

## 1. Definitions and Interpretation

1.1. Words used in these Conditions, have the following meaning:

- a. Conditions mean these Terms and Conditions, including the Details.
- b. Confidential Information includes any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, mask works and artwork, that is clearly identified as being confidential, proprietary or a trade secret; business related information including but not limited to pricing, manufacturing, or marketing; the terms and conditions of any proposed or actual Contract between the parties; either party's business policies, or practices; and the information of others that is received by either party under an obligation of confidentiality;
- c. Commencement Date means the earlier of the date that either Weltrade accepts a Customer's purchase order or the Customer accepts a Quote.
- d. Contract means any contract or agreement whatsoever made by Weltrade to supply any goods to the Customer, whether resulting from the acceptance by Weltrade of an order given by a Customer, the acceptance by a Customer of a Quote or otherwise;
- e. Customer means the person who orders the Goods from Weltrade;
- f. Event of Default means the Customer:
  - i. fails to pay the Price in full when due;
  - ii. pays for the Goods by cheque (in whole or in part) and that cheque is not met on presentation;
  - iii. commits any act of bankruptcy, becomes bankrupt, or is insolvent under administration, as defined in section 9 of the Corporations Act;
  - iv. is or becomes insolvent within the meaning as given by any of section 9 and subsection 95A (2) of the Corporations Act or regulation 7.5.02 of the Corporations Regulations; or
  - v. a termination event under clause 26.1 occurs.
  - vi. Goods means any or all of the products the subject of Supply by Weltrade to a Customer with a production tolerance +/- 10% on quantity;
- g. GST means GST within the meaning of the GST Act.
- h. GST Act means A New Tax System (Goods and Services Tax) Act 1991 (Cth).
- i. Intellectual Property Rights includes all trade names, trade marks, patents, designs, confidential information or other intellectual property rights.
- j. Order means any offer to purchase the Goods from Weltrade made by the Customer;
- k. Price means the amount agreed to be paid for the Goods;
- l. Quote means any quotation provided to the Customer for Goods, which subject to clauses 5.4 and 8, is valid for a period of 30 days from the date of issue;
- m. Supply means the supply of any Goods the subject of any Contract; and
- n. Specifications means any specifications agreed between the parties;
- o. Weltrade means Weltrade Pty Limited ABN 22 925 244 672.
- p. Lead time commences from signed approval of artwork proof or approval of preproduction samples, whichever is later.

1.2. Expressions used in the Details bear a corresponding meaning in these Conditions unless the context requires otherwise.

1.3. A reference to a clause is a reference to a clause of these Conditions.

1.4. Where any word or phrase is given a definite meaning in these Conditions, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.

1.5. A reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof.

1.6. Headings and captions are for convenience or reference only and do not alter the meaning or interpretation of these Conditions.

## 2. Governing Terms

Only these conditions bind Weltrade. All other conditions (including conditions contained in the Customer's order form or any other document or communication pertaining in the Customers order), warranties and representations are excluded.

These conditions are deemed accepted when the Quote is accepted by the Customer or the Purchase Order is accepted by Weltrade (as the case may be).

## 3. Amendment

3.1. Weltrade may amend these Conditions at any time either by written notice to the Customer or by publishing such changes on its website ([www.weltradepackaging.com.au/terms-and-conditions](http://www.weltradepackaging.com.au/terms-and-conditions)) Any such changes will take effect from the date of notification or publication on the website (as the case may be), and will apply to any Contract entered into between the Customer and Weltrade after that date.

## 4. Appointment

- 4.1. The Customer appoints Weltrade to manufacture and supply the Goods in accordance with these Conditions.
- 4.2. Weltrade accepts its appointment to manufacture and supply the Goods to the Customer.
- 4.3. Nothing in these Conditions prevents Weltrade from supplying products similar to the Goods to any third party.

## 5. Orders

- 5.1. The quantity, quality and description of and any specification for the Supply shall be those set out in a Quote (if accepted by the Customer) or the Customer's purchase order (if accepted by Weltrade).
- 5.2. The Customer shall be responsible for ensuring the accuracy of the terms of any purchase order (including any applicable specification) it submits to Weltrade, and for giving Weltrade any necessary information relating to the Supply within a sufficient time to enable Weltrade to perform the Contract in accordance with its terms.
- 5.3. Upon receipt of a purchase order or if the Customer accepts a Quote, Weltrade will confirm acceptance by issuing a sales confirmation to the Customer.
- 5.4. Weltrade reserves the right to change, at any time prior to issuing a sales confirmation to the Customer, its Prices if:
  - i. series production ends; or
  - ii. raw material prices have changed; or
  - iii. actual volume is less than forecast volume; or
  - iv. there is any significant change in economic circumstances.
- 5.5. Orders for Goods cannot be suspended or cancelled except with Weltrade's consent. The Customer shall pay all reasonable costs and expenses incurred by Weltrade due to suspension or cancellation. Deposits are non refundable.

