements for payment are unsatisfactory to the Seller.
- 4.6 If the Buyer orders Packaging via an employee or Agent or a Director of a limited or public limited company or a Partner of a limited liability partnership, he or she hereby accepts that the Directors or the Partners (inclusive of members of LLP) of the business shall be held personally responsible for the payment of the invoice and related expenses in the event that the Company is for whatever reason unable to pay).
- 4.7 The Buyer hereby acknowledges and agrees that the Directors, Partners and/or members of the Buyer shall be held personally responsible for the payment of the invoice sum and related under this Clause in the event that the Buyer is for whatever reason (including liquidation, administration and/or other insolvency event) unable to pay the Seller pursuant to the terms of this Agreement and accordingly the Seller shall procure that one or more Directors, Partners or members (as the case may be) of the Buyer enters into a Guarantee to guarantee the performance by the Buyer of its payment obligations to the Seller in accordance with Clause 4 of this Agreement.
- 4.8 The Buyer hereby acknowledges and agrees that the Intellectual Property Rights ('IPR') and the title in the Packaging remain at all times with the Seller who manufactured the Packaging subject to Clause 8 below.

5. **Delivery**

- 5.1 Delivery shall occur when the Packaging has been collected by the Buyer or has been delivered to the address agreed by the Seller.
- 5.2 If the Buyer fails to take or make arrangements to accept delivery or collect the Packaging or if the Seller is unable to deliver the Packaging because of inadequate access or instructions delivery shall be deemed and the Seller may do any one or more of the following (without prejudice to any other right or remedy the Seller may have) :-
- (a) make additional charges for failed delivery
  - (b) store the Packaging at the Buyer's risk and cost
  - (c) invoice the Buyer for the Packaging
  - (d) terminate this Contract without liability on the Seller's part and/or
  - (e) recover from the Buyer all costs and losses incurred by the Seller.
- 5.3 Any dates quoted for delivery of the Packaging are approximate only and the Seller shall not be liable for any delay in delivery of the Packaging howsoever caused. Time for delivery shall not be of the essence unless previously agreed with the Seller in writing.

- 5.4 If the Seller fails to deliver the Packaging without any reason other than any cause beyond the Seller's reasonable control the Seller's liability shall be limited to the costs of Packaging.
- 5.5 The Seller reserves the right to make delivery by installments and tender a separate invoice in respect of each installment. Any claim which the Buyer may have in respect of one installment shall not affect the Buyer's liability in respect of any other installment.
- 5.6 The Buyer shall indemnify the Seller in respect of all losses, damages, costs and expenses incurred as a result of delivery in accordance with the Buyer's instructions. This indemnity will be reduced in proportion to the extent that such losses, damages, costs or expenses are due to the Seller's negligence.
- 5.7 Any modifications made to the Seller's Packaging after delivery will not be the responsibility of the Seller.
- 5.8 The Buyer is responsible for all delivery charges payable.

6. **ACCEPTANCE**

- 6.1 Orders will be accepted by the following methods :-

Online, postal, facsimile, in person and telephone.

All orders must be confirmed in writing.

- 6.2 Payments will be accepted by cheque, cash or BACS/electronic bank transfer.
- 6.3 Submitted orders are considered final. The Seller will attempt to accommodate order changes or cancellation requests but cannot guarantee to comply with such requests.

7. **INSPECTION**

- 7.1 The Buyer shall inspect the Packaging at the place and time of loading if the Packaging is collected and unloading if the Packaging is delivered but nothing in these Terms shall require the Buyer to break Packaging.
- 7.2 Unless the Seller or delivery driver is notified forthwith and written notice is received by the Seller within two working days of loading or unloading as the case may be of any claim apparent on reasonable inspection for loss or damage in transit, short delivery, failure to conform to the contract, the Packaging will be deemed to have been delivered in accordance with the delivery documents and accepted by the Buyer and the Buyer shall not be entitled to and waives any right to reject the Packaging.
- 7.3 The Seller's liability for loss or damage in transit, short delivery, failure to conform to the contract or losses apparent on reasonable inspection is limited to supplying the Packaging as ordered and the Seller shall not be liable for any damages whatsoever. The

Buyer remains liable to pay the full invoice price of any other Packaging delivered in accordance with the Contract. Any other claim for damages is subject to Clause 8.