## 6. Specifications

6.1. If the Goods are to be manufactured or any process is

to be applied to the Goods by Weltrade in accordance with specifications submitted by the Customer, the Customer shall indemnify Weltrade against all loss, damages, cost and expenses awarded against or incurred by Weltrade in connection with or paid or agreed to be paid by Weltrade in settlement of any claim by a third party for infringement of their Intellectual Property Rights which results from Weltrade's use of the specification.

6.2. Weltrade reserves the right to make any changes to the specification of the Goods which are required to conform to any applicable statutory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance. a commercial tolerance margin will apply to all product specifications. If in doubt, contact Weltrade for clarification.

## 7. Change Requests

7.1. The Customer may issue a written change order to request changes within the scope of the Contract. Such requests are subject to acceptance by Weltrade.

7.2. Weltrade will inform the Customer, as soon as reasonably practicable, if the change will cause an increase in Weltrade's costs, quantity of Goods or time required to perform the Contract. The change will become effective, and Weltrade will commence performance, only upon execution of a written amendment to the Contract.

7.3. Unless otherwise agreed in writing, upon performance of the change order Weltrade will be entitled to invoice the Customer and the Customer shall be obligated to pay for the costs of the change, even if Weltrade agreed to proceed with the change prior to execution of an amendment.

## 8. Change of Law

8.1. In this clause 8:

a. "Change of Law" means any enactment or promulgation of any new law or regulation or the amendment of any law or regulation existing at the Commencement Date, including any law or regulation relating to the imposition or change in any tax (other than income tax), impost, fee, charge, scheme, excise or levy, in Australia which may result in a variation of the actual costs incurred by Weltrade in supplying the Products to the Customer;

b. "Introduction Date" is taken to be the date that any legislation in respect of a Change of Law receives royal assent.

8.2. The parties agree that if at any time during the Term a Change of Law occurs this will trigger an automatic review of the Price of Goods under the Contract, that in principle an increase in Price should occur if the Change of Law would have the effect of increasing the costs of Weltrade in supplying the Goods and the following will apply:

a. the sole purpose of this review is to determine the effect of the Change of Law on the Price of the Goods that apply at the Introduction Date and to adjust the Price accordingly;

b. the parties will use their best endeavours not later than 1 month from the Introduction Date to determine:

- the effect that the Change of Law will have on the Price of the Goods; and
- what adjustment, if any, is to be made to the Price of the Goods as a result of the Change of Law.

c. For the avoidance of doubt, in the event that the parties are unable to agree on any price variation under this clause 8, the provisions of clause 27 will apply.

## 9. Terms of Payment

9.1. If terms of credit have been agreed between the

parties, Weltrade will issue the invoice the day Goods are dispatched to the customer. Customer must pay the Price of any Supply within the stated invoice payment terms.

9.2. To avoid doubt, nothing in these Conditions prohibits Weltrade to make it a condition of a Supply that the Customer pays the Price in advance or in installment.

9.3. Weltrade may charge a flat 10% late fee on any outstanding invoices which remain unpaid after 30 days from due date (at Weltrade's discretion). This is applicable against the entire outstanding account. The customer will pay this late fee which will be charged as a separate invoice and due for payment immediately. The customer will also indemnify Weltrade for any debt collection fees, commission or expenses it may be charged in having to pursue the Customer for payment of any invoices.

## 10. Setoff.

The Customer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Weltrade.

## 11. Delivery

11.1. Unless otherwise agreed between the parties in writing, Goods will be delivered to the Customer at the place specified in the Order at the Customer's cost.

11.2. Delivery dates are estimates only and Weltrade is not liable for any loss or damage for a failure to have the Goods delivered on those dates.

11.3. The Goods will be delivered on CHEP pallets to be de-hired by the Customer with CHEP under the terms of their own CHEP account. In the event that the Customer does not have a valid CHEP pallet account, an amount of \$50 plus GST per pallet will be charged [Plain pallets are available for \$20 plus GST if required.] To avoid doubt, these charges are in addition to any freight costs.

11.4. Weltrade will notify the Customer in a timely manner if Weltrade is unable, whether temporarily or otherwise, to supply the Goods in the volume required and/or required times and the reasons for that inability.

11.5. Weltrade may make available part of any Order and render an invoice to the Customer for Goods available for delivery. Failure to make the total Order available will not invalidate that sale.

## 12. Acceptance

12.1. The Customer may reject the Goods by written notice to Weltrade within 48 hours of delivery.

12.2. If Weltrade accepts the Customer's reasons for rejection, it will (at its discretion) either repair or replace the Goods.

12.3. The Customer is deemed to have accepted an Order not rejected within 48 hours of delivery.

## 13. Retention of Title and Risk

13.1. The title to and property in the Goods will not pass from Weltrade to the Customer until the Customer has paid the Price in full to Weltrade in accordance with these Conditions. Until then, the Customer:

- holds the Goods in a fiduciary relationship with Weltrade as bailee only;
- must keep the Goods separate from other items it holds and clearly identified as owned by Weltrade, and must not resell or transfer possession of the Goods.

13.2. The Goods will be at the Customer's risk upon delivery at the place nominated by the Customer in the Order.

## 14. Event of Default

14.1. If the Customer suffers an Event of Default, and Weltrade is owed money or an Order has not been completed, then without prejudice to Weltrade's other

rights, Weltrade may without notice to the Customer:

- a. suspend the manufacture and/or supply of the Goods;
- b. enter onto the premises where the Goods are situated to repossess the Goods, despite the fact that the Goods may have co-mingled with other goods.

## 15. Indemnity

15.1. The Customer must also indemnify and keep Weltrade indemnified against, and pay to Weltrade, all expenses, losses and damages incurred or sustained by Weltrade as a result of, or in relation, to Weltrade exercising its rights:

- a. as a result of an Event of Default;
- b. as a result of a breach of any term, express or implied, of these Conditions by the Customer; or
- c. as a result of any bank or other costs, charges or expenses incurred by Weltrade resulting from any Customer's cheque not being met on presentation

## 16. Weltrade may sell and recover from proceeds

16.1. Where Weltrade takes possession of the Goods as a result of an Event of Default of the Customer, Weltrade, should it choose to do so and without derogating from its rights under clause 14:

- a. sell the Goods by any means and at any time;
- b. deduct from any proceeds of sale, all costs incurred in relation to the sale;
- c. retain for its own use and benefit any part of the Price for the Goods which remains outstanding; and
- d. apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which Weltrade has priority over other security interests.

16.2. Where there is a shortfall on any sale or attempted sale of the Goods, Weltrade continues to hold their security interest in the Goods and may recover the shortfall from the Customer.

## 17. Proceeds Of Sale

If the Goods are resold, or goods using the Goods are manufactured and resold by the Customer, the Customer holds all of the book debts owed and proceeds in respect of such sales on trust for Weltrade and must keep such proceeds of sale in a separate account and not mix such proceeds with any other funds. Such part of the book debts and proceeds are deemed to equal in dollar terms the amount owed by the Customer to Weltrade at the time of the receipt of such book debts and proceeds.

## 18. Allocation Of Funds

Weltrade may at its discretion and in such manner as it determines allocate payments made by the Customer for any Goods supplied by Weltrade.

## 19. Revolving Assets

19.1. In this clause 19:

"Revolving Asset" means any Goods which are inventory

19.2. If an Event of Default occurs then automatically the Goods

- i. Cease to be a Revolving Asset;
- ii. Any floating charge over the Goods immediately operates as a fixed charge; and
- iii. The Customer may no longer deal with the Goods without Weltrade's written consent.

## 20. Personal Property Securities Act 2009 ("PPSA")

For the purposes of the PPSA:

20.1. Until the Customer has paid for the Goods in full (whereby the Customer will obtain legal title to the relevant Goods), the Customer acknowledges that Weltrade holds a purchase money security interest in the following:

- a. any Goods supplied by Weltrade;

- b. any new products into which the Goods supplied have been manufactured, processed, assembled or commingled such that their original identity is lost;
- c. all proceeds in relation to the Goods referred to in (a) and (b) including without limitation money, accounts receivable and insurance proceeds; and
- d. any goods for which any of the Goods referred to in (a) and (b) have been exchanged or traded or that have been acquired in lieu of those products,
- e. as security for the Price payable by the Customer to Weltrade at any time for the Goods.

20.2. If requested by Weltrade, the Customer shall promptly and without undue delay execute any documents, provide all information required in order to complete a Financing Statement (as defined under the PPSA) and comply with any other reasonable requests by Weltrade to ensure that Weltrade's purchase money security interest(s) and general security interest are perfected.

20.3. The Customer shall immediately notify Weltrade in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement.

20.4. The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to the Supplier's security interests.

20.5. The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by Weltrade in relation to the filing of a financing statement or a financing change statement.