8. **TITLE RISK AND OWNERSHIP**

- 8.1 The risk in the Packaging shall pass to the Buyer on delivery.
- 8.2 The Seller shall remain the legal owner of the Packaging until the Buyer has paid the Seller the full invoiced amount.
- 8.3 Until ownership of the Packaging has passed to the Buyer the Buyer must:
- 8.4 Hold the Packaging on a fiduciary basis and as the Seller's bailee.
- 8.5 Store the Packaging (at no cost to the Seller) separately from all other Packaging so that they remain identifiable as the Seller's Packaging.
- 8.6 Not destroy, deface or obscure the Packaging.
- 8.7 Maintain the Packaging in a satisfactory condition
  
- 8.8 Nothing in paragraph 8.3 gives the Buyer the right to return Packaging without the Seller's consent except in accordance with the returns policy. The Seller shall be entitled at any time to recover any or all of the Packaging to which it has title and for that purpose the Seller, its employees or Agents may with such transport as necessary enter upon the premises occupied by the Buyer or to which the Buyer has access and where the Packaging may be or are believed to be situated.
- 8.9 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Packaging which remain the property of the Seller but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. **RESPONSIBILITIES**

- 9.1 Nothing in these Terms shall exclude or restrict the Seller's liability for death or personal injury resulting from the Seller's negligence.
- 9.2 The Seller shall be under no liability in respect of any defect in the Packaging that would have been apparent on a reasonable inspection in accordance with Clause (7) of these Terms unless the Buyer gives the Seller notice as required by Clause (7).
- 9.3 The Seller shall be under no liability in respect of any defect in the Packaging arising from any specification provided by the Buyer.

- 9.4 The Seller shall be under no liability in respect of any defect in the Packaging unless the defect is discovered within a reasonable period taking account of the type of Packaging concerned and their quality at the time of the contract and the Seller is notified within two working days of the discovery of the defect.
- 9.5 The Seller shall be under no liability for any defect in the Packaging if the defect arises from the Buyer's negligence or handling or storage of the Packaging or failure to follow any instructions or guidance given by the Seller whether oral or in writing.
- 9.6 Subject to the above and as expressly provided in these Terms and except where the Packaging is sold to a person dealing as a consumer all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.7 Where a valid claim in accordance with Clause 9 is notified to the Seller in accordance with these Terms, the Seller may at its sole discretion replace the Packaging (or the part in question) free of charge or return to the Buyer the price of the Packaging or a proportionate part of the price in which case the Seller shall have no liability to the Buyer.
- 9.8 The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the Packaging which give rise to such liability determined by the net price invoiced to the Buyer in respect of any occurrence or series of occurrences.
- 9.9 The Seller shall be under no liability to the Buyer for any loss, damage or injury direct or indirect resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by negligence of the Seller, its employees or Agents.
- 9.10 The Seller will pack goods and construct packaging at the Buyer's premises, or such other place as agreed, solely at the discretion of the Seller, and at the risk of the Buyer. The Seller shall have no liability to the Buyer for any loss or damage caused to the Buyers, its property, employees or agents howsoever arising.

10. **SET OFF**

- 10.1 The Buyer is not entitled to set off any debt or claim against payment of the contract price or other amounts owing to the Seller.

11. **DATA PROTECTION**

- 11.1 If the Buyer is an individual or a group of individuals the Buyer agrees that the Seller may seek, hold and process any information obtained about the Buyer from the Buyer or third parties for the purpose of and as a result of any applications or agreements the Buyer has with the Seller. This will include a search with a licensed credit reference agency which will keep a record of that search.

- 11.2 The Seller may use this information for credit assessment purposes including assessing the Buyer's credit limit and to administer and operate the credit account granted to the Buyer and analyse the conduct of that credit account. This may include further searches with licensed credit reference agencies.
- 11.3 The Seller may disclose any information the Seller holds about the Buyer to licensed credit reference agencies, other suppliers and creditors to help the Seller and others make credit decisions to help prevent or detect fraud or other crimes, to trace debtors, to provide trade references on a confidential basis to the Seller's agents and sub contractors, to insurance companies for the purposes connected with insurance products that relate or might relate to the Buyer's credit account, to any person to whom the Seller proposes to transfer its rights and/or responsibilities under this Contract and to the extent the Seller is required or permitted to do so by law.
- 11.4 The Seller may hold and use this information during and for six years after the trading relationship and thereafter destroy the information except for a record of credit limits and date of and grounds for account closure.
- 11.5 If the Buyer is a body corporate the Seller may process information as above relating to the Buyer's Directors, shareholders or members including searches with licensed credit reference agencies.

## 12. **INTERNATIONAL SALES**

- 12.1 Where the Seller's invoices are exclusive of UK tax and excise duty the Buyer will supply evidence of shipment satisfactory to UK/EU statutory authority within 30 days of exportation. The Seller reserves the right to debit the Buyer with any costs and charges including any liability for VAT, any other UK tax or excise duty if such evidence is not provided.
- 12.2 The Buyer will be responsible for complying with any legislation or regulations governing the importation of the Packaging/Goods or exportation of the Packaging/Goods into the country of destination and for the payment of any duties or taxes on them.
- 12.3 The Buyer must advise the Seller in writing of any product, labeling, Packaging or specification requirements applicable to the country of destination otherwise Packaging will be supplied to the Supplier's specification.

## 13. **INSURANCE**

- 13.1 The Buyer will insure the Goods delivered to the Seller for packaging and the Buyer acknowledges that the Seller does not insure any Goods delivered to the Seller's premises and the Buyer is solely responsible for any losses sustained to the Buyer due to fire, theft or other insurable risks either on the Seller's premises or in transit.

14. **FORCE MAJEURE**

14.1 The Seller shall not be liable to the Buyer for the loss or damage suffered by the Buyer as either a direct or indirect result of the supply of Goods or Packaging by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond the Seller's reasonable control.

15. **DEFAULT TERMINATION AND INSOLVENCY**

15.1 If the Buyer enters into any deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if an order is made or a resolution is passed for the winding up of the Buyer or if a Receiver is appointed for any of the Buyer's assets or undertakings or if the Buyer takes or suffers any similar or analogous action in consequence of debts or commits any breach of this or any other contract between the Seller and the Buyer the Seller may without prejudice to any of its other rights stop any Goods in transit or Packaging and/or suspend further deliveries and/or determine the rights of the Buyer under Clause 8 and/or by notice in writing to the Buyer to terminate the Contract.

15.2 Without prejudice to this Clause the Buyer shall reimburse the Seller's costs including without limit legal costs on an indemnity basis which the Seller incurred in enforcing the Seller's rights under this Contract including but not limited to recovery of any sums due to the Seller by the Buyer.

16. **GENERAL**

16.1 This Contract shall be governed and interpreted according to the laws of England and Wales and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

16.2 The waiver by the Seller of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

16.3 If any Clause or sub-Clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other Clauses and sub-Clauses of these Terms shall not be affected and they shall remain in full force and effect. Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been received if sent by first class post two working days after posting exclusive of the day of posting, if delivered by hand on the day of delivery and if sent by facsimile transmission at the time of confirmation of transmission of the entire fax.

- 16.4 The Buyer may not assign, sub-contract or in any way transfer or dispose of any rights or obligations under these Terms without the Seller's prior consent.
- 16.5 If any information and any communication sent by the Seller to the Buyer are inconsistent with the provisions of these Terms, then these Terms shall prevail.
- 16.6 Without prejudice to any other rights or remedies that the Seller may have the Buyer acknowledges and agrees that damages alone would not be an adequate remedy for any breach by the Buyer of the provisions of these Terms and accordingly the Seller shall be entitled without proof of special damages to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of the provisions of these Terms. If legal action is necessary to enforce an agreement between the Seller and the Buyer or to obtain payment from the Buyer then the Buyer will be responsible for any costs and legal fees incurred by the Seller in that pursuit.
- 16.7 The Buyer placing an order verbally or in writing to purchase Packaging from the Seller by this conduct this shall amount to the acceptance of these Terms and Conditions of business.

I/WE ..... confirm we have read the above Terms and Conditions and agree to accept them in full.

.....  
Signed.

.....  
Print name and position.

.....  
Date.