20.6. The Customer waives its rights under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to these Conditions or any supply of the Goods pursuant to these Conditions.

20.7. Each party agrees that it will not disclose information of the kind referred to section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275 of the PPSA and other provisions of the PPSA. The Customer agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to section 275(1) of the PPSA

## 21. Limited Warranty

21.1. Weltrade disclaims all warranties, conditions and guarantees, whether written, express, implied, statutory or otherwise, including, but not limited to, the implied warranties or guarantees of merchantability and fitness for particular purpose.

21.2. To the extent permitted by law, all implied terms, conditions, warranties and guarantees ("Guarantees") which would otherwise be implied into these Conditions are excluded. If any Guarantee, is implied into these Conditions by legislation and cannot be excluded, and Weltrade is able to limit the Customer's remedy, then Weltrade's liability is limited to one of the following:

- a. the replacement of the relevant Goods or the supply of equivalent goods;
- b. the repair of the relevant Goods;
- c. the payment of the costs of replacing the relevant Goods, or of acquiring equivalent goods; or
- d. the payment of the costs of having the relevant Goods repaired; and

Weltrade may in its sole discretion determine which of the foregoing will apply in any case.

## 22. Confidentiality

22.1. Each party may have access to the Confidential Information of the other party as a result of the supply of Goods.

22.2. The receiving party will keep all Confidential Information disclosed hereunder confidential for a period of 5 years following the expiration or termination of these Conditions.

22.3. Each party will retain ownership of its Confidential Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets.

22.4. No right or license is granted hereby to a party or its Customers, employees or agents, expressly or by implication, with respect to the Confidential Information or any patent, patent application or other Confidential right of the other party, notwithstanding the expiration of the confidentiality obligations stated herein.

22.5. Weltrade agrees to use the Confidential Information of the Customer only to provide Goods for the Customer. The Customer agrees that it will not use or disclose Weltrade's Confidential Information for any purpose besides the purchase or use of goods under these Conditions.

22.6. The Customer will not use Weltrade's Confidential Information for the manufacture or procurement of parts or Goods that are the subject of these Conditions or any similar parts or to cause such Goods to be manufactured or procured from any other source.

22.7. The receiving party has no duty to protect information that is proven by written records to be:

- a. publicly known at the time of disclosure or becomes publicly known through no fault of recipient;
- b. known to recipient at the time of disclosure through no wrongful act of recipient;
- c. received by recipient from a third party without restrictions similar to those in this section; or
- d. independently developed by recipient.

## 23. Intellectual Property

23.1. These Conditions are not a licence of, and the Customer shall not acquire any interest of any nature in any of Weltrade's Intellectual Property Rights in the Goods or any other material created in connection with the Supply.

23.2. Any design, source code, drawing, description, model, documentation, sample and/or the like, created by Weltrade, in connection with the Supply shall remain the Intellectual Property of Weltrade.

23.3. The Customer agrees not to remove or alter any indicia of manufacturing contained on or within the goods, including without limitation trademarks on nameplates or cast or machined components.

## 24. Reference and Promotional Materials

The Customer agrees to allow Weltrade to use Customer's name and logo as a reference for potential customers and to include information, pictures and material regarding the Goods provided to the Customer in Weltrade's promotional materials.

## 25. Limitation Of Liability

25.1. In no event will Weltrade be liable to compensate or indemnify the Customer for any loss or damage suffered or incurred by the Customer in relation to these Conditions, any Order, the Goods, or their delivery, mis-delivery or non-delivery for any incidental damages, consequential damages, special damages, punitive damages, statutory damages, indirect damages, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages.

25.2. To the extent permitted by law, Weltrade's liability for damages arising out of or related to these Conditions shall in no case exceed the amount actually paid to Weltrade for the Goods from which the claim arose. To the extent permitted by applicable law, these limitations and exclusions will apply regardless of whether liability arises from breach of contract, warranty, tort (including but not limited to negligence), by operation of law, or otherwise.

25.3. The Customer's remedy for any defective goods will be the repair, replacement or account credit, issued by Weltrade to be applied against future purchases (at the discretion of Weltrade). Credits will be issued at the purchase cost less any costs incurred up to the credit being raised.

## 26. Termination

26.1. A party may terminate these Conditions or any Order (if in the case of the Customer, it is prior to completion of the Order), by giving written notice to the other party ("defaulting party") if any of the following circumstances occurs:

- a. if the defaulting party is in breach of these Conditions and fails to remedy the breach within 30 days of receiving a written notice of the breach from the non-defaulting party requiring the breach to be remedied;
- b. if the defaulting party is in breach of any provision of these Conditions which is not capable of remedy;

26.2. Rights and Obligations on Termination. Termination of these Conditions will not release or discharge either party from any debt, obligation or liability which has accrued and remains to be performed by each party as at the date of such termination or which is intended by these Conditions to survive termination.

## 27. Dispute Resolution

27.1. This clause 27 shall apply only in relation to disputes between the parties in connection with or arising out of these Conditions, or the breach, termination, validity or subject matter thereof, or to any claim in tort, in equity or pursuant to any statute or law and where the amount in dispute exceeds, where the amount dispute exceeds \$5,000.

27.2. Initial Procedure

27.3. If there is a dispute between the parties as contemplated in clause 27.1, then within 7 days of a party notifying the other party of a dispute, each party's

27.4. Representative will meet with a view to resolving the dispute ("Initial Meeting"). The parties' representatives must use all reasonable endeavours and act in good faith to resolve the dispute.

## 28. Mediation

28.1. If the parties are unable to resolve the dispute within 14 days of the Initial Meeting, the parties must refer the dispute to mediation. The parties agree:

- a. to appoint a mutually agreed independent mediator to mediate the dispute;
- b. that mediation must be commenced within 28 days of date of the appointment of a mediator;
- c. that any information or document obtained through

or as part of the mediation is confidential and may not be used for any purpose other than the settlement of the dispute between the parties; and that the cost of the mediator's fees for any mediation will be shared equally between the parties.

28.2.If the parties cannot agree on the appointment of mediator under clause 28.1 within 7 days, the parties will refer the matter to the Australian Disputes Centre (ADC) who will nominate a suitably qualified mediator.

28.3.If the dispute is not resolved within 21 days of the commencement of the mediation, either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.

28.4.Strict Confidence

28.5.All negotiations connected with the dispute resolution under this clause 28 must be conducted in strict confidence and are without prejudice to rights of the parties in any further legal proceedings.

28.6. Urgent Relief

28.7. Nothing in this clause 28 prevents a party from seeking urgent injunctive or declaratory relief.

28.8. Continuing Performance

28.9. Each Party must continue to perform each of its obligations under the Contract and these Conditions notwithstanding a dispute exists or proceedings have been commenced under clause 27 or 28.

## 29.Survival

29.1. This clause 27 survives the termination or expiry of the Contract.

## 30.GST

30.1. Any reference in this clause 30 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

30.2. Unless otherwise stated, all Prices or other sums payable or consideration to be provided under these Conditions are exclusive of GST.

30.3. To the extent that any supply made under or in connection with these Conditions is a taxable supply, the consideration to be provided under these Conditions for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.

30.4. The supplier of a taxable supply will provide the other party with a tax invoice in applicable form.

30.5. Costs or expenses to be reimbursed or indemnified under these Conditions exclude any amount in respect of GST included in the costs or expenses for which an entitlement arises to claim an input tax credit.

## 31.General

31.1.Force Majeure: Neither party will be liable to the other for any failure to comply with these Conditions where the failure is due to circumstances which are not directly within the party's control, including a pandemic as defined by the World Health Organisation, acts of terrorism, natural disaster, industrial action, or a failure of a supplier, public utility or common carrier, provided the affected party diligently commences and continues its obligations under these Conditions promptly upon the removal of such cause.

31.2.Time: Time is of the essence in respect of all the Customer's obligations under these Conditions.

31.3.Expenses: The Customer must pay to the Supplier any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by the Supplier in connection with these Conditions, the

exercise or attempted exercise of any power, right or remedy under these Conditions, and the failure of the Customer to comply with these Conditions.

31.4.Waiver: A right created under these Conditions may not be waived except in writing, signed by the party granting the waiver.

31.5.Notices: All notices and other communications provided for or permitted under these Conditions or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to the parties' respective contact details as set out in the Details.

31.6.Governing Law: Any Supply by Weltrade to the Customer, and the construction and interpretation of these Conditions, shall be governed by the laws of Queensland and any dispute not resolved by the parties shall be subject to the exclusive jurisdiction of the Courts of Queensland.

31.7.If any provision of these Conditions is held by any competent authority to be illegal, invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected and, in lieu of such illegal, invalid or unenforceable provision, there will be added, as part of these Conditions, one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.

31.8.All provisions of these Conditions which by their nature should apply beyond the term of a Contract will remain in force after acceptance and complete performance of a Contract, including but not limited to, the Payment, Confidentiality, Limitation of Liability and Dispute Resolution clauses.

31.9.The Customer will not assign any rights or obligations under these Conditions without the prior written consent of Weltrade. Weltrade may assign any rights or obligations under these Conditions without the prior written consent of the Customer.

31.10. For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of these Conditions